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WEDNESDAY, MARCH 21, 1979



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

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Commodity Credit Corporation—
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Farmers Home Administration—
Community facility loans; revision and redesignation of regulations; comments by 4-2-79 ..... 6351; 2-1-79

Food and Nutrition Service—
Audits of certain FNS programs; interim regulations; comments by 3-30-79. 59823; 12-22-78
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COMMERCE DEPARTMENT

Industry and Trade Administration—
Short supply controls, need for validated licensing of petroleum coke exports; comments by 3-26-79.. 11239; 2-28-79

National Oceanic and Atmospheric Administration—
Tanner Crabs off Alaska; partial closure of fisheries; comments by 3-29-79. 5885; 1-30-79

CONSUMER PRODUCT SAFETY COMMISSION

Hazardous aluminized polyester film kites; comments by 3-27-79 ..... 5459; 1-26-79

DEFENSE DEPARTMENT

Navy Department—
New Regional Medical Center; availability of draft environmental impact statement; comments by 3-30-79 ..... 12477; 3-7-79

ENERGY DEPARTMENT

Economic Regulatory Administration—
Powerplant and Industrial Fuel Use Act of 1978; implementation; comments by 3-26-79 ..... 5808; 1-29-79
Powerplant and Industrial Fuel Use Act (existing facilities), implementation; comments by 3-26-79 .. 5809; 1-29-79
Standby petroleum product allocation regulations, notice of activation order to update the motor gasoline allocation base period; comments by 3-30-79. 11202; 2-28-79

ENVIRONMENTAL PROTECTION AGENCY

Grants for restoring publicly owned freshwater lakes, state and local assistance; comments by 3-30-79 ..... 5685; 1-29-72
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AM stereophonic broadcasting; standards for service; reply comments by 3-30-79 ..... 48659; 10-19-78; 1765; 1-8-79; 11568; 3-1-79
Amateur radio services, handicapped operator license applicants, telegraphy examinations; comment period extended to 3-30-79 ..... 56251; 12-1-78
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FEDERAL DEPOSIT INSURANCE CORPORATION

Practice and procedure; rules of construction; comments by 3-29-79 ..... 11073; 2-27-79

FEDERAL TRADE COMMISSION

Advertising of veterinary goods and services; intent to temporarily forego proposed rulemaking; comments by 3-31-79 ..... 60954; 12-29-78
General Motors Corp.; consent agreement with analysis to aid plublic comment; comments by 3-27-79 ..... 5457; 1-26-79
Hearing aid industry; staff report and report of the Presiding Officer; comments by 3-29-79 ..... 15514; 3-14-79
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Federal property management; temporary rules on commercial products; comments by 3-30-79 ..... 12031; 3-5-79

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Financial assistance to local educational agencies to meet the special educational needs of educationally deprived, neglected and delinquent children; evaluation requirements; comments by 3-26-79 ..... 7914; 2-7-79

Food and Drug Administration—
Intent to establish standard for cocoa butters; comments by 3-26-79 ..... 10740; 2-23-79
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Health Care Financing Administration—
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Land Management Bureau—
Outer Continental Shelf Mineral Leasing Program; implementation; comments by 4-2-79 ..... 6471; 2-1-79

National Park Service—
Alaska National Monument, notice of intent to propose rulemaking; comments by 3-30-79 ..... 11242; 2-28-79
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Immigration and Naturalization Service—
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Border crossing cards, nonresident alien; voidance on grounds of residence in Canada or Mexico; comments by 3-30-79 ..... 5668; 1-29-79
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Nonimmigrant classes; applications to accept employment by A-1 and A-2 aliens; comments by 3-30-79.. 5669; 1-29-79

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Occupational Safety and Health Administration—
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NATIONAL CREDIT UNION ADMINISTRATION

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SECURITIES AND EXCHANGE COMMISSION

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SMALL BUSINESS ADMINISTRATION

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TRANSPORTATION DEPARTMENT

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National Board for The Promotion of Rifle Practice, Arlington, Va. (partially open), 3-29-79..... 11821; 3-2-79

Navy Department—
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[Last Listing: March 9, 1979]

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Title 3—
The President

Proclamation 4647 of March 20, 1979

Vietnam Veterans Week, 1979

By the President of the United States of America

A Proclamation

We are a peace-seeking Nation and we are at peace, but we must not forget the lessons war has taught us, nor the brave men and women who have sacrificed so much for us in all our wars.

The decade now drawing to a close began in the midst of a war that was the longest and most expensive in our history, and the most costly in human lives and suffering. Because it was a divisive and painful period for all Americans, we are tempted to want to put the Vietnam war out of our minds. But it is important that we remember—honestly, realistically, with humility.

It is important, too, that we remember those who answered their Nation's call in that war with the full measure of their valor and loyalty, that we pay full tribute at last to all Americans who served in our Armed Forces in Southeast Asia. Their courage and sacrifices in that tragic conflict were made doubly difficult by the Nation's lack of agreement as to what constituted the highest duty. Instead of glory, they were too often met with our embarrassment or ignored when they returned.

The honor of those who died there is not tarnished by our uncertainty at the moment of their sacrifice. To them we offer our respect and gratitude. To the loved ones they left behind, we offer our concern and understanding and our help to build new lives. To those who still bear the wounds, both physical and psychic, from all our wars, we acknowledge our continuing responsibility.

Of all the millions of Americans who served in Southeast Asia, the majority have successfully rejoined the mainstream of American life.

To them, and to all who served or suffered in that war, we give our solemn pledge to pursue all honorable means to establish a just and lasting peace in the world, that no future generation need suffer in this way again.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, call upon all Americans to observe May 28 through June 3, 1979, the week of our traditional Memorial Day, as Vietnam Veterans Week. On this occasion, let us as a Nation express our sincere thanks for the service of all Vietnam era veterans.

I urge my fellow citizens and my fellow veterans, and their groups and organizations, to honor the patriotism of these veterans, and to recognize their civilian contributions to their communities in America today.

I call upon the state and local governments to join with me in proclaiming Vietnam Veterans Week, and to publicly recognize with appropriate ceremonies and activities yesterday's service and today's contributions of Vietnam era veterans.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of March, in the year of our Lord nineteen hundred and seventy-nine, and of the Independence of the United States of America the two hundred and third.

Jimmy Carter

[FR Doc. 79-8812
Filed 3-20-79; 11:43 am]

Billing code 3195-01-M

rules and regulations

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

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

[6355-01-M]

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

SUBCHAPTER E—POISON PREVENTION PACKAGING ACT OF 1970 REGULATIONS

PART 1700—POISON PREVENTION PACKAGING

Exemption From Child-Resistant Packaging Standards of Certain Betamethasone Tablets

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission issues a final amendment under the Poison Prevention Packaging Act of 1970 (PPPA) to exempt betamethasone tablets in manufacturers' dispenser packages containing no more than 12.6 milligrams betamethasone from the special packaging requirements imposed by the act. The Commission's decision to grant an exemption is based on toxicity and injury data indicating a low risk of injury associated with possible accidental ingestion of the drug in the amount requested for exemption by the petitioner, Schering Corporation.

EFFECTIVE DATE: This amendment is effective March 21, 1979.

FOR FURTHER INFORMATION CONTACT:

Sandra Eberle, Directorate for Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207, (301) 492-6400.

SUPPLEMENTARY INFORMATION:

Background

Regulations issued under the Poison Prevention Packaging Act of 1970 (PPPA) (15 U.S.C. 1471-1476) establish child-protection packaging requirements for human oral prescription drugs in order to protect children from serious personal injury or illness resulting from handling, using, or ingesting these substances.

On May 5, 1976, the Commission proposed an exemption to the child-resistant packaging regulations for prescription drugs in oral form (16 CFR 1700.14(a)(10)) in response to a petition (PP 75-1) from Schering Corporation requesting an exemption for its product, Celestone Six-Day Tablet-Pack in the manufacturer's special dispenser packaging (41 FR 18523). In proposing the exemption, the Commission also stayed the child-protection packaging regulation for prescription drugs as it applied to Celestone pending issuance of a final exemption.

Celestone Six-Day Tablet-Pack is a 21 tablet package containing a total amount of 12.6 milligrams of the synthetic glucocorticoid, betamethasone (0.6 mg/tab). This glucocorticoid is used as an anti-inflammatory agent in the treatment of disorders such as allergic states, rheumatism, and certain dermatologic conditions. The petitioner stated that the special dispenser packaging is designed to permit a patient to reduce his steroidal intake from six tablets on the first day to one tablet on the sixth day in a manner consistent with patient needs and the treatment prescribed by the physician. The Commission proposed the exemption because of the lack of adverse reactions associated with accidental ingestions by children and the low toxicity of the drug.

Information currently available to the Commission indicates that Schering's Celestone tablets are the only betamethasone tablets available on the market. The company, further, has stated that it has no arrangements with other distributors to supply betamethasone for sale under other labels. It should be noted that the Commission's proposed exemption (41 FR 18523) listed the substance under its brand name (Celestone) rather than by its generic name (betamethasone). Since the time of the proposal, the Commission has decided that exemptions from child-resistant packaging requirements under the PPPA shall generally be identified by the generic name or by a common descriptive name rather than by the manufacturer's trade name. This policy is necessary to prevent confusion resulting from one brand of a drug receiving an exemption while other brands with the same generic equivalency do not. The policy also permits the Commission to exempt a substance without having to respond to an excessive number of petitions from other manufacturers of the generically identical drug. Therefore, pursuant to the Commission's current policy, this final exemption is for all betamethasone tablets in manufacturers' dispenser packages, containing no more than 12.6 milligrams betamethasone, and is not limited to Celestone tablets.

Response to Comments

The Commission received one comment, from the American Society of Hospital Pharmacists, in response to the proposed exemption. While supporting the exemption for betamethasone on the basis that the data indicate that there is minimal risk from ingestion of the drug by children, the commenter raised two additional issues: (1) That the Commission respond to such petitions by establishing exemptions from the PPPA based upon a determination of the maximum quantity of a drug which can be ingested by a child without significant effect and (2) that exemptions from child-resistant packaging requirements under the PPPA be by generic name rather than by brand name. As noted above, this suggestion reflects current Commission policy, and the final amendment below is phrased in generic terms.

As to the first issue, the commenter is asking that the Commission, in considering exemptions, go beyond a petitioner's request and exempt the maximum amount of the drug which can safely be ingested by a child.

The Commission believes that exemptions from special packaging requirements should only be granted on a limited basis where there is a definite need for the exemption. (It should be noted in this regard that the Commission's interim regulations regarding petitioning for exemption under the PPA (16 CFR Part 1702) place the burden on the petitioner to submit all available information concerning the drug and to provide the justification for the requested exemption.) As a general rule, the Commission believes that it would be an inefficient use of the Commission's limited resources to attempt to set higher exemption levels than those requested by petitioners where, as in the case of Celestone, there is no apparent need for an exemption other than that requested.

The Commission points out, in addition, that any attempt at setting a maximum allowable level would be complicated because there is no established method of determining such maximum levels with any reasonable degree of certainty. For example, while median lethal dose (LD 50) data may be used to approximate a range of doses that could be considered fatal, such data do not provide information on how much of a drug may be ingested with impunity.

Injury Data

The Commission bases its decision to issue a final exemption for betamethasone in oral tablet form in part on the lack of significant adverse human experience reported by the National Clearinghouse for Poison Control Centers (NCPCC). During the years 1969–1976, 35 accidental ingestions of Celestone by children younger than five years of age were reported to the NCPCC. Two of these resulted in hospitalization; however, no symptoms were reported for any of the ingestions. A November, 1978 search of the Commission's in-depth investigations, death certificates, and consumer complaints, furthermore, revealed no injuries associated with Celestone.

The Commission also bases its decision to issue a final exemption on test results demonstrating betamethasone's low toxicity level in the amount requested for exemption. The extrapolated median lethal dose for 10 kg children would be greater than 100 grams of the substance, according to test results where the active ingredient was administered orally to mice. (Analysis of other experimental data and available pharmacological information, both animal and human, indicates that the oral toxicity of this product is such that this extrapolation may be considered to approximate the anticipated toxicological effect in humans.) The dosage for the exempt size package is limited to 12.6 mg and therefore is substantially less than the toxic dose for 10 kg children. Calculations submitted by the petitioner estimate that a two-year old child weighing 20 pounds would have to ingest over 7,000 packs each containing 21 tablets to reach an oral lethal dose; a five year old weighing 45 pounds would require over 16,000 packs.

Comments From the Technical Advisory Committee on Poison Prevention Packaging

Prior to issuing the proposed exemption, the Commission solicited comments from the Technical Advisory Committee on Poison Prevention Packaging. Of the 15 members that commented on the petition, 11 recommended granting the exemption and 4 recommended denial. The reasons mentioned for recommending denial included concern for possible side effects of steroids and the fact that Celestone was a new drug with no established safety record. As to possible side effects, the Commission notes that any adverse effects appear to be associated with prolonged use of this type of product and not with large single doses. As to the second comment, the Commission notes that Celestone has now been on the market since 1969 and has been available in noncomplying packaging from 1969–1974 (when the special packaging regulation for prescription drugs went into effect) and since 1976 (the year the proposed exemption was published) with few reported accidental ingestions of the drug and no serious injuries associated with any of the accidential ingestions.

Findings

Having considered the petition and the comments on the proposal, human experience data from the National Clearinghouse for Poison Control Centers and the Commission's own resources, as well as medical and scientific literature, and experimental data; and having consulted, pursuant to section 3 of the PPPA, with the Technical Advisory Committee on Poison Prevention Packaging established under section 6 of the act, the Commission finds that betamethasone in oral tablet form that is packaged in dosages not exceeding 12.6 mg of the drug does not create such a hazard to children that special packaging is required to protect them from serious personal injury or serious illness resulting from handling, using or ingesting the substance.

Effective Date

Since this rule grants an exemption, the delayed effective date provisions of the Administrative Procedure Act are inapplicable (5 U.S.C. 553(d)(1)). Accordingly, this exemption becomes effective on March 21, 1979.

Environmental Considerations

The Commission's interim rules for carrying out its responsibilities under the National Environmental Policy Act (see 16 CFR Part 1021; 42 FR 25494) provide that exemptions to an existing standard that do not alter the principal purpose or effect of the standard normally have no potential for affecting the environment and environmental review of exemptions from regulations is, therefore, generally not required (§ 1021.5(b)(1)). The rules also state that environmental review of rules requiring poison prevention packaging is generally not required (§ 1021.5(b)(3)).

With respect to this exemption of betamethasone from poison prevention packaging, the Commission finds that the rule will have no significant effect on the human environment and that no environmental review is necessary.

Conclusion and Promulgation

Having considered the petition, the comment on the proposal, and other relevant material, the Commission concludes that the final rule should be adopted as set forth below.

Accordingly, pursuant to the provisions of the Poison Prevention Packaging Act of 1970 (Pub. L. 91-601, sections 2(4), 3, 5, 84 Stat. 1670–72; 15 U.S.C. 1471(4), 1472–1474) and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92-573, section 30(a), 86 Stat. 1231, 12 U.S.C. 2079(a)), the Commission amends 16 CFR 1700.14 by adding a new paragraph (a)(10)(viii) as follows (the introductory portion of paragraph (a)(10), although unchanged, is included for context):

§ 1700.14 Substances requiring special packaging.

(a) * * *

(10) *Prescription drugs.* Any drug for human use that is in a dosage form intended for oral administration and that is required by Federal law to be dispensed only by or upon an oral or written prescription of a practitioner licensed by law to administer such drug shall be packaged in accordance with the provisions of § 1700.15(a), (b), and (c), except for the following:

* * * * *

(viii) Betamethasone tablets packaged in manufacturers' dispenser packages, containing no more than 12.6 milligrams betamethasone.

(Pub. L. 91-601, secs. 2(4), 3, Stat. 1670–72 (15 U.S.C. 1471(4)), 1472, 1474; Pub. L. 92-573, sec. 30(a), 86 Stat. 1231 (15 U.S.C. 2079(a)).)

Effective Date: March 21, 1979.

Dated: March 16, 1979.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc. 79-8470 Filed 3-20-79; 8:45 am]

[4810-22-M]

Title 19—Customs Duties

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

PART 153—ANTIDUMPING

Viscose Rayon Staple Fiber From Finland

AGENCY: U.S. Treasury Department.

ACTION: Finding of dumping.

SUMMARY: This notice is to inform the public that separate investigations conducted under the Antidumping Act, 1921, as amended, by the U.S. Treasury Department and the U.S. International Trade Commission, respectively, have resulted in determinations that viscose rayon staple fiber from Finland is being sold at less than fair value and that these sales are injuring an industry in the United States. On this basis, a finding of dumping is being issued and, generally, all unappraised entries of this merchandise will be liable for the possible assessment of special dumping duties.

EFFECTIVE DATE: March 21, 1979.

FOR FURTHER INFORMATION CONTACT:

Mary S. Clapp, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) (referred to in this notice as "the Act"), gives the Secretary of the Treasury responsibility for the determination of sales at less than fair value. Pursuant to this authority, the Secretary has determined that viscose rayon staple fiber from Finland is being sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)). (Published in the FEDERAL REGISTER of November 16, 1978 (43 FR 53531). This Determination was modified by publication of a notice of "Modification of Determination of Sales at Less Than Fair Value" in the FEDERAL REGISTER of January 10, 1979 (44 FR 2219).

Section 201(a) of the Act (19 U.S.C. 160(a)) gives the United States International Trade Commission responsibility for determining whether, by reason of such sales at less than fair value, a domestic industry is being or is likely to be injured. The Commission has determined, and on February 14, 1979, it notified the Secretary of the Treasury that an industry in the United States is being injured by reason of the importation of viscose rayon staple fiber from Finland that is being sold at less than fair value within the meaning of the Act. Notice of this determination was published in the FEDERAL REGISTER of February 20, 1979 (44 FR 10437).

On behalf of the Secretary of the Treasury, I hereby make public these determinations, which constitute a finding of dumping with respect to viscose rayon staple fiber from Finland.

For purposes of this notice, the term "viscose rayon staple fiber" means viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed, and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments). This term includes both commodity fiber and specialty fiber.

At various stages in this investigation both before the Treasury Department and the International Trade Commission, one or another party has sought to limit its scope to "commodity" grade fiber. However, as adequate reasons for such limitation were not timely presented to the Treasury during its phase of the investigation and a majority of the Commission did not limit its determination to the "commodity" grade, there is now no basis for describing the merchandise subject to this Finding in terms other than those applied since the proceedings were initiated.

Accordingly, § 153.46 of the Customs Regulations (19 CFR 153.46) is being amended by adding the following to the list of findings of dumping currently in effect.

Merchandise	Country	Treasury decision
Viscose rayon staple fiber.	Finland.....	79-87

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

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

MARCH 12, 1979.

[FR Doc. 79-8575 Filed 3-20-79; 8:45 am]

[4810-22-M]

PART 153—ANTIDUMPING

Viscose Rayon Staple Fiber From France

AGENCY: U.S. Treasury Department.

ACTION: Finding of Dumping.

SUMMARY: This notice is to inform the public that separate investigations conducted under the Antidumping Act, 1921, as amended, by the U.S. Treasury Department and the U.S. International Trade Commission, respectively, have resulted in determinations that viscose rayon staple fiber from France is being sold at less than fair value and that these sales are injuring an industry in the United States. On this basis, a finding of dumping is being issued and, generally, all unappraised entries of this merchandise will be liable for the possible assessment of special dumping duties.

EFFECTIVE DATE: March 21, 1979.

FOR FURTHER INFORMATION CONTACT:

Mary S. Clapp, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) (referred to in this notice as "the Act"), gives the Secretary of the Treasury responsibility for the determination of sales at less than fair value. Pursuant to this authority, the Secretary has determined that viscose rayon staple fiber from France is being sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)). (Published in the FEDERAL REGISTER of November 16, 1978 (43 FR 53530). This Determination was modified by publication of a notice of "Modification of Determination of Sales at Less Than Fair Value" in the FEDERAL REGISTER of January 10, 1979 (44 FR 2218).)

Section 201(a) of the Act (19 U.S.C. 160(a)) gives the United States International Trade Commission responsibility for determining whether, by reason of such sales at less than fair value, a domestic industry is being or is likely to be injured. The Commission has determined, and on February 14, 1979, it notified the Secretary of the Treasury that an industry in the United States is being injured by reason of the importation of viscose rayon staple fiber from France that is being sold at less than fair value within the meaning of the Act. Notice of this determination was published in the FEDERAL REGISTER of February 20, 1979 (44 FR 10437).

On behalf of the Secretary of the Treasury, I hereby make public these determinations, which constitute a finding of dumping with respect to viscose rayon staple fiber from France.

For purposes of this notice, the term "viscose rayon staple fiber" means viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed, and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments). This term includes both commodity fiber and specialty fiber.

At various stages in this investigation both before the Treasury Department and the International Trade Commission, one or another party has sought to limit its scope to "commodity" grade fiber. However, as adequate reasons for such a limitation were not timely presented to the Treasury during its phase of the investigation and a majority of the Commission did not limit its determination to the "commodity" grade, there is now no basis for describing the merchandise subject to this Finding in terms other than those applied since the proceedings were initiated.

Accordingly, § 153.46 of the Customs Regulations (19 CFR 153.46) is being

amended by adding the following to the list of findings of dumping currently in effect.

Merchandise	Country	Treasury decision
Viscose rayon staple fiber.	France.....	79-88

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

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

MARCH 12, 1979.

[FR Doc. 79-8574 Filed 3-20-79; 8:45 am]

[4830-01-M]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

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

Percentage to be used by foreign life insurance companies in computing income tax for the taxable year 1978 and estimated tax for the taxable year 1979

AGENCY: Department of the Treasury.

ACTION: Proclamation.

SUMMARY: This proclamation announces the percentage to be used to compute the income tax liability of foreign corporations carrying on life insurance business in the United States.

EFFECTIVE DATE: Immediate.

FOR FURTHER INFORMATION, CONTACT:

Mr. Seymour Fiekowsky, Office of Tax Analysis, U.S. Treasury Department, Washington, D.C. 20220 (202-566-8282), not a toll free call.

SUPPLEMENTARY INFORMATION: This proclamation, issued each year by the Secretary of the Treasury, announces the percentage to be used to compute the income tax liability of foreign corporations carrying on life insurance business in the United States.

PROCLAMATION

For purposes of computing the 1978 income tax of foreign corporations carrying on a life insurance business, a percentage of 13.7 shall be used in determining the "minimum figure" under section 819. The same percentage shall be used for purposes of computing the estimated tax and the installment payments of estimated tax for the taxable year 1979. No additions to tax shall be made because of any underpayment of estimated tax for the taxable year 1979 which results solely from the use of this percentage.

This proclamation is issued without notice and public procedure because the public cannot effecively participate in the determination of the percentage. It is computed from information contained in income tax returns that are not open to the public. The proclamation was not published prior to its effective date because the percentage is computed on the basis of data which was not then available.

DONALD C. LUBICK,
Assistant Secretary.

[FR Doc. 79-8385 Filed 3-20-79; 8:45 am]

[6560-01-M]

Title 40—Protection of the Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 1071-2]

PART 65—DELAYED COMPLIANCE ORDERS

Approval of a Delayed Compliance Order Issued by Environmental Protection Agency to Public Service Company of Colorado, Denver, Colorado

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the Environmental Protection Agency to the Public Service Company of Colorado. The Order requires the company to bring air emissions from its Arapahoe generating station, units 3 and 4 at Denver, Colorado, into compliance with certain regulations contained in the federally-approved Colorado State Implementation Plan (SIP). Because of the Administrator's approval, Public Service Company of Colorado's compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered by the Order during the period the Order is in effect.

DATE: This rule takes effect on March 21, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. C. A. Baldwin, Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295, telephone (303) 837-2361.

ADDRESSES: A copy of the Delayed Compliance Order, any supporting material, and any comments received in response to a prior FEDERAL REGISTER notice proposing approval of the Order are available for public inspection and copying during normal business hours at: Enforcement Division, EPA, Region VIII, 1860 Lincoln Street, Denver, Colorado.

SUPPLEMENTARY INFORMATION: On October 25, 1978, the Regional Administrator of EPA's Region VIII Office published in the FEDERAL REGISTER, 43 FR 49822 a notice proposing approval of a delayed compliance order issued by the Environmental Protection Agency to the Public Service Company of Colorado. The notice asked for public comments by November 24, 1978, on EPA's proposed approval of the Order. One comment was received but was not germane to the statutory requirements of the Clean Air Act.

Therefore, the delayed compliance order issued to Public Service Company of Colorado is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places the Public Service Company of Colorado on a schedule to bring its Arapahoe generating station, units 3 and 4, at Denver, Colorado, into compliance as expeditiously as practicable with Regulation No. 1, Section I.A.1., a part of the federally-approved Colorado State Implementation Plan. The Order also imposes emission monitoring and reporting requirements. Interim requirements were found to be unreasonable in light of the final control strategy to be implemented. If the conditions of the Order are met, it will permit Public Service Company of Colorado to delay compliance with the SIP regulations covered by the Order until June 15, 1979.

The Company is unable to immediately comply with these regulations. In 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 § 65.101 to read as follows:

§ 65.101 EPA Approval of State delayed compliance orders issued to major stationary sources.

Source	Location	Order No.	SIP Regulation Involved	Date of FR Proposal	Final compliance date
Public Service Co. of Colorado.	Denver, Colo.	A-78-14	Reg. No. 1, Section I.A.1	October 25, 1978.	June 15, 1979

EPA has determined that its approval of the Order shall be effective March 19, 1979, because of the need to immediately place Public Service Company of Colorado on a schedule which is effective under the Clean Air Act for compliance with the applicable requirements of the Colorado State Implementation Plan.

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

Dated: March 9, 1979.

DOUGLAS M. COSTLE,
Administrator.

[FR Doc. 79-7938 Filed 3-16-79; 8:45 am]

[6560-01-M]

SUBCHAPTER E—PESTICIDE PROGRAMS

[FRL 1079-1; PP 8E2084/R202]

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

Terbacil

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

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide terbacil on caneberries at 0.1 part per million. The regulation was requested by the Interregional Research Project No. 4. This rule establishes a maximum permissible level for residues of terbacil on caneberries.

EFFECTIVE DATE: Effective on March 21, 1979.

FOR FURTHER INFORMATION CONTACT:

Mrs. Patricia Critchlow, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington, DC (202/755-4851).

SUPPLEMENTARY INFORMATION: On January 29, 1979, the EPA published a notice of proposed rulemaking in the FEDERAL REGISTER (44 FR 5695) in response to a pesticide petition (PP 8E2084) submitted to the Agency by the Interregional Research Project No. 4 (IR-4), New Jersey State Agricultural Experiment Station, PO Box 231, Rutgers University, New Brunswick, NJ 08903, on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of Arkansas, California, Florida, Michigan, New Jersey, Oregon, and Washington. This petition proposed that 40 CFR 180.209 be amended by the establishment of a tolerance for combined residues of the herbicide terbacil (3-*tert*-butyl-5-chloro-6-methyluracil) and its hydroxylated metabolites (calculated as terbacil) in or on the raw agricultural commodity caneberries (blackberries, raspberries, boysenberries, dewberries, loganberries, and youngberries) at 0.1 part per million (ppm). No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

It has been concluded, therefore, that the proposed amendment to 40 CFR 180.209 should be adopted without change, and it has been determined that this regulation will protect the public health.

Any person adversely affected by this regulation may, on or before April 20, 1979, file written objections with the Hearing Clerk, Evironmental Protection Agency, Rm. M-3708 (A-110), 401 M St., SW, Washington, DC 20460. Such objections should be submitted and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Effective on March 21, 1979, Part 180, Subpart C, section 180.209 is amended by adding a tolerance for residues of terbacil on caneberries at 0.1 ppm as set forth below.

(Section 408(e) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(e)].)

Dated: March 14, 1979.

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

Part 180, Subpart C, § 180.209 is amended by alphabetically inserting caneberries at 0.1 ppm in the table to read as follows:

§ 180.209 Terbacil, tolerances for residues

Commodity:	*Parts per million*
Caneberries (blackberries, bosenberries, dewberries, loganberries, raspberries, and youngberries)	0.1

[FR Doc. 79-8589 Filed 3-20-79; 8:45 am]

[4110-83-M]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

Financial Distress Grants to Health Professions Schools

AGENCY: Public Health Service, HEW.

ACTION: Interim-Final Regulations; request for comments.

SUMMARY: The Public Health Service is issuing regulations to implement the program of financial distress grants to health professions schools to assist them in meeting their costs of operation, if they are in serious financial distress, or in meeting accreditation requirements, if they have a special need for assistance in meeting these requirements, and to carry out appropriate operational, managerial, and financial reforms. The regulations implement the amendments under the Health Professions Educational Assistance Act of 1976.

DATES: These regulations are effective March 21, 1979; however, as discussed below, comments on the regulations are invited. To be considered, comments must be received on or before May 21, 1979.

ADDRESSEES: Written comments should be addressed to the Director, Bureau of Health Manpower, Health

Resources Administration, 3700 East-West Highway, Center Building, 4th Floor, Hyattsville, Maryland 20782. All comments received will be available for public inspection and copying at the Office of Program Operations, Bureau of Health Manpower, at the above address (3rd Floor), weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Donald C. Parks, Deputy Director, Office of Program operations, Bureau of Health Manpower, Room 3-22 at the above address. (Telephone: 301-436-6560).

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Health, Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, is revising Subpart M of Part 57 of Title 42 of the Code of Federal Regulations to implement the amendments made on October 12, 1976, by the Health Professions Educational Assistance Act of 1976 (Pub. L. 94-484) to the existing authority for financial distress grants to health professions schools. As revised, the authority for this program is set forth in section 788(b) of the Public Health Service Act.

Section 788(b) of the Public Health Service Act ("Act") authorizes the Secretary to make grants to schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, pharmacy, and public health to assist in meeting the costs of operation of these schools if they are in serious financial distress, or in meeting accreditation requirements if they have a special need for assistance in meeting these requirements. Funds can also be used for carrying out appropriate operational, managerial, and financial reforms.

The following is a summary of the major features of the regulation:

(1) The financial distress program is intended to provide financial assistance on an interim basis only. Therefore, according to § 57.1206, the Secretary may require a grantee, as a condition of the grant, to carry out necessary managerial and financial reforms.

(2) In accordance with the requirement of section 788(b) of the Act, § 57.1208 of the regulations provides that the amount of the grant to any school in any fiscal year may not exceed 75 percent of the amount recieved by that school, if any, under this authority in the immediately preceding fiscal year.

Timely implementation of these rules is essential so that grants for the purpose of relieving financial distress can be made as early in the fiscal year as possible. Therefore, the Secretary has determined in accordance with 5 U.S.C. 553 and Department policy that it would be impractical and contrary to the public interest to follow proposed rulemaking procedures or to delay the effective date of these regulations.

Notwithstanding the omission of the proposed rulemaking procedures, interested persons are invited to submit written comments or data concerning these regulations to the Director of the Bureau of Health Manpower at the address given above. All relevant materials received not later than May 21, 1979, will be considered, and following the close of the comment period, the regulations will be revised as warranted by the public comments received. It is intended that any revision of the regulations resulting from these comments will be published within 90 days of the close of the comment period.

The regulations as set forth below will be effective March 21, 1979. Revisions will be applicable to activities conducted under these grants on or after the date that the revisions become effective.

Accordingly, Subpart M of Part 57 of Title 42 of the Code of Federal Regulations is revised to read as forth below.

Dated: September 18, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: March 8, 1979.

JOSEPH A. CALIFANO, Jr.,
Secretary.

Subpart M—Financial Distress Grants to Health Professions Schools

Sec.

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57.1214 What additional conditions apply to grantees?

AUTHORITY: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 788(b), 90 Stat. 2319 (42 U.S.C. 295g-8(b)).

Subpart M—Financial Distress Grants to Health Professions Schools

§ 57.1201 To what programs do these regulations apply?

These regulations apply to the award of grants under section 788(b) of the Public Health Service Act (42 U.S.C. 216) to assist schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, pharmacy, and public health in meeting their costs of operation, if they are in serious financial distress, or in meeting accreditation requirements, if they have a special need for assistance in meeting these requirements, and to carry out appropriate operational, managerial, and financial reforms.

§ 57.1202 Definitions.

As used in this subpart:

"Act" means the Public Health Service Act, as amended.

"Comprehensive cost analysis study" means an in-depth review of all the significant factors and circumstances affecting costs incurred in the operation and management of the institution. The review includes, but is not limited to, personnel and property utilization and practices, cost efficiency in specific areas of operation, and the search for additional sources of revenues.

"Construction" or "cost of construction" means the construction of new buildings or the expansion or acquisition of existing buildings (including related costs such as architect's fees, acquisition of land, offsite improvements, and the initial equipping of these buildings).

"School" means a public or other nonprofit school of medicine, osteo pathy, dentistry, veterinary medicine, optometry, podiatry, pharmacy, or public health as defined in section 701(4) of the Act, and which is accredited as provided under section 772(b) of the Act.

"Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

"State" means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

§ 57.1203 What entities are eligible to apply for a grant?

Any school which is located in a State is eligible to apply for a grant if it is either in serious financial distress

or has a special need for financial assistance in meeting accreditation requirements. For purposes of this subpart, (a) a school is in serious financial distress if it has incurred costs in excess of its ability to pay for those costs; and (b) a school has a special need for financial assistance in meeting accreditation requirements if it cannot meet its accreditation requirements within the school's revenues.

§ 57.1204 How must a school apply for a grant?

Each school desiring a financial distress grant must submit an application in the form and at the time which the Secretary requires.[1] This application must be signed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of any award, including the regulations of this subpart.

§ 57.1205 What assurances are required of an applicant?

(a) The applicant must provide assurances satisfactory to the Secretary that it will spend in carrying out its functions as a school during the fiscal year for which the grant is sought, an amount of funds (other than funds for construction) from non-Federal sources which is at least as great as the average amount of funds from non-Federal sources spent for this purpose by the school during the preceding 2 fiscal years. The determination of the average amount of funds from non-federal sources spent by a new school which has been in operation for less than 2 years will be the amount of expenditures which were actually made in carrying out the functions of the school in the preceding year.

(b) The Secretary may, in individual cases, require additional assurances where he or she finds that additional assurances are necessary to carry out the purposes of section 788(b) of the Act.

§ 57.1206 What requirements may the Secretary impose?

The Secretary will make grants upon terms and conditions which he or she determines are reasonable and necessary, including requirements that the school:

(a) disclose any financial information which the Secretary decides is necessary to determine the cause of this school's financial distress;

(b) conduct a comprehensive cost analysis study, as directed by the Secretary; and

(c) carry out operational, managerial, and financial reforms which the Secretary decides are appropriate on the basis of the comprehensive cost analysis study and other relevant information. These reforms may include increasing tuition or obtaining increased financial support from State or local governmental units.

§ 57.1207 What are the criteria for deciding which applications will be funded?

Within the limits of funds available for this purpose, the Secretary, after consultation with the National Advisory Council on Health Professions Education established by section 702 of the Act, will award grants to applicants, taking into consideration the following among other pertinent factors:

(a) The extent to which the school is unable to meet its incurred costs or has a special need for financial assistance to meet its accreditation requirements;

(b) The reasons for the school's failure to meet its costs or accreditation requirements and the alternatives available to the school to meet its costs or requirements; and

(c) The actions which the applicant has taken to alleviate the need for financial assistance to meet its costs or accreditation requirements and the applicant's plan to eliminate this need in the future.

§ 57.1208 How will the Secretary make grant awards?

(a) All grant awards must be in writing and must set forth the amount of funds granted and the period for which these funds will be available for obligation by the grantee.

(b) Neither the approval of any application nor the award of any grant commits or obligates the United States in any way to make any additional, supplemental, or other award with respect to any approved project or portion of the approved project.

(c) The amount of the award will be based on the Secretary's estimate of the sum necessary for the costs of the approved activity. Grant awards to meet incurred costs in excess of a school's ability to pay these costs may not exceed the actual funds necessary to meet such excess costs of the school through June 30 of the Federal fiscal year in which the grant is sought, plus an amount which the Secretary estimates is necessary to carry out appropriate operational, managerial and financial reforms. The amount of the grant under this subpart to any school in any fiscal year may not exceed 75 percent of the amount received by that school, if any, under this subpart in the immediately preceding fiscal year.

(d) The Secretary will, from time to time, make payments to a grantee of all or a portion of any grant award, either in advance or by way of reimbursement.

§ 57.1209 Purposes for which grant funds may be spent.

(a) Any funds granted under this subpart must be spent solely for carrying out the approved activity in accordance with section 788(b) of the Act, the regulations of this subpart, and the terms and conditions of the award. Grant funds may be spent to:

(1) Assist schools unable to pay for incurred costs. Grant funds may be used to defray costs incurred for all school fiscal years through June 30 of the Federal fiscal year in which the grant is sought. Costs shall exclude construction (other than alterations and renovations). Costs may include the amortization of the principal portion of loans except loans for construction, student aid, and other costs not allowable under § 57.1213.

(2) Assist schools in meeting accreditation requirements, and

(3) Assist schools in carrying out under an approved plan, appropriate operational, managerial, and financial reforms.

(b) Grant funds may not be used for sectarian instruction, or any other religious purpose.

§ 57.1210 What nondiscrimination requirements apply to grantees?

Recipients of grants under this subpart are advised that in addition to complying with the terms and conditions of these regulations, the following laws and regulations are applicable:

(a) Section 704 of the Act (42 U.S.C. 292d) and its implementing regulation, 45 CFR Part 83 (prohibiting discrimination on the basis of sex in the admission of individuals to training programs).

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and its implementing regulation, 45 CFR Part 80 (prohibiting discrimination in federally assisted programs on the grounds of race, color, or national origin).

(c) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*) and its implementing regulation, 45 CFR Part 86 (prohibiting discrimination on the basis of sex in federally assisted education programs).

(d) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and its implementing regulation, 45 CFR Part 84 (prohibiting discrimination in federally assisted programs on the basis of handicap).

(e) The grantee may not discriminate on the basis of religion in the ad-

[1] Application materials and instructions may be obtained from the Grants Management Officer, Bureau of Health Manpower, Health Resources Administration, Department of Health, Education, and Welfare, Center Building, Room 4-22, 3700 East-West Highway, Hyattsville, Maryland 20782.

mission of individuals to training programs.

§ 57.1211 How must grantees account for grant funds received?

(a) *Accounting for grant award payments.* The grantee must record all payments made by the Secretary in accounting records separate from the records of all other funds, including funds derived from other grant awards. The grantee must account for the sum total of all amounts paid by presenting or otherwise making available, evidence satisfactory to the Secretary of funds spent for costs meeting the requirements of this subpart.

(b) *Grant closeout.*—(1) *Date of final accounting.* A grantee must submit, with respect to each grant under this subpart, a full account, in accordance with this subpart, as of the date of the termination of grant support. The Secretary may require other special and periodic accounting.

(2) *Final settlement.* The grantee may pay to the Federal Government as final settlement with respect to each grant under this subpart the total sum of (i) any amount not accounted for under paragraphs (a) and (b) of this section; and (ii) any other amounts due in accordance with 45 CFR Part 74, except as provided in § 57.1213, and the terms and conditions of the grant award. This total sum constitutes a debt owed by the grantee to the Federal Government and is recoverable from the grantee or its successors or assigns by set off or other lawful action.

§ 57.1212 What recordkeeping, audit, and inspection requirements apply to grantees?

Each school which receives a grant under this subpart must, in addition to the requirements of 45 CFR Part 74, meet the requirements of section 705 of the Act, concerning recordkeeping, audit, and inspection.

§ 57.1213 What additional regulations apply to grantees?

The provisions of 45 CFR Part 74, establishing uniform administrative procedures and cost principles apply to all awards granted under this subpart, except that, in the case of grants awarded to assist schools unable to pay for incurred costs, the following provisions of 45 CFR Part 74, Subpart Q, Appendix D are modified as listed below:

(a) Costs normally not allowed under the following sections will be allowed: Part I—sections J.2; J.5; J.16 (a), (b), and (c); J.18; J.25; J.29; J.38; J.40; J.41; J.42(a)(2) and J.44(f); Part II—section I (1), (4), and (5).

(b) Costs normally allowed under the following section will not be allowed: Part I—section J.10.

§ 57.1214 What additional conditions apply to grantees?

The Secretary may with respect to any grant award impose additional conditions prior to or at the time of any award when in his or her judgment these conditions are necessary to assure or protect the advancement of the approved activity, the interest of the public health, or the conservation of grant funds.

[FR Doc. 79-8054 Filed 3-20-79; 8:45 am]

[4110-12-M]

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

VOCATIONAL EDUCATION PROGRAMS

Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap

AGENCY: Office for Civil Rights, Department of Health, Education, and Welfare.

ACTION: Final Guidelines for Vocational Education Programs.

SUMMARY: These guidelines explain the civil rights responsibilities of recipients of Federal funds offering or administering vocational education programs. They derive from and provide guidance supplementary to Title VI of the Civil Rights Act of 1964 and the implementing departmental regulation (45 CFR Part 80), Title IX of the Education Amendments of 1972 and the implementing departmental regulation (45 CFR Part 86), and Section 504 of the Rehabilitation Act of 1973 and the implementing departmental regulation (45 CFR Part 84).

EFFECTIVE DATE: March 15, 1979.

FOR FURTHER INFORMATION CONTACT:

David Gerard, Office of Standards, Policy, and Research, Department of Health, Education and Welfare, Office for Civil Rights, 330 Independence Avenue, S.W., Washington, D.C. 20201 (telephone 202-245-9177).

SUPPLEMENTARY INFORMATION: The following Guidelines explain how civil rights laws and Department regulations apply to vocational education programs. They are issued as a result of injunctive orders entered by the United States District Court for the District of Columbia in *Adams* v. *Califano*. They are also issued because the Department has found evidence of continuing unlawful discrimination in vocational education programs.

A. LEGAL BASIS FOR THE GUIDELINES

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in any program or activity receiving Federal financial assistance. The Department of Health, Education, and Welfare issued regulations implementing Title VI in 1965. Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in education programs receiving or benefiting from Federal financial assistance. The Department issued regulations implementing Title IX in 1975. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of handicap in any program or activity receiving Federal financial assistance. The Department issued regulations implementing Section 504 in 1977. These civil rights statutes and their implementing regulations apply to vocational education programs.

In 1973, the Department of Health, Education, and Welfare was sued for its failure to enforce Title VI in a number of education areas, including vocational education (*Adams* v. *Califano*). As a result of this litigation, the Department was directed to enforce civil rights requirements in vocational education programs through compliance reviews, a survey of enrollments and related data, and the issuance of guidelines explaining the application of Title VI regulations to vocational education. The Guidelines that follow are issued to meet a requirement of the *Adams* court orders.

B. FACTUAL BASIS FOR THE GUIDELINES

The Guidelines are also adopted because it is apparent that many vocational education administrators engage in unlawfully discriminatory practices. They need additional guidance and support from the Department to meet their obligations under civil rights authorities.

Information provided by the Office of Education's Bureau of Occupational and Adult Education for 1976 and 1977 reveals that male and female students are concentrated in programs traditionally identified as intended for them:

	Percent of total enrollment			
	1976		1977	
	Male	Female	Male	Female
Health occupations	21.2	78.8	21.2	78.8
Occupational home economics	15.3	84.7	16.1	83.9
Consumer and homemaking	16.8	83.2	18.4	81.6
Office occupations	24.9	75.1	24.9	75.1
Technical	88.7	11.3	83.0	17.0

	Percent of total enrollment			
	1976		1977	
	Male	Female	Male	Female
Trade and industrial	87.3	12.7	85.6	14.4
Vocational agriculture	88.7	11.3	85.2	14.8

In recent years vocational education administrators have addressed unlawful discrimination in their programs. Generally, they have taken advantage of the affirmative action provisions of the Vocational Education Amendments of 1976. Administrative procedures to implement these provisions are in place and are contributing to equal opportunity. Thus the above chart suggests that between 1976 and 1977, female participation increased in technical, trade and industrial, and vocational agriculture programs. There was also an increase in male participation in Consumer and Homemaking programs and Occupational Home Economics programs.

Current information on the enrollment of handicapped and minority students in specific vocational programs is not available. This deficiency will be corrected through the Office for Civil Rights Vocational Education Survey of 1979 and the Vocational Education Data System (VEDS) required by the Vocational Education Amendment of 1976. However, compliance reviews conducted by OCR investigative staff from 1973 to 1978 consistently found civil rights violations in vocational schools. For example:

1. Eligibility requirements such as residence within a geographic area or admissions tests deny vocational education opportunities on the basis of race, color, national origin and handicap;

2. Handicapped students are impermissably assigned to separate annexes or branches; they are also denied equal vocational education opportunities as a result of inaccessible facilities and inadequate evaluation procedures;

3. Vocational schools established for students of one race, national origin or sex continue as essentially segregated facilities;

4. National origin minorities with limited proficiency in English are denied equal opportunity to participate in vocational programs;

5. Vocational education administrators often fail to adequately protect against discrimination in the placement of students with employers;

6. Faculty and staff are assigned to vocational programs on the basis of race, national origin, sex and handicap.

Reports from advocate groups have identified other possible civil rights violations. For example, the N.A.A.C.P. Legal Defense Fund (LDF) has alleged that State agencies engage in unlawful discrimination against urban areas in the allocation of Federal vocational education funds.

C. Scope of Guidelines

The Guidelines primarily address the civil rights violations listed immediately above as found in compliance reviews. They do not identify every civil rights violation that may arise in a vocational education setting. The Guidelines derive from and supplement and must be read in conjunction with civil rights laws and Department regulations.

Section III of the Guidelines, which prohibits discrimination in the allocation of vocational education funds, derives in part from and must be read in conjunction with, the Vocational Education Act and Office of Education implementing regulations. These Guidelines, particularly Section III, have been reviewed by the Department's Office of Education and found consistent with its policies.

D. State Agency Responsibilities

Most comments on the Guidelines sought deletion or clarification of, or a change to, a stated paragraph or subparagraph. However, Section II, which records the responsibilities of State agency personnel, was questioned in its entirety as imposing a new burden more reasonably assigned to the Office for Civil Rights.

Section II contains two requirements. First, State agencies in performing any activity required under State or Federal law, must be certain that they do not "require, approve of, or engage in" any unlawful discrimination. For example, State agencies are often required to review or approve the site selected by or the building specifications approved by local school district officials to assure that the project is fiscally sound. The Guidelines provide that in such cases the State agency must also examine whether the site location will result in the denial of access to minority group persons and whether the building and programs will be inaccessible to handicapped persons. If it finds such violations the State agency cannot approve the project. The second requirement of Section II is generally addressed to the agency referred to in the Vocational Education Amendments of 1976 as the "State Board or agency . . . sole[ly] responsible for the administration or . . . supervision of the programs [conducted in the State] under the Act." These agencies are required by the Guidelines to monitor subrecipients for civil rights compliance through technical assistance, analyses of already compiled information and data, and periodic compliance reviews.

These are not new requirements. The first merely restates what has become axiomatic—a recipient cannot engage or participate in unlawful discrimination. The second requirement—monitoring subrecipients for compliance—derives from the Department's Title VI regulation which provides in subparagraph 80.4(b):

> Every application by a State or State agency to carry out a program involving continuing Federal financial assistance * * * shall * * * provide or be accompanied by provision for such methods of administration * * * as are found by the responsible Department official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this regulation.

Thus the Department's Title VI regulation requires State agency recipients to adopt and obtain Department approval for methods and procedures through which subrecipients can be monitored for compliance with civil rights authorities.[1]

It was suggested that it is "unrealistic" to expect closely aligned officials—State agency and local personnel—to work at odds with each other. This is neither the intent nor the expected result of the final Guidelines. Many forms of impermissable discrimination are caused by misunderstandings or lack of information and guidance on the requirements of the law. State agency personnel should therefore be of assistance to and not in conflict with local personnel. Moreover, there is a need for additional conciliatory rather than adversarial compliance activity.

State agencies also argued that the Office for Civil Rights cannot and should not delegate its responsibilities for civil rights enforcement to recipients. Such a result is neither intended nor expected. The Guidelines contemplate adding, not substituting, resources for civil rights compliance activity. The Bureau of Occupational and Adult Education presently monitors State agencies for compliance with the Vocational Education Act. Under the Guidelines, BOAE and State agencies will engage in activities supplementary to those of the Office for Civil Rights.[2] These Guidelines do

[1] Although the regulations for Title IX and Section 504 do not assign a similar responsiblity to State agencies, the Department intends to issue a Notice of Proposed Rulemaking to eliminate this inconsistency with Title VI. If revisions to the Title IX and Section 504 regulations are not adopted by the Department, these Guidelines must be revised.

[2] State agencies will require additional assistance from OCR and BOAE to understand and meet their responsibilities under the Guidelines. Such assistance will be provided through memoranda to be issued during the next 90 days. See comment and response number 9, below.

not contemplate any reduction of OCR compliance and enforcement activity. And OCR will lead, assist and monitor BOAE and State agencies in their civil rights activities. This approach derives from the Department's commitment to bring all of its agencies and recipients to the critical task of obtaining compliance with civil rights laws and regulations. It is also supported by the United States Civil Rights Commission.[3]

CONCLUSION

Vocational education is a critical and growing sector of the Nation's education system. It is offered in over 14,000 school districts and in community and junior colleges. It is also provided through more than 2,000 secondary and postsecondary vocational education centers (often known as Area Vocational Education Schools, or AVES), that have as their primary or sole objective the teaching of skills that lead to employment. The variations of programs and courses number in the thousands. They include, for example, "work study" for students needing part-time employment to support their vocational studies; "cooperative education" for students who receive credit for work at jobs related to their vocational field; and "apprentice training" for students affiliated with a labor union or another sponsor. Whatever the organization of vocational education, it is closely tied to the skill development needs of communities, States, and regions. Obtaining compliance with civil rights authorities in these diverse programs will require the participation and cooperation of all vocational education administrators and all agencies of the Department of Health, Education and Welfare. These Guidelines are designed to encourage that cooperation and compliance activity. They are provided with the expectation that they will contribute to bringing an end to unlawful discrimination against persons seeking the skills necessary for gainful and meaningful employment.

PART 80—NONDISCRIMINATION UNDER PROGRAMS RECEIVING FEDERAL ASSISTANCE THROUGH THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

1. In 45 CFR Part 80 Appendix B is added to read as follows:

[3] United States Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1974, Vol. VI, To Extend Federal Financial Assitance.* 1975, p. 809.

APPENDIX B—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS

I. SCOPE AND COVERAGE

A. APPLICATION OF GUIDELINES

These Guidelines apply to recipients of any Federal financial assistance from the Department of Health, Education, and Welfare that offer or administer programs of vocational education or training. This includes State agency recipients.

B. DEFINITION OF RECIPIENT

The definition of "recipient" of Federal financial assistance is established by Department regulations implementing Title VI, Title IX, and Section 504 (45 CFR 80.13(i), 86.2(h), 84.3(f).

For the purposes of Title VI:

The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary [e.g., students] under any such program. (45 CFR 80.13(i)).

For the purpose of Title IX:

"Recipient" means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance, including any subunit, successor, assignee, or transferee thereof. (45 CFR 86.2(h)).

For the purposes of Section 504:

"Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. (45 CFR 84.3(f)).

C. EXAMPLES OF RECIPIENTS COVERED BY THESE GUIDELINES

The following education agencies, when they provide vocational education, are examples of recipients covered by these Guidelines:

1. The board of education of a public school district and its administrative agency.

2. The administrative board of a specialized vocational high school serving students from more than one school district.

3. The administrative board of a technical or vocation school that is used exclusively or principally for the provision of vocational education to persons who have completed or left high school (including persons seeking a certificate or an associate degree through a vocational program offered by the school) and who are available for study in preparation for entering the labor market.

4. The administrative board of a postsecondary institution, such as a technical institute, skill center, junior college, community college, or four year college that has a department or division that provides vocational education to students seeking immediate employment, a certificate or an associate degree.

5. The administrative board of a proprietary (private) vocational education school.

6. A State agency recipient itself operating a vocational education facility.

D. EXAMPLES OF SCHOOLS TO WHICH THESE GUIDELINES APPLY

The following are examples of the types of schools to which these Guidelines apply.

1. A junior high school, middle school, or those grades of a comprehensive high school that offers instruction to inform, orient, or prepare students for vocational education at the secondary level.

2. A vocational education facility operated by a State agency.

3. A comprehensive high school that has a department exclusively or principally used for providing vocational education; or that offers at least one vocational program to secondary level students who are available for study in preparation for entering the labor market; or that offers adult vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market.

4. A comprehensive high school, offering the activities described above, that receives students on a contract basis from other school districts for the purpose of providing vocational education.

5. A specialized high school used exclusively or principally for the provision of vocational education, that enrolls students from one or more school districts for the purpose of providing vocational education.

6. A technical or vocational school that primarily provides vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market, including students seeking an associate degree or certificate through a course of vocational instruction offered by the school.

7. A junior college, a community college, or four-year college that has a department or division that provides vocational education to students seeking immediate employment, an associate degree or a certificate through a course of vocational instruction offered by the school.

8. A proprietary school, licensed by the State, that offers vocational education.

NOTE.—Subsequent sections of these Guidelines may use the term *secondary vocational education center* in referring to the institutions described in paragraphs 3, 4 and 5 above or the term *postsecondary vocational education center* in referring to institutions described in paragraphs 6 and 7 above or the term *vocational education center* in referring to any or all institutions described above.

II. RESPONSIBILITIES ASSIGNED ONLY TO STATE AGENCY RECIPIENTS

A. RESPONSIBILITIES OF ALL STATE AGENCY RECIPIENTS

State agency recipients, in addition to complying with all other provisions of the Guidelines relevant to them, may not require, approve of, or engage in any discrimi-

nation or denial of services on the basis of race, color, national origin, sex, or handicap in performing any of the following activities:

1. Establishment of criteria or formulas for distribution of Federal or State funds to vocational education programs in the State;
2. Establishment of requirements for admission to or requirements for the administration of vocational education programs;
3. Approval of action by local entities providing vocational education. (For example, a State agency must ensure compliance with Section IV of these Guidelines if and when it reviews a vocational education agency decision to create or change a geographic service area.);
4. Conducting its own programs. (For example, in employing its staff it may not discriminate on the basis of sex or handicap.)

B. STATE AGENCIES PERFORMING OVERSIGHT RESPONSIBILITIES

The State agency responsible for the administration of vocational education programs must adopt a compliance program to prevent, identify and remedy discrimination on the basis of race, color, national origin, sex or handicap by its subrecipients. (A "subrecipient," in this context, is a local agency or vocational education center that receives financial assistance through a State agency.) This compliance program must include:

1. Collecting and analyzing civil rights related data and information that subrecipients compile for their own purposes or that are submitted to State and Federal officials under existing authorities;
2. Conducting periodic compliance reviews of selected subrecipients (i.e., an investigation of a subrecipient to determine whether it engages in unlawful discrimination in any aspect of its program); upon finding unlawful discrimination, notifying the subrecipient of steps it must take to attain compliance and attempting to obtain voluntary compliance;
3. Providing technical assistance upon request to subrecipients. This will include assisting subrecipients identify unlawful discrimination and instructing them in remedies for and prevention of such discrimination;
4. Periodically reporting its activities and findings under the foregoing paragraphs, including findings of unlawful discrimination under paragraph 2, immediately above, to the Office for Civil Rights.

State agencies are not required to terminate or defer assistance to any subrecipient. Nor are they required to conduct hearings. The responsibilities of the Office for Civil Rights to collect and analyze data, to conduct compliance reviews, to investigate complaints and to provide technical assistance are not diminished or attenuated by the requirements of Section II of the Guidelines.

C. STATEMENT OF PROCEDURES AND PRACTICES

Within one year from the publication of these Guidelines in final form, each State agency recipient performing oversight responsibilities must submit to the Office for Civil Rights the methods of administration and related procedures it will follow to comply with the requirements described in paragraphs A and B immediately above. The Department will review each submission and will promptly either approve it, or return it to State officials for revision.

III. DISTRIBUTION OF FEDERAL FINANCIAL ASSISTANCE AND OTHER FUNDS FOR VOCATIONAL EDUCATION

A. AGENCY RESPONSIBILITIES

Recipients that administer grants for vocational education must distribute Federal, State, or local vocational education funds so that no student or group of students is unlawfully denied an equal opportunity to benefit from vocational education on the basis of race, color, national origin, sex, or handicap.

B. DISTRIBUTION OF FUNDS

Recipients may not adopt a formula or other method for the allocation of Federal, State, or local vocational education funds that has the effect of discriminating on the basis of race, color, national origin, sex, or handicap. However, a recipient may adopt a formula or other method of allocation that uses as a factor race, color, national origin, sex, or handicap [or an index or proxy for race, color, national origin, sex, or handicap e.g., number of persons receiving Aid to Families with Dependent Children or with limited English speaking ability] if the factor is included to compensate for past discrimination or to comply with those provisions of the Vocational Education Amendments of 1976 designed to assist specified protected groups.

C. EXAMPLE OF A PATTERN SUGGESTING UNLAWFUL DISCRIMINATION

In each State it is likely that some local recipients will enroll greater proportions of minority students in vocational education than the State-wide proportion of minority students in vocational education. A funding formula or other method of allocation that results in such local recipients receiving per-pupil allocations of Federal or State vocational education funds lower than the State-wide average per-pupil allocation will be presumed unlawfully discriminatory.

D. DISTRIBUTION THROUGH COMPETITIVE GRANTS OR CONTRACTS

Each State agency that establishes criteria for awarding competitive vocational education grants or contracts must establish and apply the criteria without regard to the race, color, national origin, sex, or handicap of any or all of a recipient's students, except to compensate for past discrimination.

E. APPLICATION PROCESSES FOR COMPETITIVE OR DISCRETIONARY GRANTS

State agencies must disseminate information needed to satisfy the requirements of any application process for competitive or discretionary grants so that all recipients, including those having a high percentage of minority or handicapped students, are informed of and able to seek funds. State agencies that provide technical assistance for the completion of the application process must provide such assistance without discrimination against any one recipient or class of recipients.

F. ALTERATION OF FUND DISTRIBUTION TO PROVIDE EQUAL OPPORTUNITY

If the Office for Civil Rights finds that a recipient's system for distributing vocational education funds unlawfully discriminates on the basis of race, color, national origin, sex, or handicap, it will require the recipient to adopt an alternative nondiscriminatory method of distribution. The Office for Civil Rights may also require the recipient to compensate for the effects of its past unlawful discrimination in the distribution of funds.

IV. ACCESS AND ADMISSION OF STUDENTS TO VOCATIONAL EDUCATION PROGRAMS

A. RECIPIENT RESPONSIBILITIES

Criteria controlling student eligibility for admission to vocational education schools, facilities and programs may not unlawfully discriminate on the basis of race, color, national origin, sex, or handicap. A recipient may not develop, impose, maintain, approve, or implement such discriminatory admissions criteria.

B. SITE SELECTION FOR VOCATIONAL SCHOOLS

State and local recipients may not select or approve a site for a vocational education facility for the purpose or with the effect of excluding, segregating, or otherwise discriminating against students on the basis of race, color, or national origin. Recipients must locate vocational education facilities at sites that are readily accessible to both nonminority and minority communities, and that do not tend to identify the facility or program as intended for nonminority or minority students.

C. ELIGIBILITY FOR ADMISSION TO VOCATIONAL EDUCATION CENTERS BASED ON RESIDENCE

Recipients may not establish, approve or maintain geographic boundaries for a vocational education center service area or attendance zone, (hereinafter "service area"), that unlawfully exclude students on the basis of race, color, or national origin. The Office for Civil Rights will presume, subject to rebuttal, that any one or combination of the following circumstances indicates that the boundaries of a given service area are unlawfully constituted:

1. A school system or service area contiguous to the given service area, contains minority or nonminority students in substantially greater proportion than the given service area;
2. A substantial number of minority students who reside outside the given vocational education center service area, and who are not eligible for the center reside, nonetheless, as close to the center as a substantial number of non-minority students who are eligible for the center;
3. The over-all vocational education program of the given service area in comparison to the over-all vocational education program of a contiguous school system or service area enrolling a substantially greater proportion of minority students: (a) provides its students with a broader range of curricular offerings, facilities and equipment; or (b) provides its graduates greater opportunity for employment in jobs: (i) for which there is a demonstrated need in the community or region; (ii) that pay higher entry level salaries or wages; or (iii) that are generally acknowledged to offer greater prestige or status.

D. ADDITIONS AND RENOVATIONS TO EXISTING VOCATIONAL EDUCATION FACILITIES

A recipient may not add to, modify, or renovate the physical plant of a vocational education facility in a manner that creates, maintains, or increases student segregation on the basis of race, color, national origin, sex, or handicap.

E. REMEDIES FOR VIOLATIONS OF SITE SELECTION AND GEOGRAPHIC SERVICE AREA REQUIREMENTS

If the conditions specified in paragraphs IV, A, B, C, or D, immediately above, are found and not rebutted by proof of nondiscrimination, the Office for Civil rights will require the recipient(s) to submit a plan to remedy the discrimination. The following are examples of steps that may be included in the plan, where necessary to overcome the discrimination: (1) redrawing of the boundaries of the vocational education center's service area to include areas unlawfully excluded and/or to exclude areas unlawfully included; (2) provision of transportation to students residing in areas unlawfully excluded; (3) provision of additional programs and services to students who would have been eligible for attendance at the vocational education center but for the discriminatory service area or site selection; (4) reassignment of students; and (5) construction of new facilities or expansion of existing facilities.

F. ELIGIBILITY FOR ADMISSION TO SECONDARY VOCATIONAL EDUCATION CENTERS BASED ON NUMERICAL LIMITS IMPOSED ON SENDING SCHOOLS

A recipient may not adopt or maintain a system for admission to a secondary vocational education center or program that limits admission to a fixed number of students from each sending school included in the center's service area if such a system disproportionately excludes students from the center on the basis of race, sex, national origin or handicap. (Example: Assume 25 percent of a school district's high school students are black and that most of those black students are enrolled in one high school; the white students, 75 percent of the district's total enrollment, are generally enrolled in the five remaining high schools. This paragraph prohibits a system of admission to the secondary vocational education center that limits eligibility to a fixed and equal number of students from each of the district's six high schools.)

G. REMEDIES FOR VIOLATION OF ELIGIBILITY BASED ON NUMERICAL LIMITS REQUIREMENTS

If the Office for Civil Rights finds a violation of paragraph F, above, the recipient must implement an alternative system of admissions that does not disproportionately exclude students on the basis of race, color, national origin, sex, or handicap.

H. ELIGIBILITY FOR ADMISSION TO VOCATIONAL EDUCATION CENTERS, BRANCHES OR ANNEXES BASED UPON STUDENT OPTION

A vocational education center, branch or annex, open to all students in a service area and predominantly enrolling minority students or students of one race, national origin or sex, will be presumed unlawfully segregated if: 1) it was established by a recipient for members of one race, national origin or sex; or 2) it has since its construction been attended primarily by members of one race, national origin or sex; or 3) most of its program offerings have traditionally been selected predominantly by members of one race, national origin or sex.

I. REMEDIES FOR FACILITY SEGREGATION UNDER STUDENT OPTION PLANS

If the conditions specified in paragraph IV-H are found and not rebutted by proof of nondiscrimination, the Office for Civil Rights will require the recipient(s) to submit a plan to remedy the segregation. The following are examples of steps that may be included in the plan, where necessary to overcome the discrimination:

(1) elimination of program duplication in the segregated facility and other proximate vocational facilities; (2) relocation or "clustering" of programs or courses; 3) adding programs and courses that traditionally have been identified as intended for members of a particular race, national origin or sex to schools that have traditionally served members of the other sex or traditionally served persons of a different race or national origin; 4) merger of programs into one facility through school closings or new construction; 5) intensive outreach recruitment and counseling; 6) providing free transportation to students whose enrollment would promote desegregation.

[Paragraph J omitted]

K. ELIGIBILITY BASED ON EVALUATION OF EACH APPLICANT UNDER ADMISSIONS CRITERIA

Recipients may not judge candidates for admission to vocational education programs on the basis of criteria that have the effect of disproportionately excluding persons of a particular race, color, national origin, sex, or handicap. However, if a recipient can demonstrate that such criteria have been validated as essential to participation in a given program and that alternative equally valid criteria that do not have such a disproportionate adverse effect are unavailable, the criteria will be judged nondiscriminatory. Examples of admissions criteria that must meet this test are past academic performance, record of disciplinary infractions, counselors' approval, teachers' recommendations, interest inventories, high school diplomas and standardized tests, such as the Test of Adult Basic Education (TABE).

An introductory, preliminary, or exploratory course may not be established as a prerequisite for admission to a program unless the course has been and is available without regard to race, color, national origin, sex, and handicap. However, a course that was formerly only available on a discriminatory basis may be made a prerequisite for admission to a program if the recipient can demonstrate that: (a) the course is essential to participation in the program; *and* (b) the course is presently available to those seeking enrollment for the first time and to those formerly excluded.

L. ELIGIBILITY OF NATIONAL ORIGIN MINORITY PERSONS WITH LIMITED ENGLISH LANGUAGE SKILLS

Recipients may not restrict an applicant's admission to vocational education programs because the applicant, as a member of a national origin minority with limited English language skills, cannot participate in and benefit from vocational instruction to the same extent as a student whose primary language is English. It is the responsibility of the recipient to identify such applicants and assess their ability to participate in vocational instruction.

Acceptable methods of identification include: (1) identification by administrative staff, teachers, or parents of secondary level students; (2) identification by the student in postsecondary or adult programs; and (3) appropriate diagnostic procedures, if necessary.

Recipients must take steps to open all vocational programs to these national origin minority students. A recipient must demonstrate that a concentration of students with limited English language skills in one or a few programs is not the result of discriminatory limitations upon the opportunities available to such students.

M. REMEDIAL ACTION IN BEHALF OF PERSONS WITH LIMITED ENGLISH LANGUAGE SKILLS

If the Office for Civil Rights finds that a recipient has denied national origin minority persons admission to a vocational school or program because of their limited English language skills or has assigned students to vocational programs solely on the basis of their limited English language skills, the recipient will be required to submit a remedial plan that insures national origin minority students equal access to vocational education programs.

N. EQUAL ACCESS FOR HANDICAPPED STUDENTS

Recipients may not deny handicapped students access to vocational education programs or courses because of architectural or equipment barriers, or because of the need for related aids and services or auxiliary aids. If necessary, recipients must: (1) modify instructional equipment; (2) modify or adapt the manner in which the courses are offered; (3) house the program in facilities that are readily accessible to mobility impaired students or alter facilities to make them readily accessible to mobility impaired students; and (4) provide auxiliary aids that effectively make lectures and necessary materials available to postsecondary handicapped students; (5) provide related aids or services that assure secondary students an appropriate education.

Academic requirements that the recipient can demonstrate are essential to a program of instruction or to any directly related licensing requirement will not be regarded as discriminatory. However, where possible, a recipient must adjust those requirements to the needs of individual handicapped students.

Access to vocational programs or courses may not be denied handicapped students on the ground that employment opportunities in any occupation or profession may be more limited for handicapped persons than for non-handicapped persons.

O. PUBLIC NOTIFICATION

Prior to the beginning of each school year, recipients must advise students, parents, employees and the general public that all vocational opportunities will be offered without regard to race, color, national origin, sex, or handicap. Announcement of this policy of non-discrimination may be made, for example, in local newspapers, recipient publications and/or other media that reach the general public, program beneficiaries, minorities (including national origin minorities with limited English language skills), women, and handicapped persons. A brief summary of program offerings and admission criteria should be included in the announcement; also the name, address and telephone number of the person designated to coordinate Title IX and Section 504 compliance activity.

If a recipient's service area contains a community of national origin minority persons with limited English language skills, public notification materials must be disseminated to that community in its lan-

guage and must state that recipients will take steps to assure that the lack of English language skills will not be a barrier to admission and participation in vocational education programs.

V. Counseling and Prevocational Programs

A. Recipient Responsibilities

Recipients must insure that their counseling materials and activities (including student program selection and career/employment selection), promotional, and recruitment efforts do not discriminate on the basis of race, color, national origin, sex, or handicap.

B. Counseling and Prospects for Success

Recipients that operate vocational education programs must insure that counselors do not direct or urge any student to enroll in a particular career or program, or measure or predict a student's prospects for success in in any career or program based upon the student's race, color, national origin, sex, or handicap. Recipients may not counsel handicapped students toward more restrictive career objectives than nonhandicapped students with similar abilities and interests. If a vocational program disproportionately enrolls male or female students, minority or nonminority students, or handicapped students, recipients must take steps to insure that the disproportion does not result from unlawful discrimination in counseling activities.

C. Student Recruitment Activities

Recipients must conduct their student recruitment activities so as not to exclude or limit opportunities on the basis of race, color, national origin, sex, or handicap. Where recruitment activities involve the presentation or portrayal of vocational and career opportunities, the curricula and programs described should cover a broad range of occupational opportunities and not be limited on the basis of the race, color, national origin, sex, or handicap of the students or potential students to whom the presentation is made. Also, to the extent possible, recruiting teams should include persons of different races, national origins, sexes, and handicaps.

D. Counseling of Students With Limited English-Speaking Ability or Hearing Impairments

Recipients must insure that counselors can effectively communicate with national origin minority students with limited English language skills and with students who have hearing impairments. This requirement may be satisfied by having interpreters available.

E. Promotional Activities

Recipients may not undertake promotional efforts (including activities of school officials, counselors, and vocational staff) in a manner that creates or perpetuates stereotypes or limitations based on race, color, national origin, sex or handicap. Examples of promotional efforts are career days, parents' night, shop demonstrations, visitations by groups of prospective students and by representatives from business and industry. Materials that are part of promotional efforts may not create or perpetuate stereotypes through text or illustration. To the extent possible they should portray males or females, minorities or handicapped persons in programs and occupations in which these groups traditionally have not been represented. If a recipient's service area contains a community of national origin minority persons with limited English language skills, promotional literature must be distributed to that community in its language.

VI. Equal Opportunity in the Vocational Education Instructional Setting

A. Accommodations for Handicapped Students

Recipients must place secondary level handicapped students in the regular educational environment of any vocational education program to the maximum extent appropriate to the needs of the student unless it can be demonstrated that the education of the handicapped person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Handicapped students may be placed in a program only after the recipient satisfies the provisions of the Department's Regulation, 45 CFR Part 84, relating to evaluation, placement, and procedural safeguards. If a separate class or facility is identifiable as being for handicapped persons, the facility, the programs, and the services must be comparable to the facilities, programs, and services offered to nonhandicapped students.

B. Student Financial Assistance

Recipients may not award financial assistance in the form of loans, grants, scholarships, special funds, subsidies, compensation for work, or prizes to vocational education students on the basis of race, color, national origin, sex, or handicap, except to overcome the effects of past discrimination. Recipients may administer sex restricted financial assistance where the assistance and restriction are established by will, trust, bequest, or any similar legal instrument, if the overall effect of all financial assistance awarded does not discriminate on the basis of sex. Materials and information used to notify students of opportunities for financial assistance may not contain language or examples that would lead applicants to believe the assistance is provided on a discriminatory basis. If a recipient's service area contains a community of national origin minority persons with limited English language skills, such information must be disseminated to that community in its language.

C. Housing in Residential Postsecondary Vocational Education Centers

Recipients must extend housing opportunities without discrimination based on race, color, national origin, sex, or handicap. This obligation extends to recipients that provide on-campus housing and/or that have agreements with providers of off-campus housing. In particular, a recipient postsecondary vocational education program that provides on-campus or off-campus housing to its nonhandicapped students must provide, at the same cost and under the same conditions, comparable convenient and accessible housing to handicapped students.

D. Comparable Facilities

Recipients must provide changing rooms, showers, and other facilities for students of one sex that are comparable to those provided to students of the other sex. This may be accomplished by alternating use of the same facilities or by providing separate, comparable facilities.

Such facilities must be adapted or modified to the extent necessary to make the vocational education program readily accessible to handicapped persons.

VII. Work Study, Cooperative Vocational Education, Job Placement, and Apprentice Training

A. Responsibilities in Cooperative Vocational Education Programs, Work-Study Programs, and Job Placement Programs

A recipient must insure that: (a) it does not discriminate against its students on the basis of race, color, national origin, sex, or handicap in making available opportunities in cooperative education, work study and job placement programs; and (b) students participating in cooperative education, work study and job placement programs are not discriminated against by employers or prospective employers on the basis of race, color, national origin, sex, or handicap in recruitment, hiring, placement, assignment to work tasks, hours of employment, levels of responsibility, and in pay.

If a recipient enters into a written agreement for the referral or assignment of students to an employer, the agreement must contain an assurance from the employer that students will be accepted and assigned to jobs and otherwise treated without regard to race, color, national origin, sex, or handicap.

Recipients may not honor any employer's request for students who are free of handicaps or for students of a particular race, color, national origin, or sex. In the event an employer or prospective employer is or has been subject to court action involving discrimination in employment, school officials should rely on the court's findings if the decision resolves the issue of whether the employer has engaged in unlawful discrimination.

B. Apprentice Training Programs

A recipient may not enter into any agreement for the provision or support of apprentice training for students or union members with any labor union or other sponsor that discriminates against its members or applicants for membership on the basis of race, color, national origin, sex, or handicap. If a recipient enters into a written agreement with a labor union or other sponsor providing for apprentice training, the agreement must contain an assurance from the union or other sponsor: (1) that it does not engage in such discrimination against its membership or applicants for membership; and (2) that apprentice training will be offered and conducted for its membership free of such discrimination.

VIII. Employment of Faculty and Staff

A. Employment Generally

Recipients may not engage in any employment practice that discriminates against any employee or applicant for employment on the basis of sex or handicap. Recipients may not engage in any employment practice that discriminates on the basis of race, color, or national origin if such discrimination tends to result in segregation, exclusion or other discrimination against students.

B. RECRUITMENT

Recipients may not limit their recruitment for employees to schools, communities, or companies disproportionately composed of persons of a particular race, color, national origin, sex, or handicap except for the purpose of overcoming the effects of past discrimination. Every source of faculty must be notified that the recipient does not discriminate in employment on the basis of race, color, national origin, sex, or handicap.

C. PATTERNS OF DISCRIMINATION

Whenever the Office for Civil Rights finds that in light of the representation of protected groups in the relevant labor market there is a significant underrepresentation or overrepresentation of protected group persons on the staff of a vocational education school or program, it will presume that the disproportion results from unlawful discrimination. This presumption can be overcome by proof that qualified persons of the particular race, color, national origin, or sex, or that qualified handicapped persons are not in fact available in the relevant labor market.

D. SALARY POLICIES

Recipients must establish and maintain faculty salary scales and policy based upon the conditions and responsibilities of employment, without regard to race, color, national origin, sex or handicap.

E. EMPLOYMENT OPPORTUNITIES FOR HANDICAPPED APPLICANTS

Recipients must provide equal employment opportunities for teaching and administrative positions to handicapped applicants who can perform the essential functions of the position in question. Recipients must make reasonable accommodation for the physical or mental limitations of handicapped applicants who are otherwise qualified unless recipients can demonstrate that the accommodation would impose an undue hardship.

F. THE EFFECTS OF PAST DISCRIMINATION

Recipients must take steps to overcome the effects of past discrimination in the recruitment, hiring, and assignment of faculty. Such steps may include the recruitment or reassignment of qualified persons of a particular race, national origin, or sex, or who are handicapped.

G. STAFF OF STATE ADVISORY COUNCILS OF VOCATIONAL EDUCATION

State Advisory Councils of Vocational Education are recipients of Federal financial assistance and therefore must comply with Section VIII of the Guidelines.

H. EMPLOYMENT AT STATE OPERATED VOCATIONAL EDUCATION CENTERS THROUGH STATE CIVIL-SERVICE AUTHORITIES

Where recruitment and hiring of staff for State operated vocational education centers is conducted by a State civil service employment authority, the State education agency operating the program must insure that recruitment and hiring of staff for the vocational education center is conducted in accordance with the requirements of these Guidelines.

IX. PROPRIETARY VOCATIONAL EDUCATION SCHOOLS

A. RECIPIENT RESPONSIBILITIES

Proprietary vocational education schools that are recipients of Federal financial assistance through Federal student assistance programs or otherwise are subject to all of the requirements of the Department's regulations and these Guidelines.

B. ENFORCEMENT AUTHORITY

Enforcement of the provisions of Title IX of the Education Amendments of 1972 and Section 504 of the Rehabilitation Act of 1973 is the responsibility of the Department of Health, Education, and Welfare. However, authority to enforce Title VI of the Civil rights Act of 1964 for proprietary vocational education schools has been delegated to the Veterans Administration.

When the Office for Civil Rights receives a Title VI complaint alleging discrimination by a proprietary vocational education school it will forward the complaint to the Veterans Administration and cite the applicable requirements of the Department's regulations and these Guidelines. The complainant will be notified of such action.

PART 84—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

2. In 45 CFR Part 84 Appendix B is added to read as follows:

APPENDIX B—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS

NOTE.—For the text of these guidelines, see 45 CFR Part 80, Appendix B.

PART 86—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

3. In 45 CFR Part 86 Appendix A is added to read as follows:

APPENDIX A—GUIDELINES FOR ELIMINATING DISCRIMINATION AND DENIAL OF SERVICES ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AND HANDICAP IN VOCATIONAL EDUCATION PROGRAMS

NOTE.—For the text of these guidelines, see 45 CFR Part 80, Appendix B.

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MARCH 15, 1979.

COMMENTS AND RECOMMENDATIONS

Over 130 comments and recommendations were received by the Office for Civil Rights in response to the December 19, 1978 publication of proposed Guidelines. (43 FR 59105) Many identified deficiencies that resulted in significant changes to the Guidelines. Each comment was carefully considered before a response was prepared. The following comments and responses are adopted by the Department as a part of the Guidelines.

SUPPLEMENTARY INFORMATION

1. *Comment:* Commenters stated that the Supplementary Information section was unfairly critical of vocational education administrators, relied too heavily on outdated and suspect data, and ignored the advances achieved under the Vocational Education Amendments of 1976.

Response: The objections have merit and changes have been made. The Supplementary Information section has been revised to include current data, to delete outdated and suspect data, to place greater emphasis on OCR investigations and compliance reviews and to acknowledge that vocational education administrators have responded to antidiscrimination measures of the Vocational Education Amendments of 1976.

SECTION I—SCOPE AND COVERAGE

2. *Comment:* Commenters recommended that paragraph I-A state with clarity that the Guidelines apply to all recipients of financial assistance from the Department of Health, Education, and Welfare and not merely to recipients of Federal vocational education funds.

Response: The recommendation is accepted and paragraph I-A has been modified.

3. *Comment:* One commenter suggested that OCR establish a single definition of "recipient" in its Title VI, Title IX and Section 504 regulations to the extent permitted by the underlying legislation.

Response: A single definition of "recipient" would be helpful. However, the change proposed is beyond the scope of the Guidelines project.

4. *Comment:* Commenters requested that the Guidelines state the responsibilities of recipients under the Age Discrimination Act of 1975.

Response: Regulations under the Age Discrimination Act have not yet been issued. The Guidelines will ultimately include coverage of age discrimination.

5. *Comment:* A commenter recommended that paragraph I-C include as an education agency providing vocational education, "the State Board of Vocational Education and/or a State board or body providing vocational education."

Response: Paragraph I-A states that State agency recipients are covered by the Guidelines. Paragraph I-C provides examples of recipients covered by the Guidelines and lists, at I-C(6),

"a State agency . . . operating a vocational education facility."

6. *Comment:* Commenters requested that paragraph I(D)(6) and (7) be amended to include "certificate programs."

Response: The suggested change has been adopted.

7. *Comment:* Commenters requested that paragraph I-D list as recipients vocational rehabilitation centers and residential centers.

Response: Paragraph I-D provides examples of covered schools. The Guidelines also apply to vocational rehabilitation centers and residential vocational education centers.

8. *Comment:* One commenter requested a definition of the term "subrecipient."

Response: The term "subrecipient" is defined in paragraph II-B.

SECTION II—RESPONSIBILITIES OF STATE AGENCIES

9. *Comment:* Commenters found paragraph II-B incomplete and vague.

Response: This objection has merit. The paragraph has been substantially revised to clarify State agency responsibilities. Definitions of "technical assistance" and of "compliance review" have been added (paragraph (B)(2) and (3)). The Guidelines now state that the Department, not the State agency, has the responsibility and authority to make formal fact findings and terminate and defer Federal funds.

While these additions to the final Guidelines answer several of the specific questions raised by the commenters much more needs to be done. Within 90 days, the Office for Civil Rights and the Bureau of Occupational and Adult Education will issue memoranda that provide the additional detail necessary for successful State agency compliance activity.

10. *Comment:* Commenters argued that paragraph II-B imposes new requirements on State agency recipients.

Response: State agencies, as well as other recipients of Federal financial assistance, are prohibited from conducting their programs through subrecipients or contractors that discriminate. See for example, 45 CFR Sections 80.3(b), 84.4(b)(4), 86.32(b),(d). The Title VI regulations clearly include a State agency obligation to adopt "methods of administration" for monitoring subrecipients for civil rights compliance.[1] However, this requirement has not been enforced against State education agencies. The Department believes that this must be corrected. To be effective, civil rights compliance activity cannot be the exclusive province of Federal civil rights agencies; it must include Department program agencies (in this case the Bureau of Occupational and Adult Education) and State agencies.

11. *Comment:* Commenters argued that the requirements imposed on State agencies by paragraph II-B are unduly burdensome and costly.

Response: Subparagraph B(1) has been revised to insure that no significant additional data collection or record keeping requirement is imposed on recipients. In addition, the requirement that State agencies investigate complaints has been deleted. Civil rights enforcement, however, must be recognized as important enough to merit the allocation of necessary funds. Federal, State, and local funds and resources available for vocational education must be used for civil rights compliance activities in vocational education programs. The obligations imposed are therefore not unreasonably burdensome.

12. *Comment:* Commenters stated that OCR, through paragraph II-B, is assigning or delegating its enforcement responsibilities to the States.

Response: The Guidelines contemplate a cooperative effort among OCR, the Bureau of Occupational and Adult Education, and State agencies. Their purpose is to add, not substitute, resources for civil rights compliance activity. The Guidelines now clearly state what was always intended: The Office for Civil Rights will not decrease its compliance activity in vocational education programs.

13. *Comment:* Commenters stated that proposed paragraph II-D, which attempted to establish a clear division between State and local responsibilities, was confusing and inconsistent with other sections of the Guidelines. They asked that the paragraph be deleted. It was also suggested that the heading of Section II and the first sentence of paragraph II-A should state that the enumerated requirements are only one aspect of a State agency's responsibilities under the Guidelines.

Response: The suggested changes are adopted as consistent with the intent of the Guidelines.

SECTION III—DISTRIBUTION OF FEDERAL FINANCIAL ASSISTANCE AND OTHER FUNDS FOR VOCATIONAL EDUCATION

14. *Comment:* Commenters argued that protected group persons must be provided "equal opportunity" not merely "opportunity" (paragraph III-A).

Response: This suggestion is accepted. The opportunity for vocational training must be equal for all students without regard to race, color, national origin, sex, or handicap. The provision of unequal facilities, for example, cannot be excused because it is a less than total denial of opportunity.

15. *Comment:* Commenters questioned whether the purpose of proposed paragraph III-B was to prohibit discrimination in the development of a formula (input standard) or in the allocation of funds (output standard). The policy statement in proposed paragraph III-B controlled factors in the formula while the example cited in the paragraph was based on fund allocations.

Response: The Office for Civil Rights may review a formula's components. However, its primary inquiry will be whether the formula has a discriminatory effect on the allocation of funds. Accordingly, the first sentence in paragraph III-B has been rewritten to delete the reference to "factors."

16. *Comment:* Commenters suggested rephrasing paragraph III-B to permit the use of factors that remedy the effects of past discrimination. Others suggested that the Department uphold the use of indicia that enable the State to identify communities entitled to priority under the Vocational Education Act. For example, a State vocational education distribution formula may refer to the number of persons residing in a school district receiving aid to families with dependent children or with limited English speaking ability. The purpose of such a reference is to identify areas either economically depressed or with high concentrations of low-income people.

Response: The suggestions are accepted. Judicial precedent requires recipients to undertake affirmative or remedial action when directed by Congress or in response to a finding of past discrimination. In addition, the adoption of the recommended language confirms that a recipient's use of data on AFDC or LESA populations to comply with the Vocational Education Act is consistent with civil rights authorities.

17. *Comment:* Commenters asked for an explanation of the second sentence in proposed paragraph III-B: "State agencies must apply formula provisions under the Vocational Education Amendments of 1976 in a manner consistent with civil rights authorities." They believe that the statement suggests an inconsistency between civil rights authorities and the targeting provisions of the Vocational Education Act.

Response: The sentence does suggest a tension between the provisions of the Vocational Education Act and civil rights authorities. In fact, they are complementary. Paragraph III-B, as revised, contains the essential language prohibiting discrimination in the application of a formula. The chal-

[1] HEW plans to propose an amendment to its regulations that confirms that recipients have an identical obligation under Title IX and Section 504. See "Supplementary Information, Part C, State Agency Responsibilities," above.

lenged sentence has therefore been deleted.

18. *Comment:* Commenters questioned whether the example used in proposed paragraph III-B (now in III-C) is intended to require equal per-pupil allocations of funds.

Response: Section 106(a)(5)(B)(ii) of the Vocational Education Act prohibits the adoption of a formula seeking equal per-pupil allocations of funds. Rather it requires priority funding for subrecipients serving the greatest concentrations of low income families, for subrecipients least able to pay, and for subrecipients serving the greatest concentrations of students whose education imposes higher than average costs (e.g., handicapped students, students from low-income families, and students from families in which English is not the dominant language). These statutory priorities should result in greater expenditures for communities with concentrations of minority group persons. For this reason the gauge of unlawful discrimination contained in the Guidelines—as finding of lower allocations for communities containing concentrations of minority persons—will generally indicate a high probability of noncompliance.

In addition to an analysis of allocations State-wide, OCR may examine individual districts with substantial numbers of minority students to determine if such districts receive lower per-pupil allocations than the State-wide average.

19. *Comment:* A funding formula will be presumed unlawfully discriminatory if the circumstances recorded in paragraph III-B (now paragraph III-C) are present. Commenters asked for examples of evidence that will rebut the presumption.

Response: Two examples of persuassive rebuttal evidence derive from the Vocational Education Act. First, under Section 106(a)(5)(A)(ii) a State must give priority to funding applications that propose programs new to a service area and that are designed to meet emerging or projected manpower needs and job opportunities. These priorities are not directly related to economic need. Therefore the application of these priorities may in some circumstances be used by a State agency to rebut the presumption of discrimination arising from an inadequate allocation of funds to recipients enrolling a disproportionately high percentage of minorities. Secondly, Section 106(a)(4) requires the distribution of Federal vocational education funds on the basis of annual applications. An eligible recipient that fails to submit an application is prohibited from receiving Federal funds. A similar requirement may control the allocation of State funds under the provisions of a State law. For this reason, the failure of urban or other recipients to apply for funds must be considered before a finding of compliance or noncompliance can be made.

Theses are only examples of rebuttal evidence that will be considered. Each case must be decided on the basis of a careful analysis of all evidence believed relevant by the recipient and by the Office for Civil Rights.

20. *Comment:* Commenters asked whether the presumption of paragraph III-C will be applied to each type of vocational education program or to combined State allocations; whether Federal and State funds will be examined separately or in combination; whether both operating costs and capital expenditures will be examined; whether the distribution formula will be judged on an annual basis or over a period of years.

Response: Section 106(a)(5) of the Vocational Education Act requires the States to base the distribution of Federal funds on economic, social, and dem ographic factors relating to the need for vocational education. The Commissioner of Education has ruled in 42 F.R. 53865 (Question #1) that the State's funding formula under section 106(a)(5) must be applied to each of the following Vocational Education Act programs: basic grant (section 120), guidance and counseling (section 134), special programs for the disadvantaged (section 140), and consumer and homemaking programs (section 150). To insure consistency with Office of Education directives under the Vocational Education Act, the Guidelines' requirements may be applied to each of the programs set out above.

The statutory factors listed in section 106(a)(5) of the Vocational Education Act apply to the distribution of Federal vocational education funds. A State may elect to distribute State funds under the same or a different formula. In any event, OCR may separately consider State and Federal allocations to determine whether each is consistent with civil rights authorities.

The distribution formula governs the allocation of all grants to subrecipients under Sections 120, 134, 140, and 150, including those for operating costs and capital expenditures. OCR may therefore examine both operating costs and capital expenditures.

States are required to describe the formula for the distribution of Federal funds in their five year plans (45 CFR 104.182(d)). In applying the gauge of unlawful discrimination to State formulas, OCR may consider expenditures for a single year, or for such other period it finds relevant to whether unlawful discrimination has occurred.

21. *Comment:* A commenter asked whether paragraph III-B (now III-B and III-C) applies to local as well as State agencies. Others asked whether the gauge of compliance, now recorded in paragraph III-C, applies to local agencies.

Respone: Paragraph III-B has been revised to clarify that it applies to all recipients that allocate Federal, State, or local funds among other recipients or schools. Thus, the paragraph applies to local agencies that employ a formula or "other method of allocation" to distribute funds among administrative subdistricts.

The gauge of compliance, recorded in paragraph III-C, refers to a potential misallocation of State and Federal funds. Although this gauge must prove in practice to be a convenient and informative measure, it will tentatively also be used to evaluate allocations of local funds.

22. *Comment:* State agencies argued they could not control the allocation of local funds.

Response: A State agency is not expected to provide protection against an improper allocation of local funds unless it has authority to review or approve local allocations.

23. *Comment:* Commenters argued that OCR lacks authority to monitor State vocational education funds. They argued that paragraph III-B should only control the allocation of Federal funds.

Response: The Department has an obligation to provide protection against unlawful discrimination in any and all facets of a program funded in whole or in part with Federal funds. A recipient of Federal funds may not unlawfully discriminate in the allocation or use of such funds or in the allocation or use of any other funds under its control. Of course, as one commenter notes, if the Department finds it necessary to proceed against any recipient, it may only attempt to defer or terminate HEW Federal funds.

24. *Comment:* Commenters suggested that the phrase "available through Federal funds" (paragraph III-C now III-D), improperly suggests that civil rights authorities apply only to competitive grants or contracts paid for with Federal funds under the Vocational Education Act. They urged that the phrase be deleted.

Response: The suggestion is accepted. A State agency receiving Federal funds may not discriminate in the allocation or distribution of any funds under its control.

25. *Comment:* Commenters thought the example, now recorded in paragraph III-C, should not be referred to in the paragraph relating to competitive grants and contracts.

Response: The example cannot be meaningfully applied to competitive grants and contracts. The reference has therefore been deleted.

26. *Comment:* Commenters suggested that paragraph III-E (now III-F) state that in appropriate circumstances a State may be required to remedy the effects of a prior unlawfully discriminatory distribution of funds.

Response: The Comment is accepted. It is well established that a recipient must remedy past unlawful discrimination and provide protection against like discrimination in the future.

27. *Comment:* Commenters questioned whether paragraph III-E (now III-F) affects the Commissioner of Education's authority to approve or direct a change in the State's method of fund distribution.

Response: If a State system for distributing Federal vocational education funds violates civil rights authorities, the Office of Education and the Office for Civil Rights will jointly seek corrective action.

SECTION IV—ACCESS AND ADMISSION OF STUDENTS

28. *Comment:* Commenters stated that the proposed Guidelines prohibited only future unlawful discrimination. They suggested a prohibition against recipients "maintaining" unlawfully discriminatory practices.

Response: This suggestion is accepted. Recipients must eliminate the effects of past discrimination and ensure nondiscrimination in the future.

29. *Comment:* Commenters suggested that paragraph IV-B be amended to require that sites be accessible to handicapped persons.

Response: The requirement of program accessibility for mobility impaired persons is contained in paragraph IV-N.

30. *Comment:* Commenters argued that new sites should be "equally" accessible rather than "readily" accessible to minority students.

Response: It is generally impossible to find or judge sites "equally" accessible to minority and nonminority communities. Recipients should attempt to locate facilities in perfectly neutral sites; but no change in the Guidelines is required or appropriate.

31. *Comment:* Recipient commenters stated that they often do not have authority to select sites for new facilities.

Response: Recipients that do not have authority to select, review, or approve sites have no obligations under this provision.

32. *Comment:* Commenters objected to paragraph IV-C on the ground that it conflicts with State statutes that limit certain programs offered by a district to students residing within that district.

Response: State laws that limit the admission of students to programs on the basis of residence within a district may be cited by recipients as proof of nondiscrimination. The adequacy or accuracy of that claim will depend upon all of the facts and will vary from State to State and from case to case.

33. *Comment:* Commenters suggested that student reassignment is an additional remedy for site selection and geographic service area violations (proposed paragraph IV-D, now paragraph IV-E).

Response: This suggestion is accepted. For example, if high school vocational education programs are unlawfully segregated because of a geographic zone boundary, the segregation may be remedied through student reassignments.

34. *Comment:* Commenters thought the geographic zoning requirements for secondary vocational schools (paragraph IV-C) should be the same for postsecondary institutions (proposed paragraph IV-E).

Response: Geographic service area or attendance zone boundaries for vocational education centers are generally used at the secondary level. However, paragraph IV-C and IV-E apply to postsecondary institutions that limit admission on the basis of student residence. The separate paragraph for postsecondary institutions has therefore been deleted.

35. *Comment:* Generally, students may not attend an Area Vocational Education School (AVES) unless they reside within one of the school districts participating in the consortium. Commenters objected that paragraph IV-C will result in an unfair requirement that students from nonparticipating districts be admitted to the area school.

Response: In the event the "circumstances" listed in paragraph IV-C arise in a comparison between a consortium and a school district adjacent to a consortium, a recipient(s) may rebut the resulting presumption of unlawful discrimination through proof that compelling reasons justified the inclusion and exclusion of contiguous districts. For example, recipients may demonstrate that an excluded district failed to approve a bond issue needed for the construction of a facility and that all districts included in the consortium approved such a bond issue.

It will not be sufficient for the consortium to prove that all participating districts have approximately the same tax base and that they joined together for that reason. Rather a consortium must prove that an excluded district received a genuine invitation to participate on terms comparable to those offered any other district, and that the offer was declined by the governing authority of the district. If a recipient fails to prove that the planning and formation stages were nondiscriminatory, it will be required to give the excluded district an opportunity to participate in the consortium. Of course, the newly included district may be required to contribute financially and otherwise on the basis of an equitable formula and arrangement.

36. *Comment:* Consortia ask whether paragraph IV-F bars an equal allocation of a facility's student capacity among participating school districts if that allocation results in the disproportionate exclusion of minority group students. Comment No. 35 addresses an issue illustrated by the exclusion of a city school system from an essentially suburban consortium. The issue in this comment, is illustrated by a consortium of a majority black city school system and four majority white suburban districts that equally share a vocational education facility with a capacity of 500 students. Inequality results from this agreement if the city system's student enrollment is substantially greater than its suburban partners. Thus if each participant in this five district consortium is allocated 100 student spaces in the vocational education center, each suburban district may have only 1,000 students competing for 100 spaces while the city system may have 2,000 students competing for 100 spaces. Students in the city system do not have equal opportunity for admission to the vocational education center.

Response: This provision (IV-F) applies to both separate school districts and consortia. However, a consortium may allocate available spaces in the manner described in this comment if it proves that compelling reasons similar to those discussed in comment 35 above, justify the allocation.

37. *Comment:* Commenters asked whether paragaph IV-C may result in a requirement that a school district admit to its vocational education facilities students who reside in an entirely separate school district.

Response: Paragraph IV-C and IV-F apply primarily to discrimination within a school district and to consortia as discussed in comments 35 and 36. A legally consitituted separate school district providing vocational education only to students residing within its borders is not required by paragraph IV-C to admit nonresident students. However, in the event a State establishes a "vocational education district" composed of several school districts, the boundaries of the vocational education district are subject to review under paragraph IV-C.

38. *Comment:* Commenters objected that paragraph IV-H was unreasonable and unrealistic in presuming that segregated facilities, courses and programs resulted from recipient practices rather than student choice. Others urged that the paragraph contain an additional specific presump-

tion of unlawful discrimination if a school were established for members of one race, sex or national origin and continues to be so attended. Such commenters asked for a rule holding that the only permissible remedy for segregation in such a school is relocation of courses and programs to other schools.

Response: Both comments have some merit and have led to a rewriting of the paragraph. Vocational education administrators are quite correct in arguing that specific vocational courses and programs are generally elected by, not required of, students. Consequently, segregation may result from parental, community and peer group influences that are beyond their control. This fact is generally recognized by Section IV of the Guidelines: each paragraph identifies a method or factor controlling student eligibility *other than student choice* and attempts to provide protection against the unlawful exclusion of students based upon that factor. Thus, a student's ineligibility based upon residence (paragraph IV-C) or because the facility was located too far from his or her home (paragraph IV-B) or because he or she scored too low on an admissions test (paragraph IV-K) is addressed by the Guidelines. Proposed paragraph IV-H departed from this theme. Rather than identify a specific device that resulted in the exclusion of students despite their desire to enroll, the paragraph proposed a presumption of unlawful discrimination whenever a facility or course was segregated. This was unreasonable, and the general presumption has been deleted.

However, the other commenters are also correct in stating that the Guidelines fail to identify another factor or device that can interfere with a student's choice. A recipient may have constructed a facility for members of one race or sex and may not have taken meaningful action to remedy the segregation. In such cases, it is unreasonable to state that the school continues to be segregated as a result of student choice. The analogy to racial segregation in elementary and secondary public schools is perfect: by the late 1960's Federal courts were consistently holding that school officials were not adequately desegregating their dual racial systems when, after 100 years of enforced segregation, they merely opened the doors of their white schools and announced that black students could apply for admission. Paragraph IV-H has accordingly been rewritten to hold that if a facility was established for minorities, or for one race, national origin or sex and it continues to be essentially segregated despite open enrollment, additional steps to desegregate the facility are necessary. However, the suggestion that a specific remedy should be required of a school established as a segregated facility, is not accepted. The efficacy of any proposed remedy will vary from case to case.

39. *Comment:* Commenters stated that there should not be a violation of paragraph IV-H if a protected group is represented in a facility in proportion to its representation in the service area.

Response: This comment is accepted. Evidence that members of a protected group attend a facility in proportion to their representation in the service area will be accepted as evidence of that group's nondiscriminatory enrollment in the facility. However, the boundaries of the service area must satisfy the requirements of paragraph IV-C.

40. *Comment:* Commenters suggested that in paragraph IV-H underrepresentation, not nonparticipation, should be the standard; that discrimination based on national origin was improperly omitted from paragraphs IV-F and IV-H.

Response: These suggestions merely urge consistency among several provisions and identify inadvertent errors. The suggested changes have been made.

41. *Comment:* Commenters urged that handicapped persons be protected by paragraph IV-H.

Response: A vocational education center, branch or annex enrolling only handicapped students is often permissible under the Department's Section 504 regulation (e.g. a school for autistic children). Each secondary level student must be individually evaluated and then assigned to a program responsive to his or her individual needs. For this reason the presumption recognized in paragraph IV-H cannot routinely protect handicapped persons. Nevertheless, under the requirements of paragraphs IV-N and VI-A, secondary level handicapped students may be placed in segregated annexes, branches or centers only if their individualized education plans state that they cannot be trained in a regular program with "supplementary aids and services."

42. *Comment:* Commenters suggested that the proposed validation standard of paragraph IV-K would permit recipients to use criteria that disproportionately exclude minorities or handicapped persons merely by demonstrating that the students admitted were more likely to succeed in the program. This would allow recipients, for example, to exclude protected persons from the attractive trade and technical programs through evidence that a "C" average student is less likely to excel in a program than an "A" average student. The commenters suggested that screening criteria to be permissible, must be "essential to participation" in a program.

Response: This suggestion is accepted. One of the principal objectives of the Vocational Education Act is to provide protected group persons the training they need to obtain employment. Screening criteria or standards that have the effect of disproportionately excluding such persons from vocational education programs must therefore be validated as essential to satisfactory completion of course requirements. The use of criteria like grade point average, to justify priority admission of students with exceptional attainments or scores may disproportionately exclude protected group persons. If such disproportionate exclusion occurs the criteria or standards must be validated as essential to participation in a program *before* they may be used by a recipient.

43. *Comment:* Commenters sought to expand paragraphs IV-L and IV-M. They argued that recipients should be required to provide native language programs, English language instruction and other diverse methods of instruction where there are high concentrations of persons with limited English language skills.

Response: The changes proposed are beyond the scope of the Guidelines project. The requirements of the Guidelines are consistent with established Office for Civil Rights secondary school policy.

44. *Comment:* Commenters objected to the failure of paragraph IV-D, (I) and (M) (now E, I, and M) to include deadlines for the submission of acceptable remedial plans.

Response: The Office for Civil Rights will establish time periods for the submission of remedial plans on a case by case basis.

45. *Comment:* Commenters thought the public notification paragraph, IV-O, fails to ensure adequate notice of vocational education opportunities. Others thought the proposed provision was too burdensome; they found the requirement of notice to limited English proficiency persons particularly objectionable.

Response: The requirement that recipients announce a policy of nondiscrimination has several components: 1) the notice must be continuing; 2) it must be designed to reach a recipient's beneficiaries and employees, and potential beneficiaries and employees, particularly members of protected groups; 3) it must state the policy of nondiscrimination; 4) it must include the name, telephone number, and address of a person who can provide additional information on the policy of nondiscrimination. The proposed provision for notification was deficient with respect to requirement number 4;

the final Guidelines have been revised accordingly.

The Department agrees with the commenters who found too onerous the requirement of notice of "all program offerings and admissions criteria." It has been substantially revised. Also, notice to national origin minorities with limited English speaking ability is now required only if a service area contains a "community" of such persons.

46. *Comment:* Commenters asked whether affirmative action programs were permissible or required.

Response: Appropriate remedial action (sometimes referred to as "affirmative action") must be undertaken to overcome the effects of past discrimination. Also, certain voluntary affirmative action measures are permissible under the Department's Title VI, Title IX, and Section 504 regulations, when a recipient finds such measures useful or necessary to correct societal discrimination or patterns of segregation and nonparticipation. the Secretary and the President have issued statements urging recipients to adopt and continue voluntary affirmative action programs in admissions, recruitment, counselling, and employment.

47. *Comment:* A commenter asked whether children attending private racially discriminatory academies may also attend Federally assisted vocational schools.

Response: On April 26, 1976, the Office for Civil Rights announced that "children enrolled in a non-public school cannot participate in the public school program if the non-public school engaged in discriminatory practices prohibited by Title VI. Even though the non-public school is not a recipient, any discriminatory practices by it would . . . directly affect the Federally assisted program." 41 F.R. 35553 (August 23, 1976).

SECTION V—COUNSELING AND PREVOCATIONAL PROGRAMS

48. *Comment:* Commenters recommended that recipients be required to provide inservice training for counsellors on the needs of minorities, the handicapped, and students stereotyped on the basis of sex.

Response: Inservice training is an approved method for instructing professional staff on the forms of discrimination experienced by students. However, recipients may obtain compliance through other methods.

49. *Comment:* Proposed paragraph V-B provided that disproportionate enrollments based on sex must be examined to verify that they do not result from discrimination in counselling. Commenters asked that disproportionate enrollments based on race or national origin lead to a similar examination of counselling practices.

Response: The suggestion is accepted and paragraph V-B has been revised.

50. *Comment:* Commenters urged that paragraph V-E endorse affirmative promotional and outreach activities.

Response: The recommendaton is accepted. Voluntary affirmative action in promotional and counselling activities is endorsed through comment number 47.

51. *Comment:* Commenters found "unrealistic" the prohibition against counselling handicapped students toward limited career objectives (paragraph V-B).

Response: This provision allows a recipient to advise handicapped students of the difficulties they may encounter in fields not traditionally opened to them. However, the provision requires that recipients do more than merely state that such obstacles exist. The recipient must provide students with information on available vocational opportunities, on the responsibilities of an employer under Section 504, and on available remedies in the event of discrimination. Information or materials that may assist recipients in meeting this responsibility are available from the Office for Civil Rights, Office of Program and Review and Assistance.

SECTION VI—EQUAL OPPORTUNITY IN THE VOCATIONAL EDUCATION INSTRUCTIONAL SETTING.

52. *Comment:* Commenters recommended several changes to this section: A) "Mainstreaming" handicapped students should not be a priority; B) Sex restricted financial assistance, even subject to the conditions specified in paragraph VI-B, should be impermissible; C) Additional detail should be provided in paragraph VI-C to provide protection against unlawful discrimination; D) A new section should be added to announce recipient obligations to national origin minority persons with limited English speaking ability.

Response: The primary purpose of Section VI of the Guidelines is to record several provisions of the Department's Title IX and Section 504 regulations that deserve emphasis in light of findings in OCR compliance reviews and complaint investigations. Proposed changes "A" and "B" are inconsistent with the Department's regulations and therefore beyond the scope of the Guidelines project; suggestion "C" is meddlesome in that it seeks to regulate recipients aimlessly; proposed change "D" seeks a provision already included in another secton of the Guidelines.

SECTION VII—WORK STUDY, COOPERATIVE VOCATIONAL EDUCATION, JOB PLACEMENT, AND APPRENTICE TRAINING

53. *Comment:* Commenters argued that the requirements of Section VII are too burdensome. They believe that Congress never intended recipients to monitor employers and unions for discrimination.

Response: Vocational education administrators misperceive the nature of Section VII requirements. Under the Department's civil rights regulations recipients are prohibited from engaging in any service, activity, or program in a discriminatory manner. Work study, cooperative education, and job placement are recipient programs or activities and for this reason may not be marred by unlawful discrimination. There is evidence, for example, that school officials are honoring requests from employers for persons of a particular race or sex or for persons free of handicaps. This is unlawful discrimination by both the recipient and the employer. Moreover, the Congress is not mindless; it does not enact idle legislation. It would not appropriate more than a half billion dollars annually under the Vocational Education Act for both nondiscriminatory job training programs and discriminatory job placement programs.

54. *Comment:* Commenters suggested that the Guidelines require recipients to obtain an assurance of nondiscrimination from employers that participate in cooperative education, work study, and job placement programs. Others suggested that paragraph VII-A should require school officials to collect, review, and maintain data reflecting the race, sex, national origin, and handicap of students participating in these programs.

Response: The addition of a written assurance to existing written agreements (e.g., cooperative vocational education agreements) is a reasonable and useful measure. This requirement has been added to the Guidelines. To date, OCR investigators have not been frustrated by inadequate recipient records, and the data collection suggestion is therefore not accepted.

55. *Comment:* Commenters urged that paragraph VII be rewritten to allow potential employers to discriminate on the basis of handicap if the handicap prevents a person from performing the job. One commenter stated, for example, that a roofing company need not hire an individual with no legs as a roofer since the job requires an ability to climb a ladder carrying 90 pounds of materials.

Response: Employers may not discriminate on the basis of handicap against otherwise *qualified* handicapped persons. Prospective employers are permitted to make preemployment

inquiries into an applicant's ability to perform job-related functions. Note, however, that employers are required to "reasonably accommodate" the special needs of a handicapped employee or applicant for employment if it does not result in an "undue hardship" for the employer. In the example provided by the commenter, a small roofing concern would probably be unduly burdened by the accommodation necessary for this handicapped person. However, in contrast, a major university will not experience "undue hardship" if it provides a reader for a blind applicant for employment. See paragraph VIII-E of the Guidelines. Additional information on the principles of "undue hardship" and "reasonable accommodation" can be obtained from the Office for Civil Rights, Office of Program Review and Assistance.

56. *Comment:* Commenters objected to the phrasing in paragraph VII-A suggesting that a recipient must control an employer's policies and practices.

Response: A recipient cannot control the policies or practices of an employer. However, a recipient must determine whether an employer discriminates and if necessary divorce itself—its programs and activities—from the discriminating employer.

57. *Comment:* Commenters asked whether recipients are prohibited from entering work study and cooperative education agreements with employers that have remedied their discriminatory policies and practices.

Response: Recipients are free to enter into agreements with such employers.

58. *Comment:* A commenter argued that prospective employers in cooperative placement activities should not be covered by these Guidelines because they are "ultimate beneficiaries" under 45 CFR § 84.3(f).

Response: The requirements of the Guidelines apply to recipients of Federal funds, not to prospective employers. Recipients must take measures to free their programs and activities of employers who unlawfully discriminate. It is unnecessary, therefore, to determine whether prospective employers are "ultimate beneficiaries."

59. *Comment:* Commenters asked whether the requirement of nondiscrimination in apprentice training applies only to programs sponsored by unions.

Response: Paragraph VII-B applies to registered and non-registered apprentice training programs whether sponsored by a union, an individual employer, a group of employees, an employer-employee committee, or a governmental agency. The text of paragraph VII-B has therefore been revised to cover a "labor union or other sponsor." Also, all sponsors of apprentice programs are subject to the Department of Labor Guidelines for Nondiscrimination in All Apprenticeship Programs (29 CFR Part 30).

Section VIII—Employment of Faculty and Staff

60. *Comment:* Commenters argued that the Department's Title VI employment jurisdiction extends only to employees who work directly with students. They state that the Department has no authority to act on complaints of employment discrimination against "administrators or applicants for employment."

Response: The Guidelines have been revised to reflect the Department's current interpretation of its authority. If and when it is revised or modified, the new policy will be announced and will supersede the Guidelines.

61. *Comment:* Commenters stated that the Department has no authority to accept or resolve employment discrimination complaints under Title IX.

Response: The Guidelines reflect the Department's current interpretation of its authority. Several cases raising this issue are now pending in the courts of appeal. If and when this litigation results in controlling holdings that the Department has no employment jurisdiction under Title IX, the Department's regulations and these Guidelines will be revised.

62. *Comment:* Commenters suggested that under a recent decision of the United States Court of Appeals for the Fourth Circuit, *Trageser* v. *Libbie Rehabilitation Center*, — F.2d — (4th Cir. 1978), the Department has no authority to accept or resolve employment discrimination complaints under Section 504.

Response: The Guidelines reflect the Department's current interpretation of its authority. If and when it must be revised to conform to controlling judicial decisions, the new policy will be announced and will supersede the Guidelines.

63. *Comment:* Commenters stated that the definition of a "qualified handicapped" person under Section 504 of the Rehabilitation Act and the Guidelines is at odds with the Department of Labor's definition under Section 503 of the Rehabilitation Act.

Response: The Department of HEW is presently reviewing with the Department of Labor the inconsistencies between their definitions. The Guidelines reflect the Department's current view. If and when it is revised or modified, the Department's regulation and these Guidelines will be revised.

64. *Comment:* Commenters objected to paragraph VIII-F on the ground that it establishes requirements inconsistent with *Bakke*.

Response: The Guidelines require remedial action to overcome the effects of past discrimination. *Bakke* permits, among other activities, such "affirmative action."

65. *Comment:* Commenters objected to paragraph VIII-C as "presuming guilt" before an investigation is conducted.

Response: Although alternative language was considered, no change has been made in the Guidelines. It is not the intention nor the effect of the Guidelines to make baseless presumptions or findings. Rather, statistical patterns result in inferences that additional evidence may rebut. The Office for Civil Rights will not find unlawful discrimination solely on the basis of statistical data or without affording a recipient an opportunity for rebuttal.

66. *Comment:* Commenters urged that the Guidelines require recipients to maintain and submit data on its employment practices.

Response: This suggestion was rejected. Records maintained and submitted by recipients under other authorities have satisfied the needs of OCR investigators.

67. *Comment:* Commenters asked whether this section applies to State agencies.

Response: All recipients of Federal financial assistance from the Department, as specified in Section I, are covered by Section VIII. This also explains the requirement of paragraph II-A(4).

68. *Comment:* Commenters stated that paragraph VIII-C should recognize that a recipient may rebut a presumption of unlawful employment discrimination through evidence that qualified persons of a protected group were not available to the individual school district nor to the vocational education center.

Response: Rebuttal evidence may include proof that: (1) Members of a protected group were recruited without success; or (2) Identified persons of a protected group were offered employment opportunities that were declined.

Section IX—Propriety Vocational Education Schools

69. *Comment:* A commenter argued that a tuition grant or loan to a student in attendance at a proprietary school is not Federal financial assistance to the proprietary school. Rather it is compensation paid for a direct service—a "procurement contract." It is argued that proprietary schools are therefore not subject to the Department's regulations or these Guidelines.

Response: The Department has long defined the term "recipient" under Title VI, Title IX and Section 504 to include proprietary (i.e., other than

public or nonprofit) educational institutions that receive tuition from students participating in Federal tuition grant programs. It is beyond the scope of the Guidelines project to reconsider established Department policy.

DAVID S. TATEL,
Director,
Office for Civil Rights.

March 15, 1979.

[FR Doc. 79-8561 Filed 3-20-79; 8:45 am]

[6712-01-M]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20790; FCC 79-134]

SETTING UP A SINGLE SYSTEM OF IDENTIFICATION FOR ALL DEVICES COVERED UNDER THE EQUIPMENT AUTHORIZATION PROGRAM

AGENCY: Federal Communications Commission.

ACTION: Report and Order.

SUMMARY: This is a Revision of Parts 2, 15, 18, and 83 of FCC Rules to replace former non-uniform and inconsistent identification requirements for radiofrequency devices with a single simpler system of identification for all such devices subject to the FCC Equipment Authorization program.

EFFECTIVE DATE: April 25, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Milton C. Mobley or John T. Robinson, Federal Communications Commission, Laboratory Division, P.O. Box 40, Laurel, MD 20810, Tel: 301-725-1585.

REPORT AND ORDER—PROCEEDING TERMINATED

Adopted: February 28, 1979.

Released: March 15, 1979.

By the Commission: Chairman Ferris issuing an additional statement; Commissioner Fogarty concurring in the result.

In the matter of Revisions of Parts 2, 15, 18, and 83 of the rules and regulations to set up a single system of identification for all devices covered under the equipment authorization program, Docket No. 20790

1. On May 6, 1976, the Commission released a *Notice of Proposed Rulemaking* in Docket No. 20790,[1] proposing to amend various sections in Parts 2, 15, 18, and 83 of the rules, relating to identification requirements for equipment required to be covered by grants of equipment authorization issued by the Commission prior to lawful marketing. The sections to be amended all contain requirements for equipment identification, with wide variation in the present requirements as to the type of information to be listed on the equipment identification plates. It is not uncommon for a given device to be subject to two or more equipment authorization procedures, with different requirements for each. This causes problems for the grantee in trying to comply with the various identification requirements and for the Commission with regard to indexing and listing authorized equipment. It also leads to inexact identification of equipment on documents submitted to the U.S. Customs Service and has caused a number of importation problems.

2. A major part of the identification problem has been caused by the fact that equipment marketers have for many years used a variety of terms, such as Model, Type, Catalog Number, and the like as prefixes for the actual product identification number. The terms Model and Type have also been used more or less interchangeably in the Commission's Rules relating to grants of equipment authorization. In the consumer equipment area, there are many cases of equipment electrically identical being marketed under two or more model or type numbers because of the need of the marketer to distinguish differences in cabinet styling, color and the like. Under the present rules, this requires a grant of equipment authorization for each version of the equipment, and entails additional costs for both the grantee and the Commission. Included among the objectives of this rulemaking is abandonment of the use of the term Model or Type as an equipment identification prefix for equipment authorization, and instead to use an identifier assigned by the Commission for each authorized equipment. An equipment so authorized may include a family of several models or types that are electrically identical but differ from one another in cabinet style, color, or other ways not affecting the ability of the equipment to comply with the applicable technical standards, providing the prospective grantee in his application elects this option and lists these models or types and the way(s) in which they differ from the basic equipment. Additional models or types may be proposed for inclusion in an existing authorization by filing a supplementary application at a later date.

3. The rules adopted herein establish a single system of identification for all equipment subject to the Commission's equipment authorization requirements, except for telephone equipment required to be registered under Part 68. These rules will go into effect 18 months after the effective date of this Order, except that a grantee of an equipment authorization may elect to comply with the new identification procedure at an earlier date. These rules require that an FCC-assigned identification (FCC Identifier) be displayed on the nameplate of each authorized device. This identifier shall consist of three elements.

A coded identifier for the grantee (or grantee/trade name), consisting of three alpha-numeric characters.

A coded identifier for the manufacturer, consisting of three alpha-numeric characters.

The identifier for the particular equipment, or family of equipments, assigned by the grantee.

Example: ACF2B9324B6

ACF.....	Grantee (or grantee/trade name) code.
2B9.....	Manufacturer code.
324B6.....	Number assigned by the grantee to the product or family of technically identical products.

Encoding of the identifiers for the grantee (or grantee/trade name) and manufacturer is needed because it is common practice for certain equipment to be marketed only under trade names, without the name of either the grantee or manufacturer on the equipment. Moreover, it is known that there are many instances in which more than one grantee is marketing equipment under the same trade name. This is a major problem in after-market identification of equipment, and in identification during importation. While it is not desired nor intended to affect such arrangements in the marketplace, there is a need for assurance of identification. Consumer items sold under trade names make up the larger part of the number of regulated devices sold in an average year. Inability to assure proper identification has caused many problems, particularly for imported items.

4. A nearly identical system is already employed for identification of telephone equipment registered under Part 68 of the rules. Because that part requires the complete identifier to be assigned by the Commission, and the nameplate also must display certain information peculiar to telephone equipment (and not relevant to other devices covered under the equipment authorization program), we have not proposed full unification of Part 68 devices under this proposal. However, the system adopted herein for assignment of coded identifiers to grantees (or grantee/trade names) and manufacturers is already in use for devices registered under Part 68.

[1] FEDERAL REGISTER: May 12, 1976, 41 FR 19349. FCC Reports: Vol. 59, FCC, 2nd p. 56.

5. Under these rules the equipment nameplate is required to display the FCC Identifier (as validated by the Commission) and either the name of the grantee, his trade name, or both of these (whichever he prefers). For imported items, the country of origin, as required by 19 U.S.C. 1304, must also be displayed. In the case of certain other low-power communication devices regulated under Part 15, an additional cautionary legend is also required. Where Federal law or regulations of other U.S. Government agencies require equipment, such as microwave ovens or diathermies, to be inscribed with warning labels or other legend; these may be included. Other information desired by the grantee may be included on the nameplate at his option.

6. Comments in this proceeding were filed by the parties listed below. No reply comments were received.

Consumer Electronics Group of the Electronic Industries Association (CEG/EIA)
Industrial Electronic and Control Instrumentation Group, HF Heating Committee, of the IEEE (Industrial Control/IEEE)
Unisonic Products Corp. (Unisonic)
Western Union Telegraph Co. (WU)
Litton Microwave Cooking (Litton)
Association of Home Appliance Mfrs (AHAM)
The Magnavox Co. (Magnavox)
Land Mobile Communications Section of the Electronic Industries Association (LMCS/EIA)
Collins Division of Rockwell International Corp. (Collins)
GTE/Sylvania (Sylvania)
U.S. Customs Service (USCS)

7. LMCS/EIA requested that action under this *Notice* be delayed or withdrawn until related rulemakings in Dockets 19356, 20120, 20746, 20780, and 20718 are finalized. They pointed out that advent of several concurrent rulemakings made their ability to make informed comment rather difficult, and that they were therefore rather critical of the proposal. For reasons other than the LMCS/EIA request, final action on this rulemaking has been deferred more than two years since it was announced. We often find it necessary to propose rulemaking in several areas at the same time, and it would be extremely difficult to attempt to serialize these actions so as to avoid the possibility that one or more interested parties might be affected simultaneously by two or more rulemakings. LMCS/EIA did point out that they were vitally concerned with avoiding delay in obtaining equipment authorization. One of our objectives in this rulemaking is to minimize the time required in assuring proper equipment identification, which will permit more effort on other aspects of the program. Accordingly the LMCS/EIA request for delay in finalizing this proceeding must be denied.

8. The comments raised objections to certain of the provisions that had been proposed in the Notice. These comments are discussed with respect to the particular section or subject involved.

9. Published list of codes for grantee or manufacturer. Sections 2.926 (b) and (e) proposed publication of lists of the codes assigned to grantees (or grantee/trade names) and manufacturers. CEG/EIA, LMCS/ EIA, Unisonic and Sylvania requested that this publication be dropped on the ground that this would make public otherwise private arrangements between the parties, and that this could undermine public acceptance of trade names. Under the existing provisions of the rules, the identification of grantee and manufacturer are required to be included in an application for equipment authorization. After date of grant, these files are routinely available for public inspection upon request pursuant to § 0.460 of the rules. Thus publishing lists of codes would not have made public information not already available. However, we have reconsidered the proposal to publish these lists and have deleted it from these amendments. The major need for these listings is for internal use within the Commission staff and for use by U.S. Customs. Current lists will be provided for these intra-government uses. They will not be reproduced for general public distribution.

10. Legend regarding interference. Sections 15.132(a), 15.178 (a) and (b), 15.186 (a) and (b)(3), 15.375 (a) and (b)(4), and 15.415(a) required that the nameplates of certain low-power communication devices bear the following legend;

This device complies with FCC Rules Part 15. Operation is subject to the following two conditions:

(1) This device may not cause harmful interference.

(2) This device must accept any interference that may be received, including interference that may cause undesired operation.

CEG/EIA, Magnavox, Collins and Sylvania objected to use of the term "harmful interference" in this legend, notwithstanding that this identical language is required for labelling of three types of low-power communication equipment in the present rules. They believe that uninformed parties might misunderstand this term to indicate potential physical harm to the user. This proposal continues an existing requirement and extends it to several additional categories of similar equipment. The present regulation has not given rise to the misunderstanding alleged in the comments. Since this regulation is merely a warning to the purchaser of what he can expect from his low-power communication device, this regulation is adopted as proposed. The statement for receivers in § 15.71, adopted when certification was voluntary, is now being dropped, since it is no longer needed.

11. Use of the term FCC Identifier. Litton, AHAM and Magnavox requested revision of the proposed rules to permit abbreviation of the term: "FCC IDENTIFIER," and to allow some flexibility in type size and arrangement of information required on the nameplate. We have revised the rules herein to provide for abbreviation of "FCC IDENTIFIER" and to allow rearrangement of nameplate information provided that all required information is legibly displayed.

12. Coding for Manufacturers. Magnavox requested that consideration be given to conforming FCC code assignments to the system administered by EIA (code assignments in three algebraic numbers to each manufacturer) and requested that the EIA code assigned to Magnavox be reserved for its use. When drafting the *Notice* we considered possible use of either the EIA code or the one administered by the Department of Defense. The 999 individual assignments available under the EIA system were not considered to be adequate for long-term needs of the Commission, and the need for EIA or DOD action in making code assignments would produce undesirable delay and costs in our program. Furthermore, neither system makes provision for assignments of codes to parties other than manufacturers. For these reasons, we cannot accede to the Magnavox request. The FCC coding system provides for nearly 40,000 different codes for grantees (or grantee/trade names) and a similar number for manufacturers. It is already in use for registration of telephone equipment under Part 68 of the rules. Provision is made that upon request an advance assignment of the grantee code or the manufacturer code will be made so as not to delay the grantee/manufacturer procurement of labels for his equipment.

13. Automatic acceptance of nameplate within 30 days. Litton requested that a provision be added to the rules to provide that failure by the Commission to disapprove a nameplate design within 30 days be considered de-facto acceptance. While we believe that the proposals in the *Notice* have so simplified the nameplate requirements that there is very little likelihood that the proposed nameplates might be found unacceptable, it does appear that assurance of acceptance or rejection of nameplate designs within 30 days after filing of application would make it possible for manufacturers to proceed with nameplate procurement without

delay that would result from awaiting receipt of the grant of equipment authorization. Section 2.925(b)(4) provides for this review within 30 days for all applications filed after October 27, 1980, and for applications filed earlier requesting assignment of an FCC identifier.

14. Multiple manufacturers of a particular model. LMCS/EIA directed our attention to the fact that the *Notice* did not specifically address how the identifier would be assigned in those cases where, pursuant to § 2.929 of the rules, the grantee may:

> license or otherwise authorize a second party to manufacture or market the equipment covered by the grant of equipment authorization * * * *Provided*, That the equipments manufactured by such second party bear * * * the identical name and number' * * * that appear in the grant of equipment authorization.[2]

In the context of the rules, authorization for a second party to market the equipment under the original identification presents no problem. In the case where the grantee arranges for a second (or additional) manufacturer, upon receipt by the Commission of his notification of the circumstances, the Commission issues the grantee an amended grant listing all manufacturers. When these rule changes become effective, this amended grant will validate separate identifiers for the equipment as produced by each of the manufacturers for the grantee.

15. Use of FCC Identifier prior to grant of equipment authorization. LMCS/EIA also raised the question of permissible identification for equipment not yet covered by an equipment authorization which is displayed at a trade show with the disclaimer required by § 2.803. Apparently, LMCS/EIA interpreted § 2.926(e) as prohibiting attachment of a nameplate to such equipment. The intent of § 2.926(e) is to prohibit a prospective grantee from devising his own version of the FCC Identifier and using it on the equipment before issuance of a grant by the Commission. Nowhere in the proposed rules do we prohibit application of a nameplate nor do we propose to prohibit use of a model or type number for any equipment, authorized or not.

16. Size and location of nameplate. LMCS/EIA pointed out that the rules in the *Notice* did not cover the matters of nameplate size, location nor method of attachment. We prefer not to require any specific nameplate dimensions, considering the wide variation in dimensions of equipment. § 2.925(b) has been revised to be more specific as to location and method of attachment of the nameplate.

17. Continued use of Model Number and Type Number. Sylvania pointed out that the terms "Model Number" and "Type Number" are used in many places in the rules and that the proposed rules issued with the *Notice* did not propose to amend the rules to replace these terms with "FCC Identifier." One objective of this rulemaking is to use only the term "FCC Identifier" as the equipment identification prefix for Commission purposes, hopefully to eliminate our present problems due to grantee's use of "Model Number" and "Type Number" for other purposes. This requires changes only in the rules relating to equipment identification. Since more than one model of some kinds of equipment may be covered under the same "FCC Identifier," we believe that it is better to leave the other rules unchanged at this time. We expect that grantees and manufacturers will continue use of the terms "Model Number" and "Type Number" for their own purposes.

18. Applications filed prior to effective date. WU stated that they were uncertain as to the intention of the Commission with regard to identification of equipment authorized under applications filed before these rules become effective. The new rules adopted herein supersede the existing requirements for equipment identification, effective for applications filed on or after october 27, 1980. Concurrently, to provide for extension of the existing requirements covering equipment under applications filed before that date, the existing rules were renumbered with the initial part of each section changed to read:

> Each equipment for which an * * * application is filed * * * before October 27, 1980, shall have * * *

This or similar language appears in §§ 2.925(e), 2.969(b), 2.1003(b), 2.1045(b), 15.123(b) 15.178(b), 15.186(b), 15.375(b), 15.415(b), 18.74(a)(2), and 18.141(c)(2). Renumbering these sections may have led to this uncertainty. The intent of the rules as proposed in the *Notice* is that equipment covered under applications filed before the effective date of these rules will continue to be identified as authorized, even though it may be manufactured or sold after that date.

19. Country of Origin. The U.S. Customs Service points out that 19 U.S.C. 1304 requires the inscription of the country of origin on all products imported into this country. If this information were added to the nameplate required by the Commission, the work of USCS in enforcing 19 U.S.C. 1304 would be facilitated. Accordingly USCS has requested that the country of origin be required to be inscribed on the nameplate. Although not addressed in a specific rule, the Notice in this proceeding did allow for inclusion of information required by law or other U.S. Government agencies. Accordingly § 2.925(a)(4) has been added in accordance with the USCS request.

20. Except as cited in the previous paragraph, CEG/EIA, Industrial Control/IEEE, Unisonic, WU, Litton, Magnavox, Collins, and Sylvania generally supported the proposed rulemaking.

21. The rules proposed in the *Notice* have been revised to provide for the major points raised in the objections and comments cited above. Except for these changes, the rules are adopted as proposed.

22. Rule changes proposed in other concurrent Notices of Proposed Rulemaking will be conformed to the rules adopted herein insofar as identification of equipment is concerned.

23. In view of the foregoing, we find that adoption of the revised rule changes would serve the public, interest, convenience and necessity. *Accordingly, it is ordered*, That, effective April 25, 1979, the rules amendments contained in the attached Appendix are adopted, and this proceeding is terminated.

24. Authority for this action may be found in Sections 4(i), 302 and 303(r) of the Communications Act of 1934, as amended.

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

FEDERAL COMMUNICATIONS COMMISSION,[3]
WILLIAM J. TRICARICO,
Secretary.

APPENDIX

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES & REGULATIONS

1. Section 2.925 is revised to read as follows:

§ 2.925 Identification of equipment.

(a) Each equipment for which an authorization application is filed on or after October 27, 1980, shall bear a nameplate or label carrying the FCC Identifier assigned by the Commission pursuant to § 2.926 and the grantee or grantee/trade name specified in the application for equipment authorization. In the case of an equipment of foreign origin, the country of origin (as required by 19 U.S.C. 1304) shall also be stated on the nameplate or label. Additional information may be inscribed on the nameplate or label at the option of the grantee providing that this additional information cannot be confused with the FCC Identifier. No equipment may bear more than one trade name.

(1) The grantee must display on the nameplate or label either his name or

[2] LMCS/EIA comment dated July 12, 1976, at para. 19) III.

[3] See attached Additional Statement of Chairman Ferris.

a trade name (or both of these if he prefers). His application for equipment authorization should state which of these he proposes to use for the equipment.

(2) As used in this part, the term "manufacturer" applies only to the party listed by the grantee as the manufacturer. Names of producers of subassemblies or components used by this manufacturer in production of the equipment are not required to be included in identification of the equipment.

(b) The FCC Identifier for an equipment shall consist of the three elements described in § 2.926, displayed on one line of the nameplate or label. In each instance where the FCC Identifier is displayed in the nameplate or label, it shall be preceded by the term: "FCC ID:" in capital letters on the same line. If the grantee requests the Commission to assign a single FCC Identifier to a device, where the device is subject to more than one equipment authorization procedure, the above requirement applies. If the grantee requests the Commission to assign a separate FCC Identifier to each section of a device, such as a transceiver or transmitter-receiver, subject to more than one equipment authorization procedure, each FCC Identifier shall be displayed on a separate line of the nameplate or label and preceded by the terms: "TX FCC ID:" or "RX FCC ID:" as appropriate. For a transceiver or transmitter-receiver combination having separate identifiers for the transmitter and the receiver sections, the FCC Identifier for the transmitter section shall be listed on the top line of the identifier portion of the nameplate or label, the FCC Identifier for the receiver section shall be listed on the second line, and any FCC Identifiers for other sections shall be listed on the third and following lines. For imported devices, the country of origin shall be listed on the last line of the identification portion of the nameplate. The identification portion of the nameplate shall be enclosed in an area circumscribed by a line to distinguish it from any additional information placed on the nameplate. Devices other than transceivers or transmitter-receiver combinations having more than one FCC Identifier may have these listed in any order, but on separate lines, starting at the top of the identification portion of the nameplate.

(1) Where a device, such as a transceiver, consists of two or more sections constructed in a common enclosure and on a common chasis or circuit board and/or with common frequency controlling circuits, such equipment shall be listed under a single identifier.

(2) Where a device, such as a transceiver, consists of two or more sections, assembled in a common enclosure but constructed on separate subunits or circuit boards and with independent frequency-controlling circuits, such equipment may be listed with separate FCC Identifiers for the several sections.

(3) In the case of equipment which combines the functions of a registered telephone equipment and some other kind of equipment subject to equipment authorization requirements in a single unit under a single identification, the Registration Number issued pursuant to Part 68 of this chapter will serve as the FCC Identifier for the equipment. Where a registered telephone equipment and some other kind of equipment subject to equipment authorization requirements are constructed separately but are interconnected or used together and are provided with separate nameplates, the registered telephone equipment will be assigned a FCC Registration Number and the other section(s) will be assigned FCC Identifier(s).

(4) Applications filed on or after October 27, 1980, and applications filed earlier requesting assignment of an FCC Identifier pursuant to § 2.925(c) will receive a review by the Commission's Laboratory Division with respect to nameplate design within 30 days after receipt at the Laboratory. Failure by the Laboratory to reject a nameplate design proposed in any particular application within this time period will constitute de-facto acceptance of the name plate design for that particular equipment. Such de-facto acceptance will be limited to the equipment covered by the particular application and will not be considered to establish a precedent for other applications. This review deadline applies only to the proposed nameplate design, not to the remainder of the application.

(c) Notwithstanding the provisions of paragraph (g) of this section, the FCC Identifier may be used earlier than October 27, 1980 at the option of the grantee for any equipment covered by an authorization application submitted after April 25, 1979, and for which the grantee requested in his application assignment of an FCC Identifier.

(d) The nameplate or label shall be permanently affixed to the equipment and shall be readily visible to the purchaser at the time of purchase.

(1) As used here, "permanently affixed" means that the required nameplate data must be etched, engraved, stamped into, indelibly printed, or otherwise permanently displayed on a permanently-attached part of the equipment enclosure, or displayed on a durable metal nameplate at least 0.020" (or 0.05 mm.) in thickness attached to such part of the equipment enclosure by means of rivets, spot welding, or other method that would make removal of the nameplate difficult. Paper nameplates and/or nameplates attached with a soluble glue are not acceptable. The nameplate must be of a permanent nature capable of lasting the expected lifetime of the device and attached so that it cannot readily be detached.

(2) As used here, "readily visible" means that the nameplate or nameplate data must be visible from the outside of the equipment enclosure. It is preferable that it be visible at all times during normal installation or use, but this is not a prerequisite for grant of equipment authorization.

(e) Where it is shown that a permanently affixed nameplate is not desirable or is not feasible, an alternative method of positively identifying the equipment may be used if approved by the Commission. The proposed alternative method of identification and the justification for its use must be included with the application for equipment authorization.

NOTE.—As an example, a device intended to be implanted within the body of a test animal or person would probably require an alternate method of identification.

(f) The term: "FCC ID:" and the coded identification assigned by the Commission shall be in a size of type large enough to be readily legible, consistent with the dimensions of the equipment and its nameplate. However, the type size for the FCC Identifier is not required to be larger than eight-point.

(g) Unless assigned an FCC Identifier pursuant to § 2.925(c), each equipment for which an authorization application filed before October 27, 1980, shall be uniquely identified with a name and type or model number inscribed on a nameplate or label. The detailed information to be inscribed on the nameplate or label is set out in the rules for the particular form of equipment authorization required and, for some kinds of equipment, in the rules governing the specific category of device. The type or model number required for equipment subject to this paragraph shall comply with the following requirements:

(1) The type or model number shall consist of a series of Arabic numerals or capital letters or a combination thereof, and may include punctuation marks and spaces. The total of Arabic numerals, capital letters, punctuation marks and spaces in any assigned type or model number shall not exceed 17;

(2) The type or model number will be specified in the grant of equipment authorization and will be identical to that assigned by the manufacturer or applicant and given in the application for equipment authorization;

(3) The type or model number shall be one which has not been used previously in conjunction with the same name that will be on the equipment.

2. A new § 2.926 is added to read as follows:

§ 2.926 FCC identifier.

(a) When a grant of equipment authorization is issued, it will carry an FCC Identifier assigned by the Commission to identify the particular equipment covered by such grant. This identifier will consist of three elements:

(1) Grantee or grantee/trade name code pursuant to paragraph (b) of this section.

(2) Manufacturer code pursuant to paragraph (c) of this section.

(3) Number assigned by grantee pursuant to paragraph (d) of this section.

Example: XXXYYY1234A

XXX..... Grantee or grantee/trade name code.
YYY..... Manufacturer code.
1234A..... Product identification assigned by grantee.

NOTE.—The term "grantee/trade name code" refers to a code assigned to represent a specific trade name used by a specific grantee. In instances where different grantees propose use of the identical trade name, different grantee/trade name codes will be assigned.

(b) Grantee or grantee/trade name code will consist of three characters; Arabic numerals, capital letters, or a combination thereof. The lists of these codes will not be reproduced for public distribution. They will, however, be made available for official use by FCC and U.S. Customs Staffs. A prospective grantee may request the assignment of a code at any time. If not requested in advance, a code will be assigned at the time the grant of equipment authorization is issued. A grantee proposing to sell equipment under two or more trade names must request a separate code for each trade name.

(1) After assignment, each grantee will continue to use the same code for subsequent equipment authorization applications. In the event that the grantee name is changed, or ownership is transferred, the circumstances should be reported to the Commission so that a new code can be assigned if appropriate. Such code reassignment will require reissue of any grants of equipment authorization that may be involved. See §§ 2.934 and 2.935 for additional information.

(c) Manufacturer code will consist of three characters: Arabic numerals, capital letters, or a combination thereof. The lists of these codes will not be reproduced for public distribution. They will, however, be made available for official use by FCC and U.S. Customs staffs. A manufacturer (or a grantee who proposes to use his services) may request assignment of a code at any time. If not requested in advance, a code will be assigned at the time the grant of equipment authorization is issued.

(1) After assignment of a code to a manufacturer, that party will continue to use the same code for all subsequent equipment applications, whether with the same grantee or another. In the event that the manufacturer name is changed, or ownership is transferred, the circumstances should be reported to the Commission so that a new code can be assigned, if appropriate. This notification should be routed via the grantee(s) involved, since such code reassignment will require reissue of all grants of equipment authorization involved. See §§ 2.934 and 2.935 for additional information.

(2) Where a grantee lists two or more parties as manufacturers of a given model of equipment, a code will be assigned for each manufacturer. The FCC Identifier for any such equipment made by one of the manufacturers will consist of the grantee code, followed by the code assigned to that manufacturer, and this followed by the number assigned by the grantee to the equipment. The grant of equipment authorization issued for the equipment will list all manufacturers and the respective FCC Identifiers for the equipment.

(d) The number assigned by the grantee shall consist of a series of Arabic numerals, capital letters, or a combination thereof. Standard punctuation marks and spaces also may be employed. The total of numerals, letters, punctuation marks, and spaces (within the number itself) shall not exceed 11. The number assigned to the equipment shall be one which has not been used previously in conjunction with the same grantee, grantee/trade name, or manufacturer.

(e) No FCC Identifier may be used on equipment to be marketed unless that specific identifier shall have been validated by a grant of equipment authorization issued by the Commission. The FCC Identifier is uniquely assigned to the grantee and may not be placed on the equipment without authorization by the grantee. See § 2.803 for conditions applicable to display at trade shows of equipment which has not been granted equipment authorization where such grant is required prior to marketing. Labelling of such equipment may include model or type numbers, but shall not include a purported FCC Identifier.

3. In § 2.969, the headnote and text are revised to read as follows:

§ 2.969 Information required on identification label for type approved equipment.

(a) Each equipment for which a type approval application is filed on or after October 27, 1980, shall bear an identification plate or label pursuant to § 2.925 and § 2.926. The FCC Identifier for such equipment will be validated by the grant of type approval issued by the Commission.

NOTE.—FCC Type Approval Numbers will not be issued for any equipment covered by type approval applications filed on or after the date specified above.

(b) Each equipment for which a type approval application is filed before October 27, 1980, shall have the following information on the identification plate or label.

(1) Name of the grantee of type approval.

(2) The words "TYPE NO." "or MODEL NO."followed by the model number or type number assigned to the equipment by the grantee.

(3) The words "FCC TYPE APPROVAL NO." followed by the type approval number assigned by the FCC if a type approval number has been assigned.

(4) Any other statement or labelling requirements imposed by the rules governing the operation of this equipment.

4. In § 2.1003, the headnote and text are revised to read as follows:

§ 2.1003 Information required on identification label for type accepted equipment.

(a) Each equipment for which a type acceptance application is filed on or after October 27, 1980, shall bear an identification plate or label pursuant to § 2.925 and § 2.926. The FCC Identifier for such equipment will be validated by the grant of type acceptance issued by the Commission.

(b) For each equipment covered by a type acceptance application filed before October 27, 1980, the identification plate or label shall contain the following:

(1) Name of the grantee of the type acceptance.

(2) The words "FCC TRANSMITTER DATA" followed by the number assigned to the equipment by the grantee. The abbreviations "XMTR" or "TX" may be used in place of the word "TRANSMITTER."

NOTE.—If the equipment is a transceiver containing transmitting and receiving capablity and a single identifier is assigned, the words "FCC DATA," followed by the number assigned to the equipment by the grantee shall be used. If the transmitter part and the receiver part are assigned separate identifiers, the marking of paragraph (2) shall be used for the transmitter part and the marking of § 2.1045(b)(3) shall be used for the receiver part if the receiver

part is subject to the requirement for certification.

(3) Any other statement or labelling requirement imposed by the rules governing the operation of this equipment, except that statements of compliance with equipment approval rules or technical standards may be permitted to appear in a clear and recognizable manner elsewhere on the equipment.

5. In § 2.1045, the headnote and text are revised to read as follows:

§ 2.1045 Information required on identification label for certificated equipment.

(a) Each equipment for which a certification application is filed on or after October 27, 1980, shall be identified pursuant to §§ 2.925 and 2.926. The FCC Identifier for such equipment will be validated by the grant of certification issued by the Commission.

(b) For each equipment covered by a certification application filed before October 27, 1980, the identification label shall contain at least the following:

(1) The trade name. The trade name, if shown elsewhere on the equipment, shall be the same as that shown on the label.

(2) For consumer equipment (i.e., broadcast receivers, Part 15 walkie-talkies, and other equipment sold to the general public), the words "MODEL NO." followed by the number assigned to the equipment by the grantee. If the identification label contains other numbers in addition to that required by this paragraph, such as "SERVICE NO.," "CATALOG NO." or other similar terms, to avoid confusion with the identifier required by the Commission, the words "MODEL NO." may be preceded by the term "FCC DATA" to facilitate recognition of the identifying number used for FCC.

(3) For communications equipment (i.e., receivers and other equipment normally used at licensed stations) the words "FCC RECEIVER DATA" followed by the number assigned to the equipment by the grantee. The abbreviations "RCVR" or "RX" may be used in lieu of the word "RECEIVER."

NOTE.—If the equipment is a transceiver having transmitting and receiving capability and a single identifier is assigned the marking of Section 2.1003(b)(2) shall be used. If the transmitter part and the receiver part are assigned separate identifiers, the marking of § 2.1003(b)(2) shall be used for the transmitter part and the marking of § 2.1003(b)(2) or (3) shall be used for the receiver part.

(4) Any other statement or labelling requirement imposed by the rules governing operation of this equipment, except that statements of compliance with equipment approval rules or technical standards may appear in a clear and recognizable manner elsewhere on the equipment.

6. In § 2.1065, a note is added to read as follows:

§ 2.1065 Identification and changes in equipment information filed for application reference.

* * * * *

NOTE.—It is recommended that such equipment be identified with a nameplate pursuant to § 2.925, except for deletion of the FCC Identifier, which will not be assigned to nor listed for such equipment.

PART 15—RADIO FREQUENCY DEVICES

1. Section 15.71 is amended to read as follows:

§ 15.71 Identification of certificated receiver.

Each certificated receiver shall be identified pursuant to §§ 2.925 and 2.1045 of this chapter.

2. The title and text of § 15.132 is revised to read as follows:

§ 15.132 Labelling and identification requirements.

(a) A device subject to certification by the Commission for which an application is received on and after October 27, 1980, shall be identified pursuant to §§ 2.925 and 2.1045. In addition, the nameplate or label shall contain the following statement:

This device complies with Part 15 of FCC Rules. Operation of this device is subject to the following two conditions: (1) This device may not cause harmful interference. (2) This device must accept any interference that may cause undesired operation.

(b) A device subject to certification by the Commission for which an application is filed between April 1, 1976 and October 27, 1980, shall have permanently and visibly affixed an identification label containing information shown on the sample below.

FCC IDENTIFICATION DATA

Name _____

Model No.

Unique identifier _____

"This device complies with FCC Rules Part 15 as of date of manufacture."

Date of manufacture _____

(1) *Name.* This shall include the trade name, if any, and the name and address of the manufacturer or of the vendor provided the name of the latter was included in the application for certification.

(2) *Identifier.* This is the model number assigned to the device by the manufacturer or applicant for certification and must be identical to that shown on the application for certification. This identifier must be preceded by the words "MODEL NO."

(3) *Date.* This is the month and year when the device was manufactured. If desired, this may be coded, provided the code therefor is filed with the application for certification.

(c) A device subject to certification by the Commission for which an application was filed before April 1, 1976 may be identified in any manner: *Provided,* The name, number and date required by paragraph (b) of this section are clearly identifiable and distinct from any other number or designator on the device.

3. Section 15.178 is revised to read as follows:

§ 15.178 Identification.

(a) Telemetering devices, other than those referred to in paragraphs (b) and (c) of this section, shall be identified pursuant to § 2.925, to § 2.926 where applicable, and to § 2.969 or § 2.1045 as appropriate.

(b) A biomedical telemetering device operating under § 15.172 or § 15.176 for which a certification application is filed on or after October 27, 1980, shall be identified pursuant to §§ 2.925 and 2.1045. The FCC Identifier for such equipment will be validated by the grant of certification issued by the Commission. The nameplate or label shall contain the following statement:

This device complies with FCC Rules Part 15. Operation is subject to the following two conditions: (1) This device may not cause harmful interference and (2) this device must accept any interference that may be received, including interference that may cause undesired operation.

(c) A biomedical telemetering device operating under § 15.172 or § 15.176 for which a certification application is filed before October 27, 1980, shall bear a label containing the following information:

(1) Name pursuant to § 2.1045(b)(1) of this chapter.

(2) Model number pursuant to § 2.1045(b)(2) of this chapter.

(3) The following statement:

This device complies with FCC Rules Part 15. Operation is subject to the following conditions: (1) This device may not cause harmful interference and (2) this device must accept any interference that may be received, including interference that may cause undesired operation.

(4) The date of manufacture. This information may be inscribed as the month and year of manufacture, or coded at the manufacturer's option, provided the key to the code is submitted with the application for certification.

4. Section 15.186 is revised to read as follows:

§ 15.186 **Identification.**

(a) The transmitter part and the receiver part of the radio control for a door opener operating under § 15.184 and for which certification applications are filed on or after October 27, 1980, shall each be identified pursuant to §§ 2.925 and 2.1045. The FCC Identifiers for such equipment will be validated by the grant of certification issued by the Commission. The nameplate or label shall bear the following statement:

This device complies with FCC Rules Part 15. Operation is subject to the following two conditions: (1) This device may not cause harmful interference and (2) this device must accept any interference that may be received, including interference that may cause undesired operation.

(b) The transmitter part and the receiver part of the radio control for a door opener operating under § 15.184 and for which certification applications were filed before October 27, 1980, shall each bear a label containing the following information:

(1) Name pursuant to § 2.1045(b)(1) of this chapter.

(2) Model number pursuant to § 2.1045(b)(2) of this chapter.

(3) The following statement:

"This device complies with FCC Rules Part 15. Operation is subject to the following two conditions: (1) This device may not cause harmful interference and (2) this device must accept any interference that may be received, including interference that may cause undesired operation."

5. Section 15.314 is revised to read as follows:

§ 15.314 **Identification required.**

(a) Each field disturbance sensor for which certification applications are filed on or after October 27, 1980, shall be identified pursuant to § 2.925 and § 2.1045. The FCC Identifier for such equipment will be validated by the grant of certification issued by the Commission. The nameplate or label shall bear the following statement:

"This device complies with FCC Rules Part 15. Operation is subject to the following two conditions: (1) This device may not cause harmful interference and (2) this device must accept any interference that may be received, including interference that may cause undesired operation."

(b) Each field disturbance sensor for which applications for certification are filed before October 27, 1980, shall bear a label pursuant to § 15.41.

(1) In addition to the name and identifier required by § 15.41 the identification label on a field disturbance sensor authorized under application for certification filed before October 27, 1980, shall bear the statement:

"This device complies with FCC Rules Part 15. Operation of this device is subject to the following two conditions: (1) This device may not cause harmful interference. (2) This device must accept any interference that may cause undesired operation."

6. Section 15.375 is revised to read as follows:

§ 15.375 **Identification of auditory training equipment (72–76 MHz).**

(a) Each transmitter and each receiver operated as part of an auditory training system for which applications for type approval or certification are filed on or after October 27, 1980, shall be individually identified pursuant to § 2.925 and § 2.969 or § 2.1045, as applicable. The FCC Identifier for such equipment will be validated by the grant of certification or type approval issued by the Commission. The nameplate or label of the receiver shall contain the following legend:

"This receiver complies with FCC Rules Part 15. Operation is subject to the following two conditions: (1) This device may not cause harmful interference and (2) this device must accept any interference that may be received, including interference that may cause undesired operation."

(b) Each transmitter and each receiver operated as part of an auditory training system for which applications for type approval or certification are filed before October 27, 1980, shall be individually identified with a distinctive nameplate or label containing the following information:

(1) The name of the grantee of type approval or certification or the trade (or brand) name given in the application therefor.

(2) A distinctive type number identical to that given in the application for type approval or certification.

(3) On the transmitter, the type approval number assigned by the Commission in the form:

FCC TYPE APPROVAL NO.——

(4) On the receiver, the following statement:

"This receiver complies with FCC Rules Part 15. Operation is subject to the condition that the device will not cause harmful interference and that must accept any interference that may be received, including interference that may cause undesired operation."

7. Section 15.415 is amended to read as follows:

§ 15.415 **Identification of a Class I TV device.**

(a) Each Class I TV device for which a type approval application was filed on or after October 27, 1980, shall be identified pursuant to § 2.925 and § 2.969. The FCC Identifier for such equipment will be validated by the grant of certification issued by the Commission. The nameplate or label of the equipment shall include the following statement:

"This device complies with FCC Rules Part 15. Operation is subject to the following two conditions: (1) This device may not cause harmful interference and (2) this device must accept any interference that may be received, including interference that may cause undesired operation."

(b) Each Class I TV device for which a type approval application is filed before October 27, 1980, will be assigned a type approval number as listed in the grant of type approval. The type approval number and the following statement shall be permanently inscribed upon or permanently attached to the exterior of each production unit as follows:

"FCC Type Approval No.——. Valid only when operated pursuant to FCC Rules Part 15."

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

1. § 18.74(a) is revised to read as follows:

§ 18.74 **Identification of type approved equipment.**

(a) *Nameplate.* (1) Each equipment for which a type approval application was filed on or after October 27, 1980, shall be identified pursuant to § 2.925 and § 2.969. The FCC Identifier for such equipment will be validated by the grant of type approval issued by the Commission.

(2) Each equipment for which a type approval application was filed before October 27, 1980, shall be identified by the insertion of the FCC Type Approval Number on the nameplate of the equipment.

* * * * *

2. Paragraph (c) of § 18.141 is revised to read as follows:

§ 18.141 **Operation on assigned frequencies.**

* * * * *

(c) *Identification.* (1) Each equipment for which a type approval application is filed on or after October 27, 1980, shall be identified pursuant to § 2.925 and § 2.969. The FCC Identifier for such equipment will be validated by the grant of type approval issued by the Commission.

(2) For equipment covered by type approval granted pursuant to an application filed before October 27, 1980, in accordance with § 18.144 through § 18.146 inclusive, there shall be affixed to each unit of equipment operated in accordance with paragraphs (a) and (b) of this section, or posted in the room in which such operation occurs, a dated certificate of a competent engineer, or a dated certificate or nameplate of the manufacturer of the

equipment, setting forth the FCC type approval number for such equipment, the general conditions under which such equipment should be operated, and certifying that the equipment involved may reasonably be expected to meet the requirement of this section under the described conditions of operation for a period of at least 3 years. The certification required in this section shall describe with certainty the apparatus covered thereby.

* * * * *

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

1. Paragraph (b) of § 83.405 is revoked and reserved.

§ 83.405 Special provisions applicable to ship-radar stations.

* * * * *

(b) [Reserved]

* * * * *

2. Paragraph (c)(2) of § 83.555 is revised by revoking and reserving subparagraph (ii), as follows:

§ 83.555 Requirements for automatic-alarm-signal keying device.

* * * * *

(c) * * *
(2) * * *
(ii) [Reserved]

* * * * *

3. Paragraph (c) of § 83.556 is revoked and reserved.

§ 83.556 General requirements for survival craft radio equipment.

* * * * *

(c) [Reserved]

* * * * *

ADDITIONAL STATEMENT OF CHARLES D. FERRIS ON THE AMENDMENT OF PARTS 2, 15, 18, AND 83 OF THE RULES RELATING TO IDENTIFICATION OF RADIO-FREQUENCY DEVICES

A constant complaint about government regulation is that it is burdensome, and that even the same agency can place inconsistent requirements on those subject to its regulations. The re-regulation adopted today is an attempt to reduce such burdens so that producers of equipment subject to our equipment authorization procedures will not be subject to inconsistent equipment identification requirements. I am confident that this small step can, and will, be followed by many others.

[FR Doc. 79-8526 Filed 3-20-79; 8:45 am]

[6712-01-M]

[Docket No. 21348; FCC 79-148]

PART 90—PRIVATE LAND MOBILE RADIO SERVICE

Clarification of Technical Regulations; Denial of Petition for Reconsideration

AGENCY: Federal Communications Commission.

ACTION: Final rule (Memorandum Opinion and Order).

SUMMARY: This document clarifies technical regulations relating to private land mobil radio service published at 43 FR 54788, November 22, 1978. This document also denies the petition for reconsideration by Sears Roebuck and Company seeking clarification and reconsideration of the rules in § 90.425 so as to allow identification of the stations in a mobile relay system by a single call sign.

EFFECTIVE DATE: April 20, 1979.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATIRN CONTACT:

Richard Taube, Industrial and Public Safety Rules Division, Private Radio Bureau, (202) 632-6497.

In re matter of clarification of technical regulations; denial of petition for reconsideration.

Adopted: March 6, 1979.

Released: March 14, 1979.

By the Commission:

1. In our *Report and Order* released on November 16, 1978, in this proceeding, FCC 78-799, 43 FR 54788, November 22, 1978 we consolidated former Parts 89, 91, and 93 of our rules into a single part 90. Incidental to the consolidation, many rules were re-written for clarity and a few substantive changes were made. New Part 90 became effective January 2, 1979.

2. A timely petition for reconsideration has been filed in this proceeding by Sears, Roebuck and Company, a user of mobile radio systems licensed in the Business Radio Service. The petition concerns § 90.425, which contains the rules governing station identification in the Private land Mobile Radio Service. Sears seeks clarification or reconsideration of the rules in § 90.425 so as to allow identification of the associated stations in simple mobile relay system (that is, the control, mobil relay, and mobil stations) by a single call sign and urges that the call sign assigned to the mobil relay station be used.

3. The use of a single call sign for identification of all stations in a mobil relay system has been proposed by Sears in its pending petition for rule making, RM-3108. In effect, Sears seeks grant of RM-3108. However, while we see considerable merit in this proposal, we believe the matter should be disposed of at a later time, when we consider other pending petitions which are also concerned with station identification and related licensing procedures. For this reason, the petition for reconsideration will be denied, but RM-3108 will remain pending. Nevertheless, Sears has pointed out an ambiguity caused by inconsistent language in paragraphs (a)(1) and (d)(1) in § 90.425, which should be eliminated. The inconsistency will be eliminated by amending paragraph (d)(1) to exempt from station identification, as the rule previously provided, only those mobile stations operating on the transmitting frequency of the associated base station. We did not intend to change that rule when it was reworded for Part 90.

4. In addition, we take this opportunity to make a few other minor corrective changes in Part 90. First, we will add § 90.238 as a convenient summary of other provisions in Part 90 dealing with radio telemetry. Second, we will revise § 90.433 to put back into the rules operator requirements and exemptions which were unintentionally omitted when the operator rule was re-worded. Lastly, language will be added to § 90.217 to make it clear that type accepted equipment must be used in operations conducted pursuant to that Section.

5. Finally, because the copies of Part 90 originally printed by the Federal Register have been exhausted and it will be a few more months before Part 90 becomes available on a subscription basis from the Government Printing Office, we are suspending the requirement that our licensees have copies of the land mobile rules. When Part 90 becomes available, a public notice will be given and the requirement will be re-instated.

6. For further information concerning this document, contact Richard Taube, Rules Division, Safety and Special Radio Serivices Bureau, Federal Communications Commission, Washington, D.C. 20554 (202) 632-6497.

7. Accordingly, pursuant to Section 303(r) of the Communications Act of 1934, as amended, it is ordered that Part 90 of the Commission's Rules is amended, effective April 20, 1979, as shown in the attached Appendix. It is further ordered That the petition for Reconsidereatin filed by Sears, Roebuck and Company in this proceeding on December 15, 1978, is denied. It is

further ordered That this proceeding is terminated.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

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

Part 90 of the Commission's Rules is amended as follows:

1. Section 90.207(h) is amended to read as follows:

§ 90.207 Types of emissions.

* * * * *

(h) For telemetry operations, when specifically authorized under this part (see § 90.238), only A1, A2, F1, F2, or F9 emission will be authorized.

* * * * *

2. New § 90.238 is added to read as follows:

§ 90.238 Telemetry operations.

The use of telemetry is authorized under this part on the following frequencies.

(a) 72–76 MHz (as available in specific radio service frequency listings in accordance with Section 90.257 and subject to the rules governing the use of that band).

(b) 154.45625, 154.46375, 154.47125, 154.47875 MHz (as available in specific radio service frequency listings and subject to the rules governing use of those frequencies).

(c) 173.20375, 173.2100, 173.2375, 173.2625, 173.2875, 173.3125, 173.3375, 173.3625, 173.3900, 173.39625 MHz (as available in specific radio service frequency listings and subject to the rules governing the use of that band).

(d) 216–220 and 1427–1435 MHz (as available in specific radio service frequency listings and in accordance with § 90.259.

(e) Frequencies separated by 12.5 kHz from frequencies in the 457.525–460.650, 460.875–464.975, and 465.875–469.975 MHz bands (as available in the Business Radio Service in accordance with § 90.75(d)(4)).

(f) Frequencies separated by 12.5 kHz from frequencies in the 460.650–460.875 and 465.650–465.875 MHz bands (as available in the Business Radio Service in accordance with § 90.75(d)(5)).

(g) 450–470 MHz band (as available for secondary fixed operations in accordance with Section 90.261).

(h) 458–468 MHz band (as available in the Special Emergency Radio Service for bio-medical telemetry operations).

(i) Frequencies available for low power (2 watts or less) operations in the Business Radio Service.

3. Section 90.425(d)(1) is amended to read as follows:

§ 90.425 Station identification.

* * * * *

(d) * * *

(1) It is a mobile station operating on the transmitting frequency of the associated base station.

* * * * *

4. In § 90.433, paragraphs (a) and (b) are amended and a new paragraph (c) is added to read:

§ 90.433 Operator license requirements.

* * * * *

(a) *Maintenance and tests.* All transmitter adjustments or tests during the installation, servicing, or maintenance of a radio station which may affect the proper operation of such station shall be made by or under the immediate supervision and responsibility of a person holding a first- or second-class commercial radio operator license, either radiotelephone or radiotelegraph, who shall be responsible for the proper functioning of the station equipment.

(b) *Operation during the course of normal rendition of radiotelegraph service.* Only a person holding a commercial radiotelegraph operator license of any class issued by the Commission shall operate a station when transmitting radiotelegraphy by any type of the Morse Code. Generally, only police zone and interzone stations will be transmitting radiotelegraphy. The requirements of this paragraph do not apply to (1) stations transmitting telemetry and (2) those automatically re-transmitting radio signals received from another station.

(c) *Transmitter with external controls.* Transmitters so designed that during the course of normal rendition of service may result in off-frequency operation or in unauthorized radiation, and transmitters whose controls, which may cause off-frequency or improper operation or radiation, are readily accessible shall be operated by a person holding a first- or second-class commercial radio operator license, either radiotelephone or radiotelegraph, as may be appropriate for the type of emission being used.

5. Section 90.217 is amended to read:

§ 90.217 Exemption from technical standards.

Transmitters used at stations licensed in the Business Radio Service which have an output power not exceeding 120 milliwatts are exempt from the technical requirements set out in this subpart: Provided, however, that the sum of the bandwidth occupied by the emitted signal plus the bandwidth required for frequency tolerance shall be so adjusted that any emission appearing on a frequency 40 kHz or more removed from the assigned frequency is attenuated at least 30 dB below the unmodulated carrier. Only type accepted transmitters may be used. Operation in the continuous carrier transmit mode is permitted.

[FR Doc. 79-8376 Filed 3-20-79; 8:45 am]

[7035-01-M]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Revised Service Order No. 1363]

PART 1033—CAR SERVICE

Decision on substitution of refrigerator cars for boxcars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order, Revised Service Order No. 1363.

SUMMARY: There is a substantial shortage of boxcars on Burlington Northern Inc. for shipments of sugar. BN has an available supply of certain refrigerator cars that may be substituted for this traffic at the ratio of two refrigerator cars for each boxcar. Service Order No. 1363 authorizes BN, with the consent of the shipper, to substitute two refrigerator cars for each boxcar ordered for shipments of sugar. Revised Service Order No. 1363 eliminates the restrictions requiring exclusive BN movement.

DATES: *Effective 12:01 a.m., March 15, 1979. Expires when modified or vacated by order of this Commission.*

FOR FURTHER INFORMATION CONTACT:

J. Kenneth Carter, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone (202) 275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: Decided on March 14, 1979.

An acute shortage of boxcars for transporting shipments of sugar exists on Burlington Northern Inc. (BN) at stations on its lines. The BN has an available supply of certain refrigerator cars that may be substituted for this traffic at the ratio of two refrigerator cars for each boxcar, and use of these refrigerator cars for the transportation of sugar is precluded by certain tariff provisions, thus curtailing shipments of sugar. There is a need for the

use of these refrigerator cars to supplement the supplies of plain boxcars for transporting shipments of sugar. It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure herein are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered.

§ 1033.1363 Substitution of refrigerator cars for boxcars.

(a) Each common carrier by railroad subject to the Interstate Commerce Act shall observe, enforce, and obey the following rules, regulations, and practices with respect to its car service:

(1) *Substitution of Cars*

* Burlington Northern Inc. (BN) may substitute two refrigerator cars for each boxcar ordered for shipments of sugar from any station on the BN subject to the conditions provided in paragraphs (2) through (4) of this order.

(2) *Concurrence of Shipper Required*

The concurrence of the shipper must be obtained before two refrigerator cars are substituted for each boxcar ordered.

(3) *Minimum weights*

The minimum weight per shipment of sugar for which two refrigerator cars have been substituted for one boxcar shall be that specified in the applicable tariff for the car ordered.

(4) *Endorsement of Billing*

Bills of lading and waybills covering movements authorized by this order shall contain a notation that shipment is moving under authority of Revised Service Order No. 1363.

(b) *Rules and regulations suspended.* The operation of tariffs or other rules and regulations, insofar as they conflict with the provisions of this order, is hereby suspended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(d) *Effective date.* This order shall become effective at 12:01 a.m., March 15, 1979.

(e) *Expiration.* The provisions of this order shall remain in effect until modified or vacated by order of this Commission.

(49 U.S.C. (10304-10305 and 11121-11126).)

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael. Member Joel E. Burns not participating.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-8573 Filed 3-20-79; 8:45 am]

* Change.

[3510-22-M]

Title 50—Wildlife and Fisheries

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 611—FOREIGN FISHING

Miscellaneous Corrections

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Final rule (Errata sheet).

SUMMARY: These amendments are miscellaneous corrections to the foreign fishing regulations which were published on December 19, 1978 (43 FR 59292).

EFFECTIVE DATE: These corrections will become effective on March 21, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. W. Perry Allen, Permits and Regulations Division, Washington, D.C. 20235, Telephone: 202-634-7265.

SUPPLEMENTARY INFORMATION: The foreign fishing regulations which were published in the FEDERAL REGISTER on December 19, 1978, under authority of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 *et seq.*), as amended, contained a number of minor errors. Some of these errors were typographical while others stemmed from small oversights. These amendments correct those errors and should be viewed as errata.

Signed at Washington, D.C. this 16th day of March, 1979.

(16 U.S.C. Section 1801 *et seq.*)

WINFRED H. MEIBOHM,
Executive Director, National Marine Fisheries Service.

1. § 611.4(d), second sentence, delete "and" between "BEGIN" and "RETURN".

2. § 611.4(d) and 611.4(e), sample message formats, change address lines to indicate two separate addressees as follows:

"To: 17th Coast Guard District, Juneau, Alaska; Alaska Region, NMFS, Juneau, Alaska."

3. § 611.9, Appendix I A, Atlantic Ocean Fishes, correct species code for: Porgies (NS) to "847"; Dolphin to "238"; Pompano dolphin to "237"; Wahoo to "255"; and Shrimps (NS) to "697".

4. § 611.9 Appendix I B, Pacific Ocean Fishes

a. Correct scientific name for: Sablefish (black cod) to *"Anoplopoma fimbria"*; and Dolphin to *"Coryphaena hippurus"*.

b. Correct entry for species code 118 to read, "118 * * * Turbot (Greenland halibut) * * * *Reinhardtius hippoglossoides"*.

c. Correct species code for Dolphin to "238".

d. Add under Invertebrates the species code for Tanner crab (hybrid), "684".

5. § 611.9, Appendix I C, Marine Mammals

a. Correct entry for Baleen whales to read, "993 * * * Baleen whales (NS) * * * *Mysticeti"*.

b. Correct scientific name of Northern sea lion to *"Eumetopias jubatus"*.

6. § 611.9, Appendix II, Area Codes, remove Code Number, Name, and Figure No. entries for code numbers 11 through 17 from Appendix II A, *Northwest Atlantic Ocean Fishery*, and add such entries to Appendix II C, *Atlantic Billfish and Sharks Fishery*.

7. § 611.9, Appendix IV, Weekly Catch Report, paragraph D 1, replace table with the following: (Insert table)

8. § 611.20, Table I, correct species code for Crab, Tanner to "501, 610, 684".

9. § 611.50, Table I, Fishing Gear and Season Restrictions by Fishing Area, replace with the following: (Insert table)

10. § 611.50(e)(2)(ii), correct last sentence to read: "Data may also be reported using the 1977 version of the STATLANT 21-B form and the procedures established for that form."

11. Subpart E, correct title to read "Northeast Pacific Ocean".

12. § 611.80(f)(1)(i)(A), correct to read:

"(A) Vessel name and permit number;".

13. § 611.92(d)(2)(iv)(B), correct to read:

"(B) The Regional Director shall give notification of the first opening date of the U.S. halibut fishing season to the designated representative of each foreign nation at least 7 days before the U.S. halibut fishing season first opens."

[3510-22-C]

FISHERY	ADDRESS	REPORT RECEIVED BY
Northwest Atlantic Ocean	Director, Northeast Region National Marine Fisheries Service 14 Elm Street Gloucester, Massachusetts 01930 Telex No.: 940007.	Wednesday, 1900 G.m.t., following reporting period.
Washington, Oregon, California Trawl . .	Director, Northwest Region National Marine Fisheries Service 1700 Westlake Avenue North Seattle, Washington 98109 Telex No.: 910444786.	Wednesday, 1900 G.m.t., following reporting period.
Seamount Groundfish	Director, Southwest Region National Marine Fisheries Service 300 South Ferry Street Terminal Island, California 90731.	Wednesday, 1900 G.m.t., following reporting period.
Atlantic Billfish and Sharks	Director, Southeast Fisheries Center National Marine Fisheries Service 75 Virginia Beach Drive Miami, Florida 33149.	Wednesday, 1900 G.m.t., following reporting period.
Bering Sea and Aleutian Islands . . . . Gulf of Alaska Groundfish . . . . . . Snails (Bering Sea) . . . . . . Crab (Bering Sea)	Director, Alaska Region National Marine Fisheries Service P.O. Box 1668 Juneau, Alaska 99801 Telex No.: 09945-377.	Second Monday, 1900 G.m.t., following reporting period.

Table I. Fishing gear and season restrictions by fishing area.
Northwest Atlantic Ocean Fishery

Off-Bottom Gear Only

Area 1/	January	February	March	April	May	June	July	August	September	October	November	December
1										//////	//////	//////
2	//////	//////	//////			////	//////	//////	//// 2/	//////	//////	//////
3	//////	//////	//////							//////	//////	//////
4								//////	//////	//////	//////	//////
5								//////	//////	//////	//////	//////

Bottom Gear and Off Bottom Gear

Area 1/	January	February	March	April	May	June	July	August	September	October	November	December
1												
2												
3												
4	//////	//////	//////									
5	//////	//////	//////									

Unless otherwise noted, seasons open at 0001 hours local time on the first day of the month and terminate at 2400 hours local time on the last day of the month.

1/ Coordinates of the various areas are set forth in Figure 1 to Appendix II of §611.9.

2/ Season begins at 0001 hours local time on June 15, and terminates at 2400 hours local time on September 15.

////// Denotes maximum open fishing season, subject to possible earlier closure for some or all nations in accordance with §611.15

[FR Doc. 79-8484 Filed 3-20-79; 8:45 am]

[3510-22-M]

PART 653—ADULT ATLANTIC HERRING FISHERY

Final Regulations

AGENCY: National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

ACTION: Final Regulations.

SUMMARY: These final regulations govern domestic fishing for Atlantic herring. They implement the Fishery Management Plan for the Atlantic Herring Fishery of the Northwestern Atlantic (FMP) prepared by the New England Fishery Management Council pursuant to the Fishery Conservation and Management Act of 1976 (FCMA), 16 U.S.C. 1801 *et seq.*

On December 28, 1978, these regulations were published as both emergency regulations and as proposed rulemaking (43 FR 60474). They became effective as emergency regulations on December 20, 1978. On February 3, 1979, the emergency period was extended until March 19, 1979 (44 FR 7711). Public comment was invited until February 5, 1979.

EFFECTIVE DATE: March 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Dr. Robert W. Hanks, Acting Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930; Telephone (617) 281-3600.

SUPPLEMENTARY INFORMATION: These final regulations continue the field order closing the fishery for Atlantic herring in the Gulf of Maine, effective 12:01 a.m. March 15, 1979.

Public Comments

Three letters were received from the general public commenting on the proposed rulemaking. A summary of the comments and the Agency's responses appear below.

A. RECORDKEEPING AND REPORTING REQUIREMENTS

It was suggested that persons operating vessels which merely carry herring between the harvesting vessel and the shore ("carrier vessels") be exempted from the provisions of § 653.5(b) which require anyone who receives herring for a commercial purpose from a fishing vessel to report on transfers and purchases of this fish. It was not intended that the mandates of this section reach those persons who only transport herring and do not purchase or sell these fish. Therefore, the regulations have been revised to include a definition of "carrier vessel" and exempt the owners and operators of these vessels from the reporting requirements of § 653.5(b). However, carrier vessels are required to have a fishing permit since these vessels fit within the definition of "fishing vessel" in § 653.2.

B. DEFINITIONS

One commenter observed that herring less than nine inches in length should not be considered as part of the quotas imposed by the regulations. Atlantic herring are defined in the regulations as *"Clupea harengus harengus,* three years of age and older." Consequently, size is not a determining factor in this regulatory scheme. In the FMP it is stated that "in view of the uncertainties associated with expressing sexual maturity in terms of size or length of fish, the Council has elected to forgo establishment of a minimum size at this time." (43 FR 60533). Therefore, no change to the regulations has been made.

C. PROCEDURES FOR BOARDING

It was pointed out that VHF-FM >radiotelephones, as the commonly used communications system between vessels, should not be excluded from the provisions of § 653.8(b) which pertain to conveying instructions between law enforcement vessels and aircraft and fishing vessels. Radiotelephone communications prior to boarding is the standard practice. These regulations do not preclude the use of any reasonable means of communicating between vessels. Rather, the signals enumerated in the regulations are included solely for the safety and information of vessel captains should radio communications fail. NOAA, in conjunction with the United States Coast Guard, is presently considering all of the provisions of § 653.8 in regard to the comment. At this time, however, no changes are made to the regulations.

D. OTHER PROVISIONS

One commenter believed that the quotas specified in § 653.21 are too small because of the commenter's lack of faith in the resource assessment survey data. It was further stated that herring abundance should be assessed on the basis of commercial catch per unit of effort data ("effort versus landings") rather than predictive fishery modeling ("predictions and assumptions"). Development of optimum yields in the FMP used all available data, and therefore, are adjudged to be in accordance with section 301(a)(2) of the FCMA. The quotas remain unchanged.

It was recommended that Georges Bank, as a spawning area, should be closed in order to "increase the overall availability of herring." There have been no spawning season/area closure regulations promulgated. In the FMP, the Council addressed the issue of the Georges Bank spawning site by stating that "it is clear that the current, limited capability of the U.S. fishing fleet to exploit Georges Bank spawning aggregations makes it unnecessary to establish season/area closures during the fishing year 1978/79." (43 FR 60533). The Council is reserving implementation of spawning season/area closures until a future date.

The Assistant Administrator redelegated to the Regional Director the authority to make adjustments to seasonal quotas, effective December 20, 1978. Section 653.23 has been amended to reflect this redelegation. Prior to adjusting seasonal quotas, the Regional Director is now required to "periodically evaluate" rather than "monitor" fishing levels for and stock sizes of herring. The word "monitor" connotates a continuous assessment. Since it is felt that ony periodic evaluations are necessary to determine fishing levels and approximate stock sizes, § 653.23(a) has been amended to reflect this change.

Section 653.23(a) has also been revised to give the Regional Director the authority to adjust quotas if the Gulf of Maine spawning stock is not being maintained at the approximate 1978 level. The language of the proposed regulation allowed adjustments to be made if the stock was not maintained "at approximately 67,600 metric tons." According to the FMP, this figure is the spawning stock size that was projected for the beginning of 1978. However, estimations of spawning stock size are continually being refined as additional data is gathered on the year classes of herring moving through the population. Therefore, it is felt that the Regional Director should not be guided by a specific number (67,600 metric tons) which at a later date may not realistically reflect the 1978 spawning stock size.

The definition of "Georges Bank and South" has been revised so that it is parallel in form to the definition of that area in the Atlantic groundfish regulations (50 CFR Part 651).

The definition of "Vessel Fishing for Mackerel" has been refined so that a vessel's catch on board at any time must be 75 percent mackerel *by weight.* The incidental catch limitations of § 653.22(c) have been clarified so that a vessel's allowable catch of herring during a closure must be a specified percentage *by weight* of the total catch on board.

The language of § 653.24(c)(2) requiring the posting of a field order (which closes an area to fishing or adjusts a quota) 48 hours prior to its ef-

fective date was found to be perplexing. This section is revised so that the field order will be sent by mail to holders of herring permits at least 48 hours prior to the order's effective date.

The final environmental impact statement for the fishery management plan for Atlantic herring was filed with the Environmental Protection Agency on September 18, 1978.

Signed at Washington, D.C., this 16th day of March 1979.

WINFRED H. MEIBOHM,
Executive Director,
National Marine Fisheries Service.

PART 653—ADULT ATLANTIC HERRING FISHERY

Subpart A—General Provisions

Sec.
653.1 Purpose and Scope.
653.2 Definitions.
653.3 Relation to Other Laws [Reserved].
653.4 Vessel Permits and Fees.
653.5 Recordkeeping and Reporting Requirements.
653.6 Vessel Identification.
653.7 Prohibitions.
653.8 Enforcement.
653.9 Penalties.

Subpart B—Management Measures

653.20 Fishing Year.
653.21 Seasonal Catch Quotas.
653.22 Closures.
653.23 Adjustments to Seasonal Quotas.
653.24 Field Orders.
653.25 Discard Prohibitions.
653.26 Spawning Closures [Reserved].
653.27 Size Restrictions [Reserved].

AUTHORITY: Fishery Conservation and Management Act of 1976 (FCMA), 16 U.S.C. 1801 et seq.

Subpart A—General Provisions

§ 653.1 Purpose and Scope.

(a) The regulations in this part govern the Atlantic herring fishery conducted by fishing vessels of the United States. These regulations implement the management plan for the Atlantic herring fishery of the northwestern Atlantic, which was prepared and developed by the New England Fishery Management Council and approved by the Assistant Administrator.

(b) These regulations do not limit harvests of Atlantic herring in the territorial waters of any State. Harvests from State waters other than the State waters of Maine, however, are part of the seasonal catch quotas provided for in these regulations.

§ 653.2 Definitions.

In addition to the definitions in the Act, the terms used in this Part shall have the following meanings:

Act means the Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801–1882.

Assistant Administrator means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration, Department of Commerce, or an individual to whom appropriate authority has been delegated.

Atlantic herring, or *herring,* means *Clupea harengus harengus,* three years of age and older.

Authorized Officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;

(2) Any certified enforcement officer or special agent of the National Marine Fisheries Service;

(3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Commandant of the Coast Guard to enforce the provisions of the Act; or

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Carrier Vessel means any fishing vessel which only transports Atlantic herring between another fishing vessel and the shore and does not purchase or sell herring.

Discard means to throw away, cast back, or return to the sea any fish that has been caught. The removal and release of a live fish before that fish is brought on board a vessel is not a discard. Failure to retain any live fish once it is on board a vessel, or failure to retain any dead fish, is a discard.

Fishery Conservation Zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishery Management Plan (FMP) means the Fishery Management Plan for the Atlantic Herring Fishery of the Northwestern Atlantic, and any amendments thereto.

Fishing includes any activity, other than scientific research activity conducted by a scientific research vessel, which involves:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1), (2), or (3) of this definition.

Fishing Vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for: (1) Fishing for Atlantic herring, or (2) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing for Atlantic herring, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

Fishing week means the weekly period beginning 0001 hours Sunday and ending 2400 hours Saturday.

Georges Bank and South means that management area consisting of the Northwest Atlantic Ocean excluding the Gulf of Maine.

Gulf of Maine means that management area consisting of a portion of the Northwest Atlantic ocean north of 42°20′ N. latitude, exclusive of the territorial waters of the State of Maine, plus that area south of 42°20′ N. latitude which is west of 70°00′ W. longitude and which is bounded on the south by the northern shore of Cape Cod, including the waters of Cape Cod Bay.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any vessel, means:

(1) Any person who owns that vessel in whole or in part;

(2) Any charterer of the vessel, whether bareboat, time or voyage;

(3) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or

(4) Any agent designated as such by a person described in paragraphs (1), (2), or (3) of this definition.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Regional Director means the Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930, Telephone (617) 281-3600, or a designee.

Vessel Fishing for Mackerel means any fishing vessel whose catch on board at any time is 75 percent mackerel (*Scomber scombrus*) by weight.

§ 653.3 Relation to Other Laws [Reserved]

§ 653.4 Vessel Permits and Fees.

(a) *General.* Every fishing vessel must have a permit issued under this part.

(b) *Eligibility.* [*Reserved*]

(c) *Application.* (1) An application for a permit under this Part must be submitted and signed by the owner of the vessel on an appropriate form which may be obtained from the Regional Director. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) Applicants shall provide all of the following information:

(i) The name, mailing address, and telephone number of the applicant;

(ii) The name of the vessel;

(iii) The vessel's United States Coast Guard documentation number or State registration number;

(iv) The home port and gross tonnage of the vessel;

(v) The engine horsepower of the vessel;

(vi) The approximate fish hold capacity of the vessel;

(vii) The type and quantity of fishing gear used by the vessel; and

(viii) The average size of the crew, which may be stated in terms of a normal range.

(3) Any change in the information specified in paragraph (c)(2) of this section shall be submitted in writing to the Regional Director by the applicant within 15 days of any such change.

(d) *Issuance.* The Regional Director shall issue a permit to the applicant within 30 days of the receipt of a completed application.

(e) *Expiration.* A permit shall expire when ownership, name of the vessel, or gross tonnage changes.

(f) *Duration.* A permit shall continue in full force and effect until it expires or is revoked, superseded, or modified pursuant to Part 621 of this chapter.

(g) *Alteration.* No person shall alter, erase, or mutilate any permit. Any permit which has been intentionally altered, erased, or mutilated is invalid.

(h) *Replacement.* Replacement permits may be issued by the Regional Director. An application for a replacement permit shall not be considered a new application.

(i) *Transfer.* Permits issued under this Part are not transferable or assignable. A permit shall be valid only for the fishing vessel for which it is issued.

(j) *Inspection.* Any permit issued under this Part must be carried on board the fishing vessel at all times. The permit shall be presented for inspection upon request of any Authorized Officer.

(k) *Revocation.* Subpart D of Part 621 of this chaper (Civil Procedures) shall govern the imposition of sanctions against a permit issued under this part. As specified in that Subpart D, a permit may be revoked, modified, or suspended if the permit vessel is used in the commission of an offense prohibited by the Act or these regulations, or if a civil penalty or criminal fine imposed under the Act and pertaining to a permit is not paid.

(l) *Fees.* No fee shall be required for any permit issued under this Part.

§ 653.5 Recordkeeping and Reporting Requirements.

(a) *Fishing Vessel Records.* (1) The owner or operator of a fishing vessel shall:

(i) Maintain an accurate and complete fishing logbook on forms supplied by the Regional Director, recording all fishing;

(ii) Make the fishing logbook available for inspection at any time during or after a trip by an Authorized Officer, or any employee of the National Marine Fisheries Service designated by the Regional Director to make such inspections;

(iii) Keep the fishing logbook for one year after the date of the last entry in the logbook; and

(iv) Submit fishing logbook reports as specified in paragraph (a)(2) of this section.

(2) The owner or operator of a fishing vessel shall submit a complete fishing logbook report to the Regional Director, within 48 hours of the end of the fishing week or trip, whichever is the longer time period.

(3) The Assistant Administrator may revoke, modify, or suspend the permit of any vessel whose owner or operator falsifies or fails to submit the records and reports described in this section, in accordance with the provisions of Part 621 of this chapter (Civil Procedures).

(b) *Transfers and Purchases.* Any person who receives herring for a commerical purpose from a fishing vessel shall:

(1) File a report with the Regional Director on forms supplied by him, within 48 hours of the end of the fishing week in which such receipt took place. Such report shall include information on all transfers and purchases of herring made by him during that fishing week; and

(2) Permit any Authorized Officer, or any employee of the National Marine Fisheries Service designated by the Regional Director to make such inspections, to inspect any records or books relating to any such purchase or transfer of herring.

(3) Paragraph (b) of this section does not apply to owners or operators of a carrier vessel.

§ 653.6 Vessel Identification.

(a) *Offical Number.* Each fishing vessel over 25 feet (7.62 m) in length shall display its Official Number on the port and starboard sides of the deckhouse or hull and on an appropriate wheather deck so as to be visible from enforcement vessels and aircraft. The Official Number is the documentation number issued by the Coast Guard for documented vessels or the registration of number issued by a State or the Coast Guard for undocumented vessels.

(b) *Numerals.* The Official Number shall be at least 18 inches (45.72 cm) in height for fishing vessels over 65 feet (19.8 m) in length and at least 10 inches in height (25.4 cm) for all other vessels over 25 feet (7.62 m) in length, and shall be painted legibly in block Arabic numerals in contrasting color.

(c) *Vessel Length.* The length of a vessel, for purposes of this section, shall be that length set forth in Coast Guard or State records.

(d) *Duties of Operator.* The operator of each fishing vessel shall:

(1) Keep the Official Number clearly legible and in good repair: and

(2) Ensure that no part of the fishing vessel, its rigging, or its fishing gear obstructs the view of the Official Number from an enforcement vessel or aircraft.

It is unlawful for any person to:

(i) Fish for, take, catch, harvest, or land any Atlantic herring in an area closed pursuant to § 653.24;

(ii) Discard Atlantic herring at sea;

(iii) Use any vessel for the taking, catching, harvesting, or landing of any Atlantic herring unless said vessel has a valid permit issued pursuant to this Part, and such permit is on board such vessel;

(iv) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application for a vessel;

(v) Falsify or fail to make, keep, maintain, or submit any logbook, or other record or report required by this part;

(vi) Make any false statement, oral or written, to an Authorized Officer, concerning the taking, catching, landing, purchase, sale or transfer of any herring;

(vii) Refuse to permit an Authorized Officer, or any employee of the National Marine Fisheries Service designated by the Regional Director to make such inspections, to inspect any logbooks or records relating to the taking, catching, harvesting, landing purchase or sale of any herring;

(viii) Possess, have custody or control of, ship, transport, offer for sale,

sell, purchase, import, export or land any Atlantic herring taken in violation of the Act, this Part, or any regulation promulgated under the Act;

(ix) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act, this part, or any regulation promulgated under the Act;

(x) Fail to affix and maintain permanent markings as required by § 653.6;

(xi) Forcibly assault, resist, oppose, impede, intimidate, threaten or interfere with any Authorized Officer in the conduct of any search or inspection under the Act;

(xii) Resist a lawful arrest for any act prohibited by this part;

(xiii) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this part;

(xiv) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing this part;

(xv) Fail to comply immediately with enforcement and boarding procedures specified in § 653.8;

(xvi) Violate any other provision of this part, the Act, or any regulation promulgated pursuant thereto.

§ 653.7 Prohibition.

(a) *General.* The operator of any fishing vessel shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, logbook, and catch for purposes of enforcing the Act and this Part.

(b) *Signals.* Upon being approached by a Coast Guard cutter or aircraft, or other vessel or aircraft authorized to enforce the Act, the operator of the fishing vessel shall be alert for signals or other communications conveying enforcement instructions. [The following signals extracted from the International Code of Signals are among those which may be used:

(1) "L" meaning "You should stop your vessel instantly,"

(2) "SQ3" meaning "You should stop or heave to; I am going to board you," and

(3) "AA AA AA etc.," which is the call to an unknown station, to which the signaled vessel must respond by illuminating the vessel identification required by § 653.6]

(c) *Boarding.* A vessel signaled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way so as to permit the Authorized Officer and his/her party to come aboard;

(2) Provide a ladder for the Authorized Officer and his/her party;

(3) When necessary to facilitate the boarding, provide a man rope, safety line and illumination for the ladder; and

(4) Take such other actions as are necessary to ensure the safety of the Authorized Officer and his/her party to facilitate the boarding.

§ 653.9 Penalties.

Any person or fishing vessel found to be in violation of this Part will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, and Parts 620 (Citations) and 621 (Civil Procedures) of this chapter.

Subpart B—Management Measures

§ 653.20 Fishing Year.

The fishing year for Atlantic herring begins on July 1 and ends on June 30 of the following year.

§ 653.21 Seasonal Catch Quotas.

(a) *Gulf of Maine.* Quotas limiting the amount of Atlantic herring which may be caught in the Gulf of Maine management area during the following two periods of the fishing year are:

(1) For the period from July 1, 1978, through November 30, 1978 (5 months), 4,000 metric tons; and

(2) For the period from December 1, 1978, through June 30, 1979 (7 months), 4,000 metric tons.

(b) *Georges Bank and South.* Quotas limiting the amount of Atlantic herring which may be caught in the Georges Bank and South management area during the following two periods of the fishing year are:

(1) For the period from July 1, 1978, through November 30, 1978 (5 months), 7,500 metric tons; and

(2) For the period from December 1, 1978, through June 30, 1979 (7 months), 2,500 metric tons.

§ 653.22 Closures.

(a) *Closures.* The Assistant Administrator shall project, at least once a month, a date when the quota of herring for each management area, less an anticipated amount to be taken incidentally pursuant to paragraph (c) of this section, will be caught. If the projected date is earlier than the end of the period, the Assistant Administrator shall issue a field order prohibiting fishing for herring in the applicable management area after the projected date.

(b) *Prohibitions.* Fishing for Atlantic herring in the applicable management area is prohibited from the effective date of a field order issued pursuant to § 653.24, except as provided in paragraph (c) of this section.

(c) *Incidental Catch.* (1) Fishing vessels may fish in an area closed pursuant to this section for fish other than herring and be allowed an incidental catch of herring of not more than 5 percent by weight of the total catch on board.

(2) Vessels fishing for mackerel in an area closed pursuant to this section shall be allowed an incidental catch of Atlantic herring of not more than 20 percent by weight of the total catch on board.

§ 653.23 Adjustment to Seasonal Quotas.

(a) *The Funding.* The Regional Director shall periodically evaluate fishing levels for and stock sizes of herring. If the Regional Director finds that the Gulf of Maine spawning stock is not being maintained at its approximate 1978 level, the Regional Director may adjust the quotas in § 653.21.

(b) *Considerations.* In making any adjustment under paragraph (a) of this section, the Regional Director shall consider:

(1) The effect of fishing levels within the management areas:

(2) The catch per unit of effort and rate of harvest of herring within the management areas;

(3) Relative abundance and distribution of herring stocks within the management areas;

(4) The condition of the herring stocks within the management areas;

(5) Fishing levels and abundance of herring stocks in waters outside the management areas; and

(6) Any other relevant information.

(c) *Procedure.* (1) The Regional Director shall publish proposed adjustments to the quotas in the FEDERAL REGISTER for public comment before they are made final, unless the Regional Director finds for good cause that such notice and public procedure are impracticable, unnecessary, or contrary to the public interest.

(2) If the Regional Director decides, for good cause, that an adjustment is to be made without affording a prior opportunity for public comment, comments on the necessity for, and the extent of, the adjustment shall be received by the Regional Director for a period of 15 days after the effective date of the field order. During any 15-day comment period, the Regional Director shall make available for public inspection, during business hours, the aggregate data upon which the adjustment was based.

(3) If comments are received during any comment period, the Regional Director shall reconsider the necessity for and the extent of the adjustment. As soon as practicable after that reconsideration, he shall either (i) publish in the FEDERAL REGISTER a notice of continued effectiveness of the adjustment, with a response to comments received; or (ii) modify or rescind the adjustment.

(4) *Consultation and Notice.* The Regional Director shall give notice of adjustments to the quotas by issuance of a field order in accordance with § 653.24.

§ 653.24 Field Orders.

(a) *Contents.* Field Orders issued by the Assistant Administrator/or Regional Director under this Part shall include the following information:

(1) A description of the management area which is the subject of the closure or quota adjustment;

(2) The effective date and any termination date of the closure or quota adjustment; and

(3) The reason for the closure or quota adjustment.

(b) *Consultation.* Prior to issuance of any field order, the Regional Director shall notify the Executive Directors of the New England and Mid-Atlantic Fishery Management Councils.

(c) *Effective Date.* No field order issued under this section shall be effective until:

(1) It is filed for publication with the FEDERAL REGISTER; and

(2) It has been mailed to all persons holding permits issued under § 653.4 at least 48 hours prior to its effective date.

(d) *Termination.* Orders issued pursuant to this section shall remain in effect until the earlier of the following dates:

(1) Any expiration date stated in the field order; or

(2) The effective date of any order which modifies, rescinds, or supercedes the initial order.

§ 653.25 Discard Prohibition.

There shall be no discarding of Atlantic herring at sea by fishing vessels.

§ 653.26 Spawning Closures [Reserved]

§ 653.27 Size Restrictions [Reserved]

[FR Doc. 79-8572 Filed 3-16-79; 4:36 pm]

proposed rules

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

[6320-01-M]

CIVIL AERONAUTICS BOARD

[14 CFR Part 380]

[SPDR-67, Docket 35054, dated March 14, 1979]

PUBLIC CHARTERS

Extending Consumer Protection Requirements to Other Charter Types

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB invites comments on extending its recently adopted Public Charter consumer protection requirements to charter flights that are performed under other charter rules, which are being phased out.

DATES: Comments by: April 16, 1979. Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

ADDRESSES: Comments should be sent to: Docket 35054, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. Comments may be examined at the Docket Section, Civil Aeronautics Board, Room 711, 1825 Connecticut Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Mark Schwimmer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: On August 14, 1978, the Board adopted the Public Charter rule, 14 CFR Part 380 (43 FR 36604, August 18, 1978). That rule which liberalized and simplified the conditions under which indirect air carriers could sell charter flights, replaced several other charter rules: Part 371, Advance Booking Charters (ABC's); Part 372a, Travel Group Charters (TGC's); Part 373, Study Group Charters (SGC's); Part 378, Inclusive Tour Charters (ITC's); and Part 378a, One-stop-inclusive Tour Charters (OTC's). These other rules became unnecessary, since any charter that could be performed under one of them could also be performed under the Public Charter rule. To ease the transition, however, the revocation of the old rules was made effective January 1, 1979. A charter can be performed under the old rules at any time after that date, as long as it is covered by a prospectus filed before that date.

On August 30, 1978, the Board proposed a variety of consumer protection amendments to the new Public Charter rules (SPDR-50B, 43 FR 39807, September 7, 1978). At that time, the Board stated that it was not proposing to amend the other charter rules because they were to be revoked by the time the amendments would be effective.

On March 2, 1979, the Board adopted, with some changes, the consumer protection amendments proposed in SPDR-50B (SPR-156, 44 FR 12971, March 9, 1979). The amendments apply primarily to operator-participant contracts entered into on or after May 1, 1979, for Public Charters scheduled to depart on or after July 1, 1979. The corresponding requirements for advertising apply to ads distributed or broadcast on or after May 1 for flights scheduled to depart on or after July 1.

By January 1, 1979, charter operators had filed prospectuses for a large number of ABC's, ITC's, and OTC's, in some cases extending far into the future. Without further Board action, these "old-rule charters" will not be subject to the Public Charter consumer protection rules. The Board is hereby proposing to extend the protections adopted for Public Charters in SPR-156 to the old rule charters.

We recognize that many of the old-rule charter filings may have been made in the expectation that those charters would avoid the new consumer protection requirements. Little if any of the burden of complying with the consumer protection requirements is, however, attributable to the operators' changed expectations. The burden of compliance for operators of old-rule charters would not be significantly different from that for operators who filed Public Charter prospectuses before SPR-156 was adopted, with the expectation that effectiveness of those amendments would be keyed to prospectus filing dates rather than contract and flight dates. Moreover, the burden must be weighed against the Public Charter operators' burden of competing with charters that are not subject to the new consumer protection requirements. Without these proposed changes, whether a charter passenger is covered by the increased consumer protections will depend for a long time on behind-the-scenes factors of which the public is generally unaware. Thus, either action or inaction in this area will result in some defeated expectations. On balance we have tentatively decided, contrary to our previous position, that the greater public interest calls for extending the protections to the old-rule charters as well as the newer Public Charters.

Since the Code of Federal Regulations parts under which the old-rule charters are conducted have been revoked, the extension of the consumer protection requirements would be achieved by adding a special section to the Public Charter rule. Since there are no more TGC's or SGC's scheduled, the extension does not cover those types.

The closing date for comments on this proposal is April 16, 1979. The target date for adoption of a final rule is April 30, 1979. We therefore do not expect to grant any requests to extend the comment period. The requirements for operator-participant contracts would apply to contracts entered into on or after June 1, but only for flights scheduled to depart on or after July 1, 1979. Similarly, the requirements for advertising would apply to ads distributed or broadcast on or after June 1 for flights scheduled to depart on or after July 1.

Accordingly, the Civil Aeronautics Board proposes to amend 14 CFR Part 380, *Public Charters*, as follows:

1. The Table of Contents would be amended by adding a new § 380.19 to Subpart B, to read:

PART 380—PUBLIC CHARTERS

Sec.

* * * * *

Subpart B—General Conditions and Limitations

* * * * *

380.19 Old-rule charters.

* * * * *

2. A sentence would be added at the end of § 380.1, to read:

§ 380.1 Applicability.

* * * This part also applies to old-rule charters as set forth in § 380.19.

3. A new § 380.19 would be added, to read:

§ 380.19 Old-rule charters.

(a) As used in this section, "old-rule charter" means a charter that is covered by a prospectus filed under Part 371, 378, or 378a of this title.

NOTE.—Those parts were revoked, effective January 1, 1979. The revocation specified that charters covered by prospectuses filed before that date could be performed on or after that date. 43 FR 36603-4, August 18, 1978.

(b) Indirect air carriers performing old-rule charters shall conform to the requirements of §§ 380.12, 380.30-380.33, and 380.33a of this part as if the old-rule charters were Public Charters.

(c) The requirements set forth in paragraph (b) of this section are effective as follows: § 380.12 applies to old-rule charters scheduled to depart on or after July 1, 1979. §§ 380.30 and 380.33a(d) apply to old-rule charter solicitation materials distributed or broadcast on or after June 1, 1979, but only with respect to charters scheduled to depart on or after July 1, 1979. §§ 380.31-380.33 and 380.33a (except 380.33a(d)) apply to old-rule operator-participant contracts entered into on or after June 1, 1979, but only with respect to charters scheduled to depart on or after July 1, 1979.

(Secs. 101(3), 204, 401, 402, 404, 407, 411, 416, and 1102 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, 757, 760, 766, 769, 771, 791; 49 U.S.C. 1301, 1324, 1371, 1372, 1374, 1377, 1381, 1386, and 1502.)

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-8577 Filed 3-20-79; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

[24 CFR Part 500]

[N-79-631]

REHABILITATION LOAN PROGRAM

Notice of Transmittal of Interim Rule

AGENCY: Housing and Urban Development/Office of Assistant Secretary for Community Planning and Development.

ACTION: Notice of Transmittal.

SUMMARY: Under recently-enacted legislation the Chairman of the House Committee on Banking, Finance and Urban Affairs and the Senate Committee on Banking, Housing, and Urban Affairs has requested the Secretary of Housing and Urban Development to provide their Committees with certain rules at least 15 days of continuous session prior to publication in the FEDERAL REGISTER. This Notice advises of the transmittal of specifically identified proposed and interim rules pursuant to such requests.

FOR FURTHER INFORMATION CONTACT:

Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 Seventh Street, S.W., Room 5218, Washington, D.C. 20410 (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairman of both the Senate Banking, Housing, and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the rulemaking document described below:

PART 500—SECTION 312 REHABILITATION LOAN PROGRAM

This interim rule amends the Section 312 Rehabilitation Loan Program as a result of changes made in the program by the Housing and Community Development Amendments of 1978. Congress has placed new limitations and conditions on the approval of rehabilitation loans for multifamily properties (5 or more units), has added new language on the priority for low and moderate income applicants, and has raised the loan limit on nonresidential properties from $50,000 per property to $100,000 per property. This interim rule is needed to immediately implement these important program changes.

(Section 7(o) of the Department of HUD Act, 42 U.S.C. 3535 7(o), Section 324 of the Housing and Urban Development Amendments of 1978).

Issued at Washington, D.C., March 15, 1979.

PATRICIA ROBERTS HARRIS,
Secretary, Department of Housing and Urban Development.

[FR Doc. 79-8560 Filed 3-20-79; 8:45 am]

[7710-12-M]

POSTAL SERVICE

[39 CFR Part 111]

INSPECTION SERVICE AUTHORITY

Requesting Financial Records from a Financial Institution

AGENCY: Postal Service.

ACTION: Proposed Regulation.

SUMMARY: These proposed regulations would authorize the Inspection Service Department of the U.S. Postal Service to request financial records from a financial institution pursuant to the formal written request procedure established by the Right to Financial Privacy Act of 1978, title XI of Pub. L. 95-630, 92 Stat. 3697, and would set forth the conditions under which such request may be made. Section 1108(2) of the Right to Financial Privacy Act of 1978 requires that the formal written request be authorized by regulations promulgated by the head of the agency or department. These proposed regulations would thus, once implemented, enable the Inspection Service Department to utilize the formal written procedure to obtain financial records.

DATES: Comments on these proposed regulations must be received on or before April 20, 1979.

ADDRESSES: Written comments should be directed to Charles D. Hawley, Assistant General Counsel, Legal Affairs Division, law department, U.S. Postal Service, 475 L'Enfant Plaza West, SW, Washington, D.C. 20260. Copies of all written comments received will be available for public inspection and photocopying between 9:00 AM and 4:00 PM, Monday through Friday, in Room 9103.

FOR FURTHER INFORMATION CONTACT:

Charles D. Hawley, (202) 245-4584.

SUPPLEMENTARY INFORMATION: The Postal Service proposes to carry out the purposes described above by adding a new § 233.4 to title 39, CFR. Although exempt from the requirements of the Administrative Procedure Act, 5 U.S.C. 553 (b), (c), regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revision of title 39, CFR:

PART 233—INSPECTION SERVICE AUTHORITY

In part 233, add new § 233.4 reading as follows:

§ 233.4 *Requesting financial records from a financial institution.*

(a) Definitions.

The terms used in this section shall have the same meaning as similar terms used in the Right to Financial Privacy Act of 1978, Title XI of Pub. L. 95-630. "Act" means the Right to Financial Privacy Act of 1978.

(b) Purpose.

The purpose of these regulations is to authorize the Inspection Service Department of the U.S. Postal Service to request financial records from a financial institution pursuant to the formal written request procedure au-

thorized by section 1108 of the Act, and to set forth the conditions under which such request may be made.

(c) Authorization.

The Inspection Service Department is authorized to request financial records of any customer from a financial institution pursuant to a formal written request under the Act only if:

(1) No administrative summons or subpoena authority reasonably appears to be available to the Inspection Service Department to obtain financial records for the purpose for which the records are sought;

(2) There is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry and will further that inquiry;

(3) The request is issued by a postal inspector;

(4) The request adheres to the requirements set forth in paragraph (d) of this section; and

(5) The notice requirements set forth in section 1108(4) of the Act, or the requirements pertaining to the delay of notice in section 1109 of the Act, are satisfied, except in situations (*e.g.*, section 1113(g)) where no notice is required

(d) Written Request.

(1) The formal request shall be in the form of a letter or memorandum to an appropriate official of the financial institution from which financial records are requested. The request shall be signed by the issuing official, and shall set forth that official's name, title, business address and business phone number. The request shall also contain the following:

(i) The identity of the customer or customers to whom the records pertain;

(ii) A reasonable description of the records sought; and

(iii) Such additional information as may be appropriate—e.g., the date on which the opportunity for the customer to challenge the formal written request will expire, the date on which the requesting Inspection Service Department expects to present a certificate of compliance with the applicable provisions of the Act, the name and title of the individual (if known) to whom disclosure is to be made.

(2) In cases where customer notice is delayed by court order, a copy of the court order shall be attached to the formal written request.

(e) Certification.

Prior to obtaining the requested records pursuant to a formal written request, a postal inspector shall certify in writing to the financial institution that the Inspection Service Department has complied with the applicable provisions of the Act.

(39 U.S.C. 401(2), 404(a)(7); Title XI, Pub. L. 95-630, 92 Stat. 3697)

W. ALLEN SANDERS,
Acting Deputy General Counsel.

[FR Doc. 79-8579 Filed 3-20-79; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 62]

[FRL 1072.4]

APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

Proposed Rulemaking

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Regulations promulgated under the provisions of Section 111(d) of the Clean Air Act require States to submit to the Environmental Protection Agency (EPA) plans to control fluoride emissions from phosphate fertilizer plants. Alternately, a State can submit to EPA a "negative declaration" which certifies that no phosphate fertilizer plants exist within the State's boundaries. The purpose of this FEDERAL REGISTER notice is to propose approval of such negative declarations which have been submitted to EPA by the States of New York and New Jersey, the Commonwealth of Puerto Rico, and the Territory of the Virgin Islands.

DATES: Comments must be received on or before April 20, 1979.

ADDRESSES: All comments should be addressed to: Eckhardt C. Beck, Regional Administrator, U.S. Enviromental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10007.

Copies of the letters received from New Jersey, New York, Puerto Rico and the Virgin Islands are available for public inspection during normal business hours at:

U.S. Environmental Protection Agency, Air Programs Branch, Room 908, Region II Office, 26 Federal Plaza, New York, New York 10007.

U.S. Environmental Protection Agency, Public Information Reference unit, 401 M Street, S.W., Washington, D.C. 20460.

New Jersey Department of Environmental Protection, Division of Environmental Quality, John Fitch Plaza, Trenton, New Jersey 08625.

New York Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

Virgin Islands Department of Conservation and Cultural Affairs, Division of Natural Resource Management, Charlotte Amalie, St. Thomas, Virgin Islands 00801.

Puerto Rico Environmental Quality Board, Division of Water and Air, EQB Building, Santurce, Puerto Rico 00910.

FOR FURTHER INFORMATION CONTACT:

William S. Baker, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10007, (212) 264-2517.

SUPPLEMENTAL INFORMATION: Section 111(d) of the Clean Air Act requires States to submit to the Environmental Protection Agency (EPA) plans to control emissions of designated pollutants from designated facilities. "Designated pollutants" are pollutants which are not included on a list published under the provisions of Section 108(a) of the 1977 Clean Air Act (National Ambient Air Quality Standards for Criteria Pollutants) or are not regulated under the provisions of Section 112(b)(1)(A) of the Clean Air Act (Hazardous Air Pollutants), but which are pollutants for which standards of performance for new sources have been established under Section 111(b) of the Clean Air Act (New Source Performance Standards). A "designated facility" is an existing facility which emits a designated pollutant and which would be subject to a new source performance standard for that pollutant if the facility were new.

Fluoride emissions from phophate fertilizer plants is the first of a series of designated pollutants and facilities for which control plans are required. The performance standard went into effect on March 1, 1977 when a notice of availability of a final guideline document on the subject was published in the FEDERAL REGISTER (42 FR 12022).

In many cases, a state will not contain a designated facility (such as a phosphate fertilizer plant) within its borders. In that case, the state must submit a letter to EPA certifying the nonexistence of any such designated facility. This letter is termed a "negative declaration".

The States of New Jersey, and New York, the Commonwealth of Puerto Rico, the Territory of the Virgin Islands have each submitted to EPA "negative declarations" with regard to phosphate fertilizer plants. This fulfills their responsibility for submitting state control plans as replied by Section 111(d) of the Clean Air Act, and Subpart B of 40 CFR Part 62. A more detailed discussion of 111(d) control plans is contained in the July 10, 1978 and November 3, 1978 FEDERAL REGISTER (43 FR 29585 and 43 FR 51393, respectively).

All interested persons are invited to submit written comments on the proposed regulatory actions set forth below.

The changes proposed herein, with appropriate modifications, will be effective on promulgation in the FEDERAL REGISTER.

(Section 111 and 301(a), Clean Air Act, as amended (42 U.S.C. 7413 and 7601).)

Dated: March 14, 1979.

DOUGLAS M. COSTLE,
Administrator, Environmental Protection Agency.

EPA proposes to amend Part 62, Subchapter C, Chapter I, Title 40 of the Code of Federal Regulations, by adding §§ 62.7600, 62.8100, 62.13100, and 62.13350

Subpart FF—New Jersey

FLUORIDE EMISSIONS FROM PHOSPHATE FERTILIZER PLANTS

§ 62.7600 Identification of plan—Negative declaration.

The New Jersey Department of Environmental Protection submitted, on May 20, 1977, a letter certifying that there are no existing phosphate feritilizer plants in the State subject to Part 60, Subpart B of this Chapter.

Subpart HH—New York

FLUORIDE EMISSIONS FROM PHOSPHATE FERTILIZER PLANTS

§ 62.8100 Identification of plan—Negative declaration.

The New York State Department of Environmental Conservation submitted, on May 12, 1977, a letter certifying that there are no existing phosphate feritilizer plants in the State subject to Part 60, Subpart B of this Chapter.

Subpart BBB—Puerto Rico

FLUORIDE EMISSIONS FROM PHOSPHATE FERTILIZER PLANTS

§ 62.13100 Identification of plan—Negative declaration.

The Commonwealth Environmental Quality Board submitted, on January 31, 1977, a letter certifying that there are no existing phosphate fertilizer plants in the Commonwealth subject to Part 60, Subpart B of this Chapter.

Subpart CCC—Virgin Islands

FLUORIDE EMISSIONS FROM PHOSPHATE FERTILIZER PLANTS

§ 62.13350 Identification of plan—Negative declaration.

The Territory Department of Conservation and Cultural Affairs submitted, on November 3, 1977, a letter certifying that there are no existing phosphate fertilizer plants in the Territory subject to Part 60, Subpart B of this Chapter.

(Section 111 and 301(a), Clean Air Act, as amended (42 U.S.C. 7413 and 7601).)

[FR Doc. 79-8264 Filed 3-20-79; 8:45 am]

[6560-01-M]

[40 CFR Part 233]

[FRL 1080-1]

MODIFICATION OF SECONDARY TREATMENT REQUIREMENTS FOR DISCHARGES INTO MARINE WATERS

Availability of Draft Section 301(h) Technical Support Document

AGENCY: United States Environmental Protection Agency ("EPA").

ACTION: Notice of availability of draft technical support document.

SUMMARY: Prior to promulgating final regulations implementing Section 301(h) of the Clean Water Act, as amended dealing with modification of secondary treatment requirements for discharges into marine waters, EPA is seeking public comments on the current staff draft section 301(h) technical support document which, when made final, will be issued along with the regulations.

DATE: Comments must be received by April 23, 1979.

ADDRESS: Comments should be sent to: Section 301(h) Task Force Manager, Office of Water Program Operations (WH-546), Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Scott P. Berdine, Office of Water Program Operations (WH-546), Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460, 202-426-8973.

SUPPLEMENTARY INFORMATION: Pursuant to Section 301(h) of the Clean Water Act, as amended, EPA on April 25, 1978, published a proposed rule establishing criteria and procedures to be employed by the Agency in evaluating applications for issuance of National Pollutant Discharge Elimination System ("NPDES") permits to modify requirements for secondary treatment. 43 FR 17484. EPA will promulgate a final rule shortly and, prior to doing so, is seeking public comment on the Section 301(h) technical support document which will accompany the final rule.

By this notice, EPA makes available to the public the current draft of this document. In addition, to assist commenters in reviewing this document, EPA also makes available copies of sections of the *draft* preamble, regulation, and application requirements language dealing with the three major areas ("Physical Assessment," "Biological Assessment," and "Monitoring") that the draft technical support document addresses. EPA seeks comments only on the technical support document; the Agency has afforded the public a full opportunity to comment on the preamble, regulations and application format following proposal of the rule and will accept no further comments on these items at this time. EPA requests that comments on the *draft* technical support document be organized on a page-by-page basis.

To expedite the comment process, EPA has sent copies of the draft technical support document, to all those municipalities which submitted preliminary applications for modified NPDES permits by September 25, 1978. Others wishing to comment may obtain copies of the documents from EPA.

Dated: March 16, 1979.

THOMAS C. JORLING,
Assistant Administrator for Water and Waste Management.

[FR Doc. 79-8590 Filed 3-20-79; 8:45 am]

[6820-26-M]

GENERAL SERVICES ADMINISTRATION

National Archives and Records Service

[41 CFR Part 101-11]

RECORDS MANAGEMENT

Copying—Reproduction of records, selection and utilization of equipment and supplies

AGENCY: National Archives and Records Service (NARS), General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: This proposed rule expands the regulations of the General Services Administration to include Federal agencies' responsibilities in the area of copy management.

The Federal Records Management Amendments of 1976 to 44 U.S.C. Chapter 29 expanded the responsibilities and authorities of the Administrator of General Services with respect to records management by Federal agencies. The amendments, in part, require the Administrator to provide guidance and assistance to Federal agencies with regard to the reproduction of records and the selection and utilization of equipment and supplies associated with copying. This proposed regulation provides guidance to Federal agencies on managing copying practices and equipment.

DATE: Comments must be received on or before May 21, 1979.

ADDRESS: Submit comments to Jon Halsall, Program Operations Division, Office of Records Management, Gen-

eral Services Administration (NRO), Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT:

Jon Halsall, Program Operations Division, Office of Records Management, General Services Administration (NRO), Washington, DC 20408, 202-376-8801.

SUPPLEMENTARY INFORMATION: GSA Bulletin FPMR B-68 of April 6, 1977, is rescinded as the provisions of that bulletin have been incorporated in this subpart.

The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals, and, therefore, is not significant for the purposes of Executive Order 12044.

The table of contents for Part 101-11 is amended by adding the following entries:

PART 101-11—RECORDS MANAGEMENT

Sec.
101-11.302 Applicability.
101-11.302-1 Authority.
101-11.302-2 Definitions.
101-11.302-3 Objectives.
101-11.302-4 Agencies' responsibilities.
101-11.4933 Standard Form xxx, Copy Management Annual Report (This is a proposed reporting form).

(Sec. 205(a), 63 Stat. 390; 40 U.S.C. 486(c))

Subpart 101-11.3—Organization, Maintenance, and Use of Current Records

Section 101-11.302 is added to read as follows:

§ 101-11.302 Applicability

This section provides guidance to Federal agencies on managing copying practices and copying equipment, except equipment that is subject to regulation by the Joint Committee on Printing (JCP) of the Congress of the United States. This section addresses the records management aspects of copying. While the guidelines contained herein for the management of copying practices are applicable generally, guidelines for equipment management pertain specifically to copiers and duplicators not used in a printing environment. This section does not apply to the reproduction of micrographic, photographic or machine readable records, or to associated equipment. For guidance on the reproduction of micrographic records see Subpart 101-11.5, Micrographics.

§ 101-11.302-1 Authority.

As required by 44 U.S.C. Chapter 29, the Administrator of General Services shall provide guidance and assistance to Federal agencies with regard to the reproduction of records and the selection and utilization of equipment and supplies associated with copying.

§ 101-11.302-2 Definitions.

For the purposes of the section, the following definitions shall apply:

(a) "Copy" means a duplicate of a document previously created;

(b) "Copier" means a machine that produces paper copies directly without requiring the creation of an intermediate master for each original;

(c) "Duplicator" means a machine that produces paper copies through the use of an intermediate master; and

(d) "Copying" means the making of copies whether by copier or duplicator.

§ 101-11.302-3 Objective.

Copy management aims to ensure the efficient creation of necessary copies and the elimination of unnecessary copying.

§ 101-11.302-4 Agencies' responsibilities.

To ensure good copying preactices and proper equipment management, each agency shall:

(a) *Determine copying needs.* All copy management decisions must be based on knowledge of needs. Therefore, the needs of each organizational element must be documented. A description of organizational copying needs shall include the following:

(1) Averge number of copies needed per month;

(2) Physical characteristics of materials routinely copied;

(3) Average number of pages per document;

(4) Average number of copies per document;

(5) Why copies are needed; and

(6) How quickly they are needed.

(b) *Match equipment to copying needs.* (1) Copiers and duplicators have many optional features and various operating limitations such as rated production capacities. Effective copying is accomplished by properly matching equipment capabilities to needs. Some organizational units will have needs sufficient to justify the full-time use of one or more machines. However, frequently, the best balance of economy and convenience can be achieved when all or part of one organization's needs are pooled with the needs of another and equipment is shared.

(2) When deciding on the types of equipment to be procured and its placement, agencies shall consider both the direcst and indirect costs of copying. Direct costs include such items as the lease or purchase price of equipment, the cost of maintenance and supplies, and salaries of full-time equipment operators. Indirect costs include such items as overhead and the cost of time spent by personnel seeking and obtaining service. Agencies shall select the equipment that effectively satisfies documented needs at the lowest overall cost.

(3) To ensure proper use of equipment agencies shall, as a minimum, establish for each type or class of machine an upper and lower limit on the number of copies to be produced per month, the number of pages and copies per page allowed for any one document, and the total copies to be produced from any one document. The guidelines should reflect maximum efficient machine operating capacities and minimum economic volumes. These instructions shall be posted by the machines to inform uses of the machines' capabilities and intended use. If use varies significantly from the established guidelines, needs will be reassessed and more appropriate equipment or alternate service will be provided.

(c) *Training.* Persons making copies shall be trained in the proper operation of equipment. In addition, supervisors should be instructed in and ensure implementation of the following cost effective practices:

(1) Assign copying tasks to employees at lower salary levels and use full-time equipment operators when the cost of the operator can be offset by savings;

(2) Batch work to minimize trips to the copier;

(3) Determine precisely the number of copies required by each job and produce no more than that amount;

(4) Circulate a single copy when that will suffice, rather than making separate copies for all concerned;

(5) Obtain blank forms, publications, and other materials from normal supply sources rather than copying them;

(6) Accept copies that are legible and usable, rather than seeking "perfect" ones;

(7) Use carbon copies when they are more cost effective than copying;

(8) To avoid making unwanted copies, check the quantity dial before using the machine. Reminder signs (Standard Form 276, Machine Reset) are available from GSA stores;

(9) Run a single copy before continuing with a large job to ensure that unusable copies are not produced because of malfunctioning equipment, and

(10) Whenever practical, copy on both sides of the paper.

(d) *Maintain records.* To identify which equipment is being improperly used or where different equipment would be more effective or economical certain information shall be recorded for each piece of equipment. Records should be kept at an organizational level high enough to ensure their effective use in matching equipment to

needs and in controlling overall costs. The following items of information are required:

(1) Equipment brand, model number or name, and serial number;

(2) Type of procurement (rent, lease, or purchase) and installation date;

(3) Essential provisions of the rental or lease plan, or, if owned, the purchase price and essential elements of the maintenance plan, if any;

(4) Number of copies produced by month;

(5) Equipment characteristics such as production speed, significant accessories or special features, any special electrical requirements;

(6) A record of repair and nonroutine maintenance; and

(7) Information on the operating environment, such as machine location, organizations served, and whether access to the machine is unrestricted, restricted to a full-time operator, or otherwise limited.

(e) *Review equipment requests.* Requests for equipment shall be reviewed at an organizational level high enough to ensure economical procurement and placement of equipment. Reviews shall include:

(1) A current determination of the copying needs of the requesting office;

(2) An analysis of the present use of equipment by the requesting office;

(3) A determination as to whether the requesting office should share the use of existing equipment, acquire its own, or a combination of these alternatives;

(4) A determination of whether alternate reproduction methods are practical;

(5) A cost/benefit analysis of any feasible equipment alternatives including a determination of whether purchase or lease would be more economical (see Subpart 101-25.5, Guidelines for Making Purchase or Lease Determinations); and

(6) A determination of the best location for the equipment.

(f) *Review supply procurement policy.* Procurement methods and sources for supplies such as paper, toner, ink, and duplicating masters shall be reviewed at least annually. Options, such as blanket purchase agreements, bulk purchasing, and procurement under Federal Supply Service contracts may offer lower costs.

(g) *Promote accountability.* Agencies shall develop procedures that increase the cost consciousness of managers for the copies produced by their organizations. One method of developing managerial cost awareness and accountability would be to allocate copying funds in operating budgets to the lowest practical organizational levels.

(h) *Revew copy management efforts.* Agencies shall conduct an annual review to determine whether improvements are necessary to meet the requirements of this regulation. Practices shall be audited to determine if existing policies can be improved. Records shall be reviewed to identify specific areas of potential improvement in equipment management.

(i) *Set objectives.* Based upon the review, agencies shall establish annual objectives aimed at the improvement of copying services and reduction of costs. Objectives should be specific and progress toward their accomplishment measurable. An example of an objective would be to reduce overall equipment costs by 10 percent during the current fiscal year. However, the use of the same objective for all organizational units is discouraged as the potential for improvements will vary among units. Some units may be able to reduce costs more than 10 percent and others less than 10 percent without impairing needed copy services. Objectives should be established for individual organizational units and should reflect each unit's current degree of effectiveness in managing its copying activities.

(j) *Submit annual report.* Each agency shall submit to NARS copies of Standard Form xxx, Copy Management Annual Report (proposed reporting form), by December 1 of each year. A separate report shall be completed for each bureau level component of the agency and include central office and field activities. The first report will be due on December 1, 1980. Each report will cover the preceding fiscal year. The report will help agencies and NARS determine trends in the volume and costs of copying. This reporting requirement has been cleared in accordance with FPMR 101-11.11 and assigned Interagency (Control Number xxx-GSA-xxx (this is a proposed report).

Address reports to the General Services Administration (NR), Washington, DC 20408.

Subpart 101-11.49 Forms and Reports

Section 101-11.4933 is added as follows:

§ 101-11.4933 Standard Form xxx, Copy Management Annual Report (proposed reporting form).

COPY MANAGEMENT ANNUAL REPORT

INTERAGENCY REPORT CONTROL NO.

1. AGENCY/BUREAU	2. NO. OF EMPLOYEES 1/	3. COST OF PREPARING REPORT
		$
4. CODE (GSA use ONLY)		5. FISCAL YEAR

ITEMS	COPIERS		DUPLICATORS		TOTAL
	Owned (a)	Leased/Rented (b)	Owned (c)	Leased/Rented (d)	(e)
6. Number of machines					
7. Number of copies produced					
8. Total expenditures 2/					

9. AGENCY CONTACT FOR THIS REPORT	NAME AND MAILING ADDRESS	TITLE
		TELEPHONE NUMBER

1/ Item 2—Enter number of permanent full-time employees as of May 31 of the reporting year.

2/ Item 8—Enter total of all direct costs during the reporting period. Direct costs include equipment lease/rental costs, amortized cost of purchased equipment, supply costs, equipment maintenance costs, and salaries of assigned equipment operators.

MAIL COMPLETED FORM TO:

GENERAL SERVICES ADMINISTRATION (NR)
WASHINGTON, DC 20408

Enter explanatory remarks on back.

STANDARD FORM (1-79)
Prescribed by GSA (41CFR) 101-11.302

(Sec. 205(a), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: March 6, 1979.

JAMES B. RHOADS,
Archivist of the United States.

[FR Doc. 79-8576 Filed 3-20-79; 8:45 am]

[4110-02-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 185]

EMERGENCY SCHOOL AID

AGENCY: Office of Education, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed rule would amend current regulations that set out the criteria for educational television awards under section 711 of the Emergency School Aid Act. These awards are made to pay the cost of developing and producing integrated children's television programs of educational value. The purpose of the proposed rule is to amend the selection criteria to address whether the proposer employs minority group members in key positions other than those for which funds are sought.

DATE: Comments on the proposed rule must be received on or before May 21, 1979.

ADDRESSES: Comments should be addressed to Dr. Dave Berkman, U.S. Office of Education, 400 Maryland Avenue, S.W. (Room 3108A, ROB-3), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT:

Dr. Dave Berkman, telephone (202) 245-9225.

SUPPLEMENTARY INFORMATION: Under the authority of section 711 of the Emergency School Aid Act ("ESAA"; 20 U.S.C. 1610) the Commissioner (to whom the Assistant Secretary has delegated functions under the Act) proposes to amend the criteria for educational television awards as set forth in this document.

The legislation authorizing ESAA educational television awards requires that any recipient "employ members of minority groups in responsible positions in development, production, and administrative staffs." 20 U.S.C. 1610(b)(3)(A). Current criteria for evaluating proposals for these awards include consideration of "[t]he extent to which minority group persons will occupy key creative, administrative and executive decisionmaking *project* positions." 45 CFR 185.74(c)(2)(ii), emphasis supplied. However, the criteria do not address whether or not minority group members are employed in positions in the proposer's organization other than those for which the proposer seeks ESAA funds, where they may have an impact on the success of the integrated children's television programs developed and produced under the award.

The proposed amendment would amend the staffing criteria in 45 CFR 185.74(c)(2) so as to address minority employment in key nonproject positions. The maximum number of points for staffing would remain 19. Reviewers would be instructed to take into account all factors in § 185.74(c)(2). No particular weights are assigned to these factors.

The Commissioner believes that the proposed amendment to the criteria for awards will help ensure that the television programs funded under an ESAA award reflect the background and culture of minority groups, and that it is therefore consistent with the statutory policy reflected in 20 U.S.C. 1610(b)(3)(A) quoted above. The Commissioner anticipates that the criteria will continue to be applied in the first instance by a panel of experts in the areas of education, educational television, and human relations. While the Commissioner values the recommendations of these panels, he wishes to emphasize HEW and Office of Education policy that panel recommendations are *advisory* only.

INVITATION TO COMMENT

Interested persons are invited to submit written comments, suggestions, and recommendations to be considered prior to the issuance of the final rule. Comments, suggestions, or recommendations may be sent to the address given at the beginning of this document. All comments received on or before the end of the comment period will be considered. All comments submitted in response to this notice will be available for public inspection both during and after the comment period in Room 3108A, Regional Office Building Three, 7th and D Streets, S.W., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except on Federal holidays.

AUTHORITY: This proposed rule is issued under the authority of the Emergency School Aid Act, Title VII, Pub. L. 92-318, as amended.

Dated: February 27, 1979.

ERNEST L. BOYER,
U.S. Commissioner of Education.

Approved: March 6, 1979.

MARY F. BERRY,
Assistant Secretary for Education.

Approved: March 13, 1979.

JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education, and Welfare.

(Catalog of Federal Domestic Assistance No. 13.530, Emergency School Aid Act—Television)

Title 45 of the Code of Federal Regulations is amended to read as follows:

Section 185.74(c)(2) is amended to read as follows:

§ 185.74 Criteria for awards.

* * * * *

(c) * * *

(2) *Staffing (19 points).*

(i) The extent to which the proposal sets out an overall staff plan clearly delineating positions and responsibilities and maximizing staff capabilities;

(ii) The extent to which minority group persons will occupy key creative, administrative and executive decision-making project positions;

(iii) The extent to which provision is made for on-the-job training, in full-time positions over the entire project period, to enable such trainees to become qualified to assume positions of technical and professional responsibility; and

(iv) Whether the proposer employs minority group members in key nonproject positions.

* * * * *

[FR Doc. 79-8578 Filed 3-20-79; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[BC Docket No. 79-43; RM-3140]

TELEVISION BROADCAST STATIONS IN GLENWOOD SPRINGS, COLO., AND PRICE AND VERNAL, UTAH

Proposed Changes in Table of Assignments

PREAMBLE

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Action taken herein proposes the deletion of television Channel 3 from Alamosa, Colorado, and its assignment to Glenwood Springs, Colorado. It also proposes the exchanging of Channel 6 at Price, Utah, for Channel 3 at Vernal, Utah. This action is taken in response to a peti-

tion filed by Western Slope Communications, Inc., which states that the proposed channel in Glenwood Springs, would provide the area with additional television broadcast service.

DATES: Comments must be filed on or before May 11, 1979, and reply comments must be filed on or before May 31, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Louis C. Stephens, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: March 12, 1979.

Released: March 15, 1979.

In the matter of amendment of § 73.606(b), *Table of Assignments*, Television Broadcast Stations (Glenwood Springs, Colorado, and Price and Vernal, Utah), BC Docket No. 79-43, RM-3140.

1. Western Slope Communications, Inc. ("Westen"), seeking to operate a television broadcast station at Glenwood Springs in northwest Colorado, asks that we assign Channel 3 to Glenwood Springs. Western proposes that short-spacings to unused Channel 3 assignments at Vernal, Utah, and Alamosa, Colorado, be corrected by: (1) Substituting or exchanging Channel 6 now assigned to Price, Utah, for Channel 3 assigned to Vernal; and (2) either deleting Channel 3 from Alamosa or tolerating the 43 kilometer (26.7 miles) shortage. The Association of Maximum Service Telecasters, Inc. ("AMST") objects on various grounds to any proposal which would involve retention of Channel 3 at Alamosa. However, AMST indicated that it would not oppose the alternative proposal involving the deletion of Channel 3 at Alamosa, so long as site selection would prevent short spacing between Glenwood Springs and Price.

2. Western proposes a station which would serve portions of Eagle, Garfield, and Pipkin Counties, which have an estimated year-round population of 47,400 and visitors estimated to number between 30,000 and 40,000 winter and summer. In addition to the principal community—Glenwood Springs, whose population is stated as 8,500—other communities it plans to serve are Aspen and Vail.

3. Western claims that the assignment of Channel 3 to Glenwood Springs would provide a predicted first Grade B television service to 43,500 people and a second Grade B service to an additional 71,800. Ninety-six percent of the projected service area is stated to lack on-the-air television service. Cable television provides service to some of the population centers in it.

4. The area is reported to rely for economic support chiefly on mining, tourism and recreation, farming, and ranching. Large reserves of oil shale and coal are reported in the area. Unusually high levels of cultural activities are stated to be carried on through the Aspen Music Festival, the Aspen Music School, the Conference on Contemporary Music, The International Design Conference, the Carbondale Opera Workshop, The Aspen Chorale Institute and Ballet West. Western also referred to the presence in the area of the Aspen Institute for Humanistic Study and the Given Institute of Patho-Biology.

5. AMST's objection to the fact that the new station would be 43 kilometers (26.7 miles) short to Alamosa, Colorado, we propose to meet by deleting Channel 3 from Alamosa where it has never been used.[1] While it may be possible to locate an Alamosa station so as to meet the spacing requirements to a Glenwood Springs assignment and to provide the required signal level to Alamosa, such a severe site restriction as in this case reduces the likelihood that this assignment would ever be activated.

6. We also note here that the use of the proposed Price, Utah, Channel 3 assignment would require location of the transmitter site at least 5 kilometers (3.1 miles) west of the community. This is not a severe restriction and is not regarded as having much impact on our decision in this proceeding.

7. We find sufficient merit in the proposal to provide a first commercial television assignment to Glenwood Springs to inaugurate rule making, and we invite comments on the following proposed changes to the Television Table of Assignments in Section 73.606(b) of the Rules:

City	Channel No.	
	Present	Proposed
Alamosa, Colorado	3−, *16	*16
Glenwood Springs, Colorado	*19+	3−, *19+
Price, Utah	6, *15	3+, *15
Vernal, Utah	3+, *17+	6, *17+

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix below and are incorporated by reference herein.

NOTE.—A showing of continuing interest with respect to each proposed assignment is required by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before May 11, 1979, and reply comments on or before May 31, 1979.

[1] We assigned Channel 3 to Alamosa in 1956 at the request of a petitioner who never provided the projected service.

10. For further information concerning this proceeding contact Louis C. Stephens, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involves channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

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

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the com-

ments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 79-8471 Filed 3-20-79; 8:45 am]

[3510-22-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 662]

FISHERY MANAGEMENT PLAN FOR NORTHERN ANCHOVY

Supplemental Public Comment Period

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Supplement public comment period on amendment to fishery management plan for northern anchovy.

SUMMARY: The Pacific Fishery Management Council is considering an amendment to the fishery management plan for the northern anchovy fishery. The principal purpose of the proposed amendment is to review the specification of expected domestic annual harvest. The initial public review period on a draft amendment extended from December 28, 1978, to January 26, 1979. A supplemental public review period ending April 10, 1979, is being established to provide additional opportunity for review and comment on changes to the draft amendment. The Council will consider the amendment at their next scheduled meeting on May 10-11, 1979.

DATES: Comments must be received on or before April 10, 1979.

ADDRESS: Comments may be submitted to the Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, OR 97201; or to the Regional Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT:

Mr. Lorry N. Nakatsu, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, OR 97201 (503-221-6352).

SUPPLEMENTARY INFORMATION: The Pacific Council's fishery management plan for the northern anchovy fishery was approved by the Secretary of Commerce on July 13, 1978, and implementing regulations were effective on September 15, 1978. Shortly after approval of the plan, the Council prepared a draft proposed amendment which changed the method of specification of domestic annual harvest. The draft was circulated for public review and comment, and a hearing was held in San Diego, CA, on January 12, 1979, to receive public comments.

A second draft amendment was subsequently prepared. The Council believes that the public should be provided with additional time to review and comment on this second draft and has extended the period for public review until April 10, 1979.

The second draft amendment provides that:

1. The estimated annual capacity for reduction and nonreduction processing of anchovies is 363,385 short tons;

2. The estimated annual harvest capacity for reduction fishing vessels is 891,492 short tons;

3. The estimated annual harvest capacity for the live-bait fishery is 8,500 short tons;

4. When optimum yield is less than the sum of reduction and nonreduction processing capacity (363,385 short tons) and expected live bait harvest (8,500 short tons), the expected total domestic annual harvest equals the optimum yield;

5. When the optimum yield exceeds the sum of the reduction and nonreduction processing capacity and expected live bait harvest, the expected domestic annual harvest equals 371,885 short tons.

A notice indicating the availability of the first draft amendment was published on December 29, 1978, by the National Marine Fisheries Service (See 43 FR 60970). Copies of the second draft amendment are available from the Pacific Fishery Management Council at the address noted above.

Dated: March 15, 1979.

WINFRED H. MEIBOM,
Executive Director, National Marine Fisheries Service.

[FR Doc. 79-8485 Filed 3-20-79; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-11-M]

DEPARTMENT OF AGRICULTURE

Forest Service

RPA PUBLIC SESSIONS

Advance Schedule

The Forest Service (USDA) plans to release a draft report on March 27, 1979, which makes an assessment of the renewable resource situation on the Nation's forest and rangelands and identifies alternative direction for Forest Service programs. The draft report is being prepared for submission to Congress in 1980 in response to the direction in the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended (RPA).

A briefing for the release of the draft report will be held March 27, 1979, at 9 a.m., in Room 1323—South Building, in the USDA Building at 12th and Independence, Washington, D.C. (For further information contact the Forest Service, Office of Information at 202-447-6957). This initial briefing on March 27 in Washington, D.C., and in the nine Forest Service Regional Offices will be followed by Public Inform and Involve sessions throughout the country in the months of April, May, and June. These sessions are scheduled during the public comment period which begins March 27 and ends June 8, 1979. In addition to the scheduled sessions noted below, the Forest Service will meet with any interested groups, individuals, agencies and officials to explain the draft documents and answer questions. Contact your local Forest Service office for copies of the draft report or assistance concerning its content; also, verify individual session dates, times, and places with local officials prior to attendance as the following is an advance schedule.

The scheduled sessions below are of two kinds. Inform sessions are to provide in-depth briefings and discussions on the draft report. Involve sessions are primarily to provide final assistance to groups or individuals wanting to submit written or oral comment on the draft report. The schedule follows.

R. MAX PETERSON,
Deputy Chief.

ADVANCE SCHEDULE FOR RPA PUBLIC SESSIONS

State	Inform sessions	Involve sessions
	Date: 1979, where, and time	Date: 1979, where, and time
Alabama	4-25—Montgomery Holiday Inn, 1 p.m	5-23—Montgomery NF Office, 1765 Highland, 8-4 p.m.
Alaska	4-21—Anchorage, Chuchgach NF, 2221 E. Northern Lights Blvd., Suite 230, 10-2 p.m.	Phone for information on May sessions in Alaska (907-586-7282).
	4-21—Ketchikan, Tongass NF, Fed. Bldg., 10-2 p.m	
	4-21—Sitka, Tongass NF Office, 10-2 p.m	
	4-21—Petersburg, Tongass NF Office, 10-2 p.m	
	4-21—Fairbanks, Institute of Northern Forestry, Univ. of Alaska, 10-2 p.m.	
	4-21—Juneau, Rm. 123, Fed. Bldg., 10-2 p.m	
Arkansas	4-23—Little Rock, Arkansas Game & Fish Bldg., 1 p.m	5-23—National Forest Offices in Hot Springs National Park and Russellville, 8-4 p.m.
Arizona	4-18—Phoenix, Civic Plaza, Rms. 9 & 10, 225 E. Adams, 1:30-3:30 p.m.	Additional opportunities for public involvement will occur during the period May 15-17 when National Forest Supervisors' Offices and laboratories will have staff specialists available to discuss RPA data with any interested publics.
	4-19—Flagstaff, Coconino NF Office, Conference Room, 2323 Greenlaw Lane, 1:30-3:30 p.m.	
California	4-17—San Francisco, Marine Room, Travel Lodge at the Wharf, 250 Beach St., 1:30 p.m.	6-5—San Francisco, Marine Room, Travel Lodge at the Wharf, 250 Beach St., 1:30 p.m.
	4-18—Los Angeles area, Pasadena Convention Center, Rm. 312, 300 E. Green St., Pasadena, 7-9 p.m.	6-6—Los Angles area. For information on meeting place and time contact Angeles National Forest (213-577-0050 or 577-0310).
Colorado	4-16—Lakewood, Forest Service, Regional Office, 11177 West 8th, 7:30 p.m.	5-11—Lakewood, Forest Service Regional Office, 11177 West 8th, 7:30 p.m.
Florida	4-19—Tallahassee, Tallahassee Fed. Savings & Loan, 1 p.m	5-23—Tallahassee NF Office, 2586 Seagate Dr., 8-4 p.m.
Georgia	4-16—Atlanta, Riviera-Hyatt House, 1 p.m	5-23—Gainesville NF Office, 601 Broad St. NE., 8-4 p.m.
Hawaii	4-25—Honolulu, State Office Bldg., Rm. 322-A, 1151 Punchbowl St., 2 p.m.	5-9—Honolulu, State Office Bldg., Rm. 322-A, 1151 Punchbowl St., 2 p.m.
Idaho	4-17—Boise, W. Conference Rm., Hall of Mirrors, 700 W. State, 7 p.m	5-15—Boise, W. Conference Room, Hall of Mirrors, 700 W. State, 7 p.m.
	4-26—Salmon NF Hdqtrs., Highway 93 N., 7 p.m	5-17—Salmon, Salmon NF Hdqtrs., Hwy. 93 N., 7 p.m.
	4-26—Idaho Falls, The Intermountain Science Experience Center, Inc., 1776 Science Center Dr., 7 p.m.	5-17—Idaho Falls, The Intermountain Science Experience Center, Inc., 1776 Science Center, 7 p.m.
	4-20—Coeur d'Alene, N. Shore Convention Center, 7 p.m	
Illinois	4-28—Champaign, Lewis Center, Rm. 407, University of Illinois, 7-9 p.m.	
Kentucky	4-30—Lexington, Agri. Bldg., Univ. of Kentucky, 7 p.m	5-23—Winchester NF Office, 100 Vaught Rd., 8-4 p.m.
Louisiana	5-2—Alexandria, Sheraton Inn, 10 a.m	5-23—Pineville NF Office, 2500 Shreveport Hwy., 8-4 p.m.
Massachusetts	5-9—Boston, Park Plaza Hotel, Rm. 413, 64 Arlington St., 7-9 p.m	
Michigan	5-2—Detroit (Dearborn), Dearborn Inn, 20301 Oakwood Blvd., 6:30-8:30 p.m.	
Minnesota	4-10—St. Paul, Earle Brown Center, St. Paul Campus, Univ. of Minnesota, 6:30-8:30 p.m.	
Missouri	4-25—St. Louis, Queeney Park—Jarville House, 550 Weidman Rd., 7-9 p.m.	
Mississippi	4-24—Jackson, Museum of Natural History, 7 p.m	5-23—Jackson NF Office, 8-4 p.m.
Montana	4-16—Helena, Fed. Bldg., Rm. 389, 2-4 p.m. & 7-9 p.m	
	4-19—Missoula, Fed. Bldg., W. Conference Room., 1-4 p.m. & 7-9 p.m	5-9—Missoula, Fed. Bldg., W. Conference Room, 1-4 p.m. & 7-9 p.m.
Nebraska	4-16—Chadron, Chadron State College, Sioux Room, 7:30 p.m	5-15—Chadron, Chadron State College, Box Butte Room, 7:30 p.m.
North Carolina	4-18—Asheville, Forest Service Conference Room, 1 p.m	5-23—Asheville NF Office, Level Plateau Bldg., 50 South French Broad, 8-4 p.m.

ADVANCE SCHEDULE FOR RPA PUBLIC SESSIONS—Continued

State	Inform sessions	Involve sessions
	Date: 1979, where, and time	Date: 1979, where, and time
New Hampshire	5-8—Durham, Univ. of New Hampshire, New England Center, Kearsarge Room, 1st Floor, 7-9 p.m.	
New Mexico	4-25—Las Cruces, Howard Johnson Lodge, 2600 S. Valley Drive, 7-9 p.m. 4-24—Santa Fe, Sweeney Convention Center, Rm. 2A, 1:30-3:30 p.m.	Additional opportunities for public involvement will occur during the period May 15-17 when Forest Supervisors' Offices and Research laboratories will have staff specialists available to discuss RPA data with any interested publics.
Nevada	4-17—Reno, Pioneer Inn, 221 S. Virginia, 7:30 p.m.	5-22—Reno, Pioneer Inn, 221 S. Virginia, 7:30 p.m.
Oklahoma	5-3—Oklahoma City, Conference Room, State Forester, 10 a.m	
Oregon	Portland (Phone: Mt. Hood NF 503-667-0511) Roseburg (Phone: Umpqua NF 503-672-6601) Prineville (Phone: Ochoco NF 503-447-6247) Medford (Phone: Rogue River NF 503-779-2351) Grants Pass (Phone: Siskiyou NF 503-479-5301) Corvallis (Phone: Siuslaw NF 503-752-4211) Pendleton (Phone: Umatilla NF 503-276-3811) Baker (Phone: Wallowa-Whitman NF 503-523-6391) Eugene (Phone: Willamette NF 503-687-6522) Klamath Falls (Phone: Winema NF 503-882-7761) Bend (Phone: Deschutes NF 503-382-6922) Lakeview (Phone: Fremont NF 503-947-2151) John Day (Phone: Malheur NF 503-575-1731)	
South Carolina	4-17—Columbia, Quality Inn Motel, 10 a.m	5-23—Columbia NF Office, 1801 Assembly St., 8-4 p.m.
South Dakota	5-10—Rapid City, Civic Center, Rm. 101, 1-9 p.m	
Tennessee	4-26—Knoxville (tentative), Univ. of Tennessee, 7 p.m	5-23—Cleveland NF Office, 2321 N. Ocoee St. NW., 8-4 p.m.
Texas	5-1—Nacogdoches, Univ. Center, Stephen F. Austin State College, 1 p.m.	5-23—Lufkin NF Office, Fed. Bldg., 8-4 p.m.
Utah	5-1—Salt Lake City, Salt Palace, Rm. 220 (tentative), 100 SW. Temple, 7 p.m.	5-15—Salt Lake City, Salt Palace, Rm. 220 (tentative), 100 SW. Temple, 7 p.m.
Virginia	5-1—Charlottesville, Ramada Inn, 10 a.m	5-23—NF Offices in Harrisonburg (Fed. Bldg.) and Roanoke (210 Franklin Rd. SW.), 8-4 p.m.
Washington	Wenatchee (Phone: Wenatchee NF 509-662-4335) Vancouver (Phone: Gifford Pinchot NF 206-696-4041) Seattle (Phone: Mt. Baker-Snoqualmie 206-442-5400) Colville (Phone: Colville NF 509-684-5221) Okanogan (Phone: Okanogan NF 509-422-2704) Olympia (Phone: Olympic NF 206-753-9535)	
West Virginia	4-12—Morgantown, Forestry Bldg., Evandale Campus, West Virginia Univ., 7-9 p.m.	
Wyoming	4-20—Jackson, Bridger-Teton NF Hdqtrs., 340 N. Cache, 2 p.m 4-11—Cheyenne, Cheyenne Fuel, Power & Light Hospitality Room, 7:30 p.m.	5-18—Jackson, Bridger-Teton NF Hdqtrs., 340 N. Cache, 9 a.m. 5-9—Cheyenne, Cheyenne Fuel, Power & Light Hospitality Room, 7:30 p.m.
Washington, D.C.	4-10—Washington, USDA Bldg., Rm. 3840, 12th & Independence, 9:30-11:30 a.m.	5-22—Washington, USDA Bldg., Rm. 3840, 12th & Independence, 9:30-11:30 a.m.

[FR Doc. 79-8389 Filed 3-20-79; 8:45 am]

[3410-01-M]

Office of the Secretary

RICE DEFICIENCY PAYMENTS

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of procedure for determining the national average market price received by rice farmers.

SUMMARY: The Secretary of Agriculture establishes the procedure to be followed in determining the national average market price received by rice farmers during the first five months of the marketing year. This price is necessary for the computation of deficiency payments with respect to the 1978 through 1981 crops of rice authorized by section 101(h)(3) of the Agricultural Act of 1949, as added by the Food and Agriculture Act of 1977 (7 U.S.C. 1441(h)(3)).

DATES: Effective March 20, 1979. Comments must be received by May 21, 1979.

ADDRESSES: Comments in writing may be addressed to the Director, Estimates Division, Economics, Statistics, and Cooperatives Service, USDA, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Director, Estimates Division, ESCS, USDA.

SUPPLEMENTARY INFORMATION: Section 101(h)(3) Agricultural Act of 1949, as added by the Food and Agriculture Act of 1977 (7 U.S.C. 1441(h)(3)), provides as follows:

> The Secretary shall make available to cooperators payments for each of the 1978 through the 1981 crops of rice grown in the several States of the United States at a rate equal to the amount by which the established price for the crop of rice exceeds the higher of—
>
> (A) the national average market price received by farmers during the first five months of the marketing year for such crop, as determined by the Secretary, or,
>
> (B) the loan level determined under paragraph (2) for such crop.

Similar provisions were enacted by the Food and Agriculture Act of 1977 with respect to the making of deficiency payments for wheat (7 U.S.C. 1444b) and feed grains (7 U.S.C. 1444c). No provision is made, however, in the statute for the obtaining of information on which such determinations should be made or the manner in which the national average market price received by farmers should be determined.

There has been no problem in obtaining adequate information to determine "the national average price received by farmers during the first five months of the marketing year" for crops of wheat or feed grains since

there are thousands of firms that purchase such commodities from which the USDA receives adequate data as to prices paid to farmers. However, because of the unique market structure of the rice industry, it has been impossible for USDA to obtain data with respect to prices received by farmers for rice similar to that obtained with respect to prices received by farmers for wheat and feed grains. There are only about 45 firms which purchase rough rice from producers. Furthermore, about half of all rice is marketed throught farmer cooperatives. These cooperatives pool rough rice acquired from producers and generally market milled rice. The final settlement payment for rice acquired from farmers is not made to them until after the close of the 12-month marketing year. At the close of the first five months of the marketing year it is not possible to obtain accurate projections of the final settlement price which farmers will receive for the rice they marketed during such period through cooperatives. It is necessary, therefore, that a price be derived, from the pertinent information which is reported to USDA by purchasers of rice (independent mills) and rice cooperatives, which represents the national average price farmers have received or will receive upon final settlement for all rice marketed during the first five months of the marketing year. The procedure set forth herein is designed to accomplish this purpose.

Since the first five months of the marketing year for the 1978 crop of rice closed on December 31, 1978, it is necessary that the national average market price received by farmers during such period be computed as soon as possible in order that deficiency payments may be made to farmers with respect to the 1978 rice crop. It is hereby determined that compliance with the notice of proposed rulemaking, public procedure, and 30-day effective date provisions of 5 U.S.C. 553 and the requirements of Executive Order 12044 is impracticable, unnecessary and contrary to the public interest.

Comments, recommendations, and views with respect to the procedure may be submitted and will be considered in determining whether any changes should be made in the procedure for use with respect to the 1979 through 1981 crops of rice. However, until such time as notice is published that changes are to be made in the procedure, the procedure set forth herein shall remain in effect.

DETERMINATION

The national average market price received by farmers during the first five months of the marketing year (August through December) for each of the 1978 through the 1981 crops of rice grown in the United States shall be the price representing the national average price farmers have received or will receive upon final settlement for all rice marketed during the first five months of a marketing year as computed by the Economics, Statistics, and Cooperatives Service (ESCS) of the United States Department of Agriculture (USDA) on the basis of information reported to the USDA by purchasers of rice (independent mills) and rice cooperatives, using the formula set forth herein. Where information is reported in terms of milled rice, it will be converted to rough rice requivalents based on rough rice used in producing the milled rice. The formula to be used to compute such national average market price is as follows:

FORMULA

$$\text{National average market price received by farmers during first 5 months of marketing year} = \frac{Q_1 P_1 + Q_2 P_2 + Q_3 P_3 + Q_4 P_4}{Q_1 + Q_2 + Q_3 + Q_4}$$

Where:

Q_1 = Quantity of all rough rice purchased from farmers during first 5 months of marketing year as reported by firms reporting both quantity purchased from and dollars received by farmers.

P_1 = Average price received by farmers for all rough rice purchased from farmers during the first 5 months of marketing year as reported by firms reporting both quantity purchased from and dollars received by farmers.

Q_2 = Quantity of rough short grain rice purchased from farmers during first 5 months of marketing year as reported by firms reporting only quantity purchased from farmers.

P_2 = Average price received by farmers for rough short grain rice purchased from farmers during the first 5 months of marketing year as reported by firms reporting both quantity purchased from and dollars received by farmers.

Q_3 = Quantity of rough medium grain rice purchased from farmers during first 5 months of marketing year as reported by firms reporting only quantity purchased from farmers.

P_3 = Average price received by farmers for rough medium grain rice purchased from farmers during the first 5 months of marketing year as reported by firms reporting both quantity purchased from and dollars received by farmers.

Q_4 = Quantity of rough long grain rice purchased from farmers during first 5 months of marketing year as reported by firms reporting only quantity purchased from farmers.

P_4 = Average price received by farmers for rough long grain rice purchased from farmers during the first 5 months of marketing year as reported by firms reporting both quantity purchased from and dollars received by farmers.

The national average market price received by farmers for rice, determined in accordance with this procedure, will be announced by the secretary of Agriculture as soon as possible after the close of the first five months of the marketing year for each of the 1978 through 1981 crops of rice.

Done at Washington, D.C. on March 16, 1979.

BOB BERGLAND,
Secretary.

[FR Doc. 79-8582 Filed 3-20-79; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Order 79-3-97]

AIR NEW ENGLAND

Proposed Grant of Non-Stop Authority

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79-3-97.

SUMMARY: The Board is proposing to grant authority to Air New England (ANE) which will permit nonstop operations between Providence, RI, and each of ANE's certificated points: Burlington and Montpelier-Barre, VT; Augusta-Waterville, Lewistown-Auburn and Portland, ME; Lebanon, NH-White River Junction, VT; Keene, NH; and Boston-Bedford-Fall River, Hyannis, Martha's Vineyard and Nantucket, MA; Hartford, CO-Springfield, MA; and New York, NY-Newark, NJ.

DATES: Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below, no later than April 18, 1979, a statement of objections, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections. Additional Data: All existing and would-be applicants who have not filed (a) illustrative service proposals, (b) environmental evaluations, and (c) an estimate of fuel to be consumed in the first year are directed to do so no later than April 3, 1979.

ADDRESSES: Objections should be filed in Docket 34336, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT:

Joseph Bolognesi, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; (202) 673-5057.

SUPPLEMENTARY INFORMATION: Objections should be served upon the following persons: Allegheny Airlines, American Airlines, Eastern Air Lines, Merrimak Airways; Hyannis Aviation, Pilgrim Airways, EJA/Newport, and the Mayors of Burlington, Montpelier-Barre and White River Junction, VT; Augusta-Waterville, Lewiston-Auburn and Portland, ME; Lebanon and Keene, NH; Boston-Bedford-Fall River, Hyannis, Martha's Vineyard, Nantucket and Springfield, MA; Hartford, CT; New York, NY; and Newark, NJ.

The complete text of Order 79-3-97 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 79-3-97 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: March 15, 1979.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-8489 Filed 3-20-79; 8:45 am]

[6320-01-M]

[Order 79-3-84]

AIR MIDWEST

Authority To Provide Non-Stop Service

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (79-3-84).

SUMMARY: The Board is proposing to add a new segment to the certificate of Air Midwest for Route 175: Albuquerque - Roswell - Carlsbad - Hobbs-Clovis-Lubbock-Amarillo-Garden City-Dodge City-Wichita. The proposed amendment would authorize Air Midwest to provide nonstop service between each of the points on that segment and one-stop service between the seven New Mexico and Texas points and all other points on its existing certificate. The authority would be granted on a Category II, subsidy-ineligible basis.

DATES: Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below, no later than April 6, 1979, a statement of objection, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections.

ADDRESSES: Objections should be filed in Docket 33073, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT:

Mary R. Vavrina, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428 (202) 673-5408.

SUPPLEMENTARY INFORMATION: Objections should be served upon the following persons: Air Midwest, Texas International, ZIA Airlines, Crown Aviation, Hobbs, Carlsbad, Clovis and Roswell, New Mexico, the New Mexico Department of Transportation, the Lubbock Civic Parties, the City of Amarillo and the Amarillo Chamber of Commerce.

The complete text of Order 79-3-84 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue NW., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 79-3-84 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: March 15, 1979.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-8486 Filed 3-20-79; 8:45 am]

[6320-01-M]

[Order 79-3-82]

CONTINENTAL AIR LINES

Proposed Grant of Non-Stop Authority

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79-3-82.

SUMMARY: The Board is proposing to grant Lubbock-Austin, Denver, Houston and Austin-Denver nonstop authority to Continental Air Lines and any other fit, willing and able applicant whose fitness can be established by officially noticeable data. The complete text of this order is available as noted below.

DATES: Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon Continental Airlines, no later than April 18, 1979, a statement of objection, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections. Additional Data: All existing and would-be applicants who have not filed (a) illustrative service proposals, (b) environmental evaluations, and (c) an estimate of fuel to be consumed in the first year are directed to do so no later than April 3, 1979.

ADDRESSES: Objections or Additional Data should be filed in Docket 35059, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT:

Richard Clusman, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Ave., Washington, D.C., 20428, (202) 673-5216.

SUPPLEMENTARY INFORMATION: The complete text of Order 79-3-82 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 79-3-82 to the Distribution Section, Civil Aeronautics Board, Washington, D.C., 20428.

By the Civil Aeronautics Board: March 15, 1979.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-8487 Filed 3-20-79; 8:45 am]

[6320-01-M]

[Order 79-3-81]

CONTINENTAL AIR LINES

Proposed Grant of Non-Stop Authority

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79-3-81.

SUMMARY: The Board is proposing to grant Albuquerque-Los Angeles, Ontario, Burbank and Las Vegas nonstop authority to Continental Air Lines and Ozark Air Lines; Albuquerque-Las Vegas nonstop authority to American Airlines and any other fit, willing and able applicant in those markets whose fitness can be established by officially noticeable data. The complete text of this order is available as noted below.

DATES: Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below, no later than April 18, 1979, a statement of objection, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections. Additional Data: All existing and would-be applicants who have not filed (a) illustrative service proposals, (b) environmental evaluations, and (c) an estimate of fuel to be consumed in the first year are directed to do so no later than April 3, 1979.

ADDRESSES: Objections or Additional Data should be filed in Docket 35058, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT:

Richard Clusman, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Ave., Washington, D.C. 20428, (202) 673-5216.

SUPPLEMENTARY INFORMATION: Objections should be served upon the following persons: Continental Air Lines, Ozark Air Lines and American Airlines.

The complete text of Order 79-3-81 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 79-3-81 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: March 16, 1979.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-8488 Filed 3-20-79; 8:45 am]

[6320-01-M]

[Order 79-3-92]

TRANS-PACIFIC TRADING CO., LTD. d/b/a TRANS-PACIFIC AIR COURIER INC.

Indirect Foreign Air Carrier Permit

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: ORDER 79-3-92.

SUMMARY: The Board proposes to approve the following application: Applicant: Trans-Pacific Trading Co. Ltd. (Canada) d/b/a Trans-Pacific Air Courier, Inc. Application Date: January 23, 1978, Docket 32020. Authority Sought: Indirect Foreign Air Carrier Permit.

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 April 9, 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 Canada in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence. If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit or certificate.

ADDRESSES FOR OBJECTIONS:

Docket 32020, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

Trans-Pacific Trading Co. Ltd., Galland, Kharasch, Calkins & Short, 1054 Thirty-first Street, N.W., Washington, D.C. 20007.

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:

C. Robert Mallalieu, Negotiations Division of the Bureau of International Aviation, Civil Aeronautics Board; (202) 673-5407.

By the Civil Aeronautics Board: March 15, 1979.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-8483 Filed 3-20-79; 8:45 am]

[3510-07-M]

DEPARTMENT OF COMMERCE

Bureau of the Census

SPECIAL CENSUSES

The Bureau of the Census conducts a program whereby a local or State government can contract with the Bureau to conduct a special census of population. The content of a special census is ordinarily limited to questions on household relationship, age, race, and sex, although additional items may be included at the request and expense of the sponsor. The enumeration in a special census is conducted under the same concepts which govern the decennial census.

Summary results of special censuses are published semiannually in the *Current Population Reports*—Series P-28, prepared by the Bureau of the Census. For each area which has a special census population of 50,000 or more, a separate publication showing data for that area by age, race, and sex is prepared. If the area has census tracts, these data are shown by tracts.

The date shown in the following table are the results of special censuses conducted since June 30, 1978, for which tabulations were completed between February 1, 1979 and February 28, 1979.

Dated: March 16, 1979.

MANUEL D. PLOTKIN,
Director, Bureau of the Census.

State/place or special area	County	Date of census	Population
Alaska:			
Kenai Peninsula Borough	Kenai-Cook Inlet & Seward Div.	July 3	25,335
Colorado:			
San Miguel County		November 7	2,928
Florida:			
Pembroke Pines city	Broward	November 20	30,610
Idaho:			
Ammon city	Bonneville	December 5	4,400
Illinois:			
Bartlett village	Cook & DuPage	October 3	11,004
Pawnee village	Sangamon	October 19	2,512
Rockford (annexed area) city	Winnebago	November 30	1,288
Round Lake village	Lake	October 30	3,107
Iowa:			
Oakland Acres city	Jasper	October 23	133
North Dakota:			
Burleigh County		October 2	52,195

[FR Doc. 79-8527 Filed 3-20-79; 8:45 am]

[3510-04-M]

National Technical Information Service

GOVERNMENT-OWNED INVENTIONS

Notice of Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and possibly foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of the patents cited are available from the Commissioner of Patents & Trademarks, Washington, D.C. 20231, for $0.50 each. Requests for copies of patents must include the patent number.

Copies of the patent applications can be purchased from the National Technical Information Service (NTIS), Springfield Virginia 22161 for $4.00

($8.00 outside North American Continent). Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent and Trademark Office. Claims and other technical data will usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information on a particular invention should be directed to the address cited for the agency-sponsor.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF AGRICULTURE, Research Agreements and Patent Branch, General Ser. Div., Fed. Bldg., Agricultural Research Service, Hyattsville, Md. 20782.

Patent application 904,644: Antimicrobial Fatty Acid Derivatives; filed May 10, 1978.

Patent application 909,160: Direct Extraction Process for the Production of a White Defatted Food-Grade Peanut Flour; filed May 25, 1978.

Patent application 913,418: Process for Producing Transfer Printed Cotton and Cotton Blends; filed June 7, 1978.

Patent application 927,791: Sustained Release Bolus Formulations Containing Insect Growth Regulations for Control of Livestock Pests; filed July 25, 1978.

Patent application 932,079: Sex Pheromone Produced by the Female Japanese Beetle; Specificity of Male Repsonse to Enantiomers; filed Aug. 8, 1978.

Patent application 945,977: New Fatty Acid-Derived Lubricants and Additives; filed Sept. 26, 1978.

Patent 4,083,995; (Z)-9-Tetradecen-1-ol Formate and Its Use as a Communication Disruptant for Heliothis; filed Dec. 6, 1976; patented Apr. 11, 1978; not available NTIS.

Patent 4,092,319: Sulfur-Containing Antimicrobial Ester Amides. Filed Sept. 16, 1977, patented May 30, 1978; not available NTIS.

Patent 4,101,678: Clarification of Citrus Juices; filed May 6, 1977; patented July 18, 1978; not available NTIS.

Patent 4,102,923: Tris(Ureidomethyl) Phosphine Oxides. Filed Sept. 8, 1975, patented July 25, 1978; not available NTIS.

Patent 4,107,192: Antimicrobial Esters of Aliphatic Diols; filed Feb. 15, 1977, patented Aug. 15, 1978; not available NTIS.

Patent 4,115,422: Antibacterial Textile Finishes Utilizing Zirconyl Acetate Complexes of Inorganic Peroxides; filed Apr. 12, 1977; patented Sept. 19, 1978, not available NTIS.

U.S. DEPARTMENT OF ENERGY, Assistant General Counsel for Patents, Washington, D.C. 20545.

Patent 4,086,396: Electrochemical Cell with Powdered Electrically Insulative Material as a Separator; filed Feb. 23, 1977, patented Apr. 25, 1978; not available NTIS.

Patent 4,086,404: Electrode Including Porous Particles with Embedded Active Material for Use in a Secondary Electrochemical Cell; filed Apr. 7, 1977; patented Apr. 25, 1978; not available NTIS.

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, National Institutes of Health, Chief, Patent Branch, Westwood Building, Bethesda, Md. 20014.

Patent application 940,863: Alpha-Levo Benzomorphan Analgesics Having Nonaddictive and Morphine Antagonistic Properties; filed Sept. 8, 1978.

U.S. DEPARTMENT OF THE NAVY, Assistant Chief for Patients, Office of Naval Research, Code 302, Arlington, Va. 22217.

Patent 4,101,098: Strain Actuated Hydralic Holdback Bar; filed Sept. 15, 1977; patented July 18, 1978; not available NTIS.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for Patent Matters, NASA Code GP-2, Washington, D.C. 20546.

Patent application 958,573: Method and Means for Helium/Hydrogen Ratio Measurement by Alpha Scattering; filed Nov. 7, 1978.

Patent 4,107,363: Lightweight Electrically-Powered Flexible Thermal Laminate; filed Jan. 14, 1975; patented Aug. 15, 1978; not available NTIS.

Patent 4,122,334: Illumination Control Apparatus for Compensating Solar Light; filed Dec. 23, 1976; patented Oct. 24, 1978; not available NTIS.

Patent 4,122,383: Method and Apparatus for Measuring Minority Carrier Lifetimes and Bulk Diffusion Length in p-N Junction Solar Cells; filed Dec. 16, 1977; patented Oct. 24, 1978; not available NTIS.

Patent 4,122,712: Fluid Velocity Measuring Device; filed Nov. 3, 1977; patented Oct. 31, 1978; not available NTIS.

Patent 4,123,355: Simultaneous Treatment of SO2 Containing Stack Gases and Waste Water; filed Nov. 21, 1977; patented Oct. 31, 1978; not available NTIS.

Patent 4,124,180: Free Wing Assembly for an Aircraft; filed Sept. 8, 1977; patented Nov. 7, 1978; not available NTIS.

[FR Doc. 79-8472 Filed 3-20-79; 8:45 am]

[3510-25-M]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

FEDERATIVE REPUBLIC OF BRAZIL

Increasing the Import Restraint Level for Certain Cotton Apparel

MARCH 15, 1979.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing the import restraint level for cotton apparel in Category 359, produced or manufactured in Brazil and exported to the United States during the agreement year which began on April 1, 1978 and extends through March 31, 1979. (A detailed description of the category in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), and September 5, 1978 (43 FR 39408), and January 2, 1979 (44 FR 94)).

SUMMARY: Under the terms of paragraph 6 of the Bilateral Cotton Textile Agreement of April 22, 1976, as amended, between the Governments of the United States and the Federative Republic of Brazil, the Government of the Federative Republic of Brazil has requested an increase from 700,000 to one million square yards equivalent (217,391 pounds) in the consultation level established for Category 359 during the final agreement year which began on April 1, 1978 and extends through March 31, 1979. The Government of the United States has agreed to the request.

EFFECTIVE DATE: March 15, 1979.

FOR FURTHER INFORMATION COUNTACT:

Jane C. Bonds, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

SUPPLEMENTARY INFORMATION: On July 28, 1978 there was published in the FEDERAL REGISTER (43 FR 29975), a letter dated July 7, 1978 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established levels of restraint under the new textile category system for certain specified categories of cotton textiles and cotton textile products, produced or manufactured in Brazil, which may be entered into the United States for consumption, or withdrawn for warehouse for consumption, during the twelve-month period which began on April 1, 1978 and extends through March 31, 1979.

On October 31, 1978, a further letter, dated October 24, 1978, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the FEDERAL REGISTER (43 FR 50730) directing that cotton textile apparel products in Category 359, a category subject to a consultation level under the bilateral agreement, be controlled in the same manner as categories previously designated in the directive of July 7, 1978.

In the letter published below, in accordance with the terms of the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the level of restraint previously established for Category 359 to 217,391

pounds for the twelve-month period which began on April 1, 1978.

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

COMMISSIONER OF CUSTOMS,
Department of the Treasury
Washington, D.C.

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive of October 24, 1978 from the Chairman of the Committee for the Implementation of Textile Agreements which established a level of restraint for cotton textile products in Category 359, produced or manufactured in Brazil and exported to the United States during the twelve-month period which began on April 1, 1978.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 14, 1977; pursuant to the Bilateral Cotton Textile Agreement of April 22, 1976, as amended, between the Governments of the United States and the Federative Republic of Brazil; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to increase, effective on March 15, 1979 and for the twelve-month period beginning on April 1, 1978 and extending through March 31, 1979, the level of restraint established in the directive of October 24, 1978 for Category 359 to 217,391 pounds.[1]

The action taken with respect to the Government of the Federative Republic of Brazil and with respect to imports of cotton textile products from Brazil has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 79-8456 Filed 3-20-79; 8:45 am]

[3910-01-M]

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF SCIENTIFIC ADVISORY BOARD

Meeting

MARCH 12, 1979.

The USAF Scientific Advisory Board Ad Hoc Committee on Project HEART will meet on April 9, 1979, at the School of Aerospace Medicine, Brooks AFB, Texas 78235. The purpose of this meeting is to review the current status and progress of Project HEART. The Committee will meet at 8:00 a.m. and adjourn at 4:00 p.m.

This meeting will be open to the public. For further information contact the Scientific Advisory Board Secretariat at (202) 697-4648.

CAROL M. ROSE,
Air Force Federal Register Liaison Officer.

[FR Doc. 79-8377 Filed 3-20-79; 8:45 am]

[3910-01-M]

OFFICE OF THE JUDGE ADVOCATE GENERAL, GENERAL LAW DIVISION

Availability of Index of Final Dispositions of Complaints Filed Pursuant to Article 138, UCMJ

MARCH 13, 1979.

Article 138, Uniform Code of Military Justice (10 U.S.C. 938) provides a means by which a member of the Air Force may seek redress of grievances from his or her commander and, if redress is denied, file a Complaint of Wrong against the commander. The procedure for submission of a Complaint of Wrong pursuant to Article 138 is set forth in AFR 110-19. The officer exercising general court-martial (GCM) jurisdiction over the officer against whom the complaint is made is charged with examining into the complaint and taking proper measures for redressing the wrong. After the GCM authority takes action, proceedings on the complaint are forwarded to Headquarters USAF for disposition at the direction of the Secretary of the Air Force. The Director of Civil Law, Office of The Judge Advocate General, is the designee of the Secretary of the Air Force in making final disposition of such complaints.

An index, published pursuant to section 552(a)(2), Title 5, United States Code, includes all final dispositions of Article 138 complaints from January 1 to December 31, 1978. The index will be updated on a quarterly basis to reflect all new dispositions. Since dispositions of Article 138 complaints are not permanent records, the index will reflect only those dispositions on file at the time of preparation of the index.

The index will be republished to include the prior quarter dispositions no later than the last day of the month following the end of the quarter. Copies of the index will be available for public inspection and copying in the Armed Forces Discharge Review/Correction Boards Reading Room, located on the Concourse of the Pentagon. Copies of the index may be obtained by mail, for the cost of reproduction, by writing to: General Law Division, Directorate of Civil Law, Office of The Judge Advocate General, 1900 Half Street, SW., Washington D.C. 20324, telephone (202) 693-5840.

CAROL M. ROSE,
Air Force Federal Register Liaison Officer.

[FR Doc. 79-8474 Filed 3-20-79; 8:45 am]

[3910-01-M]

OFFICE OF THE JUDGE ADVOCATE GENERAL, MILITARY JUSTICE DIVISION

Availability of Index of Final Actions by the Judge Advocate General Pursuant to Article 69, Uniform Code of Military Justice (UCMJ)

MARCH 13, 1979.

Article 69, UCMJ (10 U.S.C. 869) provides for review, by the Office of The Judge Advocate General upon application, of records of trial not reviewable by a Court of Military Review. The Judge Advocate General may vacate or modify, in whole or in part, the finding or sentence, or both, on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused.

An index, published pursuant to section 552(a)(2), Title 5, United States Code, includes all final actions on Article 69 applications from October 24, 1968 to March 2, 1979. The index will be updated on a quarterly basis to reflect all new orders. The index will be republished to include the prior quarter's action no later than the last day of the month following the end of the quarter.

Copies of the index and the final actions will be available for public inspection and copying in the Armed Forces Discharge Review/Correction Boards Reading Room, located on the Concourse of the Pentagon. Copies of the index, as well as the final actions may be obtained by mail, for the cost of reproduction, by writing to: Military Justice Division, Directorate of Military Justice, Office of The Judge Advocate General, United States Air Force, 1900 Half St., SW., Washington, D.C. 20234, telephone (202) 693-5770.

CAROL M. ROSE,
Air Force Federal Register Liaison Officer.

[FR Doc. 79-8475 Filed 3-20-79; 8:45 am]

[3710-39-M]

Department of the Army

ARKANSAS AND LITTLE ARKANSAS RIVER

Intent To Prepare a Draft Environmental Impact Statement

Notice is hereby given that, in accordance with the National Environmental Policy Act of 1969, the U.S. Army Corps of Engineers (COE) has

[1] The level of restraint has not been adjusted to reflect any imports after March 31, 1978.

initiated preparation of a Draft Environmental Impact Statement (DEIS) to assess the environmental impacts of a proposed channelization project subject to regulation under Section 404 of the Clean Water Act. The project, proposed by the city of Wichita, Kansas, would involve the realignment and stabilization of the banks of the Arkansas and Little Arkansas River in the Wichita metropolitan area.

A number of environmental and local issues have been identified as a result of a scoping meeting held in Wichita, Kansas on 31 January 1979. These issues include the potential impact on water quality, possible increase in flood heights, effect on sedimentation, impact on the riparian trees and the cumulative impact of channelization. Alternatives currently planned to be addressed in the DEIS include the no action alternative, and the stabilization of the river banks in their present configuration.

It is anticipated that the Draft Environmental Impact Statement will require approximately 140 days to complete. It is scheduled to be made available to the public by 24 August 1979.

Questions concerning the proposed action and DEIS can be answered by: Mr. Robert L. Hope, Chief, Regulatory Functions Section, Operations Division, Tulsa District, Corps of Engineers, P.O. Box 61, Tulsa, OK 74121 (918) 581-7352.

Dated: March 12, 1979.

ROBERT G. BENING,
Colonel, CE,
District Engineer.

[FR Doc. 79-8379 Filed 3-20-79; 8:45 am]

[3710-08-M]

BOARD OF VISITORS, UNITED STATES MILITARY ACADEMY

Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following meeting.

Name of Committee: Board of Visitors, U.S. Military Academy.
Dates of Meeting: April 12-14, 1979.
Place of Meeting: West Point, N.Y.
Time: At West Point:

2100-2300, April 12, Organizational Meeting (Hotel Thayer)
0830-1015, April 13, Superintendent's and Commandant's Review (Superintendent's Conference Room, Bldg. 600)
1530-1630, April 13, Meetings with Junior Faculty (Department Locations)
1630-1730, April 13, Board Discussions (Hotel Thayer)
0800-1200, April 14, Selected Visits/Discussions (Commandant's Conference Room, Bldg. 745)

Proposed Agenda: Inquiry about the cadet training to include women cadets' leadership opportunities, admissions initiatives, public affairs actions, and other matters relating to the Military Academy that the Board decides to consider.

All proceedings are open. For further information, contact LTC Kermit M. Henninger, United States Military Academy, West Point, New York, telephone 914-938-2785/4723.

For the Board of Visitors.

KERMIT M. HENNINGER,
LTC, GS, Executive Secretary,
1979 Board of Visitors.

[FR Doc. 79-8476 Filed 3-20-79; 8:45 am]

[3810-70-M]

Office of the Secretary

DEFENSE INTELLIGENCE AGENCY ADVISORY COMMITTEE

Notice of Closed Meeting

Pursuant to the provisions of section (d) of Section 10 of Public Law 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a Panel of the DIA Advisory Committee will be held as follows:

Thursday & Friday, 19-20 April 1979, Northrop Corporation, Palos Verdes Peninsula, CA

The entire meeting, commencing at 0900 hours is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a study on current and projected DOD HUMINT collection activities.

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

MARCH 16, 1979.

[FR Doc. 79-8498 Filed 3-20-79; 8:45 am]

[3810-70-M]

DEPARTMENT OF DEFENSE WAGE COMMITTEE

Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-436, the Federal Advisory Committee Act, effective January 5, 1973, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, May 1, 1979; Tuesday, May 8, 1979; Tuesday, May 15, 1979; Tuesday, May 22, 1979; and Tuesday, May 29, 1979 at 10:00 a.m. in Room 855, Hoffman Building #1, 2461 Eisenhower Avenue, Alexandria, Virginia.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) concerning all matters involved in the development and authorization of wage schedules for Federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, the Federal Advisory Committee Act, meetings may be closed to the public when they are "concerned with matters listed in section 552b. of Title 5, United States Code." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b (4)).

However, members of the public who may wish to do so are invited to submit material in writing to the Chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D-281, The Pentagon, Washington, D.C.

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

MARCH 16, 1979.

[FR Doc. 79-8499 Filed 3-20-79; 8:45 am]

[3810-70-M]

TASK FORCE ON EVALUATION OF AUDIT, INSPECTION AND INVESTIGATIVE COMPONENTS OF THE DEPARTMENT OF DEFENSE

Advisory Committee Meeting

The Task Force on Evaluation of Audit, Inspection and Investigative Components of the Department of Defense will meet on April 5, 6, 1979 at the Pentagon, Washington, D.C.,

Room 3D981. Portions of the sessions will be closed to the public.

The mission of the Task Force is to advise Congress and the President of the effectiveness of the audit, inspection and investigative components of the Department of Defense.

The Task Force will undertake internal organizational matters, personnel decisions, assessment of document resources and will meet with representatives of agencies outside the Department of Defense, to include the GAO and Department of Justice, to discuss the direction of the Task Force.

In accordance with section 10(d) of Appendix 1, Title 5, United States Code, it is hereby determined that the deliberations relative to personnel decisions will be closed to the public pursuant to Section 552(b) of Title 5, United States Code, specifically subparagraph (2) thereof. The remaining portions of the meeting will be open to the public.

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

MARCH 16, 1979.

[FR Doc. 79-8500 Filed 3-20-79; 8:45 am]

[6360-01-M]

DELAWARE RIVER BASIN COMMISSION

NORTH WALES WATER AUTHORITY, ET AL.

Public Hearing

MARCH 14, 1979.

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, March 28, 1979, commencing at 2:00 p.m. The hearing will be a part of the Commission's regular March business meeting which is open to the public. Both the hearing and the meeting will be held at the Hall of Flags West, Sheraton Hotel, 17th and Kennedy Boulevards, Philadelphia, Pennsylvania. The subject of the hearing will be applications for approval of the following projects as amendments to the Comprehensive Plan pursuant to Article 11 of the Compact and/or as project approvals pursuant to Section 3.8 of the Compact.

1. *North Wales Water Authority (D-78-94 CP).* A well water supply project to augment public water supplies in the Borough of North Wales, and Lower Gwynedd Township, and adjacent municipalities in Montgomery and Bucks County, Pennsylvania. Designated as Well No. 25, the new facility is expected to provide an average annual yield of about 250,000 gallons per day.

2. *Yardley Ball Corp. (D-78-54).* A water supply and discharge project at the company's facility in Yardley, Bucks County, Pa. Approximately 190,000 gallons per day of water will be withdrawn from the Delaware River and used for non-contact cooling processes prior to discharge back to the river.

3. *Seabrook Bros. & Sons, Inc. (D-78-79).* A well water supply project at the company's food processing plant in Upper Deerfield Township, Cumberland County, N.J. Two new wells are expected to provide approximately 4.6 million gallons per day for plant cooling and processing uses.

4. *Cream Ridge Gold Course (D-78-79).* A well water supply project to be used for irrigation purposes at the applicant's golf course in Upper Freehold Township, Monmouth County, N.J. The well facility is expected to yield approximately 700,000 gallons per day.

5. *Getty Refining and Marketing Company (D-78-97).* An industrial waste treatment project at the company's Delaware City refinery in New Castle County, Delaware. New facilities and in-plant changes will provide removal of 92% of BOD from a wastewater flow of about 11.4 millions gallons per day. Treated effluent will continue to discharge to the Delaware River.

6. *Donald Eldridge (D-79-9).* Two farm irrigation projects at the subject's farms in Upper Freehold and Millstone Townships, Monmouth County, N.J. One project involves withdrawals from a spring fed pond limited to a maximum of 13 million gallons per month. The second project involves use of a surface pond augmented by groundwater withdrawals limited to 12 million gallons per month. Both projects are used for agricultural irrigation processes.

Documents relating to the above-listed projects may be examined at the Commission's offices. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the date of the hearing.

W. BRINTON WHITALL,
Secretary.

[FR Doc. 79-8473 Filed 3-20-79; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1063-7]

REGION II; GROUNDWATER SYSTEM OF THE NEW JERSEY COASTAL PLAINS AQUIFER

Request for EPA Determination Regarding Aquifers

A petition has been submitted by the Environmental Defense Fund, Inc. and the Sierra Club—New Jersey Chapter, pursuant to Section 1424(e) of the Safe Drinking Water Act, Pub. L. 93-523, requesting the Administrator of the Environmental Protection Agency to make a determination that the aquifer underlying the Counties of Monmouth, Burlington, Ocean, Camden, Gloucester, Atlantic, Salem, Cumberland and Cape May and portions of Mercer and Middlesex Counties, New Jersey is the sole or principal drinking water source for the coastal plain area which, if contaminated, would create a significant hazard to public health.

This petition is reprinted in full below:

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DOUGLAS M. COSTLE, ADMINISTRATOR

PETITION

In the matter of the Petition of the Environmental Defense Fund, Inc. and the Sierra Club—New Jersey Chapter Under Section 1424(e) of the Safe Drinking Water Act of 1974 With Respect to the Aquifer System Underlying Monmouth, Ocean, Burlington, Camden, Gloucester, Atlantic, Salem, Cumberland, Cape May and portions of Middlesex and Mercer Counties, New Jersey.

1. The Environmental Defense Fund ("EDF") is a non-profit, public benefit membership corporation organized under the laws of the State of New York. Its principal office is located at 475 Park Avenue South, New York, New York 10016 (212-686-4191). Communication regarding this Petition should be addressed to that office. Other offices are located in Washington, D.C., Denver, Colorado and Berkeley, California. EDF has a nationwide membership of approximately 45,000 scientists, lawyers and other citizens, including approximately 1800 residents of the State of New Jersey, some of whom live in the Area which is the subject of this Petition. EDF exists to promote research and action and to undertake action itself, to protect and enhance the natural environment and to protect the public health from environmental hazards. EDF has been actively involved in protection of drinking water, and management of groundwater resources.

2. The Sierra Club is a nationwide organization of 182,000 members, headquartered in San Francisco, California. The Sierra Club-New Jeresy Chapter has 4300 members, some of whom live in the Area which is the subject of this Petition. They are vitally concerned about the quality of the groundwater on which they depend for their water supply.

3. Section 1424(e) of the 1974 Safe Drinking Water Act (42 U.S.C. 300f, 300h-3(e)) provides as follows:

"(e) If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the FEDERAL REGISTER. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, con-

tract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitement for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer."

4. The Area which is the subject of this Petition is that portion of the Atlantic Coastal Plain Physiographic Province which is contained within the State of New Jersey. This area is shown on Exhibit One, the Physiographic Province Map of New Jersey. The Area, commonly referred to as the Coastal Plain, encompasses the southern portion of the State. It is bordered on the west by the Delaware River; on the south by Delaware Bay; on the east by the Atlantic Ocean; and on the north by the Triassic Lowlands of the Piedmont Physiographic Province. The dividing line between the Piedmont and Coastal Plain Provinces runs approximately northeast from the vicinity of Trenton, through New Brunswick and into the Raritan Bay. This boundary is shown precisely on Exhibit Two, the U.S. Geological Survey Overlay and Atlas Maps.

5. The New Jersey Coastal Plain is underlain and characterized by unconsolidated sands, clays, marls, and gravels. The geological formations of the Coastal Plain are shown schematically in Exhibits Three and Four. Exhibit Three is the Geologic Map of New Jersey. It illustrates the outcrop areas of the various formations. In Exhibit Three, the outcrop areas of Coastal Plain formations which can function as aquifers are colored in red. Exhibit Four consists of a series of typical hydrogeologic cross sections of the Coastal Plain. The cross sections illustrate the "layer-cake" stratigraphy of the Coastal Plain. A large amount of information about the Coastal Plain formations exists. The brief descriptions which follow were gleaned from the references listed in Appendix A.

6. The aquifers and other formations of the Coastal Plains can be roughly described from the bottom up (northwest to southeast) as follows. The deepest is the Raritan formation, which is frequently considered together with the overlying Magothy formation. The Raritan-Magothy formation is probably the most important water supply aquifer in the Coastal Plain. The Raritan formation consists of 150 to 300 feet of rapidly alternating lenses of light colored white or yellow sands and white, cream or light gray clays which may also be dark gray or red. The Magothy formation, a relatively thin series of alternating dark clays and fine white sand ranges up to about 175 feet in thickness along the shores of Raritan Bay. The Raritan-Magothy formation outcrops in a band along the northern and western edges of the Coastal Plain, and then slopes downward to the southeast. In the outcrop area, the Raritan and Magothy formations are separated by a layer of clay, but elsewhere they are indistinguishable.

7. The Raritan-Magothy formation is an exceptionally productive aquifer for water supply purposes. Individual wells have yielded upward of 1400 gallons a minute. The average specific capacity of the Raritan-Magothy Aquifer is 20 gallons per minute per foot. The quality of the Raritan-Magothy water is generally good except for iron and manganese. There have been isolated problems with nitrates, and some heavy metals such as cadium and chromium. According to the Corps of Engineers, some 43 percent of recharge to the Raritan-Magothy is from the Delaware River. This raises some question about the long-term quality of the water in this formation.

8. Above the Raritan-Magothy formation lie the Merchantville formation and the Woodbury Clay which together form a major confining zone. These layers would normally protect the Raritan-Magothy from contamination from above. However, because of excessive pumpage from the Raritan-Magothy, the confining beds now transmit considerable quantities of water from the overlying aquifer formations.

9. Above the Woodbury Clay lies the Englishtown formation, which varies in thickness from 140 feet in Monmouth County to only about 20 feet in Gloucester County. This relatively minor formation is tapped for water supply in some areas. the Englishtown formation is capped by the Marshalltown formation, a sandy clay formation 30 to 40 feet thick. Limited data on the quality of the Englishtown water exists, but it appears to be good except for high iron concentrations.

10. The next important aquifer is comprised of the Wenonah and Mt. Laurel sands, two hydrologically connected formations of considerable importance for water supply. The 100 square mile outcrop zone of this formation parallels the Delaware River to the east of the Raritan-Magothy outcrop, varying from .5 to 3 miles in width. In downdip areas, the formations are generally between 100 and 140 feet thick. Water quality in the Mt. Laurel-Wenonah Aquifer is generally good, except for iron, particularly in the outcrop area, and moderately high hardness where heavy pumpage has induced leakage from overlying zones. Nitrate contamination in limited areas of the outcrop region has also been reported.

11. The Navesink formation is 25 to 40 feet of gray sandy clay. In the northern part of the Coastal Plain it is overlain by the Red Bank formation, a dark gray brown sandy clay, and the Tinton sandstone.

12. The Hornerstown Marl is a 30 foot thickness of glauconite with clay and sand. It extends across the State from near Atlantic Highlands through Freehold, Hornerstown, Birmingham, Mullica Hill, Sewell and Woodstown and thence southward into the Delaware. In southern New Jersey, where the Red Bank and Tinton formations have been removed, the Marl rests upon the Navesink formation.

13. the Vincentown formation consists of 25 to 100 feet of light colored sands with some glauconite. It is an aquifer which is pumped to some extent, particularly in Salem County. The Vincentown formation is overlain by the relatively thin Manasquan and Shark River marls.

14. The Kirkwood formation is a comparatively low yield aquifer, composed of fine quartz sands and drab-colored clays. It ranges from approximately 180 feet thick at the surface to almost 600 feet under Atlantic and Cape May Counties. Because of its low yield, wells within reach of the Kirkwood usually tap the high yielding Cohansey Sands or the deeper Mt. Laurel-Wenonah formation. The water bearing strata of the Kirkwood formation are hydrologically connected to the overlying Cohansey Sand.

15. The Cohansey Sand covers the largest area of the Coastal Plain, approximately 2350 square miles bounded by the outcrop area of the Kirkwood formation, the Atlantic Ocean and Delaware Bay. It consists of white to yellow sands with occasional lenses of clay and gravel. It is the "top layer" in the Coastal Plain stratigraphy. Its bottom dips seaward at a rate of approximately 10 feet per mile, and its base may extend nearly 400 feet below sea level.

16. The Cohansey Sand is a highly productive water supply aquifer. It has a hydrologic conductivity of between 90 and 250 feet per day (660 to 1885 gallons per day per square foot). The transmissivity ranges between 10,000 and 20,000 square feet per day (75,000 to 150,000 gallons per day per foot). The aquifer can sustain wells pumping 700 to 1000 gallons per minute.

17. Water quality in the Cohansey Aquifer is generally good, except for high concentrations of iron and manganese and low pH. However, because the aquifer is under water table conditions and the overlying soils are highly permeable and have very low attentuation capability, the aquifer is particularly susceptible to contamination from man's activities.

18. As a result of the overlap of these different formations and extensive pumping, significant quantities of water "leak" from one formation to another. For example, the Corps of Engineers Waterways Experiment Station has constructed a model of the Raritan-Magothy aquifer (see references 17 and 18 in Appendix A). The WES estimated that 31 percent of recharge to the Raritan-Magothy Aquifer formation is leakage from other aquifers. Thus, it is impossible to identify a particular aquifer which merits protection as the sole or principal source of drinking water for the people in the Area. Rather, it is the entire aquifer system which, as a whole, must be protected.

19. This situation is somewhat analogous to Nassau and Suffolk Counties, New York which were designated as an area having an aquifer system which is the sole or principal source of drinking water under Section 1424(e) on June 21, 1978. Long Island is underlain by the Upper Glacial, Magothy and Lloys Aquifers, the first two of which are utilized as water supplies. The designation of Nassau and Suffolk Counties pursuant to 1424(e) constituted recognition of the need to consider aquifer systems holistically and is hence a precedent for the designation which is the subject of this Petition.

20. Within this Area, publicly or privately supplied drinking water is almost entirely derived from groundwater, although some cities, including Trenton, Burlington and Atlantic City, do have surface supplies. In addition, surface waters within the Area (unless drawn from the Delaware River) are fed predominantly by groundwater discharge, because the highly permeable character of the soils in the Area does not allow significant surface runoff. Hence, any surface water supplies from within the Area are themselves dependent on the preservation of the qualify of groundwater in order to protect public health. Because of the generally high water quality, treatment is generally limited to disinfection and, depending on local conditions, iron and manganese removal, pH adjustment, softening, chemical stabilization and fluoridation. Of course, private wells would generally undergo no treatment.

21. The population of the ten counties lying wholly or partly within the Area is estimated to be approximately 3.2 million

people in 1978. As noted above, this population is almost entirely dependent upon groundwater for its water supply. Appendix B shows population and groundwater withdrawals for water supply purposes in each of the ten counties and by aquifer where data is available. This Table was compiled from a series of USGS reports and Areawide Wastewater Treatment Management Plans prepared pursuant to Section 208 of the Clean Water Act, for parts of the Area in which Petioners have access to such plans. Although incomplete and out of date, these data clearly demonstrtate that the magnitude of the dependence upon groudwater in this region is such that a contamination of this resource will create a significant hazard to public health.

22. At the present time, no alternative to dependence on groundwater for water supply exists in the Area. As noted above, surface water-based alternatives developed *within* the Area would be primarily fed by groundwater discharge and hence would not be a safe alternative if the groundwater itself became contaminated. It is possible to imagine the development of a major water supply system to import water to the Area from northern New Jersey river basins or from the Delaware River, but such schemes would be enormously expensive and virtually infeasible politically. Northern New Jersey is one of the most densely populated sections of the nation and does not have water available for export in any significant quantity. The waters of the Delaware River have been the subject of intense competition for over 50 years. Any out-of-basin diversion of Delaware water would require the unanimous approval of all signatories to the Delaware River Basin Compact, that is, the States of New York, New Jersey, Pennsylvania and Delaware, as well as the United States. Such consent is almost inconceivable, particularly if the need for the water arose because an existing resource was allowed to be destroyed. In any event, it is certainly not the intent of the Act to allow the water supply for some three million people to be contaminated, even if feasible and economic alternatives did in fact exist.

23. Contamination of the groundwater in the Area, which would constitute a significant hazard to public health, is a very real danger. Isolated incidents of contamination of wells, particularly by nitrates, have already been identified. Of equal concern is the possibility of contamination by viruses, heavy metals, and organic substances which may be carcinogenic, mutagenic, teratogenic, or otherwise toxic. The effects of these substances, and the mechanisms by which they can enter groundwater, are only poorly understood. However, several things are known with reasonable certainty.

24. First, any increase in the concentration of such substances in drinking water is a matter of concern. "Safe" levels of exposure to these substances have, in general, not been established. The proposed amendments to 40 CFR 141 (43 FR 5756) would require certain communities to install granulated activated carbon treatment, in part to remove synthetic organic substances.

25. Second, it is now known that non-point source pollution, including urban stormwater runoff, can be a major source of contaminants in groundwater. This was demonstrated by a study performed by EDF staff scientist Robert H. Harris and Karen M. Slimak on Long Island. This report, entitled "The Fate of Organic Chemicals and Heavy Metals in Wastewaters Used for Groundwater Recharge" is attached as Appendix C. As noted above, Long Island is fairly similar, hydrologically, to the Area which is the subject of this Petition.

26. Third, the residential, commercial and industrial development and other activities which generally cause or contribute to point and non-point source pollution are almost always supported and induced by Federal investments in infrastructure such as housing, highways, and sewer systems. (See "Secondary Impacts of Transportation and Wastewater Investments: Research Results," EPA-600/5-75-013.) Section 1424(e) was intended by Congress to insure that these investments do not result in a significant hazard to the public health. It is a *preventive* procedure, designed to facilitate protection of groundwater resources before irreversible contamination occurs. It would be impractical and imprudent to wait until a specific, obvious threat to groundwater quality is imminent before implementing the 1424(e) protection mechanism.

27. To make the determination under Section 1424(e) of the Safe Drinking Water Act, the Adminstrator must find that (1) "an area has an aquifer which is the sole or principal drinking water source," and (2) that if the aquifer were contaminated it "would create a significant hazard to public health." As established above, the Area which is the subject of this Petition is almost entirely dependent upon its aquifer system for drinking water. This Area has a population of approximately 3 million persons which, given their absolute dependence on groundwater, is sufficient in and of itself to show that contamination of the gorundwater would create a significant hazard to public health.

28. Therefore, we request that you determine that the Counties of Monmouth, Burlington, Ocean, Camden, Gloucester, Atlantic, Salem, Cumberland and Cape May, New Jersey, and portions of Mercer and Middlesex Counties, New Jersey (as delineated in Exhibit Two), constitute an Area whose aquifer system is "the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health," and that you publish notice of this determination in the FEDERAL REGISTER as required by Section 1424(e) of the Safe Drinking Water Act of 1974.

Respectfully submitted: Adam B. Jaffe, *Science Associate, Environmental Defense Fund, Inc.*, James T. B. Tripp, *Counsel, Environmental Defense Fund, Inc.*, Robert C. Hughes, *Chairman, Sierra Club-New Jersey Chapter*, James Ayer, *Vice Chairman, Sierra Club-New Jersey Chapter and Chairman, West Jersey Group.*

APPENDICES (ATTACHED)

A. Bibliography
B. Population and water withdrawal by county
C. "The Fate of Organic Chemicals and Heavy Metals in Wastewaters Used for Groundwater Recharge," Robert H. Harris and Karen M. Slimak.

EXHIBITS (SEPARATE DOCUMENTS)

1. Physiographic Provinces of New Jersey showing Coastal Plain Province
2. United States Geologic Survey Overlays and Atlas Maps Showing Exact Boundary of Coastal Plain
2a. Overlay No. 25
2b. Atlas Map No. 25
2c. Overlay No. 26
2d. Atlas Map No. 26
2e. Overlay No. 28
2f. Atlas Map No. 28
3. Geologic Map of New Jersey Showing Outcrop Areas of Coastal Plain Formations
4. Hydrogeologic Cross Sections of the Coastal Plain—4a. Hydrogeologic Cross Sections, Camden and Gloucester County, 4b. Hydrogeologic Cross Sections, Burlington County.

***NOTE: Appendix C and Exhibits 2-4 will be retained at the Water Supply Branch, EPA Region II, 26 Federal Plaza, New York, New York 10007.

APPENDIX A

BIBLIOGRAPHY

1. Anderson, H. R., and Appel, C. A., 1969, *Geology and Ground Water Resources of Ocean County, New Jersey*, New Jersey Div. of Water Policy and Supply Special Report No. 29.

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8. Rooney, J. G., 1971, *Ground Water Resources of Cumberland County, N.J.*, Special Report No. 34.

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11. Farlekas, G. M., et al., 1976, *Geology and Water Resources of Camden County, N.J.*, Water Resources Investigations Report No. 76-76.

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15. Delaware Valley Regional Planning Commission, 1977, *Draft 208 Water Quality Management Plan, Burlington, Camden and Gloucester Counties.*

16. M. Disko Associates, 1978, *Draft Report, Groundwater Management Planning*, prepared for the Ocean County 208 Project.

17. Southern New Jersey Water Resources Study, Water Supply Program, *Executive Summary: Maximum Yield Quantity*, Analysis (May 1978).

18. Southern New Jersey Water Resources Study, Internal Document No. 10—Natural Recharge Areas (September 1978).

APPENDIX B.—*Groundwater Use by County and Aquifer*

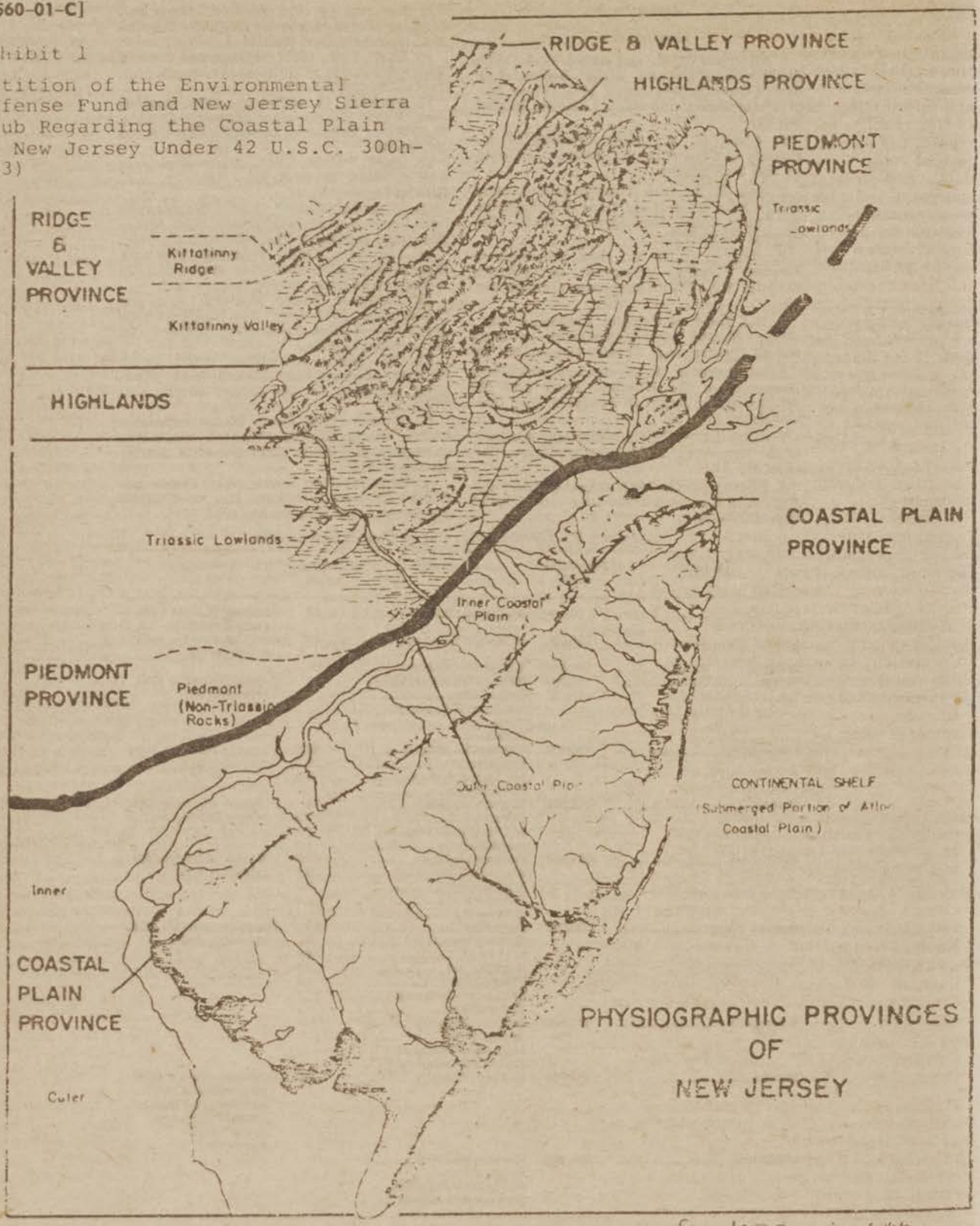
County	Population (1978)	Aquifer(s)	Withdrawal (mgd)	Comments
Cape May	79,000	Kirkwood-Cohansey	10	Pumpage rate for 1964, reference #8.
Cumberland	136,000	Kirkwood-Cohansey	49	Pumpage rate for 1964, reference #8.
Atlantic	192,000	Kirkwood-Cohansey	[1]	
Salem	64,000	Raritan-Magothy (95%).	12	Pumpage rate for 1964, reference #9.
		Englishtown		
		Mt. Laurel-Wenonah		
		Vincentown		
		Kirkwood		
Gloucester	196,000	Raritan-Magothy	41.2	Pumpage rates for 1976, reference #15.
		Cohansey	7.3	
		Mt. Laurel Wenonah	2.4	
		Englishtown	.1	
Camden	476,000	Raritan-Magothy	74	Pumpage rates for 1076, reference #15.
		Cohansey	7.3	
		Mt. Laural-Wenonah	1.1	
		Englishtown	1.0	
Burlington	364,000	Raritan-Magothy	48.9	Pumpage rates for 1976, reference #15.
		Mt. Laurel-Wenonah	8.1	
		Englishtown	3.2	
		Cohansey	1.5	
		Kirkwood	.15	
Ocean	330,000	Cohansey	12.2	Pumpage rates for 1976, reference #16.
		Raritan-Magothy	9	
		Kirkwood	8.8	
		Englishtown	4.9	
		Vincentown	1.8	
		Mt. Laurel-Wenonah	.4	
		Manasquan	.1	
Monmouth	491,000	Raritan-Magothy	[1]	
		Englishtown		
		Mt. Laurel-Wenonah		
		Kirkwood-Cohansey		
Mercer	321,000	Raritan-Magothy	8.9	Pumpage rate for 1976, reference #14. An additional 9.3 mgd is pumped from non-coastal plain formations.
Middlesex	594,000	Raritan-Magothy	[1]	
		Englishtown		
		Mt. Laurel-Wenonah.		
		Kirkwood-Cohansey		
Total	3,200,000		[2]300	

[1] Unknown to petitioners.
[2] Excluding Atlantic, Monmouth and Middlesex Counties.

[6560-01-C]

Exhibit 1

Petition of the Environmental Defense Fund and New Jersey Sierra Club Regarding the Coastal Plain of New Jersey Under 42 U.S.C. 300h-3(3)



From KOEBS, revised 10/75
1974

[6560-01-M]

EPA intends to decide whether to make the requested determination at the earliest time consistent with a complete review of the relevant data and information, and a full opportunity for public participation. In this regard, the Agency is developing a full factual record, and solicits comments, data, and references to additional sources of information relevant to the determination required by section 1424(e). In particular, information is sought concerning the hydrogeology of the Coastal Plain Aquifer System, the boundaries of the aquifer and its recharge areas. In addition, EPA requests information concerning the area or areas dependent upon the aquifer for drinking water, the significance of current or anticipated projects receiving federal financial assistance that may result in contamination of the aquifer, the prospects that such contamination will occur as a result of current activities or events that may be anticipated, and any other relevant information.

Comments, data, and references in response to this Notice should be submitted in writing to Eckardt C. Beck, Regional Administrator, Region II, Environmental Protection Agency, 26 Federal Plaza, Room 1009, New York, N.Y. 10007, Attention: Coastal Plain Aquifer; within 60 days of this Notice. Information concerning the Coastal Plain Aquifer System will be available for inspection at the above address.

In addition to considering public comments sent to EPA, the Agency will hold four public hearings on the dates and at the locations shown below:

May 14, 1979, 7 p.m. Camden County Complex, Egg Harbor Road, Conference Room—Administration Building, First Floor, Lindenwold, N.J.

May 15, 1979, 11 a.m. to 3 p.m., Mercer County Service Extension building, 930 Spruce Street, Conference Room, Trenton, N.J.

May 15, 1979, 7 p.m., Borough of Freehold, 51 W. Main Street, borough Clerk's Conference Room, Freehold, N.J.

May 17, 1979, 7 p.m., Stockton State College, Room CC103—Second Floor, C Wing, Pomona, N.J.

Persons who wish to present prepared statements at the public hearings are urged to give notice to Mr. John Mateo, Water Supply Branch, Region II, Environmental Protection Agency, 26 Federal Plaza, New York, N.Y. 10007, (212) 264-1332, prior to the hearing they wish to attend. If possible, written copies of these statements should be submitted at the hearing for inclusion in the record.

Dated: March 14, 1979.

ECKARDT C. BECK,
Regional Administrator.

[FR Doc. 79-8362 Filed 3-20-79; 8:45 am]

[6560-01-M]

[FRL 1079-2; OPP-180271]

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

Specific Exemption to Use Mesurol to Control Snails on Artichokes

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

ACTION: Issuance of a specific exemption.

SUMMARY: EPA has issued a specific exemption to the California Department of Food and Agriculture (hereafter referred to as the "Applicant") to use Mesurol (methiocarb) to control snails on 11,000 acres of artichokes in California. The specific exemption ends on December 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Emergency Response Section, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Room E-315, Washington D.C. 20460, Telephone: 202-755-4851.

SUPPLEMENTARY INFORMATION: According to the Applicant, due to unusually wet weather conditions, extremely high populations of brown snails have developed in the coastal artichoke acreage. Many of the snails remain on the plant rather than descending to the ground. Therefore, according to the Applicant, to achieve control of the pest, the artichoke plant itself must be treated and not just the surrounding soil.

The Applicant states that at the current rate of increase in snail populations, damage to the 11,000 acres of artichokes in California could result in a total loss of this crop. The total approximate value of these artichoke plantings is $15,300,000.

Metaldehyde in granular form is registered for control of snails in crop plantings; however, the Applicant states that it is suitable only for application to the ground surrounding the plant, and not the plant itself. Furthermore, according to the Applicant, metaldehyde is not efficacious when the population level is high. The proposed pesticide (Mesurol 75WP) allows for treatment of the plants.

The Applicant proposes to use Mesurol 75WP at a rate of one and one-third pounds product per acre. A maximum of five applications will be made using ground equipment, by or under the supervision of State-certified applicators. There will be a field reentry safety interval of 24 hours and a preharvest interval of seven days.

EPA has determined that methiocarb residue levels from the proposed use will be adequate to protect the public health. This pesticide is toxic to fish and aquatic invertebrates; however, since applications are to be made directly to the artichoke plants, and if care is taken to prevent significant drift to water sources, no hazard to aquatic life is expected. There are no endangered or threatened species that would be adversely affected as a result of this use.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of snails has occurred; (b) there is no effective pesticide presently registered and available for use to control snails in California; (c) there are no alternative means of control taking into account the efficacy and hazard; (d) significant economic problems may result if the snails are not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until December 31, 1979. The specific exemption is also subject to the following conditions:

1. The product Mesurol 75WP may be used at a dosage rate of one and one-third pounds product per acre;

2. A maximum of five applications may be made on a maximum of 11,000 acres;

3. Application may be made by ground equipment;

4. All applications will be made by or under the supervision of State-certified applicators;

5. The Applicant is responsible for ensuring that all of the provisions of this specific exemption are adhered to and must submit a report summarizing the results of this program by January 31, 1980;

6. This product is toxic to fish. It must be applied with care in areas adjacent to any body of water;

7. All applicable directions, restrictions, and precautions on the label must be followed;

8. The EPA shall be immediately informed of any adverse effects resulting from the use of Mesurol in connection with this exemption;

9. Artichokes with residues of methiocarb that do not exceed 3 parts per million may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been notified of this action; and

10. A seven-day pre-harvest interval will be observed.

(Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).)

Dated: March 14, 1979.

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

[FR Doc. 79-8587 Filed 3-20-79; 8:45 am]

[6560-01-M]

[FRL 1079-3; OPP-180270]

FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Specific Exemption to Use Permethrin to Control Leafminers on Tomatoes

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

ACTION: Issuance of a specific exemption.

SUMMARY: EPA has issued a specific exemption to the Florida Department of Agriculture and Consumer Services (hereinafter referred to as the "Applicant") to use permethrin to control leafminers on 28,000 acres of tomatoes in Florida. The specific exemption ends on June 30, 1979.

FOR FURTHER INFORMATION CONTACT:

Emergency Response Section, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Room E-315, Washington, D.C. 20460, Telephone: 202/755-4851.

SUPPLEMENTARY INFORMATION: The vegetable leafminer *Liriomyza sativae*, has become a serious pest in various crops and according to the Applicant, is the most serious pest in commercial tomato production in Florida. The leafminer destroys the tissue of tomato plants by laying eggs within the leaf structure. The resulting larval stages move within the leaf destroying the inner cells and the leaf's capacity for photosynthesis, thus destroying the leaf. They can cause rapid defoliation of the plant which reduces yields and exposes fruit to sun scald, thus lowering its quality. In addition, the punctures to leaves from the egg laying process serve as points of entry for plant pathogens which hasten leaf destruction. The Applicant estimates a loss of $9,374,400 due to leafminer damage.

In the past, the Florida Cooperative Extension Service has recommended the use of various organophosphates for control of leafminers, but with the exception of dimethoate and methamidophos, they do not consistently control the pest. Data indicate that dimethoate is somewhat effective during periods of low population infestation but is ineffective during periods of high populations due to resistance buildup. Methamidophos has been effective but cannot be applied within 14 days of harvest. Since there are four or five pickings at 7- to 10-day intervals, methamidophos cannot be used during the 42- to 64-day harvest period.

The Applicant proposed to use Ambush 2 EC (permethrin) at a rate of 0.05 to 0.1 pound of active ingredient (a.i.) in a minimum of 20 gallons of water per acre. Up to six applications per season may be made using ground equipment, starting 14 days before commencement of harvest and continuing through the harvest period.

EPA has determined that residues from the proposed use will be at levels adequate to protect the public health. Although permethrin is extremely toxic to aquatic organisms, EPA has determined that the low dosage rate, the use of ground application only, and a monitoring program should allow use of the product on tomatoes without creating an unreasonable adverse effect on the environment.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of leafminers on tomatoes has occurred; (b) resistance has developed to the pesticides presently registered and available for use to control this pest in Florida; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the leafminer is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until June 30, 1979, to the extent and in the manner set forth in the application, subject to the following conditions:

1. The product Ambush 2 EC may be used at dosage rates of 0.05 to 0.1 pound a.i. per acre;

2. A maximum of six applications may be made per acre per season;

3. The first application of Ambush 2 EC may be made only within 14 days of the first harvest and continued on a 5-7 day schedule as needed. Ambush 2 EC may be applied up to the day of harvest;

4. Application may be made by ground equipment only in a minimum of 20 gallons of water per acre;

5. Applications are limited to 28,000 acres of tomatoes in the Counties of Brevard, Hillsborough, Osceola, Pinellas, and Polk, and all counties south of them;

6. All applicable directions restrictions, and precautions on the product labe must be followed;

7. This pesticide is extremely toxic to fish and aquatic invertebrates. Care must be used when applying it in areas adjacent to any body of water. It may not be applied when weather conditions favor run-off or drift. It must be kept out of lakes, streams, and ponds. Care must be taken to prevent contamination of water by cleaning of equipment or disposal of wastes;

8. Permethrin is highly toxic to bees exposed to direct treatment or residues on crops or weeds. It must not be applied or allowed to drift to weeds in bloom on which an economically significant number of bees are actively foraging. Protective information may be obtained from the Florida Cooperative Extension Service;

9. Only fields where registered alternatives have been applied and a knowledgeable expert has determined that control has not been achieved may be treated under this exemption;

10. In areas where treated tomato fields border bodies of water, observations by qualified personnel must be conducted for possible adverse effects by aquatic organisms;

11. A monitoring program using caged aquatic animals or systematic population analysis of fish and/or representative aquatic invertebrates must be conducted in order to determine possible adverse effects to aquatic animals;

12. Any adverse effects from use of permethrin under this exemption must be reported immediately to EPA;

13. A 60-day crop rotation restriction is imposed;

14. Tomatoes treated according to the above provisions will not have residues of permethrin in excess of 0.5 part per million (ppm) in tomatoes, 25 ppm in tomato paste, and 100 ppm in tomato pulp. Residues resulting from feeding of treated tomatoes or tomato parts to animals will not be in excess of 0.2 ppm in milk, 0.05 ppm in eggs, 0.1 ppm in poultry, 1.0 ppm in liver and kidney, 0.7 ppm in fat, and 0.08 ppm in lean meat. Commodities with residues of permethrin which do not exceed the above levels may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action; and

15. The Applicant is responsible for assuring that all of the provisions of this specific exemption are met and must submit a report summarizing the results of this program by December 31, 1979.

(Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).)

Dated: March 14, 1979.

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

[FR Doc. 79-8588 Filed 3-20-79; 8:45 am]

[6560-01-M]

[FRL 1079-4)

MARBLEHEAD LIME CO., CHICAGO, ILL.

Final Determination

In the matter of the applicability of Title I, Part C of the Clean Air Act (Act), as amended, 42 U.S.C. 7401 *et seq.*, and the Federal regulations promulgated thereunder at 40 CFR 52.21 (43 FR 26388, June 19, 1978) for Prevention of Significant Deterioration of Air Quality (PSD), to Marblehead Lime Company, Chicago, Illinois.

On July 26, 1978, Marblehead Lime Company submitted an application to the United States Environmental Protection Agency (U.S. EPA), Region V office, for an approval to construct kiln #5 at the South Chicago facility. The application was submitted pursuant to the regulations for PSD.

On September 7, 1978, Marblehead Lime Company was notified that its application was complete and preliminary approval was granted.

On September 18 and 20, 1978, U.S. EPA published notice of its decision to grant a preliminary approval to Marblehead Lime Company. No comments or request for a public hearing were received.

After review and analysis of all materials submitted by Marblehead Lime Company, the Company was notified on December 1, 1978 that U.S. EPA had determined that the proposed new construction in Chicago, Illinois would be utilizing the best available control technology and that emissions from the facility will not adversely impact air quality, as required by Section 165 of the Act.

This approval to construct does not relieve Marblehead Lime Company of the responsibility to comply with the control strategy and all local, State and Federal regulations which are part of the applicable State Implementation Plan, as well as all other applicable Federal, State and local requirements.

This determination may now be considered final agency action which is locally applicable under Section 307(b)(1) of the Act and therefore a petition for review may be filed in the U.S. Court of Appeals for the Seventh Circuit by any appropriate party. In accordance with Section 307(b)(1), petitions for review must be filed sixty days from the date of this notice.

For further information contact Eric Cohen, Chief, Compliance Section, Region V, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604. (312) 353-2090.

Dated: March 15, 1979.

JOHN MCGUIRE,
Regional Administrator, Region V.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Approval to Construct EPA-5-79-A-3

In the Matter of Marblehead Lime Company, Chicago, Illinois, Proceeding Pursuant to the Clean Air Act, as amended.

AUTHORITY

The approval to construct is issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 *et. seq.*, (the Act); and the Federal regulations promulgated thereunder at 40 CFR 52.21 for the Prevention of Significant Deterioration of Air Quality (PSD).

FINDINGS

1. The location where Marblehead Lime Company (Marblehad) proposes to construct rotary lime kiln #5 (kiln #5) is a Class II area, as determined pursuant to the Act. The area has been designated by the State of Illinois as nonattainment for particulate matter. A complete application was submitted by Marblehead to construct kiln #5 at its South Chicago facility in Chicago, Illinois, pursuant to 40 CFR 52.21.

2. The kiln #5 is subject to the requirements of 40 CFR 52.21, and the applicable sections of the Act.

3. On September 18 and 20, 1978, the United States Environmental Protection Agency (U.S. EPA) published notice in the *Chicago Tribune*, and the *Chicago Sun-Times* seeking written comments from the public and giving an opportunity to request a public hearing on the application and U.S. EPA's review and preliminary determination to approve construction of kiln #5. No comments or requests for a hearing were received.

4. After review and analysis of all the material submitted by Marblehead, U.S. EPA has determined that emissions from the construction and operation of the proposed kiln #5 scheduled for construction at Marblehead's South Chicago facility will not violate the air quality increments applicable in the area where the source will be located nor the air quality increments applicable in any other areas.

5. Kiln #5 will meet an emission limit at least as restrictive as the proposed New Source Performance Standard for lime manufacturing plants (40 CFR Part 60).

CONDITIONS

U.S. Approval to Construct kiln #5 is subject to the following conditions:

6. Kiln #5 must meet an emission limitation of 0.3 pounds of particulate matter per ton of limestone feed. Any gases from rotary lime kiln #5 which may be discharged into the atmosphere shall not exhibit an opacity of 10 percent or greater. These limitations are equivalent to the proposed New Source Performance Standard (40 CFR Part 60) for lime manufacturing plants.

7. The maximum level of sulfur dioxide emissions allowed shall be 2.08 pounds of sulfur dioxide per ton of actual process weight input. Note that process weight is defined as the weight of the total solid materials input into the production process.

The emission limitations stated in conditions 6 and 7 above represent the application of Best Available Control Technology and are required by 40 CFR 52.21(d)(ii).

8. Marblehead must submit to U.S. EPA, within 5 working days after it becomes available, technical or contract data attesting to the expected guaranteed sulfur content of the coal to be used in the lime manufacturing process.

9. Marblehead shall install, calibrate, maintain, and operate a continuous monitoring system to monitor and record the opacity of the gases discharged into the atmosphere from kiln #5. The span of this system shall be set at 40 percent opacity. Continuous emission monitoring shall commence upon start-up. Excess emission reports shall be submitted to U.S. EPA on a calendar quarterly basis, with reports postmarked no later than 30 days after the end of the quarter. Excess emissions are defined as all 6 minute periods during which the average opacity of the plume from kiln #5 exceeds 10 percent. The quarterly report will contain information as specified in 40 CFR 60.7(c)1-4. Marblehead will maintain a record of continuous emission monitoring results consistent with 40 CFR 60.7(d).

10. The baghouse equipment must be installed for the control of fugitive dust at the kiln #5 dust handling and loadouts and the kiln #5 lime handling and loadout systems, as described in the application. Emissions from flue dust handling and loading and from lime handling shall be limited to 0.003 grains per dry standard cubic foot.

11. The operations of Western Navigation Company must be discontinued prior to the start-up of rotary lime kiln #5. This condition is required pursuant to the U.S. EPA's Interpretative Ruling (41 FR 55524-30) requiring emission offsets of sources proposing to construct in nonattainment areas.

12. The measures to reduce fugitive emissions of particulate matter which must be implemented are:

(1) Paving of kiln access roadways.

(2) Enforcing an 8 mph speed on access roads.

(3) Eliminating one present roadway.

(4) Spraying of coal piles and unpaved roads with a surfactant.

(5) Paved roads shall be swept daily.

13. Marblehead must submit to U.S. EPA at least 90 days prior to inital start-up of lime kiln #5 a plan for the operation and maintenance of the baghouse control system. This plan must demonstrate appropriate procedures designed to insure that the baghouse will control the emissions of particulate matter and sulfur dioxide from rotary lime kiln #5 at the levels specified in conditions 1 and 2 of this approval.

14. Marblehead must operate the five lime kilns at their Chicago facility in accordance with the following schedule:

(1) While kilns 1, 2, 3 and 4 are operating, kiln 5 may not operate.

(2) While kilns 1, 2, 3 and 5 are operating, kiln 4 may not operate.

(3) While kilns 3, 4, and 5 are operating, kilns 1 and 2 may not operate.

(4) While kilns 4 and 5 and 1 or 2 are operating, kiln 3 may not operate.

15. Marblehead may not alter any stack parameters, operating or design characteristics identified in its application without the prior written authorization of U.S. EPA. The assumptions and conclusions of U.S.

EPA's air quality analysis are dependent upon the information presented in Marblehead's application for approval to construct. Any changes in the information presented may change the results of U.S. EPA's analysis and therefore the conditions of any final approval. This reasoning also explains the need for conditions 8 through 14, above.

APPROVAL

16. Approval to construct rotary lime kiln #5 is hereby granted to the Marblehead Lime Company subject to the conditions expressed herein and consistent with the materials and data included in the application filed by the Company. Any departure from the conditions of this approval or the terms expressed in Marblehead's application must receive the prior written authorization of U.S. EPA.

17. This Approval to Construct does not relieve Marblehead of the responsibility to comply with the control strategy and all local, State and Federal regulations which are part of the applicable State Implementation Plan, as well as all other applicable local, State and Federal requirements.

18. A copy of this approval has been forwarded for public inspection to the East Branch Public Library, 10542 South Ewing Avenue, Chicago, Illinois.

Dated: December 1, 1978.

JOHN MCGUIRE,
Regional Administrator.

[FR Doc. 79-8586 Filed 3-20-79; 8:45 am]

[6560-01-M]

[FRL 1079-8]

SCIENCE ADVISORY BOARD RISK ASSESSMENT SUBCOMMITTEE

Open Meeting

As required by Pub. L. 92-463, notice is hereby given that a meeting of the Risk Assessment Subcommittee of the Science Advisory Board will be held beginning at 9:00 a.m., April 19, 1979, at 220 Independence Ave., Room 529A, Washington, D.C., and at 9:00 a.m., April 20, 1979, at 401 M Street, S.W., Waterside Mall, Room 2409, Washington, D.C.

The Subcommittee is meeting to review a methodology for assessing health risks which uses the opinions of scientific health experts.

The agenda will include a briefing on the use and development of the proposed decision analysis methodology for regulatory decision-making, discussion of comments, and questions of Subcommittee members with the authors, and committee discussion of the methodology. Additional comments from members of the public will also be considered.

The meeting is open to the public. Any member of the public wishing to attend, participate, or obtain information should contact Lloyd Taylor, Executive Secretary or Ms. Sarah Mills, Staff Assistant, Risk Assessment Subcommittee (703) 557-7720 by April 13, 1979.

RICHARD M. DOWD,
Staff Director,
Science Advisory Board.

MARCH 13, 1979.

[FR Doc. 79-8591 Filed 3-20-79; 8:45 am]

[6560-01-M]

[FRL 1079-7]

SCIENCE ADVISORY BOARD TASK GROUP IN BIOLOGICAL MONITORING SYSTEMS

Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the Task Group on Biological Monitoring Systems will be held on April 19, 1979, beginning at 9:00 a.m. in Conference Room 1112A, Building 2, Crystal Mall, 1921 Jefferson Davis Highway, Arlington, Virginia.

The agenda includes a discussion of members interests in the design and content of special new biological monitoring systems and consideration of a first working draft of a report. Part of the session may be devoted to writing.

The meeting is open to the public. All members of the public wishing to attend, participate or obtain information should contact Dr. J. Frances Allen or Mrs. Joni Perry, 703-557-7720 by the close of business April 12, 1979.

Dated: March 16, 1979.

RICHARD M. DOWD,
Staff Director,
Science Advisory Board.

[FR Doc. 79-8585 Filed 3-20-79; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[FCC 79—159]

COMMISSION RELEASES FOR INFORMAL COMMENT CONTRACTOR'S REPORT ON EVALUATION OF PRE-DESIGNATION PROCESSING OF CONTESTED BROADCAST APPLICATIONS

MARCH 15, 1979.

The Commission has had underway a contract study of the functioning of its adjudicatory re-regulation procedures. The Contractor, Max D. Paglin, has now submitted his Report on the evaluation of the operation of the pre-designation procedures, which were adopted in 1976, for processing mutually-exclusive and contested broadcast applications, together with his recommendations for revisions in the pre-designation and post-designation procedures.

The Report is based upon an extensive analysis of the new predesignation procedures as they have actually functioned in operation, and was founded on close examination of Commission records and data, and comprehensive interviews and conferences with Commission staff and practicing attorneys who have had actual experience with the pre-designation procedures. In essence, the Report concludes that the current procedures for processing contested broadcast applications have failed to accomplish their intended purpose of eliminating delay and simplifying and expediting the pre-designation process; and that, in fact, the new procedures have resulted in greater delays and may, if allowed to continue in their present form, result in a serious breakdown of the system.

Accordingly, the Contractor recommends that the present procedures be replaced by a streamlined, expedited system of processing contested broadcast applications which eliminates or replaces those elements in the process which have resulted in extensive delays amounting to two years or more before such applications are even reached for designation for hearing. The recommendation would, in substance, simplify and shorten the cut-off lists; eliminate the sending of "deficiency letters" as part of the processing procedure, except where the staff needs further information; restrict the pre-designation voluntary amendments of applications; eliminate the current provision for pre-designation issue pleadings; require pleadings affecting issues to be filed with the Administrative Law Judge after designation; and encourage the issuance of brief Memoranda Opinions and Orders of designation for hearing.

The Report also suggests an innovative approach for the handling of ascertainment surveys and financial qualifications, as a further step in expediting the process. The Contractor recommends consideration of a procedure whereby, after the applicant makes a satisfactory threshold showing in its application of compliance with the Commission's requirements and policies for conducting a proper community ascertainment survey and in demonstrating financial capability to build and operate the proposed station—which showing passes the muster of Commission review—these two factors would no longer be subject to the adversary pleading or hearing process, absent a strong and persuasive showing by other parties of misrepresentation, gross omission or later developing circumstances.

The Commission has reviewed the Report and its recommendations, and is of the tentative view that adoption of the recommended revisions in its procedures would eliminate the delay problems which have been experienced and would improve the efficiency and effectiveness of its broadcast application processing system. Since the recommendations involve solely matters of procedure, the Administrative Procedure Act does not require

that a rulemaking proceeding be conducted before revised regulations of this nature are adopted. Nevertheless, the Commission wishes first to have the comments, on an informal but expedited basis, of interested organizations, government agencies and persons, including representatives of the Federal Communications Bar Association, the American Bar Association, the Association of Communications Consulting Engineers and other practitioners, citizen organizations, NTIA, the Administrative Conference, and interested Congressional Committee staffs.

Copies of the Report, together with an Executive Summary, are being sent to the above-mentioned groups for their information and comment. In view of the existing situation with regard to backlogs and delays, and the obvious need to take remedial action on an expedited basis, the Commission is requesting that comments be submitted on or before April 6, 1979.

The Commission will hold a public symposium, after receipt of the written comments, to discuss the recommendations of the Report and to obtain, perhaps through a panel format, an exchange of views among the Commission, its staff, and outside groups on the proposed changes in the pre-designation and post-designation procedures. This symposium will be held at 2:00 p.m. on Tuesday, April 17, 1979 in the Commission's Meeting Room #856, 1919 M St., NW., Washington, D.C. and will be open to the public.

Copies of the Report and the Executive Summary will also be available for inspection in the Office of Public Affairs, Room 202, at the Commission's headquarters.

Action by the Commission March 15, 1979. Commissioners Ferris (Chairman), Lee, Quello, Washburn, Fogarty and Brown.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 79-8458 Filed 3-20-79; 8:45 am]

[6712-01-M]

[BC Docket Nos. 79-30, 79-31, File Nos. BR-362, BRH-952; FCC 79-120]

MAX M. LEON, INC.

Memorandum Opinion and Order Designating Applications for Hearing

Adopted: February 22, 1979.

Released: March 1, 1979.

By the Commission: Commissioner Lee absent.

In re applications of Max M. Leon, Inc., Radio Stations WDAS and WDAS-FM, Philadelphia, Pennsylvania, for renewal of licenses, BC Docket No. 79-30, File No. BR-362, BC Docket No. 79-31, File No. BRH-952.

1. The Commission has before it for consideration the above-captioned applications and its inquiry into the operation by Max M. Leon, Inc., (Leon) of stations WDAS and WDAS-FM, Philadelphia, Pennsylvania, which are licensed to Leon.[1]

2. Information before the Commission raises serious questions as to whether the captioned applicant possesses the qualifications to be or to remain a licensee of the captioned stations. In view of these questions, the Commission is unable to find that a grant of the renewal applications would serve the public interest, convenience and necessity, and must, therefore, designate the applications for hearing.

3. *Accordingly, it is ordered,* That the captioned applications are designated for a consolidated hearing pursuant to Section 309(e) of the Communications Act of 1934, as amended, at a time and place specified in a subsequent order, upon the following issues:

(a) To determine all the facts and circumstances surrounding the licensee's August 10, 1972 pleading filed in opposition to the Concerned Communicators' Petition to Deny the 1972 WDAS and WDAS-FM license renewal applications and whether, in light thereof, the licensee misrepresented facts to the Commission or was lacking in candor.

(b) To determine whether the licensee formulated, issued and/or implemented employee conflict of interest policies and guidelines and, if so, whether the licensee took steps to insure adherence to those policies and guidelines.

(c) To determine whether, and if so the extent to which, the licensee, its principals or employees subordinated the public interest to their own private interests in their selection of programming content.

(d) To determine whether, and if so the extent to which, the licensee, its principals or employees operated WDAS and WDAS-FM in an anticompetitive manner to unfairly compete in non-broadcast business fields.

(e) To determine whether, and if so the extent to which, a principal of the licensee corporation participated in a joint venture involving the operation of WDAS and WDAS-FM which monopolized or substantially reduced competition in the Black-oriented concert promotion field.

(f) To determine whether, and if so extent to which, the licensee inaccurately stated the amount of its trade-out revenue in the Annual Financial Reports (FCC Form 324) filed by the licensee for the years 1972 through 1977.

(g) To determine, in light of the evidence adduced pursuant to issues (a), (b), (c), (d) and (f), above whether, and if so the extent to which, the licensee misrepresented facts to the Commission or was lacking in candor.

(h) To determine, in light of the evidence adduced under the preceding issues, whether the licensee of WDAS and WDAS-FM possesses the requisite qualifications to be or remain a licensee of the Commission, and whether a grant of the captioned applications would serve the public interest, convenience and necessity.

4. *It is further ordered,* That the Chief, Broadcast Bureau, is directed to serve upon the captioned applicant within thirty (30) days of the release of this Order, a Bill of Particulars with respect to issues (a) through (g).

5. *It is further ordered,* That the Broadcast Bureau proceed with the initial presentation of evidence with respect to issues (a) through (g) and that the applicant when proceed with its evidence and have the burden of establishing that it possesses the requisite qualifications to be a licensee of the Commission and that a grant of its applications would serve the public interest, convenience and necessity.

6. *It is further ordered,* That to avail itself of the opportunity to be heard, the applicant herein, pursuant to § 1.221 of the Commission's rules, in person or by attorney, shall file with the Commission, within twenty (20) days of the mailing of this order, a written appearance in triplicate, stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

7. *It is further ordered,* That the applicant herein pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, shall give notice of the hearing within the time and in the manner prescribed in such rule and shall advise the Commission thereof as required by § 1.594(g) of the rules.

8. *It is furthered ordered,* That the Secretary of the Commission send copies of this Order by Certified Mail—Return Receipt Requested to

[1] The Commission also has under consideration an application for consent to the assignment of license of the above captioned stations to Unity Broadcasting Network—Pennsylvania, Inc. Action on this application will be held in abeyance pending the conclusion of the hearing ordered herein. *Jefferson Radio Company, Inc.* v. *FCC,* 340 F.2d 783 (D.C. Cir. 1964) *Walton Broadcasting Co.,* 28 FCC 2d 111 (1971) and *Bi-County Broadcasting Corporation;* 34 FCC 2d 1117 (1972). The applicants may of course, file for treatment of their assignment application as a "distress sale" under our policies announced on May 25, 1978. *Statement of Policy on Minority Ownership of Broadcast Facilities,* 68 FCC 2d 979, 983 (1978).

Max M. Leon, Inc., licensee of Radio Station WDAS and WDAS-FM, Philadelphia, Pennsylvania.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 79-8454 Filed 3-20-79; 8:45 am]

[6820-23-M]

GENERAL SERVICES ADMINISTRATION

REGIONAL PUBLIC ADVISORY PANEL, ON ARCHITECTURAL AND ENGINEERING SERVICES

Meeting

Dated: March 13, 1979.
Reply to Attention of: Construction Management Division—8PC
Subject: Proposed Notice for FEDERAL REGISTER
To: Assistant Commissioner for Construction Management—PC

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Regional Public Advisory Panel on Architectural and Engineering Services, Region 8, on April 11, 1979, from 10 a.m. to 4 p.m. in the South Dakota Room, Second Floor of Building 41, at the Denver Federal Center in Denver, Colorado. The meeting will be devoted to the initial step of the procedures for screening and evaluating the qualifications of architect-engineers under consideration for selection to furnish professional services for a proposed one-year supplemental fixed-price contract for the states of Montana, North Dakota, South Dakota, and Wyoming. The meeting will be open to the public.

Dated: March 13, 1978.

P. J. MENARDI,
Acting Regional Administrator.

[FR Doc. 79-8477 Filed 3-20-79; 8:45 am]

[6820-23-M]

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

REGIONS 1 THROUGH 10; REVIEW OF REGIONAL PUBLIC ADVISORY PANELS ON ARCHITECTURAL AND ENGINEERING SERVICES

Notice of Review

The purpose of this notice is to solicit comments from the public on the Regional Public Advisory Panels on Architectural and Engineering Services (Regions 1 through 10) which are being reviewed in accordance with Transmittal Memorandum No. 5, Office of Management and Budget Circular No. A-63, dated March 7, 1977.

Any person desiring to comment on the review, or make recommendations for continuation, or termination of these advisory committees, should file written comments with A. G. Barnes, PBS Committee Management Officer (PFAM), Public Buildings Service, Room 6313, 18th and F Streets NW., Washington, DC 20405, on or before April 10, 1979.

Dated: March 12, 1979.

DENNIS J. KEILMAN,
Acting Commissioner, Public Buildings Service.

[FR Doc. 79-8381 Filed 3-20-79; 8:45 am]

[4110-02-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

NATIONAL ADVISORY COUNCIL ON ADULT EDUCATION

Meeting

AGENCY: National Advisory Council on Adult Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Adult Education. This notice also describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92-463, Sec. 10(a)(2)).

DATE: April 18, 1979, Noon to 6:00 p.m., Standing Committee Meetings, 7:30 p.m. to 10:00 p.m., Executive Committee Meeting, April 19-20, 1979, 9:00 a.m. to 5:00 p.m.; April 21, 1979, 9:00 a.m. to Noon.

ADDRESS: April 18, 1979, The Continental Plaza, North Michigan at Delaware, Chicago, Illinois; April 19-21, 1979, Center for Urban Education, Chicago Public Schools, 160 West Wendell Street, Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT:

Dr. Gary A. Eyre, Executive Director, National Advisory Council on Adult Education, 425 13th St., N.W., Washington, D.C. 20004 (202/376-8892).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under Section 313 of the Adult Education Act (20 U.S.C. 1201). The Council is directed to:

Advise the Commissioner in the preparation of general regulations and with respect to policy matters arising in the administration of this title, including policies and procedures governing the approval of State plans under section 306 and policies to eliminate duplication, and to effectuate the coordination of programs under this title and other programs offering adult education activities and services.

The Council shall review the administration and effectiveness of programs under this title, make recommendations with respect thereto, and make annual reports to the President of its findings and recommendations (including recommendations for changes in this title and other Federal laws relating to adult education activities and services). The President shall transmit each such report to the Congress together with his comments and recommendations.

The meeting of the Council shall be open to the public.

The proposed agenda includes:

Program Visitations at Urban Education Facilities.
Committee Reports.
Recommendations on Adult Education and Urban Policy.
Orientation Format.
Annual Report.
Adult Education Appropriations.

Records shall be kept of all Council proceedings, and shall be available for public inspection at the Office of the National Advisory Council on Adult Education, 425 13th St., N.W., Suite 323, Washington, D.C. 20004.

Signed at Washington, D.C. on March 14, 1979.

GARY A. EYRE,
Executive Director, National Advisory Council on Adult Education.

[FR Doc. 79-8380 Filed 3-20-79; 8:45 am]

[4110-07-M]

Office of the Secretary

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

Part S (formerly Part 4) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health, Education, and Welfare contains the Statement of Organization, Functions and Delegations of Authority for the Social Security Administration (SSA). We are amending Part S to reflect the reorganization of SSA announced on January 5, 1979, and to show, in a separate section (S. 30), the order of succession for the Commissioner of Social Security, Associate Commissioners and Regional Commissioners. Part S now reads as follows:

SEC. S.00 *The Social Security Administration*—(Mission): The Social Security Administration is the nation's primary income security agency. It administers the Federal retirement, survivors and disability insurance programs, as well as the program of supplemental security income for the

aged, blind and disabled, and performs certain functions with respect to the black lung benefits program. SSA also directs the following State-administered income maintenance and assistance programs: Aid to families with dependent children; aid to the aged, blind and disabled in Guam, Puerto Rico and the Virgin Islands; the Cuban, Indochinese and Russian refugee programs; and the U.S. repatriation program.

SEC. S.10 *Social Security Administration*—(Organization): Social Security Administration, under the supervision and direction of the Commissioner of Social Security (the Commissioner), includes:

A. The Office of the Commissioner (SA)
B. The Office of Systems (SB)
C. The Office of the Regional Commissioners (SDI-SDX)
D. The Office of Intergovernmental and Community Affairs (SE)
E. The Office of Family Assistance (SF)
F. The Office of Hearings and Appeals (SG)
G. The Office of Operational Policy and Procedures (SJ)
H. The Office of Assessment (SL)
I. The Office of Management, Budget and Personnel (SM)
J. The Office of Central Operations (SP)
K. The Office of Policy (SR)
L. The Office of Public Affairs (SX)

SEC. S.20 *Social Security Administration*—(Functions): Social Security Administration performs all functions necessary to accomplish the agency's mission. These are specified in more detail in the sections which follow Section S.30.

SEC. S.30 *Social Security Administration*—(Order of Succession):

A. 1. In the event of the absence of the Commissioner, one of the Deputy Commissioners shall be designated by the Commissioner to serve as Acting Commissioner.

2. In the event of the disability of the Commissioner or a vacancy in the position, the Secretary of Health, Education, and Welfare (the Secretary) shall designate one of the Deputy Commissioners to serve as Acting Commissioner.

3. In the event of the absence of the Commissioner and both Deputy Commissioners, an SSA official designated by the Commissioner shall serve as Acting Commissioner.

4. Should the position of Commissioner and both Deputy Commissioner positions become vacant, or these officials become disabled, an official designated by the Secretary shall serve as Acting Commissioner.

B. 1. Where an Associate Commissioner has only one Deputy, during the absence or disability of the Associate Commissioner, or in the event of a vacancy in the Associate Commissioner position, the Deputy Associate Commissioner shall serve as Acting Associate Commissioner.

2. Where an Associate Commissioner has two Deputies, one of the Deputies shall be designated by the Associate Commissioner to serve as Acting Associate Commmissioner during his/her absence. In the event of a disability of the Associate Commissioner or a vacancy in the Associate Commissioner position, the Commissioner shall designate one of the Deputy Associate Commissioners to serve as Acting Associate Commissioner.

3. In the event of the absence of both an Associate Commissioner and his/her Deputy or Deputies, an executive designated by the Associate Commissioner shall serve as Acting Associate Commissioner.

4. Should an Associate Commissioner position and its Deputy Associate Commissioner position or positions become vacant, or should all these officials become disabled, an SSA official designated by the Commissioner shall serve as Acting Associate Commissioner.

C. 1. During the absence or disability of a Regional Commissioner, or in the event of a vacancy in a Regional Commissioner position, the Deputy Regional Commissioner shall serve as Acting Regional Commissioner.

2. In the event of the absence of both a Regional Commissioner and his/her Deputy, an SSA regional office official designated by the particular Regional Commissioner shall serve as Acting Regional Commission.

3. Should both the positions of Regional Commissioner and Deputy Regional Commissioner become vacant in a region, or should both these officials become disabled, an SSA official designated by the Commissioner shall serve as Acting Regional Commissioner.

SEC. SA.00 *The Office of the Commissioner*—(Mission): The Office of the Commissioner (OC) is directly responsible to the Secretary for all programs administered by SSA; for State-administered programs directed by SSA; and for certain functions with respect to the black lung benefits program It provides executive leadership to SSA. The Office is responsible for development of policy; administrative and program direction; program interpretation and evaluation; research oriented to the study of the problems of economic insecurity in American society; and development of recommendations on methods of advancing social and economic security through social insurance and related programs.

SEC. SA.10 *The Office of the Commissioner*—(Organization): The Office of the Commissioner, under the leadership of the Commissioner of Social Security, includes:

A. The Commissioner of Social Security (SA)
B. The Deputy Commissioner of Social Security, Programs (SA)
C. The Deputy Commissioner of Social Security, Operations (SA)
D. The Immediate Office of the Commissioner (SA), which includes:
1. The Executive Secretariat (SAX)
2. The Office of Equal Opportunity (SAE)

SEC. SA.20 *The Office of the Commissioner*—(Functions):

A. *The Commissioner of Social Security* (SA) provides executive leadership to SSA and exercises general supervision over its major components.

B. *The Deputy Commissioner of Social Security, Programs* (SA) assists the Commissioner in carrying out his/her responsibility for managing and directing administration of SSA programs, concentrating on program policy issues, public affairs and intergovernmental relations.

C. *The Deputy Commissioner of Social Security, Operations* (SA) assists the Commissioner in carrying out his/her responsibility for managing and directing administration of SSA programs, concentrating on operations to insure efficient and effective delivery of services to the public.

D. *The Immediate Office of the Commissioner* (SA) provides the Commissioner and Deputy Commissioners with Staff assistance on the full range of their responsibilities.

E. *The Executive Secretariat* (SAX):

1. Coordinates and provides liaison for internal communication and correspondence control for OC.

2. Monitors administrative and program policy development and policy implementation activities, and prepares periodic status reports.

3. Ensures that issues requiring the Commissioner's attention are developed timely and coordinated with SSA and HEW components having an interest in the matter; designs and implements procedures for proper coordination and followthrough on specific issues.

4. Communicates the objectives, priorities and standards of OC to individuals involved in the preparation of correspondence and memoranda, and ensures that communications signed or approved by OC are consistent with these standards and objectives.

5. Reviews and analyzes memoranda and other communications directed to OC for adequacy of coordination and clearances, clearness and conciseness of presentation, timeliness, necessary followthrough and other elements of completed staff work.

6. Works with operating components and staff offices to improve the quality of decision papers and correspond-

ence directed to the Office of the Secretary.

F. *The Office of Equal Opportunity* (SAE):

1. Directs, coordinates, and appraises the effectiveness of policies for SSA's agency-wide Equal Opportunity (EO) Program.

2. Provides expert technical advice and recommendations to the Commissioner in the exercise of EO and civil rights responsibilities and, through a continuing analysis of EO activities, tracks accomplishments of affirmative action goals; identifies significant trends; and implements projects and programs to assure the fulfillment of SSA's EO and civil rights objectives.

3. Manages the overall processing of discrimination complaints through the final agency decision.

4. Carries out liaison with HEW; other Federal agencies; and other public and private organizations on matters concerning EO and civil rights.

SEC. SB.00 *The Office of Systems*—(Mission): The Office of Systems (OS) directs and coordinates the planning, development, implementation, operation, and maintenance of SSA's automated data processing (ADP) and data communications systems. It defines, designs, and develops current and future ADP and data communications-based systems which directly support SSA's program activities, including: enumeration and earnings recordkeeping; insurance programs and income maintenance programs; operation and support of the computer and data communications complex; and the control, planning and evaluation of existing and future ADP and data communications systems software and hardware. The Office develops and maintains automated systems that produce statistical, administrative and management information. It advises the Commissioner and the SSA executive staff on ADP and data communications issues and concerns and represents SSA in dealings with Federal and non-Federal agencies and organizations on the full range of OS's functions.

SEC. SB.10 *The Office of Systems*—(Organization): The Office of Systems, under the leadership of the Associate Commissioner for Systems, includes:

A. The Associate Commissioner for Systems (SB)

B. The Deputy Associate Commissioner for Systems (SB)

C. The Immediate Office of the Associate Commissioner for Systems (SB)

D. The Office of Advanced Systems (SBV)

E. The Office of Systems Development (SBE)

F. The Office of Systems Operations (SBP)

G. The Office of Systems Planning and Control (SBC)

H. The Office of Data Services (SBS)

I. The Office of Data Communications (SBG)

SEC. SB.20 *The Office of Systems*—(Functions):

A. *The Associate Commissioner for Systems* (SB) is directly responsible to the Commissioner for carrying out OS's mission and provides general supervision to the major components of OS.

B. *The Deputy Associate Commissioner for Systems* (SB) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. *The Immediate Office of the Associate Commissioner for Systems* (SB) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. *The Office of Advanced Systems* (SBV):

1. Develops the objectives, policies, standards, practices and timetables for SSA processes and related systems of the future, within planning boundaries set by OS's Office of Systems Planning and Control (OSPC) and endorsed by the Associate Commissioner.

2. Conducts comprehensive, long-range process and systems planning efforts for SSA. Performs research studies and analyses about future SSA program and operational status and requirements over a span of 5 years and beyond.

3. Directs the evaluation of future systems plans in terms of progress toward attainment of SSA objectives and recommends the adjustment of objectives, methods of attainment and time frames for achievement, in light of current events and status.

4. Functioning within established paramenters, structures the issues and options for long-range system and process development. Prepares system functional specifications and oversees system and application programming efforts flowing from these specifications.

E. *The Office of Systems Development* (SBE):

1. Plans, directs and coordinates the systems development process for operational ADP systems which directly support SSA insurance and income maintenance programs.

2. Develops new and modified systems, including systems analysis and design; programming; testing; implementation and maintenance. Coordinates with OSPC to assure that these systems are fully integrated with SSA plans for operational systems; technology forecasts; and other operational plans and goals.

3. Assures the implementation of systems operating policies by developing detailed standards, methods and procedures to enhance the level of technology employed and the overall maintainability of the systems being developed.

4. Serves as liaison with other SSA components; other governmental agencies; and private organizations, on the systems development functions of the Office.

F. *The Office of Systems Operations* (SBP):

1. Plans and directs nationwide data processing operations in support of social insurance and income maintenance programs.

2. Manages a complex nationwide data processing facility of computers and related equipment which process and maintain basic program data.

3. Designs, develops, implements and provides operating control systems software and standards for SSA ADP equipment.

4. Develops the technical functional specifications and technical justifications for new or modified ADP equipment to satisfy SSA and other user requirements.

G. *The Office of Systems Planning and Control* (SBC):

1. Directs SSA-wide systems planning and control. Directs systems planning of OS and determines planning requirements at various levels within OS, and assigns responsibility for carrying out these requirements at various levels within OS.

2. Reviews and approves technical and operational systems proposals and assures that all plans are fully integrated with the planning objectives of OS. Determines system priorities among program areas to ensure maximum use of OS resources.

3. Determines and proposes to the Associate Commissioner resource requirements for systems activities in OS. Plans and develops policies, standards and procedures for overall management of OS.

4. Performs a comprehensive data base administration function, including control and authority over critical SSA operational data bases. Directs a program of continuing research into improved systems, methods and facilities. Directs and coordinates OS activities associated with the planning, utilization measurement and procurement of ADP equipment and software resources.

5. Serves as liaison with other SSA components, and other Federal and non-Federal agencies and organizations on the systems planning and control functions of OS.

H. *The Office of Data Services* (SBS):

1. Plans and coordinates the development, implementation, maintenance and operation of ADP administrative,

management information and statistical systems in support of SSA research and statistical activities; financial management; personnel administration; and administrative control programs that provide the basis for executive planning and decisionmaking.

2. Analyzes, designs, programs and maintains ADP systems and provides support to those systems.

3. Plans, manages and controls the operations of a large-scale computer complex in support of these systems. Provides technical support to systems software development and time-sharing services.

4. Provides technical advice and consulation to other SSA components concerning their needs for new or revised systems and recommends to them the most cost-effective method of development.

5. Advises the SSA executive staff on technical and cost factors for reimbursable work for other Federal and non-Federal agencies and organizations.

I. *The Office of Data Communications* (SBG):

1. Plans, designs, implements and operates SSA data communications systems in support of social insurance and income maintenance programs.

2. Assures that data communications plans are consistent with the overall strategic plans of OSPC. Manages a complex nationwide facility which provides data communications for all SSA components.

3. Analyzes, designs, programs and implements specialized software for data communications. Develops technical plans and specifications for the acquisition of data communications equipment, software and related technical resources.

4. Develops and issues policies, procedures and instructions for operation of the SSA data communications system and conducts technical evaluation of the network. Provides advice to the Associate Commissioner, Systems and other SSA officials on all matters concerning data communications.

SEC. SD.00 *The Office of the Regional Commissioner*—(Mission): The Office of the Regional Commissioner (ORC) serves as the principal SSA component at the regional level and assures effective SSA interaction with HEW regional offices (HEWROs); other Federal agencies in the regions; State Welfare Agencies; State Disability Determination Services; and other regional and local organizations. The Office provides regional program leadership and technical direction for the retirement, survivors and disability insurance programs; the black lung benefits program; the supplemental security income program; the aid to families with dependent children (AFDC) program; the program for aid to the aged, blind and disabled in Puerto Rico, Guam and the Virgin Islands; the Cuban, Indochinese and Russian refugee programs; and the U.S. repatriation program. It issues regional operating policy and procedures for these programs and evaluates program effectiveness. It implements national operational and management plans for providing SSA service to the public and directs a regionwide network of district offices, branch offices and teleservice centers. The Office manages and coordinates SSA regional operations and provides administrative support to SSA regional components. It establishes regional priorities and issues policy directives consistent with national program objectives, operational requirements and systems; and implements a regional SSA public affairs program. The Office maintains a broad overview of the regional offices of SSA's Office of Hearings and Appeals and Office of Assessment; program service centers; and data operations centers, to assure effective coordination of SSA activities at the regional level.

SEC. SD. 10 *The Office of the Regional Commissioner*—(Organization): The Office of the Regional Commissioner, under the leadership of the Regional Commissioner, includes:

A. The Regional Commissioner (SD1-SDX)

B. The Deputy Regional Commissioner (SD1-SDX) which includes:

C. The Immediate Office of the Regional Commissioner (SDI-SDX), which includes:

1. The External Affairs Staff (SD19-SDX9)

2. The Special Projects Staff (SD16-SDX6)

D. The Division of Management and Administration (SD17-SDX7)

E. The Division of Operational Support (SD18-SDX8)

F. The Office of the Assistant Regional Commissioner, Retirement and Survivors Insurance (SD12-SDX2)

G. The Office of the Assistant Regional Commissioner, Disability Insurance (SD11-SDX1)

H. The Office of the Assistant Regional Commissioner, Field Operations (SD14-SDX4)

I. The Office of the Assistant Regional Commissioner, Supplemental Security Income (SD13-SDX3)

J. The Office of the Assistant Regional Commissioner, Family Assistance (SD1A-SDXA)

SEC. SD. 20 *The Office of the Regional Commissioner*—(Functions)

A. *The Regional Commissioner* (SD1-SDX) is directly responsible to the Commissioner for carrying out ORC's mission and provides general supervision to major ORC components.

B. *The Deputy Regional Commissioner* (SD1-SDX) assists the Regional Commissioner in carrying out his/her responsibilities and performs other duties as the Regional Commissioner may prescribe.

C. *The Immediate Office of the Regional Commissioner* (SD1-SDX) provides the Regional Commissioner and the Deputy Regional Commissioner with staff assistance on the full range of their responsibilities. It includes:

1. *The External Affairs Staff* (SD19-SDX9):

a. Provides overall leadership and direction to the regional SSA external affairs program. Analyzes and evaluates regional public affairs activities and issues regional public affairs policies consistent with nationally-issued policies. Directs the operations of the Regional Public Affairs Council.

b. Serves as the primary regional contact with news media, community organizations, and Congressional staff on questions and problems of a regionwide nature.

c. Plans, directs and coordinates the development of regional policies, directives and procedures concerning the relationships of SSA programs to public and private welfare and community service programs; and coordinates SSA's regional interaction with other agencies and organizations on the extension and improvement of social services.

d. Manages and oversees the regional public information program. Prepares and disseminates public information materials. Coordinates the development and implementation of regional information and referral programs. Serves as liaison with SSA's Office of Public Affairs and Office of Intergovernmental and Community Affairs.

2. *The Special Projects Staff* (SD16-SDX6):

a. Provides the Regional Commissioner with independent counsel and recommendations on SSA program administration in the region.

b. Examines the effectiveness of interaction between program and operational components; identifies operating problems affecting more than one SSA regional component; and initiates or conducts studies and analyses of problem areas.

D. *The Division of Management and Administration* (SD17-SDX7):

1. Directs the SSA regional management support program. Assures economical management activities at the regional level. Develops and implements regional management policies and procedures and appraises the overall effectiveness of SSA's regional management programs.

2. Assures that Assistant Regional Commissioners and their staffs are operating in accordance with national and regional policies regarding finan-

cial, manpower and organization management, and other areas of management concern.

3. Serves as the focal point for SSA regional administrative planning; and conducts ongoing studies and analyses to improve administrative practices in the region.

4. Coordinates SSA administrative management activities in the region with the HEWRO and serves as SSA's regional liaison with the HEWRO on matters of mutual interest in the management area.

E. *The Division of Operational Support (SD18-SDX8):*

1. Provides support to regional personnel on program operations and systems. Plans, directs and coordinates regional operational activities that cross program lines. Conveys regional operational and systems concerns to headquarters and to other SSA regional components and represents the Regional Commissioner in the resolution of such concerns.

2. Assesses the state of ADP operations and systems security in the region. Develops and carries out an ongoing regional systems planning activity and assures integration of regional operating and management systems. Coordinates and monitors regional implementation of major changes to national systems.

3. Conducts operations analyses and provides support to regional office personnel and field office managers in the resolution of operating workflow and systems problems.

4. Consolidates, reviews and distributes regional program instructions, and develops systems instructional material and implementing instructions for operational activities that cross program lines in the region.

F. *The office of the Assistant Regional Commissioner, Retirement and Survivors Insurance* (SD12-SDX2):

1. Provides program leadership and technical direction for retirement and survivors insurance (RSI) program activities in the region. Issues regional operating policies and procedures necessary to insure implementation of national RSI program policy. Conducts visits to, and ongoing liaison with, district offices to determine the effectiveness of RSI policies and procedures; to provide technical assistance in the resolution of RSI operational problems; and to evaluate RSI program effectiveness regionwide.

2. Resolves differences of opinion on RSI program matters between district and branch offices and SSA program service centers.

3. Plans, directs and coordinates regional activities under social security coverage agreements between SSA and State and interstate entities. Negotiates with State and interstate authorities on coverage agreements; makes recommendations to final approving officials regarding the execution of new coverage agreements, modifications in exiting agreements or the termination of agreements; and processes requests for extension of coverage agreements. Supplies information with respect to wage coverage questions; and provides final SSA approval for modifications to coverage agreements with States or interstate instrumentalities within the region.

G. *The Office of the Assistant Regional Commissioner, Disability Insurance* (SD11-SDX1):

1. Provides program leadership and technical direction for SSA disability, blindness and black lung benefits activities in the regions. Issues regional operating policies and procedures necessary to insure implementation of national policy relating to these activities. Conducts visits to, and ongoing liaison with, district offices and State Disability Determination Services, to determine the operational effectiveness of the administration of the disability, blindness and black lung benefits programs regionwide.

2. Approves State Disability Determination Service (DDS) budgets. Provides technical consultation on fiscal and other administrative aspects of DDS operations. Conducts comprehensive reviews and analyses of DDS.

3. Coordinates with regional representatives of HEW's Rehabilitation Services Administration and other agencies on rehabilitation, disability, blindness and black lung benefits program matters. Establishes and maintains relationships with professional medical organizations to promote the goals of these programs.

H. *The Office of the Assistant Regional Commissioner, Field Operations* (SD14-SDX4):

1. Provides leadership, guidance and direction to district and branch offices and teleservice centers through Area Directors.

2. Insures the consistency of field operations in the region with national and regional policies and procedures, and is accountable to the Regional Commissioner for the effectiveness of these operations.

I. *The Office of the Assistant Regional Commissioner, Supplemental Security Income* (SD13-SDX3):

1. Provides program leadership and technical direction for supplemental security income (SSI) program activities in the region. Issues regional operating policies and procedures necessary to insure implementation of national SSI program policy. Conducts visits to, and ongoing liaison with, district offices to determine the effectiveness of SSI policies and procedures, and to provide technical assistance in the resolution of SSI operational problems.

2. Negotiates and maintains agreements with States relative to the SSA administration of State supplementation and Medicaid eligibility determinations. Evaluates and monitors budgets developed by States under these agreements. Maintains an ongoing contact with States and negotiates with States on SSI program matters and related concerns, including determinations pertaining to adjusted payment levels, hold harmless levels and the operational aspects of the Food Stamp program.

3. Works with outside groups representing SSI program constituencies. Consults with State and local officials, and representatives of community and private organizations on SSA operational matters. Participates in the development of regional public affairs/public information programs, including information and referral services about the SSI program.

J. *The Office of the Assistant Regional Commissioner, Family Assistance* (SD1A-SDXA):

1. Provides program leadership and technical direction for Office of Family Assistance (OFA) program activities in the region. Issues regional operating policies and procedures necessary to insure implementation of national OFA program policies.

2. Conducts visits to and ongoing liaison with State agencies to determine the effectiveness of OFA policies and procedures, and to provide technical assistance in the resolution of operation problems. Evaluates OFA program effectiveness regionwide. Plans, directs and coordinates regional activities between OFA and State and local entities. Negotiates with State and local authorities on State plans, plan amendments and recommendations, and recommends approval or disapproval to the appropriate SSA official.

3. Directs and coordinates a program of financial management, including the review and evaluation of grant award requests from States. Recommends approval or disapproval of these requests. Reviews State expenditure estimates and reports, and recommends approval or disapproval. Provides overview and assistance to State agencies in implementing major initiatives required by OFA regulations concerning financial management.

SEC. SE.00 *The Office of Intergovernmental and Community Affairs*—(Mission): The Office of Intergovernmental and Community Affairs (OICA) plans, coordinates, evaluates and partially implements SSA's program for interaction on nonlegislative Social Security matters with Congress; other Federal agencies; State and local agencies; community and private organizations; and special interest and advocacy groups. It assures SSA representation in organized planning for

social services. The Office identifies and assesses problems in public acceptance of SSA programs and how SSA administers them. It also establishes, promulgates and assesses SSA policy for answering public, congressional and other sensitive inquiries. It controls, analyzes and responds to inquiries, and conducts a quality appraisal of written responses prepared thoughout SSA.

SEC. SE.10 *The Office of Intergovernmental and Community Affairs*—(Organization): The Office of Intergovernmental and Community Affairs, under the leadership of the Associate Commissioner for Intergovernmental and Community Affairs, includes:

A. The Associate Commissioner for Intergovermental and Community Affairs (SE)

B. The Deputy Associate Commissioner for Intergovernmental and Community Affairs (SE)

C. The Immediate Office of the Associate Commissioner for Intergovernmental and Community Affairs (SE)

D. The Office of Public Concerns (SEC)

E. The Congressional Relations Staff (SER)

F. The Office of Public Inquiries (SEP)

SEC. SE. 20 *The Office of Intergovernmental and Community Affairs*—(Functions):

A. *The Associate Commissioner for Intergovernmental and Community Affairs* (SE) is directly responsible to the Commissioner for carrying out OICA's mission and provides general supervision to the major components of OICA.

B. *The Deputy Associate Commissioner for Intergovernmental and Community Affairs* (SE) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. *The Immediate Office of the Associate Commissioner for Intergovernmental and Community Affairs* (SE) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. *The Office of Public Concerns* (SEC):

1. Plans, coordinates and partially conducts SSA's interactions with private organizations at national, State and local levels. Coordinates and assures SSA representation in negotiations and deliberations with social and community service organizations, advisory groups, advocacy groups and special interest groups.

2. Assesses public reactions to Social Security programs and administration. Serves as the advocate within SSA of public concerns about SSA programs and how SSA runs them.

3. Identifies the needs of the people SSA serves for resources and services other than those provided by SSA programs. Directs SSA's nationwide program of representation and participation in organized planning for social services.

4. Provides the general guidelines and standards for SSA's information and referral activities.

5. Plans, coordinates and partially conducts SSA's interactions with other governmental organizations at the Federal, State and local levels. Coordinates and assures SSA representation in negotiations and deliberations with government agencies. Assures SSA representation at high-level intergovernmental conferences and seminars.

6. Keeps abreast of the activities and plans of the various branches of government and other domestic organizations. Assesses these activities and plans for impact on SSA programs or administration. Advises and consults with SSA's Office of Policy (OP) and, with OP, advises and consults with other HEW/SSA components, to assure that the agency addresses all identified concerns. Advises SSA components on the impact of agency policies and operations on outside organizations. Recommends changes or corrective actions.

7. Serves as advisor to SSA's executive staff on matters dealing with organizations and government agencies at all levels.

8. Provides guidance to regional and field staff in their interactions with public/private organizations at State and local levels.

E. *The Congressional Relations Staff* (SER):

1. Has agencywide responsibility for providing support services to individual members of Congress and their staffs. Provides, with help from other SSA components, timely solutions to special problems and issues called to SSA's attention by individual members of Congress. 2. Assures that Congress is kept well informed about SSA operations and activities, except for those dealing with legislation Congress is considering. Makes special presentations and briefings to Congress on SSA activities and programs.

3. Anticipates Congressional concerns and problems and alerts SSA management to assure that effective and expeditious action is taken about the the concerns of Congress.

F. *The Office of Public Inquiries* (SEP):

1. Establishes and assesses SSA policy for answering public, Congressional and other inquiries. Receives, analyzes and controls high priority written and telephone inquiries, prepares responses, when appropriate, and refers those requiring specialized knowledge to the appropriate SSA component for handling.

2. Studies correspondence practices in use throughout SSA and continually appraises the quality of written responses prepared throughout SSA. Develops recommendations to improve the effectiveness of SSA's correspondence program.

3. Reviews and clears all computer-generated notices and form letters. Conducts training programs in SSA headquarters and field components to improve correspondence with the public. Provides advice and assistance to SSA officials and liaison with HEW on public correspondence matters.

SEC. SF.00 *The Office of Family Assistance*—(Mission): The Office of Family Assistance (OFA) provides direction and technical guidance to the nationwide administration of the following income maintenance and assistance programs: Aid to families with dependent children (AFDC); aid to the aged, blind and disabled in Guam, Puerto Rico and the Virgin Islands; the Cuban, Indochinese and Russian refugee programs; and the U.S. repatriation program. It develops, recommends and issues policies, procedures and interpretations to provide program direction to these programs. The Office evaluates the performance of States in administering these programs; reviews State planning for administrative and operational improvements; and supports actions to improve program effectiveness. It directs reviews; provides consultations; and conducts necessary negotiations to achieve adherence to Federal law and regulations in State Plans for income maintenance and assistance program administration. The Office directs financial management and cost analyses in the review and approval of State grant award requests and expenditure estimates. It provides national leadership in the development and coordination of national, public and private programs in the public assistance field. The Office assures that SSA regional offices provide program and management guidance and technical assistance to States administering these income maintenance and assistance programs.

It participates with SSA's Office of Policy in legislative planning.

SEC. SF.10 *The Office of Family Assistance*—(Organization): The Office of Family Assistance, under the leadership of the Associate Commissioner for Family Assistance, includes:

A. The Associate Commissioner for Family Assistance (SF)

B. The Deputy Associate Commissioner for Family Assistance (SF)

C. The Deputy Associate Commissioner for Family Assistance (SF)

D. The Immediate Office of the Associate Commissioner for Family Assistance (SF)

E. The Special Programs Staff (SFS)

F. The Office of Policy (SFX)

G. The Office of Procedures (SFP)

H. The Office of Financial Management (SFF)

I. The Office of Management Support (SFT)

J. The Office of Planning, Evaluation and Statistical Analysis (SFE)

K. The Welfare Management Institute (SFW)

L. The Office of Liaison and State Operations (SFL)

SEC. SF.20 *The Office of Family Assistance*—(Functions):

A. *The Associate Commissioner for Family Assistance* (SF) is directly responsible to the Commissioner for carrying out OFA's mission and provides general supervision to the principal components of OFA.

B. *The Deputy Associate Commissioner for Family Assistance* (SF) assists the Associate Commissioner in carrying out his/her OFA-wide responsibilities and performs other duties as the Associate Commissioner may prescribe. In addition, has specialized duties in day-to-day program policy activities.

C. *The Deputy Associate Commissioner for Family Assistance* (SF) assists the Associate Commissioner in carrying out his/her OFA-wide responsibilities and performs other duties as the Associate Commissioner may prescribe. In addition, has specialized duties in day-to-day program implementation activities.

D. *The Immediate Office of the Associate Commissioner for Family Assistance* (SF) provides the Associate Commissioner and Deputy Associate Commissioners with staff assistance on the full range of their responsibilities.

E. *The Special Programs Staff* (SFS):

1. Administers the Cuban, Indochinese and Russian Refugee programs, including the development of regulations, policies and procedures and making arrangements for financial assistance; resettlement services; emergency health services; assistance to public schools in impacted areas; loans to refugee students; and protective care of minors. Develops regulations and guidelines for these programs.

2. Directs Federal program activities relating to the repatriation of U.S. citizens from foreign countries. Coordinates the return of repatriates with the State Department and coordinates with regional offices on the provision of services to repatriates by State agencies. Reviews and approves, or disapproves, claims by State agencies for reimbursement, and makes determinations whether repayment by repatriates is appropriate. Develops regulations and guidelines for these programs.

F. *The Office of Policy* (SFY):

1. Develops regulations and policies to implement laws governing family assistance programs and coordinates with SSA's Office of Operational Policy and Procedures on the issuance of these regulations.

2. Develops, analyzes and recommends ideas for new legislation concerning family assistance programs and coordinates these activities with SSA's Office of Policy.

3. Evaluates State plan materials for consistency with Federal policies and recommends revisions to assure consistency with Federal law and regulations. Reviews and evaluates program management and quality control reports to determine income maintenance and assistance program policy effectiveness, and develops proposals for changes in policies, regulations and legislation.

4. Assists HEW's Office of the General Counsel in litigation involving family assistance programs.

5. Conducts reviews of identified compliance and reconsideration issues; recommends and manages appropriate action.

6. Provides technical assistance and consultation to regional offices and States concerning Federal policies.

G. *The Office of Procedures* (SFR):

1. Develops, issues and interprets operational procedures, under income maintenance and assistance program regulations, designed to provide States with leadership and guidance in the most efficient techniques of administering income maintenance and assistance programs.

2. Reviews proposed income maintenance and assistance legislation and regulations for procedural implementation impact and feasibility.

3. Reviews and approves, or disapproves, applications from States for Federal financial participation in the acquisition of ADP equipment or the design of automated information systems in support of OFA programs.

4. Reviews and evaluates the utilization of State and local agency manpower devoted to income maintenance and assistance program administration.

5. Provides technical assistance and consultation to the States concerning such matters as operational procedures, systems analysis, program training and establishing models and guides for States on income maintenance and assistance methods.

H. *The Office of Financial Management* (SFF):

1. Reviews State budget forecast and expenditure reports and related financial management activities; analyzes the consequences of these reports for the Federal budget.

2. Exercises financial control over grants to States for aid provided under income maintenance and assistance programs.

3. Provides training, technical assistance and guidance to OFA regional components on Federal-State financial matters.

4. Establishes and issues income maintenance and assistance program fiscal and accounting policies and procedures.

5. Prepares, presents and executes the total OFA budget.

6. Analyzes and presents cost data for activities funded under income maintenance and assistance programs.

I. *The Office of Management Support* (SFT):

1. Plans, organizes and directs OFA's internal manpower utilization, organization and training programs, in accordance with Federal, HEW and SSA personnel management regulations, policies and procedures.

2. Analyzes the organizational effectiveness of OFA components and insures uniform and effective manpower utilization and position management.

3. Manages the OFA center where State plans for AFDC programs are located and periodically prepares and publishes "Characteristics of State AFDC Plans" and related analyses and reports.

4. Prepares the program budget for the U.S. Repatriation program and performs related financial management activities.

5. Prepares and executes the salaries and expenses budget for OFA.

6. Analyzes OFA facilities, space and equipment needs and initiates necessary actions to take care of them. Provides management services for forms; administrative publications; mail; reports; travel; safety; records; and property management.

7. Coordinates the review, preparation and publication of OFA operational instructions to insure consistency, lack of duplication, receipt and access to such materials by OFA audiences. Coordinates the issuance process for income maintenance and assistance program regulations and policies with SSA's Office of Operational Policy and Procedures.

J. *The Office of Planning, Evaluation, and Statistical Analysis* (SFE):

1. Develops OFA emergency, long-range and short-range plans to assure effective continuity of OFA activities. Prepares trend analyses and reports, and energy and environmental impact statements.

2. Specifies income maintenance and assistance program information needs and provides input from that program to SSA research efforts. Assesses the practical application of research findings to income maintenance and assistance program administration.

3. Develops statistical information relative to State, regional and national income maintenance and assistance program administration. Evaluates program effectiveness; identifies potential program abuse; reports findings; and recommends actions aimed at improving program administration and integrity.

4. Develops projects concerning client populations and income maintenance and assistance program activities to meet the needs of OFA components and State agencies.

5. Develops a coordinated and comprehensive program for identifying major OFA operational planning objectives and monitors the implementation of these goals.

6. Coordinates audits external to SSA and audit reporting requirements with SSA's Office of Assessment.

7. Provides technical assistance and consultation to regional offices and States on planning, evaluation, statistical analyses and related matters.

K. *The Welfare Management Institute* (SFW):

1. Provides coordinated Federal leadership and assistance to State and local agencies in improving their management and implementation of the AFDC program. Promotes the betterment of public welfare programs governmentwide.

2. Identifies and evaluates innovative and successful management practices and technology employed by State agencies administering the AFDC program. Plans and conducts onsite technology transfers from one State locality to another.

3. Publishes periodic newsletters advising States of program, technological and management developments. Operates a welfare management information reference service. Plans and conducts welfare management workships, conferences and forums to address critical issues and new ideas in welfare management.

L. *The Office of Liaison and State Operations* (SFL):

1. Provides a national focus for regional office activities, assuring continuous communications between OFA headquarters and regional components. Assures that regional concerns and needs are attended to by appropriate headquarters and regional components. Conducts onsite comprehensive appraisals of management and operations of the Offices of the Assistant Regional Commissioners, Family Assistance.

2. Establishes national performance goals for State and local agencies. Develops, issues, evaluates and monitors national program performance standards for measuring the effectiveness of State and local agency income maintenance and assistance program administration. Provides leadership and technical assistance to the regional offices in applying standards in the evaluation of State and local performance.

3. Analyzes quality control findings of SSA's Office of Assessment to identify areas requiring improvements and corrective actions.

4. Develops national policies and requirements for State and local corrective action plans. Provides leadership to SSA regional offices regarding the development, implementation and monitoring of State and local corrective action plans; evaluates the effectiveness of corrective action activities.

5. Develops national standards and guidelines for State program integrity activities; provides guidance to SSA regional offices in assisting States in the identification and correction of program fraud and abuse.

6. Establishes requirements for submission and review of State plans and amendments, and monitors identification of, and action on, compliance issues.

SEC. SG.00 *The Office of Hearings and Appeals*—(Mission): The Office of Hearings and Appeals (OHA) holds hearings and issues decisions as part of the SSA appeals process. It directs a nationwide field hearings organization staffed with Administrative Law Judges who conduct impartial hearings and make decisions on appealed determinations involving retirement, survivors, disability and health insurance benefits; black lung benefits; and supplemental security income. The office also performs central reviews of decisions by Administrative Law Judges which are appealed by a claimant, or reopened on the motion of the Appeals Council, and renders the Secretary's final decision on such cases.

SEC. SG.10 *The Office of Hearings and Appeals*—(Organization): The Office of Hearings and Appeals, under the leadership of the Associate Commissioner for Hearings and Appeals, includes:

A. The Associate Commissioner for Hearings and Appeals (SGA).

B. The Deputy Associate Commissioner for Hearings and Appeals (SGA).

C. The Deputy Associate Commissioner for Hearings and Appeals (SGA).

D. The Immediate Office of the Associate Commissioner for Hearings and Appeals (SGA), which includes:

1. The Executive Secretariat (SGA1).

2. The Congressional and Public Inquiries Staff (SGA2)

E. The Office of Management Operations (SGM)

F. The Office of the Chief Administrative Law Judge (SGJ)

G. The Office of Policy and Procedures (SGP)

H. The Office of Appeals Operations (SGL)

I. The Appeals Council (SGC)

J. The Offices of the Regional Chief Administrative Law Judges (SG-F1—SG-FX)

SEC. SG.20 *The Office of Hearings and Appeals*—(Functions):

A. *The Associate Commissioner for Hearings and Appeals* (SGA) is directly responsible to the Commissioner for carrying out OHA's mission and provides general supervision to the major components of OHA. Serves as Chairman of the Appeals Council.

B. *The Deputy Associate Commissioner for Hearings and Appeals* (SGA) assists the Associate Commissioner in carrying out his/her OHA-wide responsibilities and performs other duties as the Associate Commissioner may prescribe. In addition, serves as the Deputy Chairman of the Appeals Council and has specialized duties in day-to-day appeals operations activities.

C. *The Deputy Associate Commissioner for Hearings and Appeals* (SGA) assists the Associate Commissioner in carrying out his/her OHA-wide responsibilities and performs other duties as the Associate Commissioner may prescribe. In addition, has specialized duties in day-to-day management operations activities.

D. *The Immediate Office of the Associate Commissioner for Hearings and Appeals* (SGA) provides the Associate Commissioner and Deputy Associate Commissioners with staff assistance on the full range of their responsibilities. It includes:

1. *The Executive Secretariat* (SGA1):

a. Maintains liaison and coordination between the Office of the Associate Commissioner and major OHA components.

b. Coordinates, clears and reviews completed staff work on action memoranda directed to the Associate Commissioner.

c. Controls the Associate Commissioner's correspondence, assigning action on incoming correspondence and developing information on action requests to the Associate Commissioner.

d. Coordinates and prepares briefing materials for meetings attended by the Associate Commissioner.

2. *The Congressional and Public Inquiries Staff* (SGA2):

a. Prepares and reviews OHA, responses to congressional and public inquiries and correspondence.

b. Evaluates correspondence for conformance with OHA standards, policies and procedures.

c. Provides OHA—level guidance and liaison on correspondence management.

d. Determines when inquiries represent requests for hearings or reviews

and assures that such requests are directed to the appropriate OHA component.

E. *The Office of Management Operations* (SGM):

1. Plans, develops, coordinates and implements the activities of OHA, including personnel management; appeals operations; financial management; management analysis; management information systems; program quality review and appraisal; field management support; and all matters associated with facilities and facilities management services.

2. Appraises overall accomplishment of OHA's assigned mission and functions in terms of efficient, effective and economical planning, operations, procedures and achievements.

3. Directs and coordinates OHA's administration in support of its operations.

4. Participates in considering broad aspects of issues, policies, plans and program emphases affecting administration of the hearings and appeals program and related SSA programs. Shares in overall formulation, planning and evaluation of OHA operations and in making recommendations for changes in legislation, regulations and policies.

5. Plans, develops, implements and administers an equal opportunity program within OHA.

6. Provides OHA leadership and guidance on matters pertaining to psychological, vocational, educational and related factors having a bearing on work capacity.

F. *The Office of the Chief Administrative Law Judge* (SGJ):

1. Provides professional leadership to the nationwide corps of Administrative Law Judges and Regional Chief Administrative Law Judges.

2. Serves as the focal point for communications between the Office of the Associate Commissioner and Administrative Law Judges.

3. Directs a professional staff engaged in maintaining close contact with the field hearings organization to obtain and assess the views of Administrative Law Judges on hearings operations.

G. *The Office of Policy and Procedures* (SGP):

1. Plans, analyzes and develops OHA-wide policy and procedural guidelines for the hearings process.

2. Plans, analyzes and develops policy and procedural guidelines for the Appeals Council's review processes, civil actions processes and support staff.

3. Provides a system for communicating hearings and appeals policies and procedures, through the issuance of manuals and directives. Develops and maintains publications, informational material, references and forms on the hearings and appeals processes.

4. Reviews current and developing trends in administrative law; analyzes policy recommendations; and develops long-range and short-range hearings and appeals policy plans.

5. Provides advice and guidance throughout OHA on matters involving program policies and procedures.

6. Coordinates policy and procedural matters within OHA and with other SSA components; the HEW Office of the General Counsel; other HEW components; other Federal agencies; and private organizations.

H. *The Office of Appeals Operations* (SGL):

1. Provides advice and assistance to the Appeals Council on the adjudication of cases.

2. Reviews decisions of Administrative Law Judges to assist the Appeals Council in deciding whether to assume jurisdiction.

3. Analyzes cases and recommends action to the Appeals Council on appealed claims and litigated cases, and prepares documents required to implement the action decided upon by the Appeals Council.

4. Identifies and analyzes problem areas and recommends improvements in the appeals process.

5. Reviews and analyzes fee petitions from attorneys and representatives of claimants for the provision of services at the hearing level and authorizes payment of fees in those cases where fees recommended by Administrative Law Judges are more than an Administrative Law Judge can grant; also authorizes payment of fees in all cases at the Appeals Council level.

I. *The Appeals Council* (SGC):

1. Reviews decisions of Administrative Law Judges involving retirements, survivors, disability and health insurance benefits, supplemental security income; and black lung benefits, on the motion of appellants or on its own motion.

2. Examines cases records, obtains additional evidence when appropriate and renders written decisions or orders which are the Secretary's final decisions or orders, or remands cases to Administrative Law Judges.

3. Recommends action concerning decisions appealed to the courts based on analysis.

4. Obtains additional evidence and prepares supplemental decisions on remanded cases and recommends whether appeals should be taken to higher courts on judicial reversals of the Secretary's decisons.

5. Directs the medical advisory services program for OHA's components in the evaluation of claims for disability and health insurance benefits; supplemental security income for disability and blindness; and black lung benefits.

6. Provides guidance in the utilization of medical advisors throughout OHA and participates in the formulation of medical policies used in the evaluation of claims for disability and health insurance benefits; supplemental security income for disability and blindness; and black lung benefits.

7. Maintains liaison with medical groups to promote program understanding and to keep abreast of disability evaluation developments and changes in health insurance regulations.

J. *The Offices of the Regional Chief Administrative Law Judges* (SGF1-SGFX):

1. Represent the Associate Commissioner at the regional level on all matters involving the hearings process.

2. Plan, organize and administer regional programs for scheduling and conducting independent and impartial hearings on appealed determinations involving claims for retirement, survivors, disability and health insurance benefits; supplemental security income; and black lung benefits.

3. Provide guidance, direction and leadership to Administrative Law Judges and their staffs.

4. Coordinate operations and administrative activities with HEW regional offices; other SSA regional components; State agencies; and others, as required.

SEC. SJ.00 *The Office of Operational Policy and Procedures*—(Mission): The Office of Operational Policy and Procedures (OOPP) provides SSA-wide leadership and direction to the development, coordination and promulgation of operational policy and procedures in the following areas: retirement, survivors and disability insurance, supplemental security income, and black lung benefits program policy; establishment, correction and maintenance of social security earnings records; issuance of new and duplicate social security cards; social security coverage of State and local government employees; operations affecting post-entitlement actions and adjusting related master benefit records to reflect changes; and establishment of work standards, methods and processing guidelines for central, regional and field operating components. It develops and promulgates program regulations, and participates in legislative planning by identifying legislative needs and developing legislative proposals for consideration by SSA's Office of Policy. The Office insures that interrelated policy areas are coordinated; represents SSA in overall operational policy matters; and serves as SSA's overall point of operational policy expertise. It ensures that policies are coordinated internally and that all instructional materials devel-

oped are compatible with overall operating policies and practices.

SEC. SJ.10 *The Office of Operational Policy and Procedures*—(Organization): The Office of Operational Policy and Procedures, under the leadership of the Associate Commissioner for Operational Policy and Procedures, includes:

A. The Associate Commissioner for Operational Policy and Procedures (SJ)

B. The Deputy Associate Commissioner for Operational Policy and Procedures (SJ)

C. The Immediate Office of the Associate Commissioner for Operational Policy and Procedures (SJ)

D. The Office of Insurance Programs (SJN)

E. The Office of Assistance Programs (SJB)

F. The Office of Enumeration and Earnings Records (SJC)

G. The Office of Disability Programs (SJH)

H. The Work Standards and Methods Staff (SJE)

I. The Office of Regulations (SJJ)

J. The Office of Program Directives (SJG)

K. The Office of User Requirements and Validation (SJR)

SEC. SJ.20 *The Office of Operational Policy and Procedures*—(Functions):

A. *The Associate Commissioner for Operational Policy and Procedures* (SJ) is directly responsible to the Commissioner for carrying out OOPP's mission and provides general supervision to the major components of OOPP.

B. *The Deputy Associate Commissioner for Operational Policy and Procedures* (SJ) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. *The Immediate Office of the Associate Commissioner for Operational Policy and Procedures* (SJ) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. *The Office of Insurance Programs* (SJN):

1. Plans, develops and evaluates operational policies, standards and instructions for the retirement and survivors insurance (RSI) program and those common to two or more SSA benefit programs. Develops and issues the guidelines, directives and operational procedures to be used by operating components in implementing RSI program policies and common SSA program policies, and establishes evidence and verification requirements.

2. Plans, develops and evaluates operational policies, standards and instructions affecting the nondisability aspects of foreign claims. With SSA's Office of International Policy, develops and analyzes operating policies and procedures necessary to implement the provisions of international agreements.

3. Plans, develops, evaluates and articulates operational policies and instructions governing social security coverage for State and local employees.

4. Coordinates the development, evaluation and dissemination of operational policies with other SSA components and undertakes similar coordination with a number of Federal and State agencies.

5. Evaluates the effects of proposed legislation and policies initiated by SSA's Office of Policy, or of legislation pending before Congress, to determine the impact upon RSI, foreign claims and common SSA program policies and instructions. Assesses effectiveness of operating policies and initiates actions designed to correct identified deficiencies. Serves as principal advisor to SSA officials on matters concerning RSI, nondisability foreign claims and common SSA operational policies and instructions.

6. Evaluates policies to determine whether training is needed to assure their effective implementation and participates in the development of training materials.

E. *The Office of Assistance Programs* (SJB):

1. Plans, develops and evaluates operational policies, standards and instructions for the supplemental security income (SSI) program. Develops and writes the guidelines, directives and operational procedures to be used by operating components in implementing SSI program policies and establishes evidence and verification requirements.

2. Plans and develops the policies and strategies for negotiating Federal-State agreements that govern SSA's administration of SSI Optional and Mandatory State Supplementation Programs, determinations for States of SSI recipients' eligibility for medicaid, and State data exchange activities; plans and develops these agreements; and revises them when changes in the programs require it. Plans and implements policies and procedures governing SSI fiscal relationship between SSA and State governments. Provides advice and technical support to regional offices working with officials and agencies on State assistance programs.

3. Coordinates the development, evaluation and writing of operational policies with other SSA components and undertakes similar coordination with other Federal and State agencies.

4. Evaluates the effects of proposed legislation and policies being initiated by SSA's Office of Policy, or of legislation pending before Congress, to determine SSI operational policy or program administration impact; assesses effectiveness of operating policy standards; develops instructions to correct identified deficiencies; and serves as principal advisor to SSA officials on SSI program operating policies.

5. Evaluates policies to determine whether training is needed to assure their effective implementation and participates in the development of training materials.

F. *The Office of Enumeration and Earnings Records* (SJC):

1. Plans, develops and evaluates operating policies, procedures and instructions for establishment, correction and maintenance of: social security number records; issuance of new and duplicate social security cards; processing of all earinings data and adjustments to update summary earnings records and issuance of earnings statements; and reconciling disagreements regarding earnings statements.

2. Plans, develops and evaluates instructions and procedures for operations which correct improperly reported earnings. Develops methods to encourage magnetic tape reporting.

3. Plans, develops and evaluates operating policy, procedures and instructions on social security earnings reporting of State and local government employees, including collections of, and accounting for, all related payments and furnishing Trust Fund (Tax Accountability) information to the Treasury Department.

4. Plans, develops and evaluates operating policies, procedures and instructions for the establishment, correction and maintenance of a vested pension rights identification and notification system.

5. Plans, develops and evaluates polices, procedures and instructions in a number of enumeration and earnings record service areas, including: Providing a variety of mortality and job pattern information to Government and private researchers; establishing procedures, policies and standards for the management of volume correspondence received in SSA's Office of Central Records Operations; providing procedures for special activities, including letter forwarding services; and providing summary and detailed earnings statements and Master Beneficiary Record data for a variety of nonprogram purposes, including pension plan purposes and volume death verification requests.

6. Coordinates development, evaluation and writing of operational policies with other SSA components. Serves as

the SSA focal point for coordination and policy negotiation with other Federal and State agencies on matters involving enumeration and earnings reporting processes.

7. Evaluates the effects of proposed legislation and policies proposed by SSA's Office of Policy, and of legislation introduced before Congress, on enumeration and earnings record operations processes and program policy instructions. Assesses overall effectiveness of operating policies and initiates actions designed to correct deficiencies.

8. Evaluates policies to determine whether training is needed to assure their effective implementation and participates in the development of training materials.

G. *The Office of Disability Programs* (STH):

1. Plans, develops and evaluates the operational policies, standards and instructions for the disability insurance (DI) program, the disability and blindness provisions of the SSI program, the beneficiary and recipient vocational rehabilitation program, and the black lung benefits program; develops and writes guidelines, directives and operational procedures to be used by operating components in implementing DI program policies; and establishes evidence and verification requirements.

2. Directs planning, development and evaluation of policies and standards governing administration of disability determination functions conducted under Federal-State disability determination agreements. Jointly with HEW's Rehabilitation Services Administration, formulates regulations, policies and procedures governing payment for vocational rehabilitation services provided to the disabled. Participates in the development and execution of State Disability Determination Services and State Rehabilitation Services budgets. Establishes guidelines governing negotiation of agreements with States under provisions of the Social Security Act; provides operational policy advice and technical support to regional offices and central office components in the administration of disability programs.

3. Develops a nationwide professional relations program with the medical community responsive to the needs and objectives of disability programs; reviews and analyzes pending legislation and proposed policy and procedural issuances to identify areas of emphasis and to detect factors which may pose professional relations problems by the medical community; evaluates the degree of cooperation and support provided disability programs by the medical community; and identifies weaknesses and strengths in professional relations programs.

4. Coordinates development, evaluation and writing of operational disability policies with other SSA components and undertakes similar coordination with other Federal and State agencies.

5. Evaluates the effects of proposed legislation and policies being initiated by SSA's Office of Policy, and of legislation pending before Congress, to determine disability operational policy or program administration impact; assesses effectiveness of operating policy standards; develops instructions to correct identified deficiencies; and serves as principal advisor to SSA officials concerning disability program operating policies.

6. Evaluates policies to determine whether training is needed to assure their effective implementation and participates in the development of training materials.

H. *The Work Standards and Methods Staff* (SJE):

1. Plans, directs, carries out, evaluates and coordinates a work process analysis and a monitoring and evaluation procedure for both central and field operations that supports the operational policy and procedural objectives of OOPP.

2. Develops, sets and maintains work standards, work processing guidelines and work methods, as well as related operational objectives and priorities, to be followed by central, regional and field operating components.

3. Prepares guidelines, directives and instructions to be used by operating components in complying with work standards and methods and with monitoring activities undertaken by this Staff. Prepares guidelines, directives and instructions for internal work processes of district and branch offices and teleservice centers.

4. Identifies work process deficiencies that arise through the execution of operational policies and procedures. Initiates or recommends action designed to correct deficiencies and preclude abuse.

5. Participates in the review of instructional materials and directives and administrative and legislative changes, to ensure that they can be implemented effectively and are compatible with the functions of this staff.

6. Coordinates the development, evaluation and writing of the operational work process analysis and guidelines with other SSA components and undertakes similar coordination with other Federal and State agencies.

7. Evaluates policies to determine whether training is needed to assure their effective implementation and participates in the development of training materials.

I. *The Office of Regulations* (SSJ):

1. Plans, develops and writes SSA regulations, and provides for the publication of regulations. Performs an ongoing assessment of the regulations process in SSA.

2. Serves as SSA's focal point on matters concerning litigation; formulates SSA appeal recommendations on adverse decisions; and provides trend analyses of SSA's litigation activities.

3. Plans and develops rulings to provide interpretations and application of the Social Security Act and regulations governing Social Security programs; develops and publishes general and special compilations of Social Security Laws, various technical issuances and program handbooks.

4. Coordinates within OOPP the review and clearances of regulations for the claims and payment processes developed for the retirement, survivors and disability insurance programs, the supplemental security income program, and the black lung benefits program; assures that SSA's Office of Policy has input into the regulations development process. Provides technical, consultative and advisory services within OOPP and to SSA in the development of regulations.

5. Formulates policy concerning Privacy Act provisions and serves as liasion between SSA, the Office of the Secretary and HEW's Office of Management and Budget on related activities.

6. Coordinates activities with HEW's Office of the General Counsel on the issuance of regulations and rulings.

7. Negotiates with HEW and the Office of the FEDERAL REGISTER on regulations matters and other areas of concern to this Office and, in coordination with SSA's Office of Intergovernmental and Community Affairs, negotiates with other Federal and non-Federal agencies, organizations and institutions on matters within the Office's mission.

8. Evaluates policies to determine whether training is needed to assure their effective implementation and participates in the development of training materials.

J. *The Office of Program Directives* (SJG):

1. Directs the review, coordination, publication and distribution of program instructional and other materials to insure uniformity, lack of duplication and compatibility of all SSA operational, instructional and informational material; establishes the instructional needs of SSA operating personnel.

2. Directs a technical review of program operating instructions to insure proper organization, clearance format and audience population for materials prepared by various SSA components for the program operations manual system (POMS); establishes standards

and guidelines for a comprehensive and unified POMS; and maintains and evaluates the POMS.

3. Coordinates publication, distribution and warehousing of all program instructional and other material; directs a quality review of new issuances to insure proper reproduction of printed materials.

4. Indexes all program instructional material and determines user needs in this area.

5. Participates with SSA's Office of Systems in the design, development and ongoing administration of a computerized system for storing, updating, publishing and distributing operational instructions and materials; coordinates with SSA's Office of Management, Budget and Personnel, as appropriate.

6. Establishes policies and guidelines for the distribution, required by the Freedom of Information Act, of SSA program publications for the public.

K. *The Office of User Requirements and Validation* (SJR):

1. Based upon procedures and policies developed in other OOPP components, plans, develops and evaluates the implementation of operational systems for the enumeration and earnings record processes; adjudication and payment of retirement, survivors and disability insurance claims and supplemental security income claims and postadjudicative actions; payment and case control operations; health insurance entitlement; and supplementary medical insurance premium collection. Ensures the efficient and operational effectiveness of manual and automated systems from a program perspective and that policies and claims processes mesh.

2. Assures OOPP input in systems development and operations; provides interpretation, technical advice and guidance to OOPP components on matters relating to operational systems.

3. Evaluates legislative proposals, systems and operational changes, and changing technology for impact on SSA operational systems.

4. Develops functional specifications for new systems and modifications to existing systems to meet the requirements of SSA programs; plans for the development and implementation of such systems.

5. Plans and conducts analyses to evaluate and validate new or modified systems and certifies the acceptance of systems performance.

6. Coordinates between SSA's Office of Systems (OS) and Office of Central Operations to insure effective interaction; works closely with OS in the planning of future systems.

7. Evaluates policies to determine whether training is needed to assure their effective implementation and participates in the development of training materials.

SEC. SL.00 *The Office of Assessment*—(Mission): The Office of Assessment (OA) assures the integrity and quality of the administration of social security programs. It evaluates the quality of SSA operations, with emphasis on the prevention of program and systems abuse; the elimination of waste; and the increase of efficiency. It manages SSA's quality assurance programs; the handling of cases that may involve fraud, and SSA's systems audit and systems security programs. The Office assesses the effectiveness of SSA program administration and operations. It also monitors and assesses SSA's compliance with statutes governing access to information and confidentiality of records. The Office represents SSA with external auditors and assessors.

SEC. SL.10 *The Office of Assessment*—(Organization): The Office of Assessment, under the leadership of the Associate Commissioner for Assessment, includes:

A. The Associate Commissioner for Assessment (SL)

B. The Deputy Associate Commissioner for Assessment (SL)

C. The Immediate Office of the Associate Commissioner for Assessment (SL)

D. The Office of Payment and Eligibility Quality (SLQ)

E. The Office of Adjudication Process Quality (SLC)

F. The Office of Security and Program Integrity (SLB)

G. The Field Assessment Offices (SL-F1—SL-FX)

H. The Office of Evaluation (SLE)

SEC. SL.20 *The Office of Assessment*—(Functions):

A. *The Associate Commissioner for Assessment* (SL) is directly responsible to the Commissioner for carrying out OA's mission and provides general supervision to the major components of OA.

B. *The Deputy Associate Commissioner for Assessment* (SL) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. *The Immediate Office of the Associate Commissioner for Assessment* (SL) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. *The Office of Payment and Eligibility Quality* (SLQ):

1. Develops and maintains programs to assure quality of payments and continuing eligibility in all social security programs. These programs determine payment and continuing eligibility accuracy, and determine Federal fiscal liability to the States for Federally administered State supplemental payments.

2. Identifies error rates, trends and sources, and recommends corrective actions. Administers a program to evaluate policies and compliance with policies in social security benefit programs, identifying policy and policy application deficiencies and recommending corrective actions or changes in policies.

3. Provides technical direction to Field Assessment Offices in the management of their payment and eligibility quality activities.

E. *The Office of Adjudication Process Quality* (SLC):

1. Develops and maintains programs to assure quality in the adjudication processes of social security programs.

2. Identifies error rates, trends and sources, recommends corrective actions, and determines review levels necessary to improve process quality, within resource constraints.

3. Manages central review operations and provides technical direction to Field Assessment Offices in the management of their adjudication process quality activities.

F. *The Office of Security and Program Integrity* (SLB):

1. Develops plans, policies and procedures for maintaining the integrity of SSA's program processes and security of its systems. Manages risk analyses to identify program and systems weaknesses. Designs and recommends measures to prevent fraud and abuse, procedures and action plans, and assesses the effectiveness of implementation of preventive measures.

2. Directs the handling of cases which may involve fraud, including investigations not handled by the HEW Inspector General; and recommends to U.S. Attorneys, through the Office of the Inspector General, whether to prosecute fraud cases.

3. Monitors and assesses SSA's compliance with the Privacy Act. Directs personnel security activities. Provides technical direction to Field Assessment Offices in the management of their security and program integrity activities.

G. *The Field Assessment Offices* (SL-F1—SL-FX):

1. Manage OA operations in the field, including quality assurance, program integrity, systems security and evaluation activities. Conduct independent reviews to determine payment and eligibility error rates in all social security programs, including errors in Federally administrered State supplemental payments and in State administered programs directed by SSA, and determine the Federal fiscal liability amounts reimbursable to States for which SSA administers State payments.

2. Conduct independent reviews to determine the quality of adjudication processes of social security programs and State administered programs directed by SSA. Assist in identifying error trends and sources and recommend corrective actions.

3. Process cases which may involve fraud and recommend prosecution in appropriate cases. Monitor the implementation of program integrity and systems security plans and preventive measures, and perform special assessment surveys and analyses.

H. *The Office of Evaluation* (SLE):

1. Assesses the administration of social security programs. Designs broad evaluation programs, incorporating and coordinating various evaluation methods, techniques and efforts.

2. Serves as SSA's liaison with the HEW Audit Agency and external auditors and evaluators; manages the internal handling of audit reports; and assures proper attention to audit and evaluation findings and recommendations.

3. Maintains a continuing management survey program. Performs continuing and special analyses of trends and critical problem areas. Provides technical direction to Field Assessment Offices in the management of their evaluation activities.

SEC. SM.00 *The Office of Management, Budget and Personnel*—(Mission): The Office of Management, Budget and Personnel (OMBP) provides overall management of SSA resources. The Office develops policy and guidelines for the exercise of SSA-wide management responsibilities, and evaluates and appraises the manner in which those responsibilities are carried out. It administers the following SSA-wide management programs:

1. Budget and financial management, including policy guidance for, and general oversight of, financial arrangements with State agencies;

2. The full range of SSA's human resources programs, including personnel, labor-management relations and training;

3. Organization and management analysis, delegations of authority, administrative appraisal and planning, management information, manpower utilization and work measurement;

4. The acquisition of automated data processing, telecommunications and technical services and equipment;

5. General management support services, including contracting and procurement, property management, realty and space, communications and records, publication management and employee health, safety and physical security. The Office represents SSA in these areas with HEW; other Federal agencies; Congress and other organizations.

SEC. SM.10 *The Office of Management, Budget and Personnel*—(Organization): The Office of Management, Budget and Personnel, under the leadership of the Associate Commissioner for Management, Budget and Personnel, includes:

A. The Associate Commissioner for Management, Budget and Personnel (SM)

B. The Deputy Associate Commissioner for Management, Budget and Personnel (SM)

C. The Immediate Office of the Associate Commissioner for Management, Budget and Personnel (SM)

D. The Office of Management Planning and Analysis (SMP)

E. The Office of Financial Resources (SMF)

F. The Office of Human Resources (SMH)

G. The Office of Materiel Resources (SMM)

H. The Office of Technical Resources (SMR)

SEC. SM.20 *The Office of Management, Budget and Personnel*—(Functions):

A. *The Associate Commissioner for Management, Budget and Personnel* (SM) is directly responsible to the Commissioner for carrying out OMBP's mission and provides general supervision to the major components of OMBP.

B. *The Deputy Associate Commissioner for Management, Budget and Personnel* (SM) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. *The Immediate Office of the Associate Commissioner for Management, Budget and Personnel* (SM) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. *The Office of Management Planning and Analysis* (SMP):

1. Directs comprehensive SSA management analysis, appraisal and planning programs.

2. Develops and maintains the SSA management information system; establishes, conducts and coordinates major SSA management planning efforts, including emergency preparedness; conducts an SSA organization management and analysis program; develops, recommends and publishes all delegations of authority in SSA, and manages SSA's deleations of authority program.

3. Implements and manages a comprehensive manpower utilization and work measurement system; manages the SSA initiatives tracking system; develops and administers SSA internal conference policies and plans; and conducts the SSA historical research program.

4. Provides SSA liaison with HEW; other Federal agencies, and outside sources on these matters.

E. *The Office of Financial Resources* (SMF):

1. Develops SSA financial management objectives, policies, standards and procedures. Plans, prepares, justifies, presents and executes the SSA budget.

2. Designs and operates SSA's automated cost analysis accounting and budget systems. Audits and certifies expenditures; compiles required financial reports; and provides the work measurement requirements for the budget and cost analysis systems.

3. Furnishes financial management advice to the Commissioner and other top level executives of SSA. Provides SSA liaison on agency fiscal matters with the Office of Management and Budget; the Treasury Department; the General Accounting Office; HEW; other Federal agencies; and various private and public organizations.

F. *The Office of Human Resources* (SMH):

1. Develops, implements and maintains a totally integrated and coordinated human resources program responsive to the needs of SSA.

2. Represents SSA in dealing with HEW; other Federal agencies; and sources outside the Federal Government about personnel and human resources management programs.

3. Supervises the components functioning in personnel operations; personnel policy and research; training and career development; classification; labor-management relations; employee health and occupational safety; management-employee communications; and employee relations.

G. *The Office of Materiel Resources* (SMM):

1. Directs the materiel management and management support programs of SSA and develops objectives, policies, standards and procedures for these programs.

2. Directs SSA's activities in contracting and procurement; grants management; real and personal property management; equipment management; and supply operations.

3. Provides services related to space acquisition, utilization and management; telephone systems; mail and distribution operations; records; publications; forms; printing; and reprographics.

4. Directs facilities planning and maintenance; protective security; civil defense; library services; audiovisual services; and graphics services.

5. Manages visitor reception and tours, and services to SSA headquarters personnel, including transporta-

tion; parking; commuter information; food services; and other concessions.

6. Provides SSA liaison with the General Services Administration (GSA); HEW; other Federal agencies; and various public and private organizations, on matters relating to its mission.

H. *The Office of Technical Resources* (SMR):

1. Develops SSA policies and procedures for the acquisition of Automated Data Processing (ADP) and telecommunications equipment and technical services; evaluates conformance to policies and procedures relating to the acquisition of this equipment.

2. Reviews, evaluates and approves SSA plans and proposals for the acquisition of ADP and telecommunications equipment and technical services.

3. Provides SSA liaison with the General Services Administration; the Office of Management and Budget; congressional committees; and various private and public organizations, on matters involving the acquisition of SSA's ADP and telecommunications resources.

4. Analyzes and reviews the use and design of ADP equipment and telecommunications network equipment, within its areas of responsibility.

SEC. SP.0 *The Office of Central Operations*—(Mission): The Office of Central Operations (OCO) directs and coordinates SSA's central office operating components and geographically dispersed installations not under the line authority of the Regional Commissioners. These components certify benefits, authorize and review selected claims, and maintain beneficiary records for the retirement, survivors and disability insurance programs and the black lung benefits program, including foreign operations; maintain and certify earnings records; issue social security numbers and respond to critical correspondence. The Office directs headquarters components responsible for central records operations; the six SSA program service centers; three data operations centers; the Division of International Operations; and central disability operations. It plans and carriers out comprehensive analyses and studies and directs the implementation of actions to improve operational effectiveness and efficiency.

SEC. SP.10 *The Office of Central Operations*—(Organization): The Office of Central Operations, under the leadership of the Associate Commissioner for Central Operations, includes:

A. The Associate Commissioner for Central Operations (SP)

B. The Deputy Associate Commissioner for Central Operations (SP)

C. The Immediate Office of the Associate Commissioner for Central Operations (SP)

D. The Office of Operations Analysis and Support (SPN)

E. The Office of Central Records Operations (SPP)

F. The Office of SSA Program Centers (SPR)

G. The Office of Disability Operations (SPT)

SEC. SP.20 *The Office of Central Operations*—(Functions):

A. *The Associate Commissioner for Central Operations* (SP) is directly responsible to the Commissioner for carrying out OCO's mission and provides general supervision to the major components of OCO.

B. *The Deputy Associate Commissioner for Central Operations* (SP) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties the Associate Commissioner may prescribe.

C. *The Immediate Office of the Associate Commissioner for Central Operations* (SP) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. *The Office of Operations Analysis and Support* (SPN)

1. Directs operational analysis and internal administrative activities in support of OCO. Designs and conducts studies to measure the effectiveness and efficiency of overall OCO processes and interactions.

2. Directs and coordinates the implementation of process changes, together with other OCO components. Identifies and directs the timely resolution of major problems and issues.

3. Establishes management objectives and monitors progress to assure their timely implementation. Prepares responses to Congressional and sensitive correspondence requiring the Associate Commissioner's personal attention.

E. *The Office of Central Records Operations* (SPP):

1. Provides executive direction and leadership for the nationwide establishment and maintenance of basic records supporting social security programs. Manages centralized records operations and three geographically dispersed data operations centers.

2. Establishes and maintains applications for social security numbers; applications for employer identification numbers; and applications for hospital insurance identification cards. Receives and processes social security earnings reports from private and governmental employers and adjustments or corrections to posted earnings items.

3. Conducts centralized SSI eligibility redeterminations operations; maintains records of SSA enumeration and earnings records in hardcopy, microfilm, magnetic tape and disc form; and maintains an ongoing data exchange activity with the Treasury Department on the compilation and verification of individual earnings data.

F. *The Office of SSA Program Service Centers* (SCC):

1. Directs a network of six geographically dispered SSA program service centers (PSCs) which process selected claims; maintain beneficiary records; reconsider claims and eligibility determinations; and certify benefit payments for the Retirement and Survivors Insurance program; determine entitlement to Health Insurance benefits, and collect premiums for the Supplementary Medical Insurance Program.

2. Directs similar operations for administration of the U.S. Social Security program in foreign countries.

3. Makes recommendations to PSCs and other SSA components to optimize operational performance and initiates and monitors plans and actions to achieve operational objectives.

G. *The Office of Disability Operations* (SPT):

1. Provides executive direction and leadership to centralized disability operations that process claims under disability and black lung benefits programs; certify benefit payments; and maintain beneficiary rolls.

2. Directs the review of initial and reconsidered determinations of disability excluded from State Agency jurisdiction. Directs the authorization of disability claims not authorized by district offices at the initial, reconsideration and appeals levels.

3. Develops technical medical policies for the disability insurance, supplemental security income (blind or disabled) and black lung benefits programs and provides medical consultations on individual claims determinations.

4. Responds to public and Congressional correspondence on disability operations issues.

SEC. SR.00 *The Office of Policy*—(Mission): The Office of Policy (OP) directs the planning and analysis of programs directly administered by SSA; the retirement, survivors and disability insurance programs, and the supplemental security income program. Together with SSA's Office of Family Assistance, directs the planning and analysis of income maintenance programs administered by State agencies. The Office broadly formulates, promulgates and interprets program objectives and policy. It directs studies and makes recommendations about the problems of income maintenance, poverty and the contributions that social insurance, public assistance and related programs may provide for solving these problems. It directs legislative planning, analysis, and formulation in SSA, and conducts the broad research and statistical programs of

the agency. The Office reviews all regulations for consistency among programs and regulations for directly administered programs for consistency with statutory and congressional intent and with SSA policy decisions and requirements. It directs and coordinates the formulation of future program policies. The Office evaluates the effectiveness of national policies in meeting program goals and recommends program modifications. It serves as the focal point for international policy matters, other than those relating to refugee programs. The Office provides overall administrative direction to the Office of the Actuary and coordinates the activities of the Offices included in OP, in carrying out the OP mission. It carries out activities in relation to public assistance programs together with SSA's Office of Family Assistance.

SEC. SR.10 *The Office of Policy*—(Organization): The Office of Policy, under the leadership of the Associate Commissioner for Policy, includes:

A. The Associate Commissioner for Policy (SR)

B. The Deputy Associate Commissioner for Policy (SR)

C. The Immediate Office of the Associate Commissioner for Policy (SR)

D. The Office of Actuary (SRG)

E. The Office of Legislative and Regulatory Policy (SRP)

F. The Office of Research and Statistics (SRV)

G. The Office of Policy Analysis (SRC)

H. The Office of International Policy (SRT)

SEC. SR.20 *The Office of Policy*—(Functions)

A. *The Associate Commissioner for Policy* (SR) is directly responsible to the Commissioner for carrying out OP's mission and provides general supervision to the major components of OP.

B. *The Deputy Associate Commissioner for Policy* (SR) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. *The Immediate Office of the Associate Commissioner for Policy* (SR) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities and helps coordinate the activities of OP components.

D. *The Office of the Actuary* (SRG):

1. Directs and conducts the actuarial program of SSA.

2. Performs actuarial and demographic research into social insurance and related programs and makes actuarial appraisals of existing and proposed programs.

3. Studies, for both the immediate and long-range future, problems of financing program costs; estimates future workloads; and evaluates operations of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

4. Develops and analyzes actuarial data for benefit estimates and valuations in social insurance programs.

5. Provides technical and consultatives services to the Commissioner and HEW officials, and appears before Congressional committees considering legislative changes in SSA-administered programs.

6. Provides technical and consultatives services to the Board of Trustees of the Social Security Trust Funds.

E. *The Office of Legislative and Regulatory Policy* (SRP):

1. Develops and conducts the legislative planning program of SSA and serves as the focal point for all legislative activity in the agency.

2. Analyzes legislative and regulatory initiatives.

3. Develops specific legislative proposals.

4. Reviews all proposed regulations for consistency among programs and regulations for directly administered programs for consistency with policy requirements and decisions.

5. Evaluates the effectiveness of programs administered by SSA in terms of legislative needs.

6. Analyzes and develops recommendations on related income maintenance, social service and rehabilitation program proposals, particularly those which may involve coordination with SSA-administered programs, and on other methods of providing economic security.

7. Provides technical and advisory service to SSA and HEW officials and, working with SSA's Office of Intergovernmental and Community Affairs, also provides this service to officials within the Executive Branch; Congressional committees, individual Congressmen and private organizations interested in social security legislation.

F. *The Office of Research and Statistics* (SRV):

1. Develops and conducts SSA's research and statistical program.

2. Conducts research on income security; the redistributive effects on the economy of social security benefits and financing; the adequacy of cash benefits; the relation of SSA to public and private income maintenance programs; the problems of the low-income population; and trends in social security and social welfare expenditures.

3. Studies the problems of poverty and income maintenance and how social insurance and related programs may provide solutions.

4. Conducts national surveys of the aged, the disabled, the low-income aged and disabled and families with dependent children.

5. Established linkages of SSA data with data from other statistical and record systems, and develops and simulates economic models to analyze the impact of present and projected program alternatives under various conditions.

6. Publishes research findings; compiles and publishes statistical data; and provides SSA-wide statistical leadership and methodology about statistics.

7. Represents SSA on matters of research and statistics within HEW, within the academic community, and with international organizations; and, in coordination with SSA's Office of Public Affairs, with other public and private agencies and organizations.

G. *The Office of Policy Analysis* (SRC):

1. Develops policy and strategies on current and anticipated program issues in social insurance, income maintenance, public assistance and related programs.

2. Provides policy guidance in social insurance and income maintenance programs. Carries out a continuing assessment of future policy requirements and formulates policy plans to meet future needs.

3. Uses actuarial data and research products to analyze social security and related programs. Recommends program modifications for adaptation to changing social, demographic and economic conditions.

4. Provides guidance to the study of policy initiatives and proposals which originate in other SSA components or outside the agency.

5. Develops broad program policy planning projects, experiments and studies associated with major program goals and changes; organizes and conducts special high priority analytical efforts.

6. Evaluates the effectiveness of present and alternative income maintenance strategies.

H. *The Office of International Policy* (SRT):

1. Serves as liaison to international agencies and associations which deal with social security matters.

2. Serves as SSA's point of contact with the State Department and other agencies involved in international affairs, excluding those affairs relating to refugee programs.

3. Provides legislative and regulatory planning and analysis on all program matters relating to non-operational international policy.

4. Provides leadership and coordination of all activities within SSA involving negotiations with foreign governments on international social security

agreements (totalization). Involves SSA's Office of Operational Policy and Procedures in the development and analysis of policies for implementing provisions of totalization agreements.

5. Serves as the SSA focal point for the formulation of U.S. police relating to international social security matters.

6. Provides training, orientation and technical assistance on social security and related fields to foreign governments, international organizations and foreign visitors.

SEC. SX.00 *The Office of Public Affairs*—(Mission): The Office of Public Affairs (OPA) plans, coordinates, and implements SSA's nationwide program for effective information exchange with the public and the press; other Federal agencies; and State agencies, on SSA-administered programs or State-administered programs and services. The Office develops programs and materials to assure public knowledge and understanding of protections, rights, and responsiblities under programs administered by SSA. It Assures SSA adherence to the Freedom of Information Act in all SSA public information activity. The Office provides technical direction to SSA field offices in the management of their public affairs activities.

SEC. SX.10 *The Office of Public Affairs*—(Organization): The Office of Public Affairs, under the leadership of the Associate Commissioner for Public Affairs, includes:

A. The Associate Commissioner for Public Affairs (SX)

B. The Deputy Associate Commssioner for Public Affairs (SX)

C. The Immediate Office of the Associate Commissioner for Public Affairs (SX)

D. The Press Office (SXP)

E. The Office of Information (SXN)

SEC. SX.20 *The Office of Public Affairs*—(Functions):

A. *The Associate Commissioner for Public Affairs* (SX) is directly responsible to the Commissioner for carrying out OPA's mission and provides general supervision to the major components of OPA.

B. *The Deputy Associate Commissioner for Public Affairs* (SX) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. *The Immediate Office of the Associate Commissioner for Public Affairs* (SX) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

D. *The Press Office* (SXP):

1. Guides and coordinates all SSA press activities and prepares and issues news items for national release and for release through district offices.

2. Initiates and maintains contacts with members of the working press and responds to requests for information and assistance from newspapers, radio and TV news departments, news and general magazines and the specialized press.

3. Prepares news and feature stories for the area press on SSA headquarters events, programs of community interest and the accomplishments and activities of SSA employees.

4. Analyzes press coverage of social security programs; prepares responses to press articles, when appropriate; assesses public reaction to social security programs; and prepares the Daily Press Service for the SSA Executive Staff.

E. The Office of Information (SXN):

1. Directs SSA's information activities to assure public knowledge and understanding of programs administered by SSA.

2. Develops and evaluates goals, objectives, policies, standards and guidelines for SSA public information activities.

3. Assesses nationwide public information needs and carries out programs to inform the public of the purposes and provisions of SSA-administered programs; program changes; and people's rights and responsibilities under these programs.

4. Prepares and determines distribution of a wide variety of public information materials on all phases of SSA-administered programs.

5. Evaluates the quality of informational materials to assure a high quality product and helps in public affairs training in SSA.

6. Exercises SSA headquarters authority to make initial denials of requests for information under denial provisions of the Freedom of Information Act.

Dated: March 14, 1979.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 79-8532 Filed 3-20-79; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection

[Docket No. N-79-917]

NATIONAL MOBILE HOME ADVISORY COUNCIL

Meeting

AGENCY: Assistant Secretary for NVACP, HUD.

ACTION: Notice of National Mobile Home Advisory Council Meeting.

SUMMARY: This Noticer announces a biannual meeting of the National Mobile Home Advisory Council.

FOR FURTHER INFORMATION CONTACT:

John Mason, Acting Director, Mobile Home Standards Division, Office of Neighborhoods, Voluntary Associations and Consumer Protection, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, Telephone (202) 755-7970.

SUPPLEMENTARY INFORMATION: The National Mobile Home Construction and Safety Standards Act of 1974 (Title Vi of the Housing and Community Development Act of 1974) authorizes the Secretary of the Department of Housing and Urban Development to establish Federal construction and safety standards for mobile homes. It provides for the appointment by the Secretary of a National Mobile Home Advisory Council composed of 24 members. The membership of the Council is selected equally from each of the following categories: (a) consumer organizations, community organizations, and recognized consumer leaders; (b) the mobile home industry and related groups, including at least one representative of small business; and (c) government agencies including Federal, State and local governments. The purpose of the National Mobile Home Advisory Council is to advise the Department to the extent feasible prior to the establishment, amendment or revocation of any mobile home construction and safety standard.

Sections 6(a) and (b) of the Charter of the National Mobile Home Advisory Council enacted pursuant to Section 9(c) of the Federal Advisory Committee Act stipulates that members are appointed to serve two-year terms which expire on August 21 of the second year of the member's appointment.

In accordance with Section 605 of Title VI of the Housing and Community Development Act of 1974 (Public Law 93-383) and Section 10(a)(2) of the Federal Advisory Committee Act of 1972 (Public Law 92-463) announcement is made of the following meeting:

The National Mobile Home Advisory Council will meet on May 22, 23, and 24, 1979. The meetings are open to the public and will convene at 9:00 am on Tuesday, May 22, 1979 at the HUD Building, Room 10233, 451 Seventh Street, S.W., Washington, D.C. 20410.

Depending on the availability of research conclusions, among other

items, the Department plans to discuss and seek recommendations concerning the below listed items:

A. Fire Safety Research
B. Wind Research
C. Transportation Durability
D. Transportation Safety.

The final agenda will be available prior to the meeting.

Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C 3535(d) and Section 605, National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C 5404.

Issued at Washington, D.C., March 14, 1979.

GENO C. BARONI,
Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection.

[FR Doc. 79-8393 Filed 3-20-79; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of and Management

[Wyoming 66911]

WYOMING

Application

MARCH 12, 1979.

Notice is hereby given that pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 4½ inch O.D. pipeline and related facilities for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 15 N., R. 92 W.,
sec 14, N½SE¼ and SW¼SE¼
sec. 23, W½NE¼, SE¼NE¼ and E½SE¼.

The proposed pipeline will transport natural gas which will extend from the point of connection with the Hamilton Federal #14-1 well in the SE¼ section 14 in a generally southerly direction to a point of connection with their existing facilities in the SE¼ section 23, T. 15 N., R. 92 W., Carbon County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

WILLIAM S. GILMER,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-8478 Filed 3-20-79; 8:45 am]

[4310-84-M]

[Wyoming 66912]

WYOMING

Application

MARCH 12, 1979.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 4½ inch O.D. pipeline and related facilities for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 15 N., R. 92 W.,
sec. 25, N½SW¼, SE¼SW¼, W½SE¼ and SE¼SE¼;
sec. 26, N½SE¼.

The proposed pipeline will transport natural gas from the Federal #25-1 well in said SE¼ of section 25 in a generally westerly direction to the point of connection with their existing facilities in the SE¼ section 26, T. 15 N., R. 92 W., Carbon County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and, if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

WILLIAM S. GILMER,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-8487 Filed 3-20-79; 8:45 am]

[4310-31-M]

Geological Survey

[Int FES 79-13]

ENVIRONMENTAL IMPACT STATEMENT

Availability of Final Statement, Pronghorn Mine, Campbell County, Wyoming

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental impact statement on the proposed Pronghorn surface coal mining operation by the Consolidation Coal Company, in joint partnership with Mobil Oil Corporation, in Campbell County, Wyoming. The final statement assesses the environmental impacts of the lessee's plan for the surface mining of federally owned coal and the concurrent reclamation and revegetation of surface lands. The proposed action is on Federal coal lease W-58112, located 16 miles (26 km) southeast of Gillette, Wyoming, in Campbell County.

The mine plan contained in this final environmental impact statement was submitted prior to the promulgation of interim regulations by the U.S. Office of Surface Mining, pursuant to the Surface Mining Control and Reclamation Act of 1977. The mine plan is currently being reviewed by State and Federal regulatory agencies for compliance with those requirements. It has not yet been determined whether the plan is adequate and in full conformance with applicable requirements of the Act. Once the mine plan is conformed to meet those regulations, the Department will evaluate whether this final environmental impact statement is adequate for the mine plan approval action or whether a supplement to this impact statement needs to be prepared and distributed.

Comments received on the draft environmental statement during the comment period were considered in the preparation of and are reproduced in the final environmental statement.

The proposed mining and reclamation plan assessed in this statement was one of the mining proposals identified in the preparation of the regional analysis (Part I) of the Department's final environmental statement, FES 74-55, entitled "Proposed Development of Coal Resources in the Eastern Powder River Coal Basin in Wyoming," which was filed with the Council on Environmental Quality on October 18, 1974. Public hearings on the draft of FES 74-55 were held as follows: June 24-25, 1974, at Cheyenne, Wyo.; June 26, 1974, at Casper, Wyo.; and June 27-28, 1974, at Gillette, Wyo.

The final environmental impact statement for the proposed Pronghorn mine is available for public review at the U.S. Geological Survey Library, 1526 Cole Blvd., Golden, Colo.; the U.S. Geological Survey Library, Room 4A100, National Center, Reston, Va.; the Converse County Library, 300 Walnut St., Douglas, Wyo.; the George Amos Memorial Library, 412 South Gillette Ave., Gillette, Wyo.; the Library of Natrona County, 307 East Second, Casper, Wyo.; and the State Library, State of Wyoming, Supreme Court Bldg., Cheyenne, Wyo.

A limited number of copies are available on request from the U.S. Geological Survey, Land Information and Analysis Office, Federal Center, Stop 701, Denver, CO 80225.

Dated: March 16, 1979.

LARRY E. MEIEROTTO,
Assistant Secretary of the Interior.

[FR Doc. 79-8388 Filed 3-20-79; 8:45 am]

[4310-31-M]

TRAINING AND QUALIFICATION OF PERSONNEL IN WELL-CONTROL TRAINING

AGENCY: Geological Survey, U.S. Department of the Interior.

ACTION: A listing of well-control training schools approved in accordance with GSS-OCS-T 1.

SUMMARY: The FEDERAL REGISTER notice, Vol. 42, No. 251, published by the U.S. Geological Survey on December 30, 1977, set forth the U.S. Geological Survey Outer Continental Shelf (OCS) Training Standard No. T 1 (GSS-OCS-T 1), "Training and Qualification of Personnel in Well-Control Equipment and Techniques for Drilling on Offshore Locations." This notice details the well-control training schools that are currently approved by the U.S. Geological Survey.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard B. Krahl, U.S. Geological Survey, National Center, Reston, Virginia 22092 (703/860-7531).

SUPPLEMENTAL INFORMATION:

LEGEND

JOB CLASSIFICATION

RH—Rotary Helper
DK—Derrickman
DR—Driller
TP—Toolpusher
OR—Operator Representative

BLOWOUT-PREVENTER STACK TYPE

SUR—Surface BOP Stack
SS—Subsea BOP Stack

BASIC WELL-CONTROL TRAINING COURSES APPROVED

Name	Job classification	Blowout-preventer stack type
1. Chevron U.S.A. Inc.	OR	SUR, SS
2. Continental Oil Company.	OR	SUR, SS
3. Delta Drilling Company.	DR, TP, OR	SUR
4. Dresser Industries.	DR, TP, OR	SUR
5. IMCO Services	DR, TP, OR	SUR, SS
6. Lousiana State University.	DR, TP, OR	SUR, SS
7. Milchem Incorporated.	TP, OR	SUR, SS

BASIC WELL-CONTROL TRAINING COURSES APPROVED—Continued

Name	Job classification	Blowout-preventer stack type
8. Reading and Bates Drilling Company.	RH, DK, DR, TP	SUR
9. Rowan Companies, Inc.	RH, DK	
10. University of Southwestern Louisiana.	DR, TP, OR	SUR, SS
11. Zapata Off-Shore Company.	RH, DK	

REFRESHER WELL-CONTROL TRAINING COURSES APPROVED

1. Chevron U.S.A. Inc.	OR	SUR, SS
2. Delta Drilling Company.	DR, TP, OR	SUR
3. Reading and Bates Drilling Company.	DR, TP	SUR
4. University of Southwestern Louisiana.	DR, TP, OR	SUR, SS

It is anticipated that periodic notices of this type will be published in the future on an as needed basis.

Dated: March 7, 1979.

W. A. RADLINSKI,
Acting Director.

[FR Doc. 79-8386 Filed 3-20-79; 8:45 am]

[4310-84-M]

Office of the Secretary

[INT DES 79-13]

PROPOSED GRAZING MANAGEMENT FOR THE VERMILLION RESOURCE AREA, MOHAVE AND COCONINO COUNTIES, ARIZ.

Availability of Draft Environmental Statement and Public Hearing

Pursuant to section 102 (2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement for the Vermillion Resource Areas. The proposal involves implementing an improved range management program on public lands within the Vermillion Resource Area of the Arizona Strip District in Northwest Arizona.

The Department of the Interior invites written comments on the draft statement to be submitted within 45 days of this notice, to the State Director, Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Arizona 85073.

The limited number of copies are available upon request to the State Director at the above address.

Public reading copies will be available for review at the following locations:

Office of Public Affairs, Bureau of Land Management, Interior Building, 18th & C Streets NW., Washington, D.C. 20240; Telephone (202) 343-5717.

Arizona State Office, Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Arizona 85073; Telephone (602) 261-3706.

Arizona Strip District, Bureau of Land Management, 196 E. Tabernacle, St. George, Utah 84770; Telephone (801) 673-3545.

Oral and/or written comments will also be received at the formal public hearing to be held at the following location:

APRIL 25,—7:00 p.m. MST, Fredonia High School Auditorium, Fredonia, Arizona.

An administrative law judge will preside over the public hearing. Witnesses presenting oral comments should limit their testimony to ten (10) minutes. Written request to testify orally should be sent to the District Manager, Arizona Strip District Office, 196 E. Tabernacle, St. George, Utah 84770.

Comments receive on the draft environmental statement, whether written or oral, will be given equal consideration during preparation of the final environmental statement on the Proposed Livestock Grazing Program—Vermillion Resource Area.

Dated: March 16, 1979.

LARRY E. MEIEROTTO,
Assistant Secretary.

[FR Doc. 79-8528 Filed 3-20-79; 8:45 am]

[7020-02-M]

INTERNATIONAL TRADE COMMISSION

[AA1921-198, AA1921-199, AA1921-200]

SUGAR FROM BELGIUM, FRANCE, AND WEST GERMANY

Time and Place or Hearing

The public hearing in connection with the Commission investigation of Sugar from Belgium, France, and West Germany announced in the FEDERAL REGISTER of March 8, 1979, (44 FR 12777), will be held at 10:00 a.m. e.s.t. April 10, 1979, in Executive Room A of the Dupont Plaza Hotel, 300 Biscayne Boulevard Way, Miami, Florida 33131.

By order of the Commission.

Issued: MARCH 14, 1979.

KENNETH R. MASON,
Secretary.

[FR Doc. 79-8584 Filed 3-20-79; 8:45 am]

[6820-35-M]

LEGAL SERVICES CORPORATION

GRANTS AND CONTRACTS

MARCH 16, 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. Legal Services of Northeastern Wisconsin in Green Bay, Wisconsin to serve Winnebago, Fond du Lac and Calumet Counties.

2. Western Wisconsin Legal Services, Inc. in La Crosse, Wisconsin to serve La Crosse, Monroe, Vernon and Trempealeau Counties.

3. Legal Action of Wisconsin, Inc. in Milwaukee, Wisconsin to serve Columbia, Dodge, Jefferson and Waukesha Counties.

4. Wisconsin Judicare in Wausau, Wisconsin to serve Marathon, Portage and Wood 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, Chicago Regional Office, 310 South Michigan Avenue, 24th Fl., Chicago, Illinois 60604.

THOMAS EHRLICH.
President.

[7536-01-M]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

ADVISORY COMMITTEES

Annual Comprehensive Review

In accordance with section 7(b) of the Federal Advisory Committee Act (Pub. L. 92-463), the National Endowment for the Humanities is currently reviewing each advisory committee to determine:

(a) Whether the panel is carrying out its purpose;

(b) Whether consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;

(c) Whether it should be merged with other advisory committees; or

(d) Whether it should be abolished.

Public comments and recommendations concerning the advisory committees to the National Endowment for the Humanities may be addressed to Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, 806 15th Street NW., Washington, D.C. 20506, 202-724-0367.

Comments should be received by April 1, 1979.

Dated: March 15, 1979.

STEPHEN J. MCCLEARY,
Advisory Committee Management Officer.

[FR Doc. 79-8375 Filed 3-20-79; 8:45 am]

[7537-01-M]

ARTISTS-IN-SCHOOLS ADVISORY PANEL

Notice of Reestablishment

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), Section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office and Management and Budget Circular A-63) notice is hereby given that reestablishment of the Artists-in-Schools Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until March 30, 1981. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: a) applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

MARCH 13, 1979.

[FR Doc. 79-8481 Filed 3-20-79; 8:45 am]

[7537-01-M]

MUSIC ADVISORY PANEL (JAZZ SECTION)

Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Panel (Jazz Section) to the National Council on the Arts will be held April 5 and 6, 1979, from 9:00 a.m. to 5:30 p.m., in the East Tower Community Room of the Manhattan Plaza, 400 West 43rd Street, New York, New York.

A portion of this meeting will be open to the public on April 5, 1979, from 1:30 p.m. to 5:30 p.m., and on April 6, 1979, from 9:00 a.m. to 5:30 p.m.

The remaining sessions of this meeting on April 5, 1979, from 9:00 a.m. to 1:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER March 17, 1977, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endownment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endownment for the Arts.

MARCH 14, 1979.

[FR Doc. 79-8480 Filed 3-20-79; 8:45 am]

[7537-01-M]

SPECIAL PROJECTS ADVISORY PANEL

Notice of Reestablishment

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office and Management and Budget Circular A-63) notice is hereby given that reestablishment of the Special Projects Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until March 30, 1981. The Committee's objectives and scope of activities include

the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: a) applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

MARCH 13, 1979.

[FR Doc. 79-8482 Filed 3-20-79; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Notice of Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232 b.), the Advisory Committee on Reactor Safeguards will hold a meeting on April 5-7, 1979, in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting was published on January 19, 1979 (44 FR 4056).

The agenda for the subject meeting will be as follows:

THURSDAY, APRIL 5, 1979

8:30 A.M.-9:00 A.M.: Executive Session (Open)—The Committee will hear and discuss the report of the ACRS Chairman regarding miscellaneous matters relating to ACRS activities.

The Committee will discuss candidates proposed for appointment to the Committee, as appropriate. Portions of this session will be closed as necessary to protect information the release of which would represent a clearly unwarranted invasion of personal privacy.

9:00 A.M.-11:30 A.M.: Meeting with NRC Staff (Open)—The Committee will hear and discuss a report by the Staff regarding criteria for evaluation of pipe breaks inside and outside containment. The NRC Staff will also report on the basis for shutting down five nuclear plants to resolve piping questions.

11:30 A.M.-12:30 P.M.: Executive Session (Open)—The Committee will discuss matters proposed for discussion with the Commissioners regarding the timing and scope of the ACRS annual report on the NRC Safety Research Program, combination of dynamic loads, including those generated by seismic events, as a design basis for nuclear facilities, and use of probabilistic assessment in the licensing process.

1:30 P.M.-2:30 P.M.: Meeting with NRC Commissioners (Open)—The Committee will meet with the Commissioners to discuss items noted above.

2:30 P.M.-4:30 P.M.: Meeting with Department of Energy (Open)—The Committee will hear a report and hold discussions regarding the safety related aspects of the Tokamak Fusion Test Reactor.

4:30 P.M.-6:30 P.M.: Anticipated Transients Without Scram (Open)—The Committee will hear reports from and hold discussions with members of the NRC Staff and representatives of the nuclear industry as appropriate regarding alternative nuclear plant modifications to resolve this issue. Portions of this session will be closed as necessary to discuss Proprietary Information related to this matter.

FRIDAY, APRIL 6, 1979

8:30 A.M.-9:00 A.M.: Executive Session (Open)—The Committee will hear and discuss the report of its Subcommittee and consultants who may be present regarding the request for a permit to construct the Palo Verde Nuclear Generating Station Units 4 and 5.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this facility and provisions for the physical protection of this station.

9:00 A.M.-11:30 A.M.: Palo Verde Nuclear Generating Station Units 4 and 5 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC Staff and the applicant regarding the request for a permit to construct this facility.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this facility and provisions for the physical protection of this station.

11:30 A.M.-12:00 Noon: Executive Session (Open)—The Committee will hear the report of its Subcommittee and consultants who may be present regarding proposed operation of the Sequoyah Nuclear Plant.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this facility and provisions for the Physical protection of this station.

1:00 P.M.-5:30 P.M.: Sequoyah Nuclear Plant (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC Staff and the applicant regarding the request to operate this plant.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this facility and provisions for the Physical protection of this station.

5:30 P.M.-6:30 P.M.: Executive Session (Open)—The Committee will hear and discuss the reports of ACRS Subcommittees on items related to nuclear power plant safety, including evaluation of systems interactions, design of integrated protection systems, regulatory activities, and ACRS procedures.

SATURDAY, APRIL 7, 1979

8:30 A.M.-10:30 A.M.: Executive Session (Open)—The Committee will discuss its proposed reports to the NRC on the Palo Verde Nuclear Generating Station, the Sequoyah Nuclear Plant, and the proposed resolution of Anticipated Transients Without Scram. Portions of this session will be closed as necessary to discuss Proprietary Information, provisions for physical protection of these stations, and matters involved in adjudicatory proceedings.

10:30 A.M.-11:30 A.M.: Meeting with NRC Staff (Open)—The Committee will hold discussions with members of the NRC Office of Inspection and Enforcement regarding policies and practices related to the imposition of civil penalties.

The future schedule for ACRS activities will also be discussed.

11:30 A.M.-12:30 P.M. and 1:30 P.M.-4:00 P.M.: Executive Session (Open)—The Committee will continue preparation of its reports to NRC on the Palo Verde Nuclear Generating Station, the Sequoyah Nuclear Plant, and the Anticipated Transients Without Scram.

The Committee will also discuss proposed comments and positions regarding other matters discussed during this meeting.

Procedures for the conduct of and participation in ACRS meetings were outlined in the FEDERAL REGISTER on October 4, 1978, page 45926. In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time

during the meeting for such statements.

I have determined in accordance with section 10(d) Pub. L. 92-463 that it is necessary to close portions of this meeting as noted above to protect Proprietary Information (5 U.S.C. 552b(c)(4)), to preserve the confidentiality of classified and Proprietary Information related to safeguarding of special nuclear material and the arrangements for physical protection of the Palo Verde and Sequoyah Plants (5 U.S.C. 552b(c) (1) and (4)), to protect information the release of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)) and to permit discussion of matters involved in an adjudicatory proceeding (5 U.S.C 552b(c)(10)).

Further information rearding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634-3265), between 8:12 A.M. and 5:00 P.M. EST.

Dated: March 16, 1979.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 79-8459 Filed 3-20-79; 8:45 am]

[7590-01-M]

[Docket No. 50-237]

COMMONWEALTH EDISON CO.

Notice of Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 41 to Provisional Operating License No. DPR-19, issued to Commonwealth Edison Company (the licensee), which revised Technical Specifications for operation of Unit No. 2 of Dresden Nuclear Power Station (the facility) located in Grundy County, Illinois. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications by extending the surveillance interval for inaccessible safety-related snubbers (shock suppressors) by 7 days.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated February 28, 1979, (2) Amendment No. 41 to License No. DPR-19, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington. D.C. and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60451. A single 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 2nd day of March 1979.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 79-8463 Filed 3-20-79; 8:45 am]

[7590-01-M]

[Docket No. 50-213]

CONNECTICUT YANKEE ATOMIC POWER CO.

Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 31 to Facility Operating License No. DPR-61, issued to Connecticut Yankee Atomic Power Company (the licensee), which revised the Technical Specifications of operation of the Haddam Neck Plant (the facility) located in Middlesex County, Connecticut. The amendment is effective as of its date of issuance.

The amendment revised the Appendix A Technical Specifications to delete the limiting conditions for operation and surveillance requirements for eight hydraulic snubbers in the feedwater system.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated February 27, 1979 and supplement thereto dated March 2, 1979, and (2) Amendment No. 31 to License No. DPR-61, including the Commission's evaluation contained in the letter of transmittal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Russell Library, 119 Broad Street, Middletown, Connecticut 06457. A copy of item (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 2nd day of March 1979.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 79-8464 Filed 3-20-79; 8:45 am]

[7590-01-M]

FUEL CYCLE FACILITIES

[NUREG-0430 Vol. 1, No. 2]

Issuance and Availability

The U.S. Nuclear Regulatory Commission has issued the second semiannual report, "Licensed Fuel Facility Status Report" NUREG—0430, dated March 1979. The report contains (a) general facility data such as plant location, type of operation and Special Nuclear Material (SNM) authorization limits; (b) plant operating status; (c) a summary of NRC inspection results; and (d) licensee reports involving plant effluent data, inventory difference data, and reportable events.

This status report constitutes the third report on inventory accounting differences at NRC-licensed facilities possessing significant quantities of highly enriched uranium, plutonium

and uranium-233. The first NRC report of inventory difference data, which was issued in August 1977 (NUREG—0350), covered the period from January 1, 1968 through September 30, 1976. The second status report covered inventory difference data from October 1, 1976 through September 30, 1977. The latest report presents comparable data from October 1, 1977 through June 30, 1978.

This report, which is issued on a semi-annual basis, also contains information on licensed uranium mills, and conversion facilities as well as fuel fabrication plants.

NUREG-0430 is available for inspection at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. Copies may be purchased for $5.25 per copy from the National Technical Information Service, Springfield, Virginia 22161.

Dated at Bethesda, MD, this 14th day of March 1979.

For the Nuclear Regulatory Commission.

DUDLEY THOMPSON,
Executive Officer for Operations Support, Office of Inspection and Enforcement.

[FR Doc. 79-8462 Filed 3-20-79; 8:45 am]

[7590-01-M]

REGULATORY GUIDE

Notice of Issuance and Availability

The Nuclear Regulatory Commission has issued a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.134, Revision 1, "Medical Evaluation of Nuclear Power Plant Personnel Requiring Operator Licenses," describes a method acceptable to the NRC staff for providing the information needed by the Commission for its evaluation of the medical qualifications of applicants for initial or renewal operator or senior operator licenses for nuclear power plants. It endorses the standard ANSI N546-1976, "Medical Certification and Monitoring of Personnel Requiring Operator Licenses for Nuclear Power Plants." This guide has been 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 13th day of March 1979.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of Standards Development.

[FR Doc. 79-8465 Filed 3-20-79; 8:45 am]

[7590-01-M]

REVISION TO THE STANDARD REVIEW PLAN (NUREG-75/087)

Notice of Issuance and Availability

As a continuation of the updating program for the Standard Review Plan (SRP) previously announced (FEDERAL REGISTER notice dated December 8, 1977), The Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 2 to Section No. 9.1.2 "Spent Fuel Storage" of the SRP for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear power reactors. The purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, which has been identified as NUREG-75/087, are available from the National Technical Information Service, Springfield, Virginia 22161. The domestic price is $70.00, including first-year supplements. Annual subscriptions for supplements alone are $30.00. Individual sections are available at current prices. The domestic price for Revision No. 2 to Section No. 9.1.2 is $40.00. Foreign price information is available from NTIS. A copy of the Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555 (5 U.S.C. 552(a)).

Dated at Bethesda this 12th day of March 1979.

For the U.S. Nuclear Regulatory Commission.

ROGER J. MATTSON,
Director, Division of Systems Safety, Office of Nuclear Reactor Regulation.

[FR Doc. 79-8466 Filed 3-20-79; 8:45 am]

[7590-01-M]

STUDY OF NUCLEAR POWER PLANT CONSTRUCTION DURING ADJUDICATION

Meetings

The Nuclear Regulatory Commission's advisory committee on nuclear power plant construction during adjudication held its third meeting on Friday, March 2, 1979 at NRC Headquarters, 1717 H Street, N.W., Washington, DC. 20555. As previously announced, the group's fourth meeting will be held on Friday, March 23, 1979 at NRC Headquarters. At the third meeting the group continued work on its interim report, which is tentatively scheduled to be presented to the Commission in an open Commission meeting at 9:30 a.m., Friday, April 6, 1979. During the March 23, 1979 meeting the group will consider the draft interim report and intends to approve the report for submission to the Commission. Members of the public are invited to attend the group's meetings and there will be a limited amount of time available for members of the public to make oral statements to the study group. Written comments, addressed to the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, will be accepted for one week after the meeting. The Chairman of the study group is empowered to conduct the meetings in a manner that, in his judgment, will facilitate the group's work, including, if necessary,

continuing or rescheduling meetings to another day.

A file of documents relevant to the group's work, including a complete transcript of each meeting, memoranda exchanged between group members, public comments and other documents, is available for inspection and copying at the Commission's Public Document Room at 1717 H Street, N.W., Washingtn, DC, 20555. The Secretary of the NRC maintains a mailing list for persons interested in receiving notices of the group's meetings and actions. Anyone wishing to be on that list should write to: Secretary of the Commission, Nuclear Regulatory Commission, Washington, DC, 20555. Attention: Docketing and Service Branch.

The following statement should have been included in the February 22, 1979 Notice of Meetings and that notice, 44 FR 11283 (February 28, 1979) is hereby amended to add the following statement after the third paragraph.

With respect to the solicitation of ideas for studies or surveys, respondents should note that any such ideas submitted to the NRC become the property of the NRC and may be used by the NRC in any manner it deems appropriate. Respondents relinquish to the NRC all rights to any information submitted to the NRC in response to this notice. This notice is only soliciting the public's opinions and suggestions relevant to the study group's work and it is not a request for proposals. No bid or proposal expenses will be reimbursed by the NRC as result of this notice.

The study group will provide its final report to the Commission by November 1, 1979. For further information on the study group's mission, please call Stephen S. Ostrach, Office of the General Counsel, Nuclear Regulatory Commission (202) 634-3224.

Dated at Washington, DC, this 15th day of March 1979.

GRAY MILHOLLIN,
Chairman.

[FR Doc. 79-8460 Filed 3-20-79; 8:45 am]

[7590-01-M]

[Docket Nos. 50-338SP, 50-339SP]

VIRGINIA ELECTRIC & POWER CO.

Proposed Amendment to Operating License NPF-4; Order Scheduling Conference

In the matter of Virginia Electric and Power Company (Vepco), (North Anna Power Station Units 1 and 2).

(a) A conference among VEPCO, the NRC staff, Citizens Energy Forum, and Potomac Alliance is scheduled for Thursday, March 29, 1979, beginning at 9:30 a.m. and to continue, if necessary, through Friday, March 30, 1979. The place of the conference is the Council Chambers (2nd floor), City Hall, 7th and Main Streets, Charlottesville, Virginia.

(b) The purpose of the conference is to determine the issues which will be the subject of an anticipated evidentiary hearing to be scheduled later in a formal notice of hearing. See 10 CFR § 2.714 (e) and (f).

(c) Representatives of the conferees are directed to communicate with one another in advance of the conference to attempt to settle upon an agreed statement of issues for consideration by the board and discussion at the scheduled conference. If a statement of issues is so agreed upon, VEPCO shall forward a copy to each member of the board on or before Friday, March 23, 1979.

(d) In the absence of an agreed upon statement of issues, VEPCO, the NRC staff, Citizens Energy Forum, and Potomac Alliance are each directed to file with members of the board on or before Friday, March 23, 1979 its own proposed statement of issues for an evidentiary hearing. Such statements will be discussed at the conference scheduled herein for the following week.

(e) VEPCO's pending motion of consolidating Citizens Energy Forum and Potomac Alliance will be given further consideration.

(f) Limited appearances will not be scheduled for this conference. They will be scheduled for the anticipated evidentiary hearing.

Done this 15th day of March 1979 at Washington, D.C.

ATOMIC SAFETY AND LICENSING BOARD,
VALENTINE B. DEALE,
Chairman.

[FR Doc. 79-8461 Filed 3-20-79; 8:45 am]

[3190-01-M]

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

REQUEST FOR PUBLIC COMMENT IN REVIEW OF THE ADVISORY COMMITTEE FOR TRADE NEGOTIATIONS

In accordance with Section 7(b) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), the Office of the Special Representative for Trade Negotiations (STR) will conduct an annual review of the Advisory Committee for Trade Negotiations (the Committee). By order of the President, a zero-based review of every executive advisory committee is to be undertaken, with the presumption that all committees should be abolished except those (1) for which there is a compelling need; (2) which have a truly balanced membership; and (3) which conduct their business as openly as possible, consistent with the law and their mandate. Based on this review, a determination is to be made whether to continue, merge, terminate, or revise responsibilities of each advisory committee. The STR is required to submit a report on the results of this review to the Office of Management and Budget by April 15, 1979.

The Trade Act of 1974 required establishment of an Advisory Committee for Trade Negotiations to provide overall advice on certain trade agreements referred to in the Trade Act. (19 U.S.C. 2255). The Committee is composed of 45 individuals drawn from government, labor, industry, agriculture, small business, service industries, retailers, consumer interests, and the general public. Members of the Committee are appointed by the President for a period of two years and may be reappointed for additional periods.

The Committee is chaired by the Special Representative for Trade Negotiations and meets at his request. The STR is authorized to make available to the Committee such staff, information, personnel, and administrative services and assistance as it may reasonably require to carry out its activities.

The Committee provides advice to the President, the Congress, and to the United States negotiators on the Multilateral Trade Negotiations presently underway in Geneva. Public access to meetings of the Committee has been restricted pursuant to 5 U.S.C. 552b(c)(1), since disclosure of informaton discussed in such meetings could seriously harm U.S. foreign policy interests.

The Committee shall terminate as soon as practical after January 3, 1980, upon submission of reports required under Section 135(e)(2) of the Trade Act of 1974.

Comments, or requests for further information, should be directed to Phyllis O. Bonanno, Executive Director for The Advisory Committee for Trade Negotiations, 1800 G Street NW., Washington, D.C., 20506, no later than April 5, 1979.

PHYLLIS O. BONANNO,
Executive Director, Advisory Committee for Trade Negotiations.

[FR Doc. 79-8529 Filed 3-20-79; 8:45 am]

[7715-01-M]

POSTAL RATE COMMISSION

[Docket No. MC79-3]

MAIL CLASSIFICATION SCHEDULE, 1979

Correction

JANUARY 9, 1979.

In the matter of order instituting proceeding; designating presiding officer, officer of the commission, and other participants; requesting information; fixing date for a prehearing conference; and establishing procedures (order No. 228) (Issued January 4, 1979).

FR Doc. 79-870, appearing at pages 2211-2214 in the FEDERAL REGISTER of Wednesday, January 10, 1979, the following changes should be made:

1. Page 2211, Column 3, change caption to read "Mail Classification Schedule, 1979".

Page 2211, Column 3, delete "Fixing Date For A Prehearing Conference;" from the title.

2. Page 2213, Column 2, Paragraph (C), Lines 6 and 20, change "January 20, 1979" to "January 22, 1979".

Page 2213, Column 3, under heading "Appendix A. Service List", delete Harold J. Hughes, Esquire, as representative for the United States Postal Service, and substitute: Frances G. Beck, Assistant General Counsel, Office of Rate & Classification Law (Rate Division), U.S. Postal Service, 475 L'Enfant Plaza West, SW., Room 9165, Washington, D.C. 20260.

3. Page 2214, Column 1, delete John W. Gane, as representative for the Department of Defense, and substitute: Mr. Russell Farley, Headquarters, Department of the Army, ATTN: DAAG-MAO, Washington, D.C. 20314.

Page 2214, Column 2, add as second representative for Time Incorporated: Mr. Raymond J. Mitchell, Time Incorporated, Time-Life Building, Rockefeller Center, New York, New York 10020.

By the Commission.

DAVID F. HARRIS,
Secretary.

[FR Doc. 79-8583 Filed 3-20-79; 8:45 am]

[6820-97-M]

PRESIDENTIAL COMMISSION ON WORLD HUNGER

INTERNATIONAL POLICY SUBCOMMITTEE, ET AL.

Meetings

Subcommittees of the Presidential Commission on World Hunger have scheduled meetings as follows:

The International Policy Subcommittee will meet in New York, New York on April 5, 1979.

The Public Participation and Communication Subcommittee will meet on April 9, 1979, at Heritage Hall, Minneapolis Public Library and Information Center, 300 Nicollet Mall, Minneapolis, Minnesota.

The Domestic, Agriculture Policy, Consumer and Nutrition Subcommittee will meet on April 11, 1979, in Room 5141A, General Services Administration Building, 18th and E Streets, NW., Washington, D.C.

These meetings will all begin at 9:30 a.m. and will be open for observation by the public. Details as to location of the International Policy Subcommittee are being developed and may be obtained by telephone at (202) 395-3505 after March 22, 1979.

Persons interested in attending the International Policy and Domestic, Agriculture Policy, Consumer and Nutrition subcommittees should address a letter to the Presidential Commission on World Hunger, 734 Jackson Place, NW., Washington, D.C. 20006. Admission of observers will be on the basis of the earliest postmark date and to the extent space is available.

DONALD B. HARPER,
Administrative Officer, Presidential Commission on World Hunger.

[FR Doc. 79-8455 Filed 3-20-79; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 6035; 18-1]

EDWARDS & ANGELL RETIREMENT PLAN FOR LEGAL AND CERTAIN OTHER PERSONNEL

Filing of Application for an Order Exempting From the Provisions of Section 5 of the Act

MARCH 13, 1979.

Notice is hereby given that Edwards & Angell (hereinafter referred to as "Applicant" or the "Firm"), One Hospital Trust Plaza, Providence, RI 02903, a law firm organized as a partnership under the laws of the State of Rhode Island, on March 10, 1978, filed an application for an exemption from the registration requirement of the Securities Act of 1933 ("Act") for participations or interests issued in connection with the Edwards & Angell Retirement Plan for Legal and Certain Other Personnel ("Plan"). All interested persons are referred to that document, which is on file with the Commission, for the facts and representations contained therein, which are summarized below.

The Plan covers the Firm's partners and employees who are compensated other than on a weekly or hourly basis. Non-partner employees are eligible to participate in the Plan if they have completed one year of service with the Firm and are at least 25 years of age. As of December 30, 1977, there were a total of 65 participants in the Plan.

Applicant states that the Plan is of the type commonly referred to as a "Keogh" 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 ("Code"), and therefore, is excepted from the exemption provided by Section 3(a)(2) of the Act for interests or participations in 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.

Applicant states that the Plan first became effective on January 1, 1968, and was amended and restated in its entirety, effective as of January 1, 1976, in order to comply with the Employee Retirement Income Security Act of 1974 ("ERISA"). The Internal Revenue Service has issued a ruling to the effect that the Plan, as so amended and restated, continues to be a qualified plan under Section 401(a) of the Code.

Applicant makes annual contributions to the Plan on behalf of all participating employees in amounts equal to a specified percentage of their compensation. Participating partners may contribute to the Plan amounts based on each partner's share of Firm net income for the year. In addition, each participant may make voluntary contributions of not more than 10 percent of such participant's aggregate compensation or share in Firm's net income.

Applicant states that it is the Plan administrator; the day-to-day administration of the Plan has been delegated to the Pension Committee which presently consists of four partners of the Firm. Rhode Island Hospital Trust National Bank ("Trustee") is trustee for the Plan under a trust agreement between the Trustee and the Firm. The Trustee has exclusive authority and discretion with respect to the management and investment of the Plan's assets, subject to general policy guide-

lines established by the Pension Committee.

Applicant states that a portion of the assets of the Plan are to be invested in a collective fund containing assets other than assets of the Plan.

Applicant submits that the Plan does not present the risks associated with the sale of interests or participations in Keogh plans which were the concern of the Congress when the 1970 amendments to Section 3(a)(2) of the Act were enacted. At that time Congress recognized that Keogh plans constituted complex investment vehicles, the interests in which could be marketed by sponsoring financial institutions to self-employed persons who might not be sophisticated in the securities field or who might not be able to protect adequately their interests and those of their participating employees.

Applicant represents that its Plan is not a uniform or mass marketed plan designed to be sold by promoters to numerous unrelated self-employed persons; it is a program which is specifically tailored to meet the needs of the Firm. The Firm exercises substantial administrative responsibilities in connection with the Plan, and the Plan is of substantial size. Applicant further submits that, due to the nature of the Firm's work, the Firm is able to represent adequately its own interests and those of its employees. Finally, Applicant contends that were the Firm a corporation, interests or participations in the Plan would be exempt under Section 3(a)(2) of the Act. The results should be no different simply because the Firm is organized as a partnership.

Applicant represents that it has not distributed and does not intend to distribute any type of promotional material relating to the Plan (other than such material as Applicant is required under ERISA to distribute to participants).

Applicant concludes that for the foregoing reasons, granting the requested exemption would be appropriate in the public interest, consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than April 9, 1979, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or the may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants 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 application will be issued as of course following April 9, 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. 79-8490 Filed 3-20-79; 8:45 am]

[8010-01-M]

[Release No. 20955; 70-6271]

GULF POWER CO.

Proposed Issuance and Sale of First Mortgage Bonds and Preferred Stock at Competitive Bidding

MARCH 12, 1979.

Notice is hereby given that Gulf Power Company ("Gulf"), 75 North Pace Boulevard, P.O. Box 1151, Pensacola, Florida 32520, an electric utility subsidiary of The Southern Compay, a registered holding company, has filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50 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.

Gulf proposes to issue and sell up to $30,000,000 aggregate principal amount of its first mortgage bonds ("new bonds"), to be issued not later than September, 1979. It is intended that the new bonds will have a term of not less than five nor more than thirty years and will be sold at competitive bidding for the best price obtainable, but for a price to Gulf of not less than 98% nor more than 101¾% of the principal amount thereof, plus accrued interest. The new bonds will be issued under the Indenture dated as of September 1, 1941, between Gulf and The Chase Manhattan Bank (National Association) and The Citizens & Peoples National Bank of Pensacola, as Trustees, as heretofore supplemented by various indentures supplemental thereto, and as to be further supplemented by a Supplemental Indenture to be dated as of May 1, 1979.

It is stated that it is difficult to determine, under present bond market conditions, whether it would be more advantageous to Gulf to sell the new bonds with a 30-year term or some shorter term and that it is in the public interest for Gulf to be afforded the necessary flexibility to adjust its financing program to developments in the markets for long-term debt securities when and as they occur in order to obtain the best possible price, interest rate, and term for its new bonds. Gulf intends, therefore, to decide on the term of the new bonds after the date of the public invitation for proposals and then notify prospective bidders by telephone, confirmed in writing, of its decision not less than 72 hours prior to the time of the bidding.

Gulf also proposes to issue up to 100,000 shares of its preferred stock, par value $100 per share, ("new preferred stock") and to sell such securities at competitive bidding for the best price obtainable but for a price to Gulf of not less than $100 per share nor more than $102.25 per share, which shall also be the public offering price per share. In addition, Gulf proposes to pay to the purchasers of the new preferred stock compensation for their services in purchasing and making a public offering of such shares. It is proposed that such stock be issued in May 1979 but in any event not later than September 1979. The terms of the new preferred stock will be established by amendment to the charter of Gulf. Gulf may also make provision for a cumulative sinking fund for the benefit of the new preferred stock which would retire annually not more than 5% of the number of shares initially issued, commencing five years after the sale, with the non-cumulative option on any sinking fund date, commencing five years or later after the sale, of redeeming an additional like number of shares.

It is stated that Gulf may request by amendment that each of the proposed sales be excepted from the competitive bidding requirements of Rule 50, should circumstances develop which, in the opinion of Gulf's management, make such exception in the best interest of Gulf and its investors and consumers.

Gulf intends to use the proceeds from each sale of the new bonds and the sale of the new preferred stock, along with other funds, in financing its 1979 construction program.

Statements of the fees and expenses to be incurred in connection with the proposed transactions will be filed by amendment. It is stated that the proposed transactions will have been authorized by the Florida Public Service Commission and that no other state commission and no federal commission, other than this Commission, has

jurisdiction over the proposed transactions.

Notice is further given that any interested persons may, not later than April 6, 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 the filing which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be 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. 79-8491 Filed 3-20-79; 8:45 am]

[8010-01-M]

[Release No. 20953; 70-6274]

MIDDLE SOUTH UTILITIES, INC. AND LOUISIANA POWER & LIGHT CO.

Proposed Issuance and Sale of Common Stock by a Subsidiary to Its Parent Holding Company

MARCH 12, 1979.

Notice is hereby given that Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana, a registered holding company, and its wholly owned subsidiary, Louisiana Power & Light Company ("LP&L"), 142 Delaronde Street, New Orleans, Louisiana 70174, have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9(a), 10, and 12(f) of the Act and Rules 23, 24, and 43 promulgated thereunder as applicable to the following proposed transaction. All interested persons are referred to the application-declaration which is summarized below, for a complete statement of the proposed transaction.

LP&L proposes to issue and sell to Middle South, and Middle South proposes to acquire, from time to time through December 31, 1979, up to 11,364,000 shares of its authorized but unissued no-par common stock at an aggregate cash purchase price of $75,000,000. LP&L will use the proceeds of such sales to finance in part its construction program and for payment of short-term borrowings. The sales of common stock will be timed to coincide with LP&L's needs, which are primarily determined by the nature and pace of construction work. It is stated that each sale will be reported to the Commission by a certificate filed pursuant to Rule 24.

As of December 31, 1978, LP&L had issued 53,776,000 shares of its common stock to Middle South for an aggregate cash consideration of $353,900,000. To the extent that funds are required from external sources to acquire the common stock, Middle South will obtain such funds through the issuance and sale of its unsecured short-term promissory notes issued under a revolving credit agreement dated as of June 29, 1978, as authorized by the Commission's order dated June 15, 1978 (HCAR No. 20593).

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $3,000, including legal fees of $1,000. It is stated that no state commission and no federal commission, other that this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than April 3, 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 the filing 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 addresses, 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 filed or as it may be 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 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. 79-8531 Filed 3-20-79; 8:45 am]

[8010-01-M]

[Release No. 15637; SR-MSRB-78-11]

MUNICIPAL SECURITIES RULEMAKING BOARD

Order Approving Amended Proposed Rule Change

MARCH 13, 1979.

On January 4, 1979, the Municipal Securities Rulemaking Board (the "MSRB"), Suite 507, 1150 Connecticut Avenue, NW., Washington, D.C. 20036, filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, copies of an amendment to a proposed rule change which was filed on July 10, 1978. MSRB rule A-13 currently requires the payment of a fee based on underwriting participation and the filing of certain information. The earlier proposal would have amended that rule by expanding the items of information required and requiring the use of a form. In addition, the MSRB indicated in that filing that it intended to have the information processed and made available to the public. The most recent amendment modified the MSRB's earlier proposal to amend MSRB rule A-13 by deleting all but one of the additional items of information which would have been required by that proposal. The amended proposed rule change would require the use of a specific form for furnishing the information required by MSRB rule A-13 and would require two items of information not currently required, the date of sale or commitment for each issue for which an assessment fee is paid and the amount of fee paid by the municipal securities professional. In addition, the MSRB no longer intends to have the information processed and made available to the public.

Notice of the amended proposed rule change together with the terms of substance of the amended proposed rule change was given by publication of Commission Releases (Securities Exchange Act Release No. 14972 (July 18, 1978) and Securities Exchange Act Release No. 15542 (January 30, 1979)) and by publication in the FEDERAL REGISTER 43 FR 31489 (1978) and 44 FR 7260 (1979). The Commission re-

ceived one comment letter on the original proposed rule change from the National Association of Securities Dealers, Inc. That letter argued that the burden imposed upon municipal securities professionals by the data collection which would have been required by the proposed rule change as originally filed would not be commensurate with any benefit to be received. In addition, the letter stated that much of the information sought to be collected should not be made public because of its proprietary nature. The proposed rule change as amended seems responsive to these concerns.

The Commission finds that the amended rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and in particular, the requirements of Section 15B and the rules and regulations thereunder.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act, that the above-mentioned amended proposed rule change be, and it hereby is, approved. The amended proposed rule change will become effective on April 12, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-8492 Filed 3-20-79; 8:45 am]

[8010-01-M]

[Release No. 10623; 812-4368]

PROVIDENT NATIONAL ASSURANCE CO. ET AL.

Filing of Application for an Order of Exemption From the Provisions

MARCH 12, 1979.

Notice is hereby given that Provident National Assurance Company Separate Account B ("Account B") and Provident National Assurance Company Separate Account C ("Account C"), Fountain Square, Chattanooga, Tennessee 37402, which are separate accounts of Provident National Assurance Company ("Provident National") registered under the Investment Company Act of 1940 ("Act") as diversified open-end management investment companies, and Provident National, a Tennessee stock life insurance company which serves as the principal underwriter for Account B and Account C (collectively "Applicants") filed an application on September 18, 1978, and an amendment thereto on March 2, 1979, pursuant to Section 6(c) of the Act for an order of exemption, to the extent necessary, from the provisions of Section 27(a)(3) and Rule 27a-2 thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations therein which are summarized below.

Account B holds assets set aside for the funding of individual and group variable annuity contracts issued by Provident National which are designed to fund the benefits provided under annuity plans which qualify for tax-deferred treatment under Sections 401, 403(b), and 408 of the Internal Revenue Code of 1954, as amended ("Code"). Account C holds assets set aside for the funding of individual variable annuity contracts which are not qualified for such tax-deferred treatment under the Code.

Account B contracts offered pursuant to a currently effective prospectus have deductions made for sales and administrative charges, as well as any applicable premium taxes. The individual contract used to fund plans qualified under Sections 401 or 408 of the Code is subject to a level 8.0% deduction (7.0% for sales expenses and 1.0% for administrative expenses) from each purchase payment. Under the individual contract or the group contract used to fund plans qualified pursuant to Section 403(b) of the Code, a deduction is made ranging from 6.0% (5.0% for sales expenses and 1.0% for administrative expenses) on the first $10,000 in cumulative purchase payments to 4.0% (3.0% for sales expenses and 1.0% for administrative expenses) on the balance of cumulative purchase payments above $10,000.

Account C individual contracts offered pursuant to a currently effective prospectus have deductions made for sales and administrative charges, in addition to any applicable deductions for premium taxes or tax reserves. The amount deducted for sales and administrative expenses depends on whether there is a single payment or the payments are flexible and cumulative and on the amount of the payment(s). The amount deducted from a single purchase payment contract ranges from 6.0% (4.5% for sales expenses and 1.5% for administrative expenses) to 2.0% (1.5% for sales expenses and 0.5% for administrative expenses), depending on the amount of the payment. Under the flexible installment purchase payment contract, the amount deducted ranges from 8.0% (7.0% for sales expenses and 1.0% for administrative expenses) to 4.0% (3.0% for sales expenses and 1.0% for administrative expenses), depending on the amount of the payment.

Provident Life and Accident Insurance Company ("Provident Life") is a stock life insurance company organized under the laws of the state of Tennessee in 1887. It is the parent and sole owner of both Provident National and Provident Life and Casualty Insurance Company ("Provident Casualty"), a life insurance company organized under the laws of the state of New York in 1951.

Applicants propose that if amounts payable under life insurance policies or annuity contracts issued by Provident National, Provident Life or Provident Casualty (e.g., the death benefit under a policy or contract, lump sum cash available to the beneficiary, termination values under a life insurance policy or annuity contract and cash surrender values of insurance and fixed-dollar annuity contracts) ("Amounts Payable") would be applied to acquire any of the contracts in Account B or Account C which have been offered on or after April 28, 1978, no sales charges would be deducted from such amounts. Applicants propose to permit such applications without sales charge deductions at the request of the policy or contract owners.

Applicants state that the Amounts Payable would be included in the cumulative total of payments with which sales load and applicability of breakpoints are determined for subsequent payments when such amounts are applied to acquire Account B individual or group contracts used to fund plans qualified pursuant to Section 403(b) of the Code. Such Amounts payable would not be included in the cumulative total of payments with which sales load and applicability of breakpoints are determined for subsequent payments when applied to purchase other contracts participating in Account C.

Applicants state that all applications of such amounts to the contracts participating in Account B or Account C shall be Amounts Payable to a policy owner, contract owner, participant under a group policy or contract or a beneficiary of any of these persons. Applicants further state that such Amounts Payable must be applied in a lump sum and must consist of the entire amount received upon termination of the applicable interest (either ownership or participation) in the policy or contract.

SECTION 27(a)(3) AND RULE 27a-2

Section 27(a)(3) of the Act provides that no registered investment company issuing periodic payment plan certificates and no depositor of or underwriter for such company may sell any such certificate if the amount of sales load deducted from any one of the first twelve monthly payments exceeds proportionately the amount deducted from any other such payment, or if the amount deducted from any subsequent payment exceeds proportionately the amount deducted from any other subsequent payment.

Rule 27a-2 exempts a registered separate account, and any depositor or underwriter for such account, from the provisions of Section 27(a)(3) of the Act if the proportionate amount of sales load deducted from any payment during the contract period does not exceed the proportionate amount deducted from any prior payment during the contract period.

Applicants state that the proposed elimination of a sales charge on only the Amounts Payable under life insurance policies or annuity contracts issued by Provident National, Provident Life or Provident Casualty, and applied to acquire a contract participating in Account B or Account C, will result in subsequent payments on these contracts being subject to a sales charge exceeding proportionately the sales charge deducted from the initial payment; i.e., the amount being applied.

Applicants state that since the sales charge upon such Amounts Payable, if eliminated as proposed, will involve a single payment derived from amounts previously accumulated by the policyholder, the contract owner or the participant, that the economies of scale in sales effort and sales-related expenses will be achieved to an extent which will justify such lower deduction. Applicants submit that under such circumstances no purpose would be served by subjecting a substantial purchase payment attributable to funds previously accumulated under life policies or annuity contracts of Provident National, Provident Life or Provident Casualty, to the full sales charge for sales expenses applicable to regular periodic payments.

Applicants contend that the purpose of Section 27(a) of the Act will not be frustrated by the granting of the requested exemptions. Applicants maintain that Section 27(a) was designed to curb abuses associated with front-end load arrangements on mutual fund contractual plans by, in part, limiting the sales charge to 9% and lessening the possible loss which would be incurred upon early termination of such a plan. Applicants state that since the sales charge deduction under the periodic purchase payment contracts does not exceed the statutory limitation of 9%, it does not involve the kind of front-end arrangement at which the section is directed. Therefore, Applicants submit that the proposed elimination of a sales charge on Amounts Payable cannot lead to the abuses intended to be curbed by Section 27(a) of the Act.

Finally, Applicants maintain that the circumstances in which the lower sales and administrative expense deduction will be applicable are sufficiently distinct so that it is unlikely that any persons will be misled or confused. Accordingly, Applicants request exemptions from the provisions of Section 27(a)(3) of the Act and Rule 27a-2 thereunder, to the extent necessary to permit elimination of sales charges on Amounts Payable under life policies or annuity contracts issued by Provident National, Provident Life or Provident Casualty, and applied to acquire a variable annuity contract participating in Account B or Account C which has been offered on or after April 28, 1978.

Section 6(c) authorizes the Commission to exempt any person, security or transaction or any class or classes of persons, securities or transactions, from the provisions of the Act and Rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than April 6, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following April 6, 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. 79-8493 Filed 3-20-79; 8:45 am]

[8010-01-M]

[Release No. 20954; 70-6276]

ROCKY RIVER REALTY CO. ET AL

Proposed Intrasystem Assignment of Real Estate Lease and Sale of Leasehold Improvements; Intrasystem Sublease of Such Real Estate and Leasehold Improvements; Financing of Purchase or Such Leasehold Improvements and Additional Improvements by Assignee-Sublessor

MARCH 12, 1979.

Notice is hereby given that The Rocky River Realty Company ("Rocky River"), Northeast Utilities Service Company ("NUSCO") and The Hartford Electric Light Company ("HELCO"), Selden Street, Berlin, Connecticut 06037, each a wholly owned subsidiary of Northeast Utilities, a registered holding company, have filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6, 7 and 12 of the Act and Rule 43 promulgated thereunder as applicable to the following proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

It is proposed that HELCO will assign a real estate lease and sell leasehold improvements to Rocky River, that Rocky River will sublease such real estate and lease such leasehold improvements to NUSCO and that Rocky River will finance the purchase of the leasehold improvements and the cost of additional improvements through bank borrowings.

The land and buildings situated at 176 Cumberland Avenue, Wethersfield, Connecticut, were formerly the principal corporate office of HELCO. The premises are owned by Connecticut General Life Insurance Company ("CG") and were leased to HELCO in 1954 under lease expiring in 1986. HELCO has the option to extend the lease for three successive ten year periods. With the consolidation of the operations of HELCO and The Connecticut Light and Power Company, HELCO has no further use for the buildings, a portion of which have previously been sublet by HELCO to NUSCO to house the NUSCO Data Processing Department. NUSCO proposes to occupy the entire property and requires additional leasehold improvements to the premises.

HELCO proposes to exercise the first ten year renewal option and then to assign the CG lease to Rocky River and to sell to Rocky River the leasehold improvements made by HELCO at HELCO's book value, estimated to be $650,000 at the time of the sale. Rocky River will sublease the premises

to NUSCO under two subleases, (a) a net lease of the land and buildings covered by the CG lease at the same basic annual rent provided for in the CG lease ($239,221.65 until 1986 and $104,128.75 for the first ten year option period expiring June 30, 1966), and (b) a net lease of the improvements, trade and office fixtures purchased from HELCO together with additional improvements to be made by Rocky River at an annual basic rental of $130,794.12, which is equal to Rocky River's amortization payments to the bank under the Loan Agreement.

To finance the purchase of the HELCO leasehold improvements and the cost of the new improvements, Rocky River will enter into a Loan Agreement with Connecticut National Bank ("CNB") whereby CNB will loan $1,000,000 at 10¼% for a term of 15 years to be amortized on a monthly level payment basis and evidenced by Rocky River's promissory notes ("Notes"). As the principal security for the note, Rocky River will assign to CNB the lease payments due under the improvement lease. As additional security Rocky River will execute and deliver to CNB a second mortgage on real property owned by Rocky River in New Milford, Connecticut.

It is stated that Rocky River, as a real estate subsidiary of Northeast, is the logical company to take over the property and sublease it to NUSCO rather than attempt to have NUSCO acquire the CG lease and finance the improvements. This proposal also avoids having any of the operating subsidiaries of Northeast finance the arrangement at a time when long-term financing by operating subsidiaries is very limited due to their inadequate coverage ratios.

It is stated that no fees or commissions are to be paid or incurred, directly or indirectly, in connection with the proposed transactions. Incidental services estimated to cost $500 in the case of each of the applicants will be performed at cost by NUSCO.

It is further stated that the Connecticut Divisions of Public Utility Control has jurisdiction over the assignment by HELCO of its interest under the CG lease and the sale by HELCO of the leasehold improvements to Rocky River. No other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than April 6, 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 the filing 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 declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be 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 or 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. 79-8494 Filed 3-20-79; 8:45 am]

[8010-01-M]

[Release No. 6036; 18-35]

SIDLEY & AUSTIN RETIREMENT PLAN

Filing of Application for an Order Exempting From the Provisions of Section 5

Notice is hereby given that Sidley & Austin (hereinafter referred to as the "Applicant" or the "Firm"), One First National Plaza, Chicago, Il 60603, a law firm organized as a partnership under the laws of the State of Illinois, on February 7, 1979, filed an application for exemption from the registration requirements of the Securities Act of 1933 ("Act") for participations or interests issued in connection with the Sidley & Austin Retirement Plan ("Plan"). All interested persons are referred to that document, which is on file with the Commission, for the facts and representations contained therein, which are summarized below.

The Plan covers the Firm's partners, legal and non-legal personnel, of whom 102 partners, and 241 lawyers and non-lawyers were active participants on December 31, 1978. All employees of the Firm are eligible to participate in the Plan if they have completed one year of service with the Firm and are at least 25 years of age, except that persons over age 60 when hired are excluded.

Applicant states that the Plan is of the type commonly referred to as a "Keogh" 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 ("Code"), and therefore, is excepted from the exemption provided by Section 3(a)(2) of the Act for interests or participations in 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 interests or participations 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.

DESCRIPTION AND ADMINISTRATION OF THE PLAN

Applicant states that the Plan was originally adopted in 1972, and has been amended in order to comply with the Employee Retirement Income Security Act of 1974 ("ERISA"). The Internal Revenue Service has issued a ruling to the effect that the Plan, as so amended, continues to be a qualified plan under Section 401(a) of the Code. The Plan is an "employee pension benefit plan" subject to the fiduciary standards and to the full reporting and disclosure requirements of ERISA.

Applicant makes annual contributions to the Plan on behalf of all participants in amounts equal to specified percentages of their compensation. In addition, each participant may make voluntary contributions subject to certain limitations. Employer contributions are held in trust with the Chicago Title & Trust Company, and are invested at the direction of BEA Associates, Inc., a registered investment adviser designated by the Firm as investment manager for the Plan's assets. Voluntary contributions may be invested in one or more of three investment funds.

The Plan is administered by a Retirement Plan Committee ("Committee") consisting of at least three persons appointed by the Firm. Three partners of the Firm serve as trustees to the Plan. Neither the trustees nor the members of the Committee have any responsibility for the investment and management of Plan assets.

Applicant states that the Plan does not qualify for the statutory exemption because of its coverage of self-employed persons. However, Applicant submits that the information that would be required to be disclosed in a registration of participants' interests in the Plan would, in large part, in-

volve mere duplication of the financial and other information required to be disclosed under ERISA. Applicant further submits that the Plan is a single employer plan and is not designed to be marketed by a promoter to unrelated persons.

It appears that the characteristics of the Plan are essentially typical of those maintained by many single corporate employers and the legislative history of the relevant language in Section 3(a)(2) of the Act does not suggest intent on the part of Congress that interests issued in connection with single employer Keogh plans necessarily should be registered under the Act. Rather, Congress excluded interests issued in connection with Keogh plans from the Section 3(a)(2) exemption primarily out of concern over interests or participations in Keogh funds with might be marketed by sponsoring financial institutions to self-employed persons unsophisticated in financial matters.

Applicant concludes that for the foregoing reasons, granting the requested exemption would be appropriate in the public interest, consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than April 9, 1979, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants 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 application will be issued as of course following April 9, 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, wil receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements therefore.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-8495 Filed 3-20-79; 8:45 am]

[8010-01-M]

[Rel. No. 10628; 812-4340]

TEMPLETON GROWTH FUND, LTD.

Filing of Application for Amendment of Order of the Act to Permit Canadian Citizens to Constitute a Majority of Company's Board of Directors and Custody of Japanese Securities in Branch of United States Bank in Japan

MARCH 13, 1979.

Notice is hereby given that Templeton Growth Fund, Ltd. ("Applicant"), 155 University Aveune, Toronto, Ontario M5H 3B7, an open-end, diversified investment company incorporated under the laws of Canada on September 1, 1954, and permitted to register under the Investment Company Act of 1940 (the "Act") and to register its shares for sale in the United States under the Securities Act of 1933 by order of the Commission dated October 7, 1954, issued pursuant to Section 7(d) of the Act and Rule 7d-1 thereunder ("1954 Order") filed an application on June 2, 1978, and amendments thereto on October 2, 1978, and January 26, February 22, and March 8, 1979, for an order of the Commission amending the 1954 Order to permit (1) Canadian citizens to constitute a majority of Applicant's board of directors and (2) maintenance of Japanese securities in the Applicant's portfolio in the custody of a branch of a United States bank in Japan. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The 1954 Order of the Commission was granted on the basis, among other things, of the Applicant's undertaking (1) that its by-laws would provide that not less than a majority of the directors of the Applicant must be citizens and residents of the United States as required by paragraph (b)(8)(iv) of Rule 7d-1 and (2) that the Applicant would maintain all of its assets in the United States in the custody of a custodian bank as required by paragraph (b)(8)(v) of Rule 7d-1.

The Applicant was organized under the laws of Canada and is currently subject to the Canada Corporations Act. The Applicant states that the Canada Business Corporations Act ("CBCA"), which came into force on March 24, 1975, provides that a majority of the directors of a Canadian corporation presently subject to the Canada Corporations Act must be resident Canadians. The Applicant further states that the Applicant will be required to file a certificate of continuation under the CBCA and to conform its by-laws and procedures to the provisions thereof no later than December 15, 1980, failing which the Applicant will be dissolved. The Applicant therefore requests that the terms of the 1954 Order of the Commission under Section 7(d) be modified to permit Applicant to amend its by-laws relating to composition of the board of directors to provide that the board shall include a majority of directors who are resident Canadians.

Applicant contends that since all of the directors on its board—both those who are United States citizens as well as those who are not—have executed and filed, and will continue to execute and file, the undertaking and agreement required by Rule 7d-1(b)(1), and all of the non-United States directors have consented, and will continue to consent, to the jurisdiction of United States courts, very little, if any, of the Commission's powers to enforce the Act will have been diminished or impaired as the result of reducing the United States directors on the board. On the other hand, it is asserted that if the application is not granted, the consequence will be that the Applicant will be dissolved for failure to comply with the CBCA. Moreover, Applicant has consented that, the requested amended order be conditioned upon Applicant's board or directors being constituted so that (1) so long as Mr. John M. Templeton a citizen of the United Kingdom, resident of Nassau, Bahamas, remains a director, the board shall include the largest number of United States directors permitted by applicable Canadian law, less one (Mr. Templeton), but in no event less than one-third of the entire board of directors and (2) from and after such time as Mr. Templeton for any reason ceases to serve on the board of directors, all positions on the board of directors which under applicable Canadian law, may be filled by persons other than Canadians shall be filled by persons who are United States citizens and residents.

The Applicant also seeks to amend its prior order to permit it to maintain its Japanese portfolio securities in the custody of a Japanese branch of The Chase Manhattan Bank, N.A. (the "Bank"). Pursuant to its investment policy, Applicant may invest in securities issued by companies or governments of any nation. At one time Japanese securities constituted over 50% of Applicant's portfolio. As of December 31, 1978, Applicant held over $20 million in Japanese securities, constituting 10.8% of its total assets.

The application states that the rules of the Tokyo Stock Exchange require that the security certificates in settlement of a transaction be delivered on the third business day following the trade date. It is asserted that it is entirely impracticable to meet this condition unless the security certificates are kept physically with a custodian locat-

ed in Tokyo. Conversely, to require the Japanese securities to be maintained in a custody account physically within the United States compels Applicant to trade on a far less advantageous basis, for example, by borrowing securities temporarily for purposes of the trade from an investment banker in Tokyo.

In addition, it is stated that Japanese securities typically are issued in small denominations and in bearer form. Thus, there is a very high cost incurred for air freight and insurance for any delivery of such securities between the United States and Japan. Applicant submits that it will be unable to achieve best price and execution for its portfolio transactions unless its Japanese securities are lodged with a custodian located in Japan. For this purpose, Applicant intends to keep its Japanese portfolio securities in the custody of the Tokyo branch of The Chase Manhattan Bank, N.A. Under such an arrangement Applicant represents that the United States bank will be as fully responsible for the safekeeping of Applicant's assets as it would be if they were kept in the bank's custody in the United States, except for the incorporation in the bank's standard corporate custody agreement of provisions reflecting certain practices peculiar to Japanese securities and securities trading, and subject to Japanese law. Applicant stated that payment for Japanese portfolio securities purchased by it will be made only against receipt by the custodian of the certificates representing such securities and submits that the custody arrangement will provide full jurisdictional control within the United States of Applicant's assets for the protection of investors. If the application is granted, Applicant undertakes that it will at no time maintain more than 30% of its total assets outside the possession of a custodian physically situated within the United States without the approval of the Commission; that it has arranged for and will maintain an "expropriation" policy covering 50% of the value of Applicant's securities held in Japan; and that it will transfer promptly its Japanese securities to Applicant's custodian within the United States at any time upon written request by the Commission.

Rule 7d-1(b)(8)(ix) provides that any investment company applying under Rule 7d-1 for an order pursuant to Section 7(d) will not change its charter or by-laws in any manner inconsistent with paragraph (b) of Rule 7d-1 of the Act and the rules thereunder unless authorized by the Commission.

Notice is further given that any interested person may, not later than April 6, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-8496 Filed 3-20-79; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

ALBRIGHT VENTURE CAPITAL, INC.

[Application No. 03/03-5141]

Application for License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company, under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. *et seq.*), has been filed by Albright Venture Capital, Inc. (applicant), with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1978).

The officers, directors and stockholders of the applicant are as follows:

William A. V. Albright, President, Treasurer, Director, General Manager, 100% Stockholder, 12209 Piney Meetinghouse Rd., Potomac, Md. 20854.

Carolynn G. Albright, Vice President, Secretary, Director, 12209 Piney Meetinghouse Rd., Potomac, Md. 20854.

Raymond W. Bradley, Jr. Director, 3724 Foxcroft Rd., Charlotte, NC 28211.

The applicant, a North Carolina corporation, with its principal place of business located at 8005 Rappahannock Avenue, Jessup, Maryland 20794, will begin operations with $300,000 of paid-in capital and paid-in surplus derived from the sale of 30,500 shares of common stock. The applicant has submitted written assurances that its private capital will be increased to $500,000 on or before October 1, 1979.

The applicant will conduct its activities principally in the State of Maryland, and in other areas in the Metropolitan Washington, D.C. area.

Applicant intends to provide assistance to all qualified socially or economically disadvantaged small business concerns as the opportunity to profitably assist such concerns is presented.

As a small business investment company under Section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed management, and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and SBA Rules and Regulations.

Any person may, not later than April 5, 1979, (15 days from the date of publication of this notice), submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Jessup, Maryland.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies.)

Dated: March 15, 1979.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 79-8566 Filed 3-20-79; 8:45 am]

[8025-01-M]

[License No. 02/02-5358]

AMISTAD DOT VENTURE CAPITAL, INC.

Issuance of a License To Operate as a Small Business Investment Company

On December 27, 1978 a notice was published in the FEDERAL REGISTER (FR 43-60362) stating that Amistad DOT Venture Capital, 801 Second Avenue, New York, New York 10017 has filed an application with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1978) for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

Interested parties were given until the close of business January 11, 1979 to submit their comment to SBA. No comments were received.

Notice is hereby given that having considered the application and other pertinent information, SBA has issued License No. 02/02-5358 to Amistad DOT Venture Capital, Inc., on February 26, 1979.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies.)

Dated: March 15, 1979.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 79-8567 Filed 3-20-79; 8:45 am]

[8025-01-M]

[License No. 09/09-5231]

EQUITABLE CAPITAL CORP.

Issuance of a License To Operate as a Small Business Investment Company

On January 24, 1979, a notice was published in the FEDERAL REGISTER (44 FR 5038), stating that Equitable Capital Corporation, located at 419 Columbus Avenue, San Francisco, California 94133, had filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1979) for a license to operate as a small business investment company under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on February 8, 1979, and no comments were received.

Notice is hereby given that having considered the application and other pertinent information, SBA has issued License No. 09/09-5231 to Equitable Capital Corporation.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: March 14, 1979.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 79-8568 Filed 3-20-79; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1590]

HAWAII

Declaration of Disaster Loan Area

As a result of the President's declaration, I find that Hawaii County and adjacent counties within the State of Hawaii constitute a disaster area because of damage resulting from severe storms and flooding beginning about February 15, 1979. Applications will be processed under the provisions of Pub. L. 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 17, 1979, and for economic injury until the close of business on November 14, 1979, at:

Small Business Administration, District Office, 300 Ala Moana, P.O. Box 50207, Honolulu, Hawaii 96850.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated March 15, 1979.

A. VERNON WEAVER,
Administrator.

[FR Doc. 79-8570 Filed 3-20-79; 8:45 am]

[8025-01-M]

[License No. 08/08-0038]

MERCHANTS FINANCE COMPANY, INC.

License Surrender

Notice is hereby given that Merchants Finance Company, Inc., 1700 South 1800 West, Salt Lake City, Utah 84104, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Merchants Finance Company, Inc., was licensed by the Small Business Administration on April 15, 1971.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on February 27, 1979, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: March 16, 1979.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 79-8569 Filed 3-20-79; 8:45 am]

[8025-01-M]

REGION I ADVISORY COUNCIL EXECUTIVE BOARD

Public Meeting

The Small Business Administration Region I Advisory Council Executive Board will hold a public meeting from 1:00 p.m. to 4:00 p.m., on Monday, April 9, 1979, in the Conference Room, 60 Batterymarch Street, 10th Floor, Boston, Massachusetts, to discuss such matters as may be presented by members, the staff of the Small Business Administration or others attending.

For further information, write or call John J. McNally, U.S. Small Business Administration, 60 Batterymarch Street, Boston, Massachusetts 02110—(617) 223-4495.

Date: March 16, 1979.

K. DREW,
Deputy Advocate for Advisory Councils.

[FR Doc. 79-8562 Filed 3-20-79; 8:45 am]

[8025-01-M]

REGION II ADVISORY COUNCIL MEETING

Public Meeting

The Small Business Administration Region II Advisory Council, located in the geographic area of New York, New York, will hold a public meeting at 2:30 p.m. on Tuesday, April 3, 1979, in Room 29-118, U.S. Federal Building, 26 Federal Plaza, New York, New York, to discuss such business as may be presented by members, the staff of the Small Business Administration, or others attending.

For further information, write or call Woodie G. Williams, District Director, U.S. Small Business Administration, 26 Federal Plaza, New York, New York 10007 (212) 264-1318.

Date: March 16, 1979.

K. DREW,
Deputy Advocate for Advisory Councils.

[FR Doc. 79-8563 Filed 3-20-79; 8:45 am]

[8025-01-M]

REGION V ADVISORY COUNCIL MEETING

Public Meeting

The Small Business Administration Region V Advisory Council, located in

the geographical area of Indianapolis, Indiana, will hold a public meeting at 10:30 a.m. EST, on Monday, April 16, 1979, in the Midtown Ramada, 1530 North Meridian Street, Indianapolis, Indiana, to discuss such matters as may be presented by members, the staff of the Small Business Administration or others present.

For further information, write or call Janice E. Wolfe, Acting District Director, U.S. Small Business Administration, Federal Building, 5th Floor, 575 North Pennsylvania Street, Indianapolis, Indiana 46204—(317)331-7275.

Dated: March 16, 1979.

K. DREW,
Deputy Advocate for Advisory Councils.

[FR Doc. 79-8565 Filed 3-20-79; 8:45 am]

[8025-01-M]

REGION VI ADVISORY COUNCIL BOARD EXECUTIVE

Public Meeting

The Small Business Administration Region VI Advisory Council, located in the geographical area of Dallas, Texas, will hold a public meeting on Friday, April 6, 1979, at 9:30 a.m., at the Holiday Inn—City Room, 1015 Elm Street, Dallas, Texas, to discuss such matters as may be presented by members, the staff of the Small Business Administration or others present.

For further information, write or call Emly, S. Atkinson, District Director, U.S. Small Business Administration, 1100 Commerce Street, Dallas, Texas 75242—(214) 749-2706.

Date: March 16, 1979.

K. DREW,
Deputy Advocate for Advisory Councils.

[FR Doc. 79-8564 Filed 3-20-79; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1587; Amendment No. 1]

WISCONSIN

Declaration of Disaster Loan Area

The above numbered Declaration (See 44 FR 15554) is amended by adding Dane County and adjacent counties within the State of Wisconsin, which constitute a disaster area because of damage resulting from heavy snow which occurred on December 15, 1979 through February 5, 1979. All other information remains the same; i.e., the termination date for filing applications for physical damage is close of business on May 3, 1979, and for economic injury until the close of business on December 3, 1979.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated March 9, 1979.

A. VERNON WEAVER,
Administrator.

[FR Doc. 79-8571 Filed 3-20-79; 8:45 am]

[8025-01-M]

REGION IX ADVISORY COUNCIL MEETING

Public Meeting

The Small Business Administration Region IX Advisory Council, located in the geographical area of Phoenix, Arizona, will hold a public meeting on Wednesday, April 18, 1979, at 12 Noon, at the Emperor's Garden Restaurant, 7228 First Avenue, Scottsdale, Arizona, to discuss such business as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Stanley D. Goldberg, District Director, U.S. Small Business Administration, 3030 N. Central—Suite 1201, Phoenix, Arizona 85012—(602) 261-3700.

Dated: March 15, 1979.

K DREW,
Deputy Advocate for Advisory Councils.

[FR Doc. 79-8452 Filed 3-20-79; 8:45 am]

[4710-02-M]

DEPARTMENT OF STATE

Agency for International Development

RESEARCH ADVISORY COMMITTEE

Meeting

Pursuant to Executive Order 11769 and the provisions of Section 10(a)(2), Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given of the A.I.D. Research Advisory Committee meeting on April 30, 1979 at the Pan American Health Organization Building, 23rd Street and Virginia Avenue, N.W., Conference Room 'B' and May 1, 1979, Department of State Bldg, 320 21st Street NW., Room 1107 to review, appraise and make recommendations to the Administrator, Agency for International Development, concerning projects proposed for A.I.D. central research funding in the field of food and nutrition, health and population and urban development.

The meeting will begin at 9:00 a.m. and adjourn at 5:30 each day. The meeting is open to the public. Robert C. Simpson, Director, Office of Program, Bureau for Development Support, is designated as the A.I.D. representative at the meeting. It is suggested that those desiring more specific information, contact Mr. Simpson, 1601 N. Kent Street, Arlington, Virginia 22209 or call area code (202) 235-8898.

Dated: March 12, 1979.

ROBERT C. SIMPSON,
A.I.D. Representative, Research Advisory Committee.

[FR Doc. 79-8383 Filed 3-20-79; 8:45 am]

[4710-07-M]

[Public Notice CM-8/174]

STUDY GROUP 9 OF THE U.S. ORGANIZATION FOR THE INTERNATIONAL RADIO CONSULTATIVE COMMITTEE (CCIR)

Notice of Meeting

The Department of State announces that Study Group 9 of the U.S. National Organization for the International Radio Consultative Committee (CCIR) will meet on April 10, 1979 at 9:15 am, in the Third Floor Conference Room D, 2000 L Street, N.W., Washington, D.C.

Study Group 9 deals with questions relating to line-of-sight and trans-horizon radio-relay systems operating via terrestrial stations at frequencies above about 30 MHz. The purpose of the meeting is a review of current texts of Study Group 9 and the results of the Special Preparatory Meeting for the 1979 World Administrative Radio Conference, and establishment of a work program in preparation for the next international meeting of Study Group 9.

Members of the general public may attend the meeting and join in the discussions subject to the instructions of the Chairman. Requests for further information should be directed to Mr. Gordon Huffcutt, State Department, Washington, D.C. 20520 (telephone (202) 632-2592).

Dated: March 13, 1979.

GORDON L. HUFFCUTT,
Chairman, U.S. CCIR National Committee.

[FR Doc. 79-8382 Filed 3-20-79; 8:45 am]

[4810-22-M]

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 79-86]

Forms Used For Declaration and Entry Of Foreign Repairs and Equipment Purchases By U.S. Vessels and Aircraft

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

ACTION: General notice.

SUMMARY: This notice informs the transportation community that effective June 1, 1979, Customs will require

Customs Form 226, "Record of Vessel/Aircraft Foreign Repair or Equipment Purchase" to be used in place of Customs Form 3415, "Declaration of Foreign Repairs to Vessels or Aircraft", and Customs Form 7535, "Vessel/Aircraft Foreign Repair or Equipment Purchase Entry". Customs Form 3415 and Customs Form 7535 have been replaced by Customs Form 226 in compliance with a Presidential directive to reduce the number of public use forms. These forms relate to the declaration and entry of foreign repairs to, or equipment purchases by, U.S. vessels and aircraft under section 466, Tariff, Act of 1930, as amended (19 U.S.C. 1466).

EFFECTIVE DATE: The use of Customs Form 226 shall be mandatory effective June 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Allard P. D'Heur, Cargo Processing Branch, Inspection and Control Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202-566-5354).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The master of a vessel documented under the laws of the United States to engage in the foreign or coasting trade, or intended to be employed in the foreign or coasting trade, at the port of first arrival from a foreign country, is required to declare on Customs Form 3415 any equipment, repair parts, or material purchased for the vessel, or any expense for repairs incurred, in a foreign country within the purview of section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466). Entry on Customs Form 7535 is required to be made for such equipment or repairs. If no equipment has been purchased or repairs made, a declaration to that effect is required on Customs Form 3415. Sections 4.7(d)(1), 4.14(b), Customs Regulations (19 CFR 4.7(d)(1), 4.14(b)).

Under section 6.7(d), Customs Regulations (19 CFR 6.7(d)), the provisions of section 466, Tariff Act of 1930, as amended, are made applicable to aircraft of United States registry engaged in trade and arriving in the U.S., whether from a contiguous or noncontiguous foreign country. Sections 6.7(d) and (e) provide for the use by the aircraft commander of Customs Forms 3415 and 7535 in appropriate circumstances.

In compliance with a Presidential directive to reduce the number of public use forms, Customs has developed Customs Form 226 to replace Customs Forms 3415 and 7535. By Information Notice 78-58, dated May 26, 1978, Customs advised of the availability of the new form and provided that Customs Forms 3415 and 7535 could continue to be used unitl supplies were exhausted.

ACTION

Effective April 1, 1979, Customs Forms 3415 and 7535 no longer will be made available by Customs. However, to minimize inconvenience to the public, those forms may continue to be used through May 31, 1979. Effective June 1, 1979, the use of Customs Form 226 will be mandatory.

Customs Form 226 is available from district directors of Customs at a price of $1.80 per pad and 100 forms. It may be printed by private parties provided that the privately printed form conforms to the official version in size, wording, arrangement, quality and color of paper, and color of ink. Private parties should discontinue immediately any further printing of Customs Forms 3415 and 7535.

Appropriate conforming amendments to §§ 4.7, 4.14, and 6.7, Customs Regulations, to provide for the use of Customs Form 226 in place of Customs Forms 3415 and 7535, will be made as soon as possible.

DRAFTING INFORMATION

The principal author of this document is Laurie S. Amster, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: March 14, 1979.

JACK T. LACY,
Assistant Commissioner (Administration).

[FR Doc. 79-8530 Filed 3-20-79; 8:45 am]

[8320-01-M]

VETERANS ADMINISTRATION

WAGE COMMITTEE

Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, notice is hereby given that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, April 5, 1979
Thursday, April 19, 1979
Thursday, May 3, 1979
Thursday, May 17, 1979
Thursday, May 31, 1979
Thursday, June 14, 1979
Thursday, June 28, 1979

The meetings will convene at 2:30 p.m. and will be held in Room 817, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC. 20420.

The Committee's primary responsibility is to consider and make recommendations to the Chief Medical Director, Department of Medicine and Surgery, on all matters involved in the development and authorization of wage rate schedules for Federal Wage System (blue-collar) employees.

At these scheduled meetings, the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, the Federal Advisory Committee Act, as amended by Pub. L. 94-409, meetings may be closed to the public when they are concerned with matters listed under section 552b, Title 5, United States Code. Two of the matters so listed are those related solely to the internal personnel rules and practices of an agency (5 U.S.C. 552b(c)(2)), and those involving trade secrets and commercial or financial information obtained from a person and privileged or confidential (5 U.S.C. 552b(c)(4)). Accordingly, I hereby determine that all portions of the meetings cited above will be closed to the public because the matters considered are related to the internal rules and practices of the Veterans Administration (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)). However, members of the public who wish to do so are invited to submit material in writing to the Chairman regarding matters believed to be deserving of the Committee's attention.

Additional information concerning these meetings may be obtained by contacting the Chairman, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC. 20420.

Dated: March 14, 1979.

MAX CLELAND,
Administrator.

[FR Doc. 79-8457 Filed 3-20-79; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Notice No. 49]

ASSIGNMENT OF HEARINGS

MARCH 16, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps

to insure that they are notified of cancellation or postponements of hearings in which they are interested.

No. MC 109736 (Sub No. 42F), Capitol Bus Company, application dismissed.

No. MC-107403 (Sub-No. 1105F), Matlack, Inc., now assigned for hearing March 21, 1979, at Washington, D.C., is postponed and changed from hearing to Prehearing Conference, April 10, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

No. MC-2890 (Sub-No. 55F), American Buslines, Inc., MCC-10002, Greyhound Lines, Inc., V. American Buslines, Inc., now assigned for hearing on March 27, 1979, (3 days), at Harrisburg, Pa., is postponed to May 1, 1979, (3 days), at Harrisburg, Pa., in a hearing room to be later designated.

No. MC 103066 (Sub No. 66F), Stone Trucking Company, hearing now assigned April 3, 1979, at Houston, Texas is canceled and application dismissed.

No. MC 143546, Atlantic Marketing Cooperative Association, hearing canceled and application dismissed.

No. MC-115331 (Sub-No. 471F), Truck Transport Incorporated, No. MC-82063 (Sub-No. 96F), Klipsch Hauling Co., No. MC-110420 (Sub-No. 791F), Quality Carriers, Inc., now assigned for hearing on May 16, 1979, at the Offices of the Interstate Commerce Commission Washington, D.C.

H. G. Homme, Jr.
Secretary.

[FR Doc. 79-8558 Filed 3-20-79; 8:45 am]

[7035-01-M]

[Docket No. AB-1 (Sub-No. 78F)]

CHICAGO AND NORTH WESTERN TRANSPORTATION CO. ABANDONMENT NEAR ORMSBY, MN, AND ESTHERVILLE, IA, IN MARTIN AND WATONWAN COUNTIES, MN, AND EMMET COUNTY, IA

Notice of Findings

Notice is hereby given pursuant to Section 10903 of the Interstate Commerce Act (49 U.S.C. 10903) that by a Certificate and Decision decided February 13, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.-Abandonment Goshen*, 354 I.C.C. 584 (1978), and for public use as set forth in said decision, the present and future public convenience and necessity permit the abandonment by the Chicago and North Western Transportation Company of its line of railroad extending from milepost 136.0 near Ormsby, MN to milepost 140.0 and milepost 142.4 to milepost 168.9 near Estherville, IA, a distance of 31.2 miles in Martin and Watonwan Counties, MN and Emmet County, IA. A certificate of public convenience and necessity permitting abandonment was issued to the Chicago and North Western Transportation Company. Since no investigation was instituted, the requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the Federal Register be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (Section 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than April 5, 1979. The offer, as filed, shall contain information required pursuant to § 1121.38(b)(2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 45 days from the date of this publication.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-8555 Filed 3-20-79; 8:45 am]

[7035-01-M]

[Finance Docket No. 28933F]

MISSOURI PACIFIC RAILROAD CO.

Trackage Rights—Over Union Pacific Railroad Co. in Omaha, NE

Finance Docket No. 28933 F. Application filed February 6, 1979, by MISSOURI PACIFIC RAILROAD COMPANY (MoPac), 210 North 13th Street, St. Louis, MO 63103, for authority to operate certain of its trains over trackage owned by the Union Pacific Railroad Company (UP), 1416 Dodge Street, Omaha, NE 68179, for a distance of approximately 4.86 miles at Omaha-South Omaha, NE. The involved trackage lies generally between "O" Street, on the south, and the connection between tracks of MoPac and UP near the intersection of California and 12th Streets, on the north. Applicant's attorney is R. H. Stahlheber, same address as applicant.

MoPace has its own trackage between the end points of the UP trackage, but applicants claim that the proposed route is substantially shorter and will permit savings in engine hours and will avoid service difficulties and delays at a number of street crossings and grades. Applicant presently conducts operations over the proposed route under a service order issued by the Commission.

Interested persons may participate formally in a proceeding by submitting written comments regarding the application. Such submissions shall indicate the proceeding designation (F.D. No. 28933F), and the original and two copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, not later than May 7, 1979. Such written comments shall include the following: the person's position, e.g., party protestant or party in support, regarding the proposed transaction; specific reasons why approval would or would not be in the public interest; and a requet for oral hearing if one is desired. Additionally, interested persons who do not intend to participate formally in a proceeding but who desire to comment thereon, may file such statements and information as they may desire, subject to the filing and service requirements specified herein. Persons submitting written comments to the Commission shall, at the same time, serve copies of such written comments upon the applicant, the Secretary of Transportation and the Attorney General.

Decided: February 27, 1979.

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

H. G. Homme, Jr.,
Secretary.

Time Table

February 6, 1979—Application as supplemented filed with the Commission.

March 5, 1979—Because it takes approximately 3 days for service for Federal Register publiction, the Commission must vote by this day.

March 8, 1979—Statutory deadline for publication in Federal Register.

The following date assumes the application is accepted and notice published on March 1, 1979.

April 16, 1979. Written comments are due.

If no opposition exists, the evidentiary record will close on April 16, 1979. The Commission must then issue a decision by October 8, 1979.

[FR Doc. 79-8554 Filed 3-20-79; 8:45 am]

[7035-01-M]

[Volume No. 11]

PETITIONS, APPLICATIONS, FINANCE MATTERS (INCLUDING TEMPORARY AUTHORITIES), ALTERNATE ROUTE DEVIATIONS, AND INTRASTATE APPLICATIONS.

TABLE OF CONTENTS LISTING

MARCH 14, 1979.

PETITIONS FOR MODIFICATION, INTERPRETATION OR REINSTATEMENT OF OPERATING RIGHTS AUTHORITY

The following petitions seek modification or interpretation of existing operating rights authority, or reinstatement of terminated operating rights authority.

All pleadings and documents must clearly specify the suffix (e.g. M1 F, M2 F) numbers where the docket is so identified in this notice.

An original and one copy of protests to the granting of the requested authority must be filed with the Commission within 30 days after the date of this notice. Such protests shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247)[1] and shall include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon petitioner's representative, or petitioner if no representative is named.

MC 29934 (MIF) (Notice of filing petition to modify certificate), filed November 20, 1978. Petitioner: LOBIONDO BROTHERS MOTOR EXPRESS, INC., P.O. Box 160 Bridgeton, N.J. 08302. Representative: Michael R. Werner, P.O. Box 1409, 167 Fairfield Road, Fairfield, N.J. 07006. Petitioner holds a motor *common carrier* certificate in MC-29934, issued January 10, 1941 authorizing in part, transportation *General Commodities* (except those of unusual value, and except dangerous explosives, liquors, household goods as defined in Practices of Motor Common Carriers of Household Goods, 17 M.C.C. 467, commodities in bulk, commodities requiring special equipment), between Philadelphia, PA and points and places in New Jersey, those in New York, NY and Nassau, Suffolk, Rockland, and Westchester Counties, NY. By the instant petitions, petitioner seeks to modify the above authority by substituting "New Jersey" in lieu of that part of the present territorial description reading "Camden, Gloucester, Salem and Cumberland and Atlantic Counties, N.J."

[1] Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

Republications of Grants of Operating Rights Authority Prior to Certification Notice

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the FEDERAL REGISTER.

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this FEDERAL REGISTER notice. Such pleading shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 57591 (Sub-4) (M1) (Republication of notice of filing petition for modification of certificate), filed January 17, 1978, published in the FEDERAL REGISTER issue of April 27, 1978, and republished this issue. Petitioner: EVANS DELIVERY CO., INC., P.O. Box 268, Pottsville, PA 17901. Representative: Joseph F. Hoary, 121 South Main Street, Taylor, PA 18517. A Decision of the Commission, Review Board Number 3, decided January 9, 1979, and served February 12, 1979, finds that the present and future public convenience and necessity require modification of Certificate No. MC 57591 (Sub-4), issued May 1, 1972, authorizing transportation over regular routes, of *General commodities* (including commodities of unusual value, commodities in bulk, and commodities requiring special equipment, but excluding Classes A and B explosives and household goods as defined by the Commission), (1) Between Reading, PA, and Shenandoah, PA, serving all intermediate points: From Reading over PA Hwy 61 to junction PA Hwy 924 at Frackville, PA, thence over PA Hwy 924 to Shenandoah, and return over the same route; and (2) Between Pottsville, PA, and Minersville, PA, serving all intermediate points: From Pottsville over U.S. Hwy 209 to junction unnumbered highway (formerly PA Hwy 901), thence over unnumbered highway to Minersville, and return over the same route. Petitioner is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate the deletion of "which are stations on the rail line of The PA Railroad Company" from the two places where it appears in the certificate; and deleting the restrictions in their entirety.

MC 117686 (Sub-194) (Republication), filed November 12, 1977, published in the FEDERAL REGISTER issue of January 12, 1978, and republished this issue. Applicant: HIRSCHBACH MOTOR LINES, INC., 5000 South Lewis Blvd., Sioux City, IA 51102. Representative: George L. Hirschbach, P.O. Box 417, Sioux City, IA 51102. A Decision of the Commission, Review Board Number 2, decided April 25, 1978, and served May 9, 1978, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *common carrier*, by motor vehicle, over irregular routes, in the transportation of *Such commodities* as are dealt in by grocery and food business houses (except commodities in bulk), between Northfield, MN and Fargo, ND, restricted to the transportation of traffic originating at the facilities of Fairway Foods, Inc., at the named points, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republicaton is to indicate the applicant's actual grant of authority.

MC 143317 (Sub-7F) (Republication),filed July 18, 1978, published in the FEDERAL REGISTER issue of September 14, 1978, and republished this issue. Applicant: GEORGE CLARK TRANSIT CO., a Corporation, 2902 Calumet Avenue, Manitowoc, WI 54220. Representative: John L. Bruemmer, 121 West Doty Street, Madison, WI 53703. A Decision of the Commission, Review Board Number 3, decided January 26, 1979, and served March 5, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *contract carrier*, by motor vehicle, over irregular routes, in the transportation of *Silica sand*, from points in Green Lake and Jackson County, WI, to points in IL, IN, IA, MI, ND, SD, WI, and MN (except from points in Green Lake County to Minneapolis), under contract with Fairwater Silica, Inc., of Fairwater, WI, will be consistent with the public interest and the national transportation policy, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to indicate the applicant's actual grant of authority.

MC 144740F (Republication), filed May 11, 1978, published in the FEDERAL REGISTER issue of June 29, 1978, and republished this issue. Applicant: L. G. DEWITT, INC., P.O. Box 70, Ellerbe, NC 28338. Representative: Jacob P. Billig, 2033 K Street NW, Washington, D.C. 20006. A Decision of the Commission, Review Board Number 1, decided February 8, 1979, and served March 5, 1979, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce as a *contract carrier*, by motor vehicle, over irregular routes, in the transportation of *Foodstuffs* (except in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of Whitman's Chocolate's Division, Pet Incorporated, at Philadelphia, PA, to points in AZ, AR, CA, CO, ID, LA, NM, NV, OK, OR, TX, UT, WA, and those in Shelby County, TN, under contract with Whitman's Chocolate's Division, Pet Incorporated, of Philadelphia, PA, will be consistent with the public interest and the national transportation policy, that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations. The purpose of this republication is to modify the commodity description, and indicate AR in lieu of AK as a destination point.

MOTOR CARRIER, BROKER, WATER CARRIER AND FREIGHT FORWARDER OPERATING RIGHTS APPLICATIONS

The following applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the FEDERAL REGISTER. Failure to seasonably file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with Section 247(e)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use a such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. All pleadings and documents must clearly specify the "F" suffix where the docket is so identified in this notice. If the protest includes a request for oral hearing, such request shall meet the requirements of Section 247(e)(4) of the special rules, and shall include the certification required therein.

Section 247(f) further provides, in part, that an applicant who does not intend timely to prosecute its application shall promptly request dismissal thereof, and that failure to prosecute an application under procedures ordered by the Commission will result in dismissal of the application.

Further processing steps will be by Commission decision which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the FEDERAL REGISTER of a notice that the proceeding has been assigned for oral hearings.*

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation Act of 1975.

MC 46054 (Sub-79F) (Correction), filed September 25, 1978, previously noted in FEDERAL REGISTER of December 12, 1978 and republished this issue. Applicant: BROWN EXPRESS, INC., 428 South Main Avenue, San Antonio, TX 78285. Representative: Phillip Robinson, 1806 Rio Grande, P.O. Box 2207, Austin, TX 78768. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting *general commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Dallas, TX, and Oklahoma City, OK, over Interstate Hwy 35, serving no intermediate points, (2) between Dallas, TX, and Tulsa, OK: From Dallas over U.S. Hwy 75 to junction U.S. Hwy 69, then over U.S. Hwy 69 to junction Indian Nation Turnpike, then over Indian Nation Turnpike to junction U.S. Hwy 75, then over U.S. Hwy 75 to Tulsa, and return over the same route, serving no intermediate points, (3) between Dallas, TX, and Indianapolis, IN: From Dallas over Interstate Hwy 30 to Little Rock, AR, then over Interstate Hwy 40 to Nashville, TN, then over Interstate Hwy 65 to Indianapolis, and return over the same route, serving the intermediate point of Louisville, KY, and serving junction Interstate Hwy 30 and U.S. Hwy 59, and Memphis, TN, for purposes of joinder only, (4) between Louisville, KY, and Detroit, MI: From Louisville over Interstate Hwy 71, to junction Interstate Hwy 75, then over Interstate Hwy 75 to Detroit, and return over the same route, serving the intermediate points of Cincinnati and Toledo, OH, (5) between Houston, TX, and junction Interstate Hwy 30 and U.S. Hwy 59, over U.S. Hwy 59, serving no intermediate points, and serving junction Interstate Hwy 30 and U.S. Hwy 59 for purposes of joinder only; and (6) between Memphis, TN, and St. Louis, MO, over Interstate Hwy 55, serving Memphis for purposes of joinder only and serving St. Louis for purposes of interchange only, restricted in Routes (3) and (4) against the transportation of traffic originating at and destined to points in IN, KY, MI, or OH. (Hearing site: Laredo or Brownsville, TX.)

NOTE.—Dual operations are involved in this proceeding. CONDITION: The certificate to be issued in this proceeding, insofar as it authorizes the transportation of classes A and B explosives, shall be limited to a term expiring 5 years from its date of issuance.

NOTE.—The purpose of this republication is to indicate the territorial scope of restriction in Routes (3) and (4).

MC 104967 (Sub-12F), filed January 2, 1979. Applicant: TIGHE TRUCKING, INC., 45 Holton Street, Winchester, MA 01890. Representative: Mary E. Kelley, 11 Riverside Avenue, Medford, MA 02155. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between points in Massachusetts. (Hearing site: Boston, MA.)

NOTE.—The purpose of this filing is to convert a Certificate of Registration to a Certificate of Public Convenience and Necessity. This matter is directly related to a Section 212 (b) application in MC-FC 77991 published in the FEDERAL REGISTER issue of February 15, 1979.

MC 118130 (Sub-94F), filed November 29, 1978, and previously noticed in the FEDERAL REGISTER issue of February 23, 1979. Applicant: SOUTH EASTERN XPRESS, INC., P.O. Box 6985, Fort Worth, TX 76115. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Authority sought to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs, and such other*

commodities as are dealt in or used by wholesale and retail chain and grocery houses, (except commodities in bulk), between the facilities of Hudson Industries, Inc., at or near Troy and Brundidge, AL, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Montgomery or Birmingham, AL.)

NOTE.—This republication changes the authority from granted to sought, and adds *foodstuffs* and *wholesale and retail chain* to the commodity description.

MOTOR CARRIER INTRASTATE APPLICATION(S)

The following application(s) for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to Section 10931 (formerly Section 206(a)(6)) of the Interstate Commerce Act. These applications are governed by Special Rule 245 of the Commission's *General Rules of Practice* (49 CFR 1100.245), which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall *not* be addressed to or filed with the Interstate Commerce Commission.

Tennessee Docket No. MC 5317 (Sub-3) (amendment), filed December 29, 1978. Applicant: VOLUNTEER EXPRESS, INC., 1220 Faydur Court, Nashville, TN 37211. Representative: Walter Harwood, P.O. Box 15214, Nashville, TN 37215. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: *General commodities* (except Classes A and B explosives, household goods, commodities in bulk, and articles requiring special equipment), (1) From Jackson, TN via U.S. Hwy 45 to its junction with U.S. Hwy 45W, then via U.S. Hwy 45W to the Obion County Line, then via any and all highways and roads in Obion and Weakley Counties, TN, serving all points in said Counties (but serving no intermediate points between Jackson and the said Obion County Line), and return over the same route; and (2) From Jackson, TN via U.S. Hwy 45 to its junction with U.S. Hwy 45E, thence via U.S. Hwy 45E to the Weakley County Line, then via any and all highways and roads in Weakley and Obion Counties, serving all points in said Counties (but serving no intermediate points between Jackson and the said Weakley County Line), and return over the same route. Restricted against the handling of traffic which originates at, is destined to, or interlined at Jackson, TN, and points in its Commercial Zone, on the one hand, and, on the other, which originates at, is destined, to, or interlined at Nashville, TN, or Memphis, TN, and points in their respective Commercial Zones. Intrastate, interstate and foreign commerce authority sought. HEARING: March 27, 1979, at 9:30 a.m., The Oak Wood Restaurant, Hwy 22, in Dresden, TN. Requests for procedural information should be addressed to Tennessee Public Service Commission, C1-102 Cordell Hull Bldg., Nashville, TN 37219, and should not be directed to the Interstate Commerce Commission.

FINANCE APPLICATIONS

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control through ownership of stock, of rail carriers or motor carriers pursuant to Sections 11343 (formerly section 5(2)) or 11349 (formerly Section 210a(b)) of the Interstate Commerce Act.

An original and one copy of protests against the granting of the requested authority must be filed with the Commission on or before April 20, 1979. Such protests shall comply with Special Rules 240(c) or 240(d) of the Commission's *General Rules of Practice* (49 CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's representative, or applicant, if no representative is named.

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conversation Act of 1975.

MC-F-13310 (2d correction and notice) RYDER TRUCK LINES, INC.—CONTROL & MERGER—ALTO TRUCKING COMPANY, INC., published in September 29, 1977 issue of the FEDERAL REGISTER on pages 51719-51721; correction notice published in October 14, 1977 issue of FEDERAL REGISTER on pages 55343 and 55344. By order dated April 25, 1978, and served May 24, 1978, Review Board Number 5 approved the application herein. The rights to be transferred were set forth in Appendix A to the order. By Supplemental Decision dated January 18, 1979, and served February 6, 1979, Review Board Number 5 has determined that a portion of vendor's rights which were omitted from Appendix A should have been included therein. The omitted rights, authorized to be transfered upon publication and notice in the Federal Register, and as follows: Between Perth Amboy, NJ, and Irvington, NJ, serving no intermediate points: From Perth Amboy over New Jersey Highway 11 (formerly New Jersey Highway 4) to junction New Jersey Highway 27, thence over New Jersey Highway 27 to Rahway, thence over city streets through Lenox, Clark, Roselle, Roselle Park, and Kenilworth, to junction New Jersey Highway S24, thence over new Jersey Highway S24 to junction Salem Road, thence over city streets via Hillside, NJ, to Irvington, and return over the same route. From Perth Amboy over New Jersey Highway 11 (formerly New Jersey Highway 4) to junction New Jersey Highway 27, thence over New Jersey Highway 27 to junction Chestnut Street, thence over city streets via Roselle to Irvington, and return over the same route. From Perth Amboy over new Jersey Highway 35 to junction U.S. Highway 1, thence over U.S. Highway 1 to Elizabeth, thence over New Jersey Highway S24 and city streets to Irvington, and return over the same route. Between Perth Amboy, NJ, and Newark, NJ, serving no intermediate points: From Perth Amboy over Middlesex County Highway 1R6 to junction New Jersey Highway 27, thence over New Jersey Highway 27 to junction New Jersey Highway S28, thence over New Jersey Highway S28 to junction Somerset County Highway 1, thence over Somerset County Highway 1 to junction Somerset County Highway 16, thence over Somerset County Highway 16 to juncton New Jersey Highway 28, thence over New Jersey Highway 28 to Dunellen, thence over Middlesex County Highway 2R3 to New Market, NJ, thence over New Market Road to South Plainfield, thence over Middlesex County Highway 2R2 to junction U.S. Highway 22, thence over U.S. Highway 22 to Newark, and return from Newark over U.S. Highway 1 to junction New Jersey Highway 35, thence over New Jersey Highway 35 to Perth Amboy, and return over the same route. Between Newark, NJ, and Bayonne, NJ, serving no intermediate points: From Newark over New Jersey Highway 25 to Jersey City, NJ, thence over city streets to Bayonne and return over the same route. RESTRICTION: The operations authorized herein are subject to the following conditions: Said operations are restricted against the transportaton of traffic between Allentown, Bethlehem, and Easton, PA, on the one hand, and, on the other, Jersey City, NJ.

MC 13876F (correction), previously noticed in the FEDERAL REGISTER issue of February 8, 1979. Authority sought by BROWNING FREIGHT LINES, INC., 650 South Redwood Road, Salt Lake City, UT 84104, to purchase a portion of the operating rights of ABC

Truck Lines, Inc., 728 West Idaho Street, P.O. Box 1824, Elko, NV 89801, and for acquisition by George A. Browning and Clifton M. Browning and Lowell D. Browning of control of such rights through purchase. Applicant's Representative: Ben D. Browning and Ronald D. Browning, Attorneys, 1321 SE Water Avenue, Portland, OR 97214. Operating rights to be purchased: General Commodities with the usual exceptions, over regular routes between Elko, NV and Owyhee, NV via State Route 11 to four miles beyond Dinner Station; via State Route 43 to Mountain City Ranger Station; and via State Route 11A to Owyhee, serving all intermediate points.

Vendee is authorized to operate as a common carrier in the States of UT, ID and OR pursuant to certificates issued in Docket MC-41932.

Application has been filed for temporary authority under Section 210a(b). In Docket MC-41932 (Sub No. 13F) application has been made to convert the above described authority to be purchased from a registered certificate to a certificate of public convenience and necessity. (Hearing sites: Boise, ID or Salt Lake City, UT.)

NOTE.—MC 41932 (sub 13F), is a directly related matter.

The purpose of this correction is to indicate MC 41932 Sub 13F as the directly related application in lieu of MC 41932 Sub 12F.

MC-F-13936F. Authority sought for purchase by BRIGGS TRANSPORTATION CO., North 400 Griggs-Midway Bldg., St. Paul, MN 55104, of a portion of the operating rights of Glendenning Motorways, Inc., P.O. Box 43947, St. Paul, MN 55164, and for acquisition of control of such rights by George E. Briggs, P.O. Box 906, Eau Claire, WI 54701, and Michael P. Wardwell, North 400 Griggs-Midway Bldg., St. Paul, MN 55104, through the purchase. Applicants' Attorneys: Carl L. Steiner, 39 S. La Salle St., Chicago, IL and Donald A. Morken, 1000 First National Bank Bldg., Minneapolis, MN 55104. Operating rights sought to be transferred are as a *common carrier*, over regular routes as follows: MC-43475 *General commodities*, with the usual exceptions, between West Allis, WI and Chicago, IL as follows: From West Allis, WI over U.S. Hwy 45 to junction IL 21, then over IL 21 to Chicago, IL and return over the same route. Briggs Transportation Co. is authorized to operate in the States of IL, IN, IA, OH, WI, MN, KS, KY, MO, NE, SD, CO and WY as a common carrier. Application has been filed for temporary authority under Section 210 a(b).

MC-F-13937F. Authority sought for purchase by UNIVERSAL CARTAGE, INC., 640 W. Ireland Road, South Bend, IN, of a portion of the operating rights of EDGAR W. LONG, INC., Route 4, Zanesville, OH, and for acquisition by RONALD WHITEFORD, and FLORENCE WHITEFORD, both of 640 W. Ireland Rd., South Bend, of control of such rights through the transaction. Applicants' representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Operating rights sought to be purchased in MC 119547, Sub 1, involving the transportation of clay cat litter as a common carrier over irregular routes from Wrens, GA, to points in IN and OH with no transportation for compensation on return except as otherwise authorized; Sub-40-G, involving the transportation of clay cat litter from Wrens, GA, to points in WV; Sub E-1, involving the transportation of clay cat litter from Wrens, GA, to Chicago, IL, points in MI, WI, that part of PA, on and west of a line beginning at the NY-PA State line, then along U.S. Hwy 219 to junction U.S. Hwy 119, and thence along U.S. Hwy 119 to the PA-MD State line, points in the part of NY, west of a line beginning at Maple View, NY and extending along U.S. Hwy 11 to the NY-PA State line, and south of a line beginning at Maple View, NY and extending westward along U.S. Hwy 104 to Oswego, NY, and that part of IA on and north of I-80 and on and west of I-35; Sub 32, involving the transportation of charcoal in containers from points in Guernesey and Vinton Cos., OH and Nicholas Co., WV to points in that part of the U.S. on and east of the western boundaries of MN, IA, MO, AR, and LA, with no transportation for compensation on return except as otherwise authorized; Sub 48, involving the transportation of rolling doors, grills, and related components and parts from the facilities of Kinnear-Division of Harsco Corporation at Columbus, OH, to points in the U.S. (except AK and HI). Vendee is authorized to operate in the States of IN, IL, KY, MI, and OH. Transferee's commonly controlled companies C&C Cartage, Inc. and Whiteford Transport, Inc. are authorized to operate in all States (except AK, HI, WA, OR, CA, NV, ID, MT, WY, UT, AZ, and NM. Application has been filed for temporary authority under section 210a(b) of the Act.

MC-F-13938F. Authority sought by SARTAIN TRUCK LINE, INC., 1625 Hornbrook, Post Office Box 190, Dyersburg, TN, 38024 to purchase all of the operating rights of Dyersburg Express, Inc., 1625 Hornbrook, Post Office Box 190, Dyersburg, TN, 38024. Common control of both companies was approved in Docket No. MC-F-13291. Applicant's representaive, Warren A. Goff, Attorney at Law, 2008 Clark Tower, Memphis, TN, 38137. Operating rights to be purchased: General Commodities, with he usual exceptions, over regular routes, from Memphis to Dyersburg, Tiptonville and Union City, all in Tennessee, serving some intermediate and off-route points.

Transferee is authorized to operate as a common carrier, transporting General Commodities, with the usual exceptions, over regular routes, between Memphis, TN, numerous points in west Tennessee and St. Louis, MO, but not between Memphis, TN and St. Louis, MO, pursuant to certificates issued in Docket No. MC 85970 and subs thereunder. Application has been filed for temporary authority under Section 210(a)(b). (Hearing sites: Washington, D.C.).

MC-F-13939F. Authority sought for control by MONTGOMERY TANK LINES, INC., 17550 Fritz Drive, Lansing, IL, 60438, of CHEMICAL TRANSPORTERS, INC., 15145 El Cameno Real Drive, Orland Park, IL 60462, through stock purchase, and for acquisition by ELTON BABBITT, 509 Nolton, Willow Springs, IL, 60480, of control of Chemical Transporters, Inc., through the acquisition. Applicant's attorney, William H. Towle, 180 North LaSalle Street, Chicago, IL, 60601. Operating rights sought to be controlled: Chemicals, in bulk, as a common carrier, from the plantsite of Amoco Chemical Corporation near Joliet, IL, to points in the U.S. (except points in AK, HI, NC, SC, VA, specified points in MI and TX, and a defined portion of TN). Montgomery Tank Lines, Inc. is authorized to operate within all States in the U.S. (except AK and HI). Application has been filed for Temporary Authority under Section 210 a(b).

NOTE.—If a hearing is deemed necessary, applicants request it be held in Chicago, IL.

MC-F-13940F. Authority sought for purchase by Charles A. McCauley, 308 Leasure Way, Bethlehem, Pa. 16242 of a portion of the operating rights of Edgar W. Long, Inc., 3815 Old Wheeling Road, Zanesville, Ohio 43701, and for acquisition by Charles A McCauley, 308 Leasure Way, Bethlehem, Pa. 16242 of control of such rights through the purchase. Applicant's representatives: Henry M. Wick, Jr., Stanley E. Levine, 2310 Grant Building, Pittsburgh, Pa. 15219 for Transferee; Richard H. Brandon, 220 West Bridge Street, P.O. Box 97, Dublin, Ohio 43017 for Transferor. Operating rights sought to be transferred: (1) that portion of Certificate No. MC-119547 (Sub-No. 1) which authorizes the transportation of *glassware*, handmade, except ampules, bottles, carboys, demijohns and jars, from Bellaire, OH to points in that part of PA on and east of U.S. Hwy. 11, and to

points in DC, MD, DE, NJ, and VA, with no transportation for compensation on return except as otherwise authorized; (2) that portion of Certificate No. MC-119547 (Sub-No. 16) which authorizes the transportation of *malt beverages*, from Columbus, OH to Beckley, Charleston, Huntington, Parkersburg, Ronceverte, Webster Springs, Weirton, and White Sulphur Springs, WV and Washington, PA, with no transportation for compensation on return except as otherwise authorized; (3) Certificate No. MC-119547 (Sub-No. 21); (4) Certificate No. MC-119547 (Sub-No. 31); (5) Certificate No. MC-119547 (Sub-No. 35); and (6) Certificate No. MC-119547 (Sub-No. 45). Vendee is authorized to operate in all States in the United States as a common carrier (except AK, HI, ID, MT, NM, ND, OK, OR, TX, WA, and WY. Application has been filed for temporary authority under Section 210a(b). (Hearing site: Washington, DC, Pittsburgh, PA or Columbus, OH.)

OPERATING RIGHTS APPLICATION(S) DIRECTLY RELATED TO FINANCE PROCEEDINGS

The following operating rights application(s) are filed in connection with pending finance applications under Section 11343 (formerly Section 5(2)) of the Interstate Commerce Act, or seek tacking and/or gateway elimination in connection with transfer applications under Section 10926 (formerly Section 212(b)) of the Interstate Commerce Act.

An original and one copy of protests to the granting of the authorities must be filed with the Commission on or before April 20, 1979. Such protests shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) and include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon applicant's representative or applicant if no representative is named.

Each applicant states that approval of its application will not significantly affect the quality of the human environment nor involve a major regulatory action under the Energy Policy and Conservation Act of 1975.

MC 41932 (Sub-13F) (Correction) filed January 3, 1979. Previously noticed in the FEDERAL REGISTER issue of February 8, 1979. Applicant: BROWNING FREIGHT LINES, INC., 650 South Redwood Road, Salt Lake City, UT 84104. Representative: Ben D. Browning, 1321 SE Water Avenue, Portland, OR 97214. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except commodities in bulk, in tank vehicles commodities which by reason of size or weight require special equipment, household goods as defined by the Commission, and commodities of unusual value), (1) Between Elko, NV and Owyhee, NV, serving all intermediate points, over NV Hwy 51, (2) Between Mountain Home, ID and Owyhee, NV, over ID Hwy 51, to junction NV Hwy 51, then over NV Hwy 51 to Owyhee serving no intermediate points and serving Owyhee, NV for purpose of joinder only with the requested authority in (1) above, (3) Between Twin Falls, ID and Elko, NV, serving all intermediate points, from Twin Falls, over US Hwy 93 to Wells, NV, then over Interstate Hwy 80 to Elko, NV, and return over the same route. (4) Between Wells, NV and Salt Lake City, UT over Interstate Hwy 80, as an alternate route for operating convenience only between authority requested in (30 above and with applicant's existing regular route operations; and (5) Serving Duck Valley Indian Reservation located at points in ID and NV as an off-route point in connection with applicant's existing regular routes operations in MC 41932, which authorizes service between Salt Lake City, UT and Boise, ID over described Highways. (Hearing site: Boise ID or Salt Lake City, UT.)

NOTE.—The purpose of this application is to convert a certificate of registration to a certificate of public convenience and necessity in (1) above. Parts (2), (3), (4), and (5) above are authority extension requests. This application if directly related to MC-F-13876F and published in a previous section of the FEDERAL REGISTER issue. The purpose of this correction is to indicate the docket number as MC 41932 Sub-13F in lieu of MC 41932 Sub-12F as previously published.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-8589 Filed 3-20-79; 8:45 am]

[7035-01-M]

[Finance Docket No. 28971F]

PROVIDENCE AND WORCESTER CO.

Merger—Providence and Worcester Railroad Co.

PROVIDENCE AND WORCESTER COMPANY (P&W), One Depot Square Woonsocket, Providence County, RI 02895, represented by John L. Richardson, Esquire, and Steven H. Dorne, Esquire, 1660 L Street, N.W. Suite 100, Washington, DC 20036, hereby give notice that on the 23rd day of February, 1979, it filed with the Interstate Commerce Commission at Washington, DC, an application filed under Section 11343 of the Interstate Commerce Act for a decision approving and authorizing the merger of Providence and Worcester into Providence and worcester Railroad Company, and the acquisition by Providence and Worcester Railroad Company, as a result of the merger, of trackage rights over the lines of other carriers. The merger is part of a plan of corporate reorganization by Providence and Worcester Company. As a result of the merger, Providence and Worcester Railroad Company will operate as a railroad common carrier over the same routes and in the same manner as Providence and Worcester Company, and will acquire all trackage rights over the lines of other carriers now held by Providence and Worcester Company.

In the opinion of the applicant, the granting of the authority sought will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—National Environmental Policy Act, 1969*, 353 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—National Environmental Policy Act, 1969, supra*, at p. 487.

Interested persons may participate formally in a proceeding by submitting written comments regarding the application. Such submissions shall indicate the proceeding designation Finance Docket No. 28971F and the original and two copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423, not later than 45 days after the date notice of the filing of the application is published in the FEDERAL REGISTER. Such written comments shall include the following: the person's position, e.g., party protestant or party in support, regarding the proposed transaction; specific reasons why approval would or would not be in the public interest; and a request for oral hearing if one is desired. Additionally, interested persons who do not intend to formally participate in a proceeding but who desire to comment thereon, may file such statements and information as they may desire, subject to the filing and service requirements specified herein. Persons submitting written comments to the Commission

shall, at the same time, serve copies of such written comments upon the Applicant, the Secretary of Transportation and the Attorney General.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-8556 Filed 3-20-79; 8:45 am]

[7035-01-M]

[EX PARTE No. 347]

WESTERN COAL INVESTIGATION—GUIDELINES FOR RAILROAD RATE STRUCTURE

Intent to Prepare Environmental Impact Statement

MARCH 15, 1979.

Notice is hereby given that, in accordance with the National Environmental Policy Act of 1969, the Interstate Commerce Commission intends to prepare an environmental impact statement (EIS) on Ex Parte No. 347—*Western Coal Investigation—Guidelines for Railroad Rate Structure.* The Commission seeks to assess the environmental implications of the conduct of the proceeding which will focus on the determination of appropriate levels of minimum and/or maximum rates for large-volume movements of bituminous and lignite coal from origins in coal producing districts 16 through 22 (Montana, North and South Dakota, Colorado, Wyoming, Utah, Arizona and New Mexico) to all destinations in the continental United States.

The emphasis on the accelerated development of coal resources in the United States and recent regulations mandating use of coal in electric utilities and industry has resulted in a major expansion of coal mining west of the Mississippi River.

Major studies predict that this geographic area may be supplying approximately 50 percent of U.S. coal requirements by 1990.

It is recognized that the cost of transporting western coal could represent a crucial component in determining the short and long term market viability of this resource. Hence, the importance in developing guidelines governing the freight rate structure for western coal. Coal freight rates could attain levels which could trigger the utilization of alternative transportation modes and/or fuels. If, however, current projections for increased coal use are realized, the potentiality of environmental impacts resulting from expanding coal traffic must be addressed.

The EIS for this proceeding will identify, examine, and analyze the environmental consequences resulting from the use of western coal or the substitution of other fuels as well as the impacts of coal movement via alternative transportation modes (rail, coal, slurry pipeline, etc). Both the short and long term impacts will be identified and examined.

The alternatives assessed in the EIS will be the use of alternative fuels and the transportation of coal by different modes.

The EIS will reflect the parameters inspired by the National Energy Act and implementing regulations in determining the extent of western coal production.

All interested agencies, organizations, or persons are invited to participate in scoping process as defined by current CEQ Regulations. Accordingly, a scoping meeting will be held in the Interstate Commerce Commission Bldg., 12th and Constitution Ave., N.W., Washington, DC 20423 at 10 a.m. on April 19, 1979.[1]

As lead agency for this EIS, the Interstate Commerce Commission has initiated actions to allocate assignments to cooperating agencies for the preparation of the EIS.

The environmental analyses contained in the EIS will be considered as an integral component of the agency's decision-making schedule. The preparation of the EIS is being so coordinated to insure timely and appropriate consideration of crucial environmental issues identified by the final document.

The Commission's contact person for this action is Mr. Robert Maestro, Assistant Chief, Section of Energy and Environment, Rm. 3375, Interstate Commerce Commission, 12th and Constitution Ave., NW, Washington, DC 20423 (telephone 202-275-7217).

Upon completion of the draft EIS, its availability will be announced in the FEDERAL REGISTER at which time public comments will be solicited. It is also contemplated that a public hearing will be held to consider the draft EIS. The time and place of this hearing will also be announced in the FEDERAL REGISTER.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-8557 Filed 3-20-79; 8:45 am]

[7035-01-M]

[Notice No. 40]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

MARCH 12, 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 9325 (Sub-77TA), filed February 15, 1979. Applicant: K LINES, INC., 17765 S. W. Boones Ferry Road, Lake Oswego, OR 97034. Representative: John A. Anderson, Suite 1440, 200 Market Building, Portland, OR 97201. *Salt cake, in bulk,* from San Francisco, CA to Portland, OR, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Owens-Illinois, 5850 N. E. 92nd Drive, Portland, OR. Send protests to: A. E. Odoms, DS, ICC, 114 Pioneer Courthouse, Portland, OR 97204.

MC 22509 (Sub-15TA), filed February 9, 1979. Applicant: MISSOURI-NEBRASKA EXPRESS, INC., 5310 St. Joseph Avenue, St. Joseph, MO 64505. Representative: Harry Ross, 58 South Main Street, Winchester, KY 40391. *Fibrous glass products and materials, mineral wool, mineral wool products and materials; insulated air ducts; insulating materials and products; glass fibre rovings, yarn and strands; glass fibre mats and mattings; flexible air ducts (except commodities in bulk)* from facilities of CertainTeed Corporation at or near Kansas City, Kansas and Pauline, Kansas to points in IL, IN, MO, AR, LA, OK, TX, KY, TN and points in IA east of U.S.

[1] The meeting room number will be posted in the ICC Bldg. Lobby on that date.

Hiway 63 for 180 days. An underlying ETA seeks 90 day authority. Supporting Shipper(s): CertainTeed Corp., P.O. Box 860, Valley Forge, PA 19482. Send protests to: Vernon V. Coble, DS, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 47583(Sub-84TA), filed February 9, 1979. Applicant: TOLLIE FREIGHTWAYS, INC., 1020 Sunshine Road, Kansas City, KS 66115. Representative: D. S. Hults, P.O. Box 225, Lawrence, KS. *Waste and scrap paper* (except commodities in bulk) between all points and places in the States of AR, IA, KS, MO, NE, OK, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Batliner Paper STock Co., 2501 Riverfront Road, Kansas City, MO 64120. Send protests to: Vernon V. Coble, DS, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 106074 (Sub-84TA), filed February 14, 1979. Applicant: B & P MOTOR LINES, INC., P.O. Box 741, Forest City, NC 28043. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Rd., Omaha, NE 68106. *Household appliances, parts and accessories* from The Maytag Company at Newton, IA to points in NC, SC, VA, and WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): The Maytag Company, Newton, IA 50208. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Rd-Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 106195 (Sub-24TA), filed February 16, 1978. Applicant: CLARK BROS. TRANSFER, INC., 900 North First, Norfolk, NE 68701. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Rd., Omaha, NE 68106. *Meats and packinghouse products,* from Madison, NE to points in KS, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): D. A. Chute, Armour Fresh Meat Co., 111 West Clarendon, Greyhound Tower, Phoenix, AZ 85077. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 110420 (Sub-798TA), filed February 7, 1978. Applicant: QUALITY CARRIERS, INC., P.O. Box 186, Pleasant Prairie, WI 53158. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425-13th St. NW., Washington, DC 20004. *Tallow, in bulk, in tank vehicles,* from the facilities of Iowa Beef Processors, Inc. at Emporia, KS, Dakota City & West Point, NE & Denison & Ft. Dodge, IA to points in AR, IL, IA, MO, OK, TN, TX, IN & WI, for 180 days. Supporting Shipper(s): Iowa Beef Processors, Inc., Dakota City, NE 68731. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 110420 (Sub-799TA), filed February 8, 1979. Applicant: QUALITY CARRIERS, INC., P.O. Box 186, Pleasant Prairie, WI 53158. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425-13th St., NW, Washington, DC 20004. *Natural and synthetic tanning extracts, and liquid chemicals, in bulk,* from Andover and Peabody, MA to points in IL and WI, for 180 days. Supporting Shipper(s): Chemtan Co., Inc., Hampton Road, Exeter, NH 03833. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 110420 (Sub-800TA), filed February 14, 1979. Applicant: QUALITY CARRIERS, INC., P.O. Box 186, Pleasant Prairie, WI 53158. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425-13th St., NW, Washington, DC 20004. *Vegetable oils, in bulk, in tank vehicles,* from Minneapolis, MN to points in AR and GA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Spencer Kellog, Div. of Textron, Inc., Box 307, 120 Delaware Ave., Buffalo, NY 14240. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 111401 (Sub-546TA), filed February 16, 1979. Applicant: GROENDYKE TRANSPORT, INC., P.O. Box 632, 2510 Rock Island Blvd., Enid, OK 73701. Representative: Victor R. Comstock (same address as applicant). *Inedible tallow,* in bulk, in tank vehicles, from Roswell, NM to Houston, TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Glover, Inc., 1000 N. Garden, P.O. Box 40, Roswell, NM 88201. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240 Old Post Office & Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 111401 (Sub-547TA), filed February 16, 1979. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Blvd., P.O. Box 632, Enid, OK 73701. Representative: Victor R. Comstock (same address as applicant). *Petroleum lubricating oil,* in bulk, in tank vehicles, from Princeton, LA to El Centro, CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Mobil Oil Corporation, 8350 N. Central Expressway, Suite 522, Dallas, TX 75206. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240 Old Post Office & Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 111548 (Sub-14TA), filed February 14, 1979. Applicant: SHARPE MOTOR LINES, INC., PO Box 517, Hildebran, NC 28637. Representative: Edward G. Villalon, 1032 Penn. Bldg., Penn. Avenue & 13th St., NW, Washington, DC 20004. *Veneer,* (1) from points in KY and Piqua, OH and Rockford, IL to points in NC; and (2) from points in IN to points in NC, except those in Burke, Caldwell McDowell and Catawba Counties, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): There are 14 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd-Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 112989 (Sub-83TA), filed February 16, 1979. Applicant: WEST COAST TRUCK LINES, INC., 85647 Highway 99 South, Eugene, OR 97405. Representative: John W. White, Jr., 85647 Highway 99 South, Eugene, OR 97405. *Gypsum products* from Clark County, NV to San Diego, Orange, Riverside, Los Angeles, Ventura, San Bernardino, Kern, and Imperial Counties, CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): The Flintkote Company, 2201 E. Washington Blvd., Los Angeles, CA 90021. Send protests to: A. E. Odoms, DS, ICC, 114 Pioneer Courthouse, Portland, OR 97204.

MC 111548 (Sub-177TA), filed February 13, 1979. Applicant: DAHLSTEN TRUCK LINE, INC., P.O. Box 95, Clay Center, NE., 68933. Representative: Howard N. Dahlsten (same address as applicant) *Paper bags,* from points in AR to the facilities of American Colloid Company located at or near Belle Fourche, SD; Lovell and Upton, WY; Gascoyne, ND; and Malta, MT. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Robert N. Garity, Transportation Specialist, American Colloid Company, P.O. Box 228, Skokie, IL., 60077. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Building & Court House, 100 Centennial Mall North, Lincoln, NE., 68508.

MC 115669 (Sub-178TA), filed February 13, 1979. Applicant: Dahlsten Truck Line, Inc., P.O. Box 95, Clay Center, NE., 68933. Representative: Howard N. Dahlsten (same address as

applicant). *Dry feed ingredients,* from the facilities of Clinton Corn Processing Co., at Clinton, IA., to points in IL, IN, and OH. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Allen D. Sloan, Manager, Traffic Department, Clinton Corn Processing Company, P.O. Box 340, Clinton, IA., 52732. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Building & Court House, 100 Centennial Mall North, Lincoln, NE., 68508.

MC 118159 (Sub-316TA), filed February 16, 1979. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366, Dawson Station, Tulsa, OK 74151. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Tile, facing or flooring, or molding facing, baseboard or cove, cements, adhesives, and materials used in the installation thereof,* from the facilities of the GAF Corporation at or near Vails Gate, NY, to points in AL, AR, FL, GA, LA, MS, NC, OK, SC, TN, TX, and VA, for 180 days. Supporting Shippers(s): GAF Corporation, 1361 Alps Road, Wayne, NJ 07470. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240, Old Post Office and Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 119118 (Sub-61TA), filed February 12, 1979. Applicant: McCURDY TRUCKING, INC., P.O. Box 388, Latrobe, PA 15650. Representative: Robert James, (same as above). *Malt beverages,* in containers, from Latrobe, PA to points in NH and VT and empties on return, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Latrobe Brewing Co., Box 350, Latrobe, PA 15650. Send protests to: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, Pittsburgh, PA 15222.

MC 119489 (Sub-56TA), filed February 16, 1979. Applicant: CENTRAL TRANSPORT CO., Box 249, 2500 N. 13th St., Norfolk, NE 68701. Representative: Steven K. Kuhlmann, P.O. Box 82028, Lincoln, NE 68501. *Tallow, in bulk, in tank vehicles,* from the facilities of Iowa Beef Processors, Inc., located at or near Dakota City and West Point, NE: Ft. Dodge and Denison, IA; and Luverne, MN to points in IL and IN, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Glen C. Echelbarger, Iowa Beef Processors, Inc., Dakota City, NE 68731. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 119765 (Sub-70TA), filed February 15, 1979. Applicant: EIGHT WAY XPRESS, INC., 5402 So. 27th St., Omaha, NE 68107. Representative: Marshall D. Becker, Suite 610, 7171 Mercy Rd., Omaha, NE 68106. *Fresh pork,* from the facilities of Crest Mark Packing Company in Chicago, IL to points in MA and NY, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Joseph R. Halper, Crest Mark Packing Company, 1435 W. Exchange Ave., Chicago, IL 60609. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 119767 (Sub-351TA), filed February 15, 1979. Applicant: BEAVER TRANSPORT CO., P.O. Box 186, Pleasant Prairie, WI 53158. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th St. NW., Washington, DC 20004. *Prepared flour mixes and frosting mixes* (except in bulk) from the facilities of Chelsea Milling Co. at or near Chelsea, MI to Milan, IL; Boone, Cedar Rapids, Charlton and Des Moines, IA and St. Louis, MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Chelsea Milling Co., Chelsea, MI 48118. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 577 East Wisconsin Avenue, Room 619, Milwaukee WI 53202.

MC 121626 (Sub-11TA), filed February 16, 1979. Applicant: BAYVIEW TRUCKING, INC., 7080 Florin-Perkins Road, Sacramento, CA 95828. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. *Frozen foods,* in vehicles equipped with mechanical refrigeration, (1) from the facilities of Campbell Soup Co. at Omaha and Fremont, NE to Modesto and Sacramento, CA and (2) from the facilities of Campbell Soup Co. at Modesto, CA to Omaha, NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Campbell Soup Co., P.O. Box 3051, Modesto, CA 95353. Campbell Soup Co., 1202 Douglas, Omaha, NE 68102. Send protests to: A. J. Rodriguez, DS, ICC, 211 Main Street, Suite 500, San Francisco, CA 94105.

MC 124813 (Sub-195TA), filed February 2, 1979. Applicant: UMTHUN TRUCKING CO., 910 South Jackson Street, Eagle Grove, IA 50501. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Steel tubing* from Green Bay, WI to points in IA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Tectron Tube Corporation, Division of Menco Corporation, 1744 South Broadway, Green Bay, WI 54304. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 124813 (Sub-196TA), filed February 5, 1979. Applicant: UMTHUN TRUCKING CO., 910 South Jackson Street, Eagle Grove, IA 50533. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Lime* from the facilities of Linwood Stone Products Company near Davenport, IA to Kenosha, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Linwood Stone Products Company, 4321 East 60th Street, Davenport IA. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 125368 (Sub-46TA), filed February 14, 1979. Applicant: CONTINENTAL COAST TRUCKING CO., INC., P.O. Box 26, Holly Ridge, NC 28445. Representative: C. W. Fletcher (same address as applicant). *Meats, meat products and supplies used in the manufacture of meat products* between the facilities of White Packing Company, King George, VA, on the one hand, and, on the other, points in AR, CO, CT, FL, IA, KS, LA, MA, MS, MO, NE, NH, NY, OK, SC, SD, WV, and WI, for 180 days. An underlying ETA was filed seeking 90 days authority. Supporting shipper(s): White Packing Company, Inc., P.O. Box 95, King George, VA 22485. Send protests to: Mr. Archie W. Andrews, District Supervisor, Interstate Commerce Commission, P.O. Box 26896, Raleigh, NC 27611.

MC 125433 (Sub-210TA), filed February 9, 1979. Applicant: F-B TRUCK LINE CO., 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). *Bentonite, bentonite clay, and mud drilling compounds* from the facilities of Wyo-Ben Inc., at or near Greybull and Lovell, WY, to points in CA, for 180 days. Supporting shipper(s): Wyo-Ben Inc., P.O. Box 1979, Billings, MT 59103. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 126844 (Sub-71TA), filed February 12, 1979. Applicant: R.D.S. TRUCKING CO., INC., 1713 North Main Road, Vineland, NJ 08360. Representative: Kenneth F. Dudley, 611 Church Street, P.O. Box 279, Ottumway, IA 52501. *Meats, meat products, meat by-products, and articles distributed by meat packinghouses,* (except hides and commodities in bulk), from Beloit, WI to points in MD, NJ, NY, PA, and WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Geo. A. Hormel & Company, P.O. Box 800, Austin, MN 55912. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 134427 (Sub-3TA), filed February 7, 1979. Applicant: JOHN T. SISK, Rt. 2, Box 182-B, Culpepper, VA 22701. Representative: Frank B. Hand, Jr., P.O. Drawer C, Berryville, VA 22611. *Contract carrier*, irregular routes, *flour*, in bulk, in shipper-owned trailers, from facilities of Seaboard Allied Milling Corp., near Culpepper, VA to Greenwich, Hartford, New Haven and West Haven, CT and New York City, NY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Seaboard Allied Milling Corp., Box 19148, Kansas City, MO 64141. Send protests to: T. M. Esposito, Trans. Asst., 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 134501 (Sub-43TA), filed February 15, 1979. Applicant: INCORPORATED CARRIERS, LTD., P.O. Box 3128, Irving, TX 75061. Representative: T. M. Brown, P.O. Box 1540, Edmund, OK 73034. *New furniture*, from the facilities of Pat Higdon Industries, Inc., Quincy, FL to Elverson, PA for 180 days. Underlying ETA filed. Supporting Shipper(s): Pat Higdon Industries, Inc., P.O. Box 796, Quincy, FL 32351. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 135185 (Sub-38TA), filed February 13, 1979. Applicant: COLUMBINE CARRIERS, INC., P.O. Box 15246, 1720 East Garry Avenue, Santa Ana, CA 92705. Representative: Charles M. Williams, Kimball, Williams & Wolfe, P.C., 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. *Contract:* irregular: *Razors and razor blades, toilet articles and toilet preparations, pens and markers, shaving cream, stationery and stationery products, cigarette lighters, cleaning compounds and pads, hair curlers, hair spray, shampoo, sponges, fire extinguishers, electric appliances, deodorants, dispensers, sound warning signals, photographic equipment, materials and supplies, and display racks, stands and cabinets, and materials, equipment and supplies (except in bulk) used in the manufacture and distribution of the commodities named above*, from La Mirada, CA, to Andover and Boston, MA and points in their respective commercial zones and to points in IL, for 180 days. Restricted to a transportation service to be performed under a continuing contract or contracts with The Gillette Company of Andover, MA. An underlying ETA seeks up to 90 days operating authority. Supporting Shipper(s): The Gillette Company, 43rd Floor, Prudential Tower, Boston, MA 02109. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, California 90012.

MC 135410 (Sub-43TA), filed February 14, 1979. Applicant: COURTNEY J. MUNSON, d.b.a., MUNSON TRUCKING, North 6th Street Road, P.O. Box 266, Monmouth, IL 61462. Representative: Stephen H. Loeb, Attorney, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. *Frozen Meat*, from the facilities of Hill-N-Dale Meat Co., located at or near Downingtown, Pennsylvania, to points in Ohio, Indiana, Illinois, Missouri, Iowa, Nebraska and Wisconsin. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Hill-N-Dale Meat Co., Dowlin Forge Road, Downington, PA 19335. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 135410 (Sub-44TA), filed February 15, 1979. Applicant: COURTNEY J. MUNSON, d.b.a., MUNSON TRUCKING, North 6th Street Road, Monmouth, IL 61462. Representative: Jack H. Blanshan, Attorney at Law, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. *Alcoholic beverages* and *materials* and *supplies* used in the manufacturing and sale of alcoholic beverages (except commodities in bulk), from the facilities of Hiram Walker & Sons, Inc., at Peoria, IL to Wilmington, DE; Baltimore and Silver Spring, MD; Concord, NH; Camden, Clifton, Newark, Pleasantville, Scobeyville and Union, NJ; Albany, Buffalo, Kingston, Liverpool, New York, Rochester, Syosset and Syracuse, NY; Kingston, Lebanon, Philadelphia, Pittsburgh and Youngwood, PA; Phoenix and Tucson, AZ; Burlingame, CA; and Denver, CO, and to points in the Commercial Zones of the respectively named cities, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Hiram Walker & Sons, Inc., Foot of Edmund Street, Peoria, IL 61601. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 135410 (Sub-45TA), filed February 16, 1979. Applicant: COURTNEY J. MUNSON, d.b.a., MUNSON TRUCKING, P.O. Box 266, Monmouth, IL 61462. Representative: Jack H. Blanshan, Attorney, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. *Canned and preserved foodstuffs*, from the facilities of Heinz U.S.A., Division of H. J. Heinz Co., at or near Muscatine, IA to the facilities of Heinz U.S.A. at Toledo, OH and Pittsburgh, PA, restricted to the transportation of traffic originating at the named facilities and destined to the named destination points, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Heinz U.S.A., Division of H. J. Heinz Company, P.O. Box 57, Pittsburgh, PA 15230. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 136291 (Sub-12TA), filed February 7, 1979. Applicant: CUSTOMIZED PARTS DISTRIBUTION, INC., 3600 N.W. 82nd Avenue, Miami, FL 33166. Representative: Francis W. McInerny, 1000 16th St., N.W., Suite 502, Washington, D.C. 10035. *Contract carrier*—Irregular route: Liquid nitrogen in specially designed cryogenic vehicles from Baltimore, MD to New Hanover, NC and Charleston, SC; and from New Hanover, NC to Charleston, SC 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 136818 (Sub-50TA), filed February 22, 1979. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 West Elwood Road, Phoenix, AZ 85030. Representative: Donald Fernaays, 4040 East McDowell Rd., Phoenix, AZ 85030. *Lime*, from Dolomite, UT to points in AZ, CO, NM and TX. Supporting Shipper(s): White Eagle Stucco, Co., 301 South 30th Street, Phoenix, AZ 85034. Send protests to: Thomas E. Klobas, DS, Interstate Commerce Commission, 2020 Federal Building, 230 North First Avenue, Phoenix, AZ 85925.

MC 138322 (Sub-7TA), filed February 13, 1979. Applicant: BHY TRUCKING, INC., 9231 Whitmore, El Monte, CA 91734. Representative: Robert Fuller, 6119 Southwind Drive, Whittier, CA 90601. *Fabricated steel pallet rack material, steel shelving, fork lift trucks and fork lift truck parts*, from Springfield (Robertson County), TN; Dallas (Dallas County), TX; Chicago (Cook County), IL; and New York City, NY to Los Angeles, CA, for 180 days. An underlying ETA seeks 90 days operating authority. Supporting Shipper(s): M. E. Canfield Company, 2860 East Pico Boulevard, Los Angeles, CA 90023. Send protests to: Irene Carlos, Transportation Assistant, Interestate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, California 90012.

MC 138875 (Sub-138TA), filed February 9, 1979. Applicant: SHOEMAKER TRUCKING CO., 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh (same as above). *Food-*

stuffs in temperature controlled vehicles, from Newark, NJ and its commercial zone to the facilities of General Food Service located at or near Boise, ID, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): General Food Service, 5710 Pan Am Str., Boise, ID 83706. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 139193 (Sub-94TA), filed February 13, 1979. Applicant: ROBERTS & OAKE, INC., 4240 Blue Ridge Blvd., Kansas City, MO 64123. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Contract irregular *frozen foodstuffs*, from the plantsite warehouse facilities of Campbell Soups Co. at or near Omaha, NE to Mexico, Sikestown, Scotts City and Salem and St. Louis and its commercial zone, MO and Davenport, Cedar Falls, Des Moines, Chariton, Ankeny, Cedar Rapids, Boone, Laurens, and Dubuque, IA for 180 days. Supporting Shipper(s): Campbell Soups Co., 1202 Douglas St., Omaha, NE 68102. Send protests to: DS John V. Barry, ICC, 600 Fed Bldg., 911 Walnut, K.C., MO 64106.

MC 139261 (Sub-15TA), filed January 16, 1979. Applicant: BUCKEYE EXPRESS, INC., P.O. Box 368, Perrysburg, OH 43551. Representative: Michael M. Briley, Esq., 300 Madison Ave., 12th Fl., Toledo, OH 43603. Contract-irregular. (1) *Bakery products and frozen bakery products, in vehicles equipped with mechanical refrigeration*, and (2) *materials and supplies used in preparation of items in part (1) above, except in bulk*, between Livonia, MI on the one hand, and, on the other, all points in the United States, (except AK and HI); Limited to transportation services to be performed for and under a continuing contract, or contracts, with Awrey Bakeries, Incorporated, for 180 days. Supporting Shipper(s): Awrey Bakeries, Incorporated, 12301 Farmington Road, Livonia, MI 48150. Send protests to: I.C.C., 313 Federal Office Bldg., 234 Summit St., Toledo, OH 43604.

MC 139330 (Sub-4TA), filed February 12, 1979. Applicant: F.V.T. TRUCKING, INC., 106 Howard Drive, Williamstown, NJ 08094. Representative: Mark D. Russell, Suite 406-7, Walker Building, 734 15th Street, NW., Washington, DC 20005. (1) *Fibrous glass products and materials, mineral wool, mineral wood products and materials, insulated air ducts, insulating products and materials; glass fibre rovings, yarn and strands; glass fibre mats and mattings; flexible air duct*, except commodities in bulk, and (2) *materials, equipment and supplies* used in the manufacture of commodities named in (1) above, except in bulk, between the facilities of CertainTeed Corporation, at or near Williamstown Junction, NJ, on the one hand, and, on the other, points in MA and VA, for 180 days. Supporting Shipper(s): CertainTeed Corporation (Insulation Grp.), P.O. Box 860, Valley Forge, PA 19482. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 140768 (Sub-32TA), filed February 12, 1979. Applicant: AMERICAN TRANS-FREIGHT, INC., P.O. Box 796, Manville, NJ 08835. Representative: Eugene M. Malkin, Suite 6193, 5 World Trade Center, New York, NY 10048. Air conditioners, heating equipment, stoves, ranges, trash compactors and associated parts and accessories from Fayetteville, TN to points in AR, CT, DC, FL, GA, LA, MA, MD, MO, NC, NY, NJ, OH, OK, PA, SC, TX and VA; materials and supplies (except in bulk) used in the manufacture, packaging and distribution of the commodities above from points in CT, OH, OK, and PA to Fayetteville, TX for 180 days. Common carrier, irregular routes. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Amana Refrigeration, Inc., Wilson Parkway, Fayetteville, TN 37334. Send protests to: Irwin Rose, TS, ICC, 9 Clinton Street, RM 618, Newark, NJ 07102.

MC 141450 (Sub-11TA), filed February 12, 1979. Applicant: OLIN WOOTEN TRANSPORT CO., INC., P.O. Box 731, Hazlehurst, GA 31539. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Contract carrier*, irregular routes; *Materials and Supplies used in the manufacture of paint (except commodities in bulk)* between points in OH, NY, NJ, PA, AL, GA, and FL. Supporting Shipper(s): Martin Trading Corporation, P.O. Box 5262, Ft. Lauderdale, FL 33310. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 142269 (Sub-7TA), filed February 5, 1979. Applicant: EAGLE HAWK CORP. d.b.a. ALL IOWA LTL PERISHABLE SERVICE, P.O. Box 155, Fort Dodge, IA 50501. Representative: Thomas E. Leahy, 1980 Financial Center, Des Moines, IA 50309. *Meat, meat products, meat by-products and articles distributed by meat packinghouses, except hides and commodities in bulk*, from the facilities of Geo. A. Hormel & Co. at Ft. Dodge, IA, and Huron and Sioux Falls, SD, to points in CT, GA, MD, MA, NJ, NY, OK, OH and PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Geo. A. Hormel & Company, P.O. Box 800, Austin, MN 55912. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 142399 (Sub-1TA), filed February 13, 1979. Applicant: ELLER-BROCK TRUCKING, INC., Highway 20, East, Sac City, IA 50583. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. *Farm machinery, materials, supplies and parts used in the manufacturing and distribution of farm machinery (except commodities in bulk)*, between the facilities of Lear Siegler-Noble Division at or near Sac City, IA and AL, AR, CO, IL, IN, KS, KY, LA, MI, MN, MO, MS, NE, ND, OK, OH, SD, TN, TX, WI and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Lear Siegler-Noble Division, N. 16th St., Sac City, IA 50583. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 143117 (Sub-8TA), filed February 13, 1979. Applicant: SAV-ON TRANSPORTATION, INC., 143 Frontage Rd., Manchester, NH 03108. Representative: John A. Sykas (same address as applicant). Contract carrier: irregular routes: *General commodities* (usual exceptions), from Rouses Point, NY, to points in OH, MI, KY, TN, PA, IL, IN, WI, MN, IA, MO, KS, SD, ND, CO, OK, TX, AR, LA, AL, WV, AZ, CA, FL, GA, ID, MS, MT, MS, NV, NM, NC, OR, SC, UT, VA, WA, WY, and NE, under contract with Champlain Valley International Shippers & Receivers Association, Inc., for 180 days. An underlying ETA seek 90 days authority. SUPPORTING SHIPPER(S): Champlain Valley International Shippers & Receivers Association, Inc., P.O. Box 277, Rouses Point, NY 12979. SEND PROTEST TO: Ross J. Seymour, DS, ICC, Rm 3, 6 Loudon Rd., Concord, NH 03301.

MC 144398 (Sub-1TA), filed February 15, 1979. Applicant: WAYNE TRANSPORTS, INC., Box 36, Milaca, MN 56353. Representative: Val M. Higgins, 1000 First National Bank Building, Minneapolis, MN 55402. Sugar, in bulk, from Renville, MN and Wahpeton, ND to points in the Chicago, IL Commercial Zone, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): North Central Sugar Marketing Cooperative, 219 Shelard Plaza, Minneapolis, MN. SEND PROTESTS TO: Delores A. Poe, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 144616 (Sub-1TA), filed February 13, 1979. Applicant: TRUCKS, INC., P.O. Box 79113, Saginaw, TX 76179. Representative: Harry F. Horak, 5001 Brentwood Stair Road, Suite 115, Fort Wayne, TX 76112. *Meat, meat products, meat by-products and articles distributed by meat pack-*

inghouses as described in Sections A, B and C of Appendix I to the report in Descriptions of Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from Sioux Falls, SD and Estherville, IA, to points in CT, MD, MA, NJ, NY, PA, and RI; restricted to traffic originating at the facilities of John Morrell & Co. at or near the named origins and destined to the named destination states, 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: Martha A. Powell, Transportation Asst., Interstate Commerce Commission, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 144709 (Sub-6TA), filed February 14, 1979. Applicant: MINERAL CARRIERS, INC., P.O. Box 110, Bound Brook, NJ 08805. Representative: Paul J. Keeler, P.O. Box 253, South Plainfield, NJ 07080. 180-day Temporary Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting (1) Activated Carbon, in dump trailers, from Neville Island, PA and Catlettsburgh, KY to points in ME, NH, VT, and MA and (2) Spent Carbon, in dump trailers, from points in ME, NH, VT, and MA to Neville Island, PA and Catlettsburgh, KY. An underlying ETA seeks 90 days authority. Restricted to a transportation service to be performed under a continuing contract or contracts with Calgon Corporation of Pittsburgh, PA. Supporting Shipper(s): Calgon Corporation, P.O. Box 1346, Pittsburgh, PA 15230. Send protests to: Irwin Rosen, TS, ICC, 9 Clinton Street, Newark, NJ 07102.

MC 145402 (Sub-3TA), filed February 15, 1979. Applicant: LAKE LINE EXPRESS, INC., P.O. Box 566, Wausau, WI 54401. Representative: Richard Nestley, 4506, Regent St., Suite 100, Madison, WI 53705. *Common carrier;* regular routes; *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) serving the facilities of Essex International Corp. at Berrien Springs, MI as an off-route point in connection with applicant's presently authorized regular route service, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Miller Electric Mfg. Co., 718 Bounds St., Appleton, WI 54911. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 145423 (Sub-2TA), filed February 14, 1979. Applicant: C. VAN BOXELL TRANSPORTATION CO., 763 South Oakwood, Detroit, MI 48217. Representative: William B. Elmer, 21635 East Nine Mile Road, St. Clair Shores, MI 48080. *Roofing, roofing materials, roofing products, roofing insulation, and materials, equipment and supplies* used in the installation or manufacture of the foregoing, from Detroit, MI to points in IN and OH for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Owens-Corning Fiberglas Corp., Fiberglas Tower, Toledo, OH 43659, James K. Terry, General Traffic Manager. Send protests to: Timothy S. Quinn, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 604 Federal Building and U.S. Courthouse, 231 West Lafayette Blvd., Detroit, MI 48226.

MC 145493 (Sub-3TA), filed February 9, 1979. Applicant: CLARENCE E. RAY, JR., AND A. E. BROWN, d.b.a. LONGVIEW LIMOUSINE SERVICE, P.O. Box 8171, Longview, TX 75602. Representative: Billy R. Reid, P.O. Box 8335, Fort Worth, TX 76112. *Parcels and express having an immediate prior or subsequent movement by air*, between Longview and Marshall, TX, on the one hand, and, on the other, Shreveport Regional Airport, Shreveport, LA for 180 days. An underlying ETA filed. Supporting Shipper(s): LeTourneau Sales & Service, Inc., P.O. Box 8027, Longview, TX 75602. ICI Americas, Marshall, TX. Snerck Equipment Co., 291 S. Eastman Rd., Longview, TX 75602. Travel World, Inc., 801 W. Cotton, Longview, TX 75602. Duncan's Rainbow Floral, 314 East Travis, Marshall, TX 75670. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 145908 (Sub-1TA), filed February 16, 1979. Applicant: RONALD JAMES BURROWS, 915 Polk Lane, Cleveland, WI 53015. Representative: James R. Evans, 145 N. Wisconsin Ave., Neenah, WI 54956. *Contract carrier;* irregular routes; *Scrap metals and waste products* between Newton, WI on the one hand, and Chicago and Rockford, IL; Bedford and Crane, IN; and Louisville and Fort Knox, KY, on the other, under continuing contract or contracts with B & B Metals Processing Co., Newton, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): B & Metals Processing Co., Route 1, Newton, WI 53063. 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 145950 (Sub-4TA), filed January 29, 1979. Applicant: BAYWOOD TRANSPORT, INC., P.O. Box 2611, Waco, TX 76706. Representative: A. C. Horne, 2611 University Parks Drive, Waco, TX 76706. *Canned and preserved foodstuffs (except commodities in bulk)*, from the facilities of Heinz U.S.A., Division of H. J. Heinz Co., at or near Muscatine, IA, to Grand Prairie, TX; Greenville, SC; and Jacksonville, FL, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Heinz USA, Division of H. J. Heinz Company, P.O. Box 57, Pittsburgh, PA 15230. Send protests to: Martha A. Powell, Transportation Assistant, Interstate Commerce Commission, Room 9A27, Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 145967 (Sub-1TA), filed February 7, 1979. Applicant: W. O. Wood & SONS, INC., Rt. 1, Box 73, Sandy Ridge, NC 27046. Representative: W. Oscar Wood, Rt. 1, Box 73, Sandy Ridge, NC 27046. *Contract Carrier;* irregular routes; *Fertilizer and fertilizer materials (bagged)* for the account of Smith-Douglass, Division of Borden Chemical, Inc. from Danville, VA to points in NC, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Smith-Douglass, Division of Borden Chemical, Borden, Inc., P.O. Box 419, Norfolk, VA 23501. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Rd. Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 146079 (Sub-1TA), filed January 19, 1979. Applicant: JACKSON TRANSPORTATION, INC., R.R. 1, Box 410A, Clayton, IN 46118. Representative: Donald W. Smith, Suite 945, 9000 Keystone Crossing, Indianapolis, IN 46240. *Automotive parts, and equipment, materials and supplies used in the manufacture and production of motor vehicles*, between the facilities of General Motors Corporation at Indianapolis, IN, on the one hand, and on the other, the facilities of General Motors Corporation at Flint, Pontiac, and Detroit, MI, Janesville, WI, St. Louis, MO, Atlanta, GA, Baltimore, MD, and Chicago, IL for 180 days. Supporting Shipper(s): General Motors Corporation, Chevrolet Motor Div., 340 White River Parkway, W. Drive South, Indianapolis, IN 46206. Send protests to: Beverly J. Williams, ICC, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 146165 (Sub-1TA), filed February 13, 1979. Applicant: BEN'S TRANSPORTATION, INC., Furnace Hill, Cheshire, MA 01225. Representa-

tive: David M. Marshall, Marshall & Marshall, 101 State Street, Suite 304, Springfield, MA 01103. *Alum aluminum sulfate, rosin sizing, sodium aluminate and sulfuric acid,* in bulk, between the facilities of Holland Company, Inc., Adams, MA, on the one hand, and, on the other, points in ME, NH, VT, CT, RI, NY, NJ and PA, for 180 days. Supporting Shipper(s): Holland Company Inc., Howland Avenue, Adams, MA 01220. Send protests to: David M. Miller, District Supervisor, ICC, 436 Dwight Street, Springfield, MA 01103.

MC 146179 (Sub-1TA), filed February 15, 1979. Applicant: R & E, INC., 4009 Dahlman Avenue, Omaha, NE 68107. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Rd., Omaha, NE 68106. *Meats and packinghouse products,* from Omaha, NE to points in IL, IN, IA, KS, MI, MN, OH, and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): David A. Kousgaard, Palamera Beef Corp., 25th & Z Streets, Omaha, NE. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 146193 (Sub-1TA), filed February 15, 1979. Applicant: CAMPBELL GRAIN CORP., P.O. Box 94, Humeston, IA 50123. Representative: Thomas E. Leahy, 1980 Financial Center, Des Moines, IA 50309. *Sewage treatment equipment and materials and supplies used in the manufacture of sewage treatment equipment,* between the facilities of Johnson Machine Works at Chariton, IA, and Northwest Welding at Bloomingdale, IL; and from the facilities of Johnson Machine Works at Chariton, IA, to points in IL, TN, OH, MO, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Lakeside Equipment Corp., 1022 East Devon Avenue, Bartlett, IL 60103. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 146211 (Sub-1TA), filed February 14, 1979. Applicant: DAVID M. LARSON AND BRENT R. LARSON d.b.a. LARSON BROTHERS, P.O. Box 605, Ephraim, UT 84629. Representative: D. Michael Jorgensen, P.O. Box 2465, Salt Lake City, UT 84110. *Travel trailers* (1) from Hemet, CA, to Spanish Fork, UT, and (2) from Ephraim, UT, to points in CA on and south of Interstate Hwy. 80, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Roadrunner Divison, 475 W. 1st N., Ephraim, UT 84627. Miller Camper & Trailer Sales Corp., 950 E. 800 No., Spanish Fork, UT. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 146221 (Sub-1TA), filed February 16, 1979. Applicant: WILLIAM W. ROBINSON d.b.a R. & J. EXPRESS, 810 Saratoga Ave. Suite N-102, San Jose, CA 95129. Representative: William W. Robinson, (same as applicant). Contract carrier: irregular routes: *Uncrated electronic games and shippers trailers with and without electronic games permanently installed,* between Sunnyvale, CA and points within the U.S., except AK and HI, for the account of Ramtek Corporation, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Ramtek Corporation, 292 Commercial St., Sunnyvale, CA 94086. Send protests to: District Supervisor M. M. Bulter, 211 Main—Suite 500, San Francisco, CA 94105.

MC 146283 (Sub-1TA), filed February 15, 1979. Applicant: JAMES BASIN TRUCK COMPANY, 1323 W. 3rd Avenue, Mitchell, SD 57301. Representative: Mark Menard, P.O. Box 480, Sioux Falls, SD 57101. *Contract carrier:* irregular routes: *Fly ash* from Sioux City, IA to ND, MN, SD and WY for the account of Power Plant Aggregates of Iowa, Inc., and Midwest Fly Ash for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Power Plant Aggregates of Iowa, Inc., Box 3557, Sioux City, IA 51102. Send protests to: J. L. Hammond, DS, ICC, Room 455, Federal Bldg., Pierre, SD 57501.

MC 146286 (Sub-1TA), filed February 12, 1979. Applicant: P & C TRUCKING, INC., 8011 Green Bay Rd., Kenosha, WI 53142. Representative: Michael Wyngaard, 150 E. Gilman St., Madison, WI 53703. Contract carrier: irregular routes: *Precast concrete and concrete products* from the facilities of Modern Building Materials, Inc. at or near Kenosha, WI to IL, IN and IA, restricted to service performed under a continuing contract or contracts with Modern Building Materials, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Modern Building Materials, Inc., 8011 Green Bay Rd., Kenosha, WI 53142. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

By the Commission.

H. G. HOMME,
Secretary.

[FR Doc. 79-8553 Filed 3-20-79; 8:45 am]

[1505-01-M]

[Notice No. 14]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Corrections

In FR Doc. 79-3243, appearing at page 6253, in the issue of Wednesday, January 31, 1979, make the following corrections:

(1) On page 6255, in the third column, the third paragraph, the first line, correct "MC 114735" to read "MC 114725".

(2) On page 6259, in the last paragraph, the first line, correct "MC 145889 (Sub-1TA)" to read "MC 145889 (Sub-TA)".

[1505-01-M]

[Notice No. 15]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 79-3885, appearing at page 7032, in the issue of Monday, February 5, 1979, on page 7037, in the middle column, the second full paragraph, the first line, correct "MC 12855" to read "MC 128555".

[6450-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 79-02-NG, FERC Docket No. CP71-223]

GREAT LAKES GAS TRANSMISSION CO.

Application

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Application for Amendment to Import Authorization, and Invitation to Submit Petitions to Intervene.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt of the Application of Great Lakes Gas Transmission Company (Great Lakes) to amend its current authorization to increase the volume of natural gas it may import for resale by the amount of 1.3 billion cubic feet (Bcf) annually. Great Lakes will purchase the gas from TransCanada Pipelines Limited (TransCanada). This volume of gas has been previously authorized for import by Great Lakes for use as compressor fuel and for other company uses, but presently cannot be imported for resale because of restrictions in TransCanada's export license and Great Lakes'

import authorizations. The application is filed with ERA pursuant to Section 3 of the Natural Gas Act and the Secretary of Energy's Delegation Order No. 0204-25. Petitions to intervene are invited.

DATES: Petitions to intervene: To be filed on or before April 5, 1979.

FOR FURTHER INFORMATION CONTACT:

Finn K. Neilsen, Director, Import/Export Division, Office of Fuels Regulation, 2000 M St., N.W., Room 6318, Washington, D.C. 20461, 202-254-9730.

Martin S. Kaufman, Office of General Counsel, Room 5116, Federal Building, 12th and Pa., Ave., N.W., Washington, D.C. 20461, 202-633-9380.

SUPPLEMENTARY INFORMATION: Great Lakes states that, by import authorization issued June 1, 1971 (45 FPC 1037), Docket No. CP71-223, the Federal Power Commission (Commission) allowed Great Lakes to import from TransCanada for resale in the United States 1.3 Bcf of natural gas which has been previously authorized to be imported for compressor fuel or other company use, but which is not now required for such uses as a result of the conservation of gas resulting from a loop pipeline installed by Great Lakes. This looping is expected to reduce the amount of fuel gas required by the company in rendering transportation and sales services. On November 3, 1978, TransCanada filed an application with the National Energy Board of Canada (NEB) to amend its Export License No. GL-43. While approval of this amendment will not allow any increase in the overall amount of gas TransCanada is authorized to export, it will allow the exportation to Great Lakes for sale to U.S. customers the 1.3 Bcf of natural gas annually which Great Lakes is expected to save due to the looping program.

The approval of the amendment presently applied for will allow Great Lakes to import the additional gas commencing with the first day of the month following the date on which all requisite Canadian and U.S. regulatory approvals have been received. The two U.S. customers of Great Lakes having agreed to purchase this gas are: Natural Gas Pipeline Company of America, 2,604 Mcf per day; Michigan Consolidated Gas Company, 957 Mcf per day. The border price for the proposed imports is the current price of $2.16 per MMBtu. The entry point is Great Lakes' existing interconnection with TransCanada on the international boundary near Emerson, Manitoba.

OTHER INFORMATION

The ERA invites petitions for intervention in the proceeding. Such petitions are to be filed with the Economic Regulatory Administration, Room 6318, 2000 M Street, N.W., Washington, D.C., 20461, in accordance with the requirements of the rules of practice and procedure (18 CFR 157.10). Such petitions for intervention will be accepted for consideration if filed no later than 4:30 P.M., April 5, 1979.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing which may be convened herein must file a petition to intervene. Any person desiring to make any protest with reference to the petition and application for temporary certificate should file a protest with the ERA in the same manner as indicated above for petitions to intervene. All protests filed with ERA will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

A formal hearing will not be held unless a motion for such hearing is made by any party or intervener and is granted by ERA, or if the ERA on its own motion believes that such a hearing is required. If such hearing is required, due notice will be given.

A copy of Great Lakes' petition is available for public inspection and copying in Room B-120, 2000 M Street, N.W., 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 14, 1979.

BARTON R. HOUSE,
Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-8370 Filed 3-20-79; 8:45 am]

[6450-01-M]

[ERA Docket No. 79-04-NG]

MIDWESTERN GAS TRANSMISSION CO.

Application for Amendment to Existing Authorization To Import Natural Gas

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Receipt of Application and invitation to submit petitions to intervene in the proceedings.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt of an application by Midwestern Gas Transmission Company (Midwestern), in ERA Docket No. 79-04-NG, for authorization under Section 3 of the Natural Gas Act to import an additional volume of 114,000,000 Mcf of natural gas, at up to 350,000 Mcf per day, from Canada through existing facilities at a point on the United States-Canadian boundary near Emerson, Manitoba. This natural gas would be purchased from TransCanada Pipeline Limited (TransCanada) and resold to Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), Northern Natural Gas Company (Nothern Natural) and Natural Gas Pipeline Company of America (Natural). Petitions to intervene are invited.

DATES: Petitions to intervene: April 13, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Finn K. Neilsen, Director, Import/Export Division, Office of Fuels Regulation, Economic Regulatory Administration, 2000 M St., N.W., Room 6318, Washington, D.C. 20461, Telephone: (202) 254-9730.

SUPPLEMENTARY INFORMATION: *Background.* On January 25, 1979, Midwestern Gas Transmission Company, 1100 Milam Building, Houston, Texas 77002, filed an application for amendment to existing authorization to import natural gas under Section 3 of the Natural Gas Act. Through its requested amendment Midwestern seeks authorization to import an additional volume of 114,000,000 Mcf of natural gas at up to 350,000 Mcf per day. Midwestern states that "such quantity is generated from a total quantity of gas previously authorized to be imported but which quantity could not previously be imported due to daily and annual restricition in TransCanada's export license and in Midwestern's import authorization." The natural gas would be imported through existing facilities on the United States-Canadian boundary near Emerson, Manitoba, at the interconnection of the Midwestern and TransCanada pipeline systems. The additional natural gas would be resold to Tennessee, Northern Natural and Natural pursuant to authorization sought in Midwestern's application, in Docket No. CP79-161, filed with the Federal Energy Regulatory Commission.

Midwestern states that the Canadian National Energy Board (NEB), by order issued December 7, 1978, authorized TransCanada to waive maximum daily delivery limitations under its License No. GL-18 to one year from November 1, 1978. This NEB order leaves unchanged the total quantity of 1.2 trillion cubic feet that can be exported under License No. GL-18. Midwestern requests authorization to import additional natural gas until and including October 31, 1980.

Midwestern also states that the additional natural gas will be purchased at

the current border price of $2.16 (U.S.) per MMBtu and that the proposed import will not have a rate impact on Midwestern's customers.

OTHER INFORMATION

The Midwestern petition in ERA Docket No. 79-04-NG is on file with the ERA and open to inspection in the Public Docket Room at 2000 M Street, N.W., Washington, D.C., Room B-110, between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, except for Federal holidays.

The ERA is hereby inviting petitions for intervention in the proceedings. Such petitions are to be filed with the Economic Regulatory Administration, Room 6318, 2000 M Street N.W., Washington, D.C. 20461, in accordance with the requirements of the rules of practice and procedure (18 CFR 157.10). Such petitions for intervention will be accepted for consideration if filed no later than 4:30 p.m., on April 13, 1979.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing which may be convened herein must file a petition to intervene. Any person desiring to make any protest with reference to the Midwestern petition should file a protest with the ERA in the same manner as indicated above for petitions to intervene. All protests filed with ERA will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Pursuant to the authority contained in Section 3 of the Natural Gas Act, as delegated to the ERA, in the Department of Energy Delegation Order Nos. 0204-4 (42 FR 60726, November 29, 1977) and 0204-25 (43 FR 47769, October 17, 1978), and the rules of practice and procedure, a formal hearing will not be held unless a motion for such hearing is made by any party or intervener and is granted by ERA, of if the ERA on its own motion believes that such a hearing is required. If such hearing is deemed required, due notice will be given.

Issued in Washington, D.C., on March 14, 1979.

BARTON R. HOUSE,
Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 79-8371 Filed 3-20-79; 8:45 am]

[6450-01-M]

Federal Energy Regulatory Commission

FLORIDA

Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

MARCH 12, 1979.

On March 5, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

STATE OF FLORIDA

DEPARTMENT OF NATURAL RESOURCES

FERC Control Number: JD79-631
API Well Number: 091132017601
Section of NGPA: 107
Operator: Exxon Corporation
Well Name: Lawrence L. Malone et ux 41-4A
Field: Jay/LEC
County: Santa Rosa
Purchaser: Florida Gas Transmission Co.
Volume: 1530 MMcf.

FERC Control Number: JD79-632
API Well Number: 0911320170
Section of NGPA: 107
Operator: Exxon Corporation
Well Name: J. B. Swift et al No. 10-5
Field: Jay/LEC
County: Santa Rosa
Purchaser: Florida Gas Transmission Co.
Volume: 3100 MMcf.

FERC Control Number: JD79-633
API Well Number: 0911320165
Section of NGPA: 107
Operator: Exxon Corporation
Well Name: McDavid Lands No. 7-6
Field: Jay/LEC
County: Santa Rosa
Purchaser: Florida Gas Transmission Co.
Volume: 2280 MMcf.

FERC Control Number: JD79-634
API Well Number: 0911320158
Section of NGPA: 107
Operator: Exxon Corporation
Well Name: C. Higdon te al No. 19-5
Field: Jay/LEC
County: Santa Rosa
Purchaser: Florida Gas Transmission Co.
Volume: 1035 MMcf.

FERC Control Number: JD79-635
API Well Number: 0903320029
Section of NGPA: 107
Operator: Exxon Corporation
Well Name: McDavid Lands No. 31-2
Field: Jay/LEC
County: Excambia
Purchaser: Florida Gas Transmission Co.
Volume: 1780 MMcf.

FERC Control Number: JD79-636
API Well Number: 0903320028
Section of NGPA: 107
Operator: Exxon Corporation
Well Name: McDavid Lands No. 7-5
Field: Jay/LEC
County: Santa Rosa
Purchaser: Florida Gas Transmission Co.
Volume: 1425 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are avaialble for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before April 5, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8391 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RM79-3]

NATURAL GAS POLICY ACT OF 1978

Receipt of Report of Determination Process

MARCH 15, 1979.

Pursuant to section 18 CFR 274.105 of the Federal Energy Regulatory Commssion's Regulations, a jurisdictional agency may file a report with the Commission describing the method by which such agency will make certain determinations in accordance with sections 102, 103, 107, and 108 of the Natural Gas Policy Act of 1978.

Reports in conformance with 18 CFR 274.105 have been received by the Commission from the following jurisdictional agencies:

Agency and Date

State of New Mexico Energy and Minerals Department, Oil Conservation Division, November 29, 1978
State of Lousiana Department of Conservation, November 29, 1978
Railroad Commission of Texas, November 30, 1978
West Virginia Department of Mines, Oil and Gas Division, November 30, 1978
Alabama State Oil and Gas Board, November 30, 1978
State Oil and Gas Board of Mississippi, November 30, 1978
Kansas State Corporation Commission Conservation Division, November 30, 1978
State of Michigan, Department of Natural Resources, Geological Survey Division, December 1, 1978
(Supplemental Report), March 7, 1979
State of California Department of Conservation Division of Oil and Gas, December 4, 1978
Commonwealth of Virginia Department of Labor and Industry Division of Mines and Quarries, December 4, 1978
State of Wyoming Office of Oil and Gas Conservation Commission, December 4, 1978
State of Colorado Department of Natural Resources, December 5, 1978

State of Ohio Department of Natural Resources Division of Oil and Gas, December 6, 1978
State of Alaska Oil and Gas Conservation Commission, December 11, 1978
State of Arizona Oil and Gas Conservation Commission, December 14, 1978
State of Nebraska Oil and Gas Conservation Commission, December 15, 1978
State of Tennessee Oil and Gas Board, December 19, 1978
State of Indiana Department of Natural Resources, December 26, 1978
State of Pennsylvania Department of Environmental Resources, Division of Oil and Gas, December 26, 1978
State of Florida Department of Natural Resources, January 3, 1979
State of North Dakota Geological Survey, January 4, 1979
State of Illinois, Department of Mines & Minerals, Oil and Gas Division, January 5, 1979
United States Department of Interior, Geological Survey, January 19, 1979
State of Montana Department of Natural Resources and Conservation, January 29, 1979
State of Utah, Department of Natural Resources, Division of Oil, Gas, and Mining, January 30, 1979
Commonwealth of Kentucky Department of Mines and Minerals, Division of Oil & Gas Conservation, February 5, 1979
Arkansas Oil and Gas Commission, February 12, 1979
New York State Department of Environmental Conservation, February 23, 1979
State of South Dakota, March 9, 1979

Copies of these reports are available for public inspection in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8390 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. PV-1451]

OKIE PIPE LINE CO.

Notice of Tentative Valuation

MARCH 16, 1979.

Notice is hereby given that a tentative valuation is under consideration for Okie Pipe Line Company, P.O. Box 2256, Wichita, KS 67201. This is an initial valuation for Okie and the date of valuation is as of December 31, 1973.

On or before May 1, 1979, persons other than those specifically designated in section 19a(h) of the Interstate Commerce Act having an interrest in this valuation may file, pursuant to rule 72 of the Interstate Commerce Commission's "General Rules of Practice" (49 CFR 1100.72) an original and three copies of a petition for leave to intervene in this proceeding. Jurisdiction over oil pipelines, as it relates to establishment of valuations for pipelines, was transferred from the Interstate Commerce Commission to the Federal Energy Regulatory Commission (FERC), pursuant to sections 306 and 402 of the Department of Energy Organization Act, 42 U.S.C. 7155 and 7172, and Executive Order No. 12009, 42 FR 46267 (September 15, 1977).

If the petition for leave to intervene is granted the party may thus come within ther category of "additional parties as the FERC may prescribe" under section 19a(h) of the act, thereby enabling it to file a protest. It is required that a copy of the petition to intervene be served at the address shown above for Okie and that an appropriate certificate of service be attached to the petition. Persons specifically designated in section 19a(h) of the act need not file a petition: they are entitled to file a protest as a matter of right under the statute.

LEON J. SLAVIN,
Administrative Officer,
Oil Pipeline Board.

[FR Doc. 79-8392 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP79-51]

ALGONQUIN GAS TRANSMISSION

Rate Reduction Filing

MARCH 12, 1979.

Take notice that on March 2, 1979 Algonquin Gas Transmission Company ("Algonquin Gas") tendered for filing the following revised tariff sheets applicable to its FERC Gas Tariff, First Revised Volume No. 1, to be effective April 1, 1979:

48th Revised Sheet No. 10, Superseding 47th Revised Sheet No. 10
7th Revised Sheet No. 10-A, Superseding 6th Revised Sheet No. 10-A

Algonquin Gas states that such tariff sheets have been filed in order to reduce its rates under Rate Schedules F-1, WS-1, I-1, E-1, and T-1 by approximately $365,000 annually to reflect the reduction in the corporate Federal income tax rate from 48% to 46%, commencing January 1, 1979. It also states that the reduction has been filed in response to an informal Staff inquiry. Algonquin Gas indicates that inasmuch as service for the current winter under its Rate Schedule SNG-1 will be subject to a post audit of actual costs and revenues, Federal income tax reduction with respect to such service will be taken into account at that time.

Algonquin Gas proposes to apply the unit reductions to charges for deliveries between January 1, 1979 until April 1, 1979 by a credit to customer billings. It further states that copies of its rate reduction filing have been served upon its customers and interested State commissions.

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, 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 and 1.10). All such petitions or protests should be filed on or before April 9, 1979. All protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8436 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP79-50]

ALGONQUIN GAS TRANSMISSION CO.

Proposed Changes In FERC Gas Tariff

MARCH 12, 1979.

Take notice that on March 1, 1979, Algonquin Gas Transmission Company ("Algonquin Gas") filed the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

1st Revised Sheet No. 20-D
Original Sheet No. 20-E
Original Sheet No. 20-F

Algonquin Gas states that the three tariff sheets are related to Algonquin Gas' Rate Schedule SNG-1 and are filed to institute a provision on a temporary, one-year experimental basis, which Algonquin Gas' customers under such Rate Schedule SNG-1 have requested. Algonquin Gas also states that the new provision would provide a degree of operating flexibility to the customers who elect the option contained in the filing.

The proposed effective date of the tariff sheets is April 1, 1979.

A copy of this filing is being served upon all affected parties and interested state commissions.

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, N.E., Washington, DC 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 April 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8437 Filed 3-20-79; 8:45 am]

[6450-01-M]

ALPAR RESOURCES, INC.

Notice of Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

MARCH 12, 1979.

On March 6, 1979, the Federal Energy Regulatory Commission received notice from the North Dakota Geological Survey of a determination pursuant to 18 CFR 274.104 and Section of the Natural Gas Policy Act of 1978 applicable to:

FERC Control Number: JD79-689.
API Well Number: 64933305300757.
Operator: Alpar Resources, Inc.
Well Name: Peterson No. 1.
Field: Cherry Creek.
County: McKenzie.
Purchaser: Montana-Dakota Utilities Co.
Volume: 1,500 MMcf.

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before April 5, 1979.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8427 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. ER77-521]

ARIZONA PUBLIC SERVICE CO.

Notice of Extension of Time

MARCH 8, 1979.

On February 23, 1979, Arizona Public Service Company filed a motion for extension of time to file briefs opposing exceptions to the initial decision issued in this proceeding on December 19, 1978. The motion states that additional time is needed because the parties are involved in another proceeding which may result in limiting or mooting certain issues in this proceeding.

Upon consideration, notice is hereby given that an extension of time is granted to and including March 21, 1979.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc. 79-8395 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RI79-19]

AN-SON CORP.

Notice of Petition for Special Relief

MARCH 9, 1979.

Take notice that on November 20, 1978, An-Son Corporation (An-Son), 3814 North Santa Fe, Oklahoma City, Okla. 73118, filed a petition for special relief in Docket No. RI79-19 pursuant to Section 2.76 of the Commission's General Policy and Interpretations (18 CFR 2.76).

An-Son seeks an above ceiling rate for the sale of natural gas produced from its Smaltz No. 1 Well, located in Cimarron County, Okla., to Panhandle Eastern Pipe Line Company. According to An-Son, since present well bore pressure is too low to remove liquids, installation of a pumping unit is necessary to continue economical production. It is estimated that reserves of 234,000 Mcf can be recovered.

Any person desiring to be heard or to make any protest with reference to said petition should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before April 3, 1979. 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. 79-8396 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP76-10(PGA79-1)]

ARKANSAS LOUISIANA GAS CO.

Filing of Revised Tariff Sheets Reflecting Purchased Gas Cost Adjustment

MARCH 9, 1979.

Take notice that on March 1, 1979 Arkansas Louisiana Gas Company (Arkla) tendered for filing 17th Revised Sheet No. 185 to its FERC Gas Tariff Original Volume No. 3, Rate Schedule No. X-26, to become effective April 1, 1979.

Arkla states that the purpose of 17th Revised Sheet No. 185 is to track producer and pipeline supplier price changes as of April 1, 1979 and to recover the accumulated deferred purchased gas costs as of December 31, 1978, through unit rate adjustments computed pursuant to provisions of Arkla's purchased gas cost adjustment clause contained in its FERC Rate Schedule No. X-26. The surcharge adjustment is based on the balance in Account 191 at December 31, 1978 as adjusted for NGPA costs estimated to be deferred during January, February and March, 1979 in accordance with the Commission's Order No. 18 in Docket No. RM79-7.

Arkla also states that copies of the revised tariff sheet and supporting data were mailed to Arkla's jurisdictional customers and other interested parties affected by this tariff change.

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, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 20, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8397 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP74-61 (PGA79-1)]

ARKANSAS LOUISIANA GAS CO.

Notice of Filing of Revised Tariff Sheets Reflecting Purchased Gas Cost Adjustment

MARCH 9, 1979.

Take notice that on March 1, 1979 Arkansas Louisiana Gas Company (Arkla) tendered for filing 19th Revised Sheet No. 4 to its FERC Gas Tariff First Revised Volume No. 1, Rate Schedule No. G-2, to become effective April 1, 1979. Arkla also submits six (6) copies of Alternate 19th Revised Sheet No. 4 to become effective April 1, 1979 in the event 19th Revised Sheet No. 4 does not become effective.

Arkla requests waiver of the provision in its PGA clause to permit it to recover the deferred costs contained in this filing during a 12-month collection period in lieu of the normal 6-month collection period. Arkla states that the purpose of its request is to reduce the unusually high surcharge rate that results on a 6-months' collection period in this filing.

Arkla states that the purpose of 19th Revised Sheet No. 4 is to track producer and pipeline supplier price changes as of April 1, 1979 and to recover during a 12-months' collection period the accumulated deferred purchased gas costs as of December 31, 1978, through unit rate adjustments computed pursuant to provisions of Arkla's purchased gas cost adjustment clause contained in its FERC Rate Schedule No. G-2. The surcharge adjustment is based on the balance in Account 191 at December 31, 1978 as adjusted for NGPA costs estimated to be deferred during January, February and March, 1979 in accordance with the Commission's Order No. 18 in Docket No. RM79-7.

Arkla requests that Alternate 19th Revised Sheet No. 4 which provides for the normal 6-months' collection of the deferred gas costs be allowed to become effective on April 1, 1979 if 19th Revised Sheet No. 4 is not permitted to become effective.

Arkla also states that copies of the revised tariff sheet and supporting data were mailed to Arkla's jurisdictional customers and other interested parties affected by this tariff change.

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, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 20, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8398 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-214]

CAROLINA POWER & LIGHT CO.

Notice of Filing

MARCH 12, 1979.

Take notice that Carolina Power & Light Company on February 27, 1979 tendered for filing an Amendment to the Interconnection Agreement between Carolina Power & Light Company and South Carolina Electric & Gas Company, dated July 9, 1970. Carolina Power & Light Company states that the Amendment deletes existing Service Schedules A, B, C and D and replaces them with Service Schedules A—1979 Spinning Reserve, B—1979 Economy Interchange, C—1979 Limited Term Power, D—1979 Short Term Power, and G—1979 Other Energy. Existing Service Schedules E and F are retained. Carolina Power & Light Company requests that this Amendment to Interconnection Agreement be permitted to become effective on April 1, 1979.

Carolina Power & Light Company indicates that it has sent copies of this filing to South Carolina Electric & Gas Company, the South Carolina Public Service Commission, and the North Carolina Utilities Commission.

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, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 23, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8410 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-215]

CAROLINA POWER & LIGHT CO.

Notice of Filing

MARCH 12, 1979.

Take notice that Carolina Power & Light Company, on February 27, 1979 tendered for filing an Amendment to the Interchange Agreement between Carolina Power & Light Company and South Carolina Public Service Authority, dated January 5, 1973. Carolina Power & Light Company states that the Amendment deletes existing Service Schedules A and B and replaces them with Service Schedules A-1979 Spinning Reserve, B-1979 Short Term Power, C-1979 Limited Term Power, G-1979 Economy Interchange, and E-1979 Other Energy. Carolina Power & Light Company requests that this Amendment to Interchange Agreement be permitted to become effective on April 1, 1979.

Carolina Power & Light Company indicates that it has sent copies of this filing to South Carolina Public Service Authority, the South Carolina Public Service Commission, and the North Carolina Utilities Commission.

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, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 23, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8411 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. CP79-128]

COLORADO INTERSTATE GAS CO.

Amendment

MARCH 9, 1979.

Take notice that on February 16, 1979, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP79-128 an amendment to its pending application for a certificate of public convenience and necessity, pursuant to Section 7(c) of the Nat-

ural Gas Act so as to authorize CIG to sell the remaining recoverable gas reserves attributable to the Flank Field to Panhandle Eastern Pipe Line Company (Panhandle), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

CIG states that on December 18, 1978, it filed an application in the instant docket for authority to construct and operate facilities necessary to develop the Flank Field in Baca County, Colorado, for use as a natural gas storage reservoir. Further, CIG states that at that time all the agreements to purchase the working interest in Flank Field had not been executed.

CIG asserts that Baca Gas Gathering System, Inc. was authorized in Docket No. CP65-57 to construct pipeline facilities necessary to transport natural gas acquired by Panhandle from the Flank Field to the Anadarko Processing Plant. The remaining recoverable gas reserves in the Flank Field are dedicated to Pandhandle as a result of that authority, it is said. CIG and Panhandle have agreed to the amount of recoverable gas reserves, the term, the delivery points, and the price, it is further stated.

It is asserted that by virtue of the working interest purchase agreements CIG obtained from the producers in the Flank Field, CIG has succeeded to the interests of Flank Field producers. The executive of those agreements enables CIG, as successor in interest, to proceed with the cancellation of the related Flank Field rate scheules on behalf of Bruce Calder, Inc., Kerr-McGee Corporation, PanCanadian Petroleum Company, Texas Oil & Gas Corporation, W. R. Murfin Drilling Company, and The Termo Company, it is said.

CIG asserts that Panhandle, the only purchaser of natural gas from the Flank Field, and CTG have agreed upon the remaining recoverable reserves and have executed a sales agreement for said reserves. It is further asserted that as stated in the sales agreement, the price that Panhandle would pay CIG for the reserves would be that price which Panhandle is currently paying producers in the Flank Field subject to any price adjustments permitted by the Natural Gas Policy Act of 1978. The delivery points would remain in the Flank Field at existing meter stations as indicated in the sales agreement; therefore, there are no new facilities proposed or required as a result of this amendment, it is said.

CIG states that the remaining recoverable reserve volume agreed upon between CIG and Panhandle is 1,825,000 Mcf to be delivered at the average rate of 1,000 Mcf per day over a five-year period and Panhandle's existing low-pressure gathering system would be used to transport the gas to Anadarko Plant. The sales agreement provides Panhandle with all processing rights, it is further said.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before April 3, 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) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8433 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP72-122 (PGA79-1)]

COLORADO INTERSTATE GAS CO.

Notice of Proposed Change in Rates Under Purchased Gas Adjustment Clause Provision

MARCH 9, 1979.

Take notice that Colorado Interstate Gas Company, on February 28, 1979, tendered, for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1. The proposed changes would increase the commodity rate under each of CIG's jurisdictional rate schedules by 24.17 cents per Mcf.

The filing was made to enable CIG to reflect in its rates, pursuant to Section 21 of CIG's FERC Gas Tariff, Original Volume No. 1, net increased purchased gas costs it will experience effective April 1, 1979, as the result of a rate filing made by Northwest Pipeline Corporation. Additionally, the rate adjustment proposed by the filing includes the changes in CIG's purchased gas costs as permitted by the Commission's Order No. 18, issued December 1, 1978, in Docket No. RM79-7.

CIG respectfully requests that the instant filing be made effective on April 1, 1979.

Copies of the filing have been served upon the Company's jurisdictional customers and other interested persons, including public bodies.

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 20, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8399 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP79-42]

COLUMBIA GAS TRANSMISSION CORP.

Proposed Changes in FERC Gas Tariff

MARCH 12, 1979.

Take notice that Columbia Gas Transmission Corporation (Columbia) on March 1, 1979, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1, as follows:

Fiftieth Revised Sheet No. 16 Original Sheet Nos. 66 and 67

These proposed changes provided for an increase of 2.76¢ per Mcf to be effective April 1, 1979, are being filed pursuant to FERC Order No. 10, issued on August 28, 1978, in Docket No. RM78-23, as clarified and modified by FERC Order No. 10-A issued on December 20, 1978, to provide temporary tracking with deferred accounting of the Louisiana First Use Tax on a semi-annual basis until the validity or invalidity of the tax is established by a final and non-appealable court order.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

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, Union Center Plaza Building, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before March 22, 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 filing are on file with

the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8412 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP79-47]

CONSOLIDATED GAS SUPPLY CORP.

Proposed Changes in FERC Gas Tariff

MARCH 12, 1979.

Take notice that Consolidated Gas Supply Corporation (Consolidated) on March 1, 1979, tendered for filing, proposed changes to its FERC Gas Tariff, Third Revised Volume No. 1 pursuant to Opinion Nos. 10 and 10-A in Docket No. RM78-23. The revised tariff sheets provide for (1) an increase of 0.90¢ per Dt to reflect the cost of the Louisiana First Use Tax; (2) provisions for tracking and deferred accounting thereof; and, (3) a renumbering of sections of the General Terms and Conditions.

Consolidated requested an effective date of April 1, 1979, the date upon which the Tax becomes effective.

The revisions to the tariff are shown on:

Original Sheet Nos. 75-B and 75-C; Substitute First Revised Sheet Nos. 76 and 77; and, Twelfth Revised Sheet No. 16

While Consolidated believes no waivers are necessary, Consolidated requests a waiver of any of the Commission's Rules and Regulations that may be deemed necessary in order to permit the revised tariff sheets to become effective as proposed.

Copies of this filing were served upon Consolidated's jurisdictional customers as well as interested State Commissions.

Any persons 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, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 22, 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 filing are on file with the Commission and are available for inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8413 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-70]

DETROIT EDISON CO.

Order Accepting for Filing and Suspending Proposed Rate Increase, Denying Motion to Reject, Granting Partial Summary Disposition, Establishing Hearing and Price Squeeze Procedures, and Granting Intervention

MARCH 9, 1979.

On November 20, 1978, as completed on January 10, 1979,[1] Detroit Edison Company (Edison) tendered for filing certain revised and original tariff sheets designed to implement a general rate increase for firm power service to seven wholesale customers.[2] The proposed rate increase would result in additional revenues of approximately $7,830,000 (19.5%), based on a test period consisting of the twelve months ending December 31, 1979. Edison requests waiver of the Commission's notice requirements and proposes an effective date for the revised rates of January 20, 1979.

In a timely petition to intervene filed on December 14, 1978,[3] Consumers Power Company asserts that it is Edison's largest wholesale customer and that it would be substantially affected by the proposed rates.

On December 22, 1978, the City of Croswell, the Villages of Clinton and Sebewaing, the Michigan Municipal Cooperative Power Pool, Southeastern Michigan Rural Electric Cooperative, Inc., and Thumb Rural Electric Cooperative, Inc. (collectively referred to as Munis/Coops) jointly filed a protest, petition to intervene, motion to reject or for partial summary disposition and maximum suspension. In support of their motion to reject Edison's filing, Munis/Coops allege that the company has violated the Commission's test period and filing regulations.

Initially, Munis/Coops contend that Edison has circumvented § 35.13(b)(4)(iii) of the Commission's Regulations which provides in pertinent part that an estimated Period II test year may not commence after the proposed effective date for the tendered rates. Edison has selected a Period II test year beginning on January 1, 1979, prior to the proposed effective date of January 20, 1979. However, Munis/Coops allege that by adjusting Period II estimates to reflect a full year's operations of a new generating facility (Greenwood No. 1) scheduled to commence service in April of 1979, Edison effectively has moved the beginning of the test year ahead from January to April.

Based upon this so-called "Greenwood adjustment", Munis/Coops maintain that Edison has improperly utilized a test year commencing later than the proposed effective date. In addition, Munis/Coops argue that if the test year is construed as beginning in April of 1979, Edison's filing is deficient since it contains projected data only through December of 1979, rather than April of 1980. Alternatively, Munis/Coops assert that the "Greenwood adjustment" may be viewed as an impermissible means of including CWIP in rate base for the first several months of the test year. Under any of the suggested interpretations of the "Greenwood adjustment", Munis/Coops contend that rejection of Edison's filing is appropriate.

In an answer filed on January 8, 1979, Edison, *inter alia*, denies any impropriety associated with the "Greenwood adjustment."[4] According to Edison, its Period II cost of service annualizes the Greenwood investment and costs in order to avoid "distortion" in the test period data. Edison further states that it has also annualized related cost of service items and has made offsetting adjustments such as a reduction in the Period II purchased power expense.

While the annualizing adjustments proposed by Edison do not constitute sufficient grounds for rejecting the company's filing, we find that summary disposition of this particular issue is appropriate. The Commission's futue test year regulations do not contemplate the filing of Period II data which incorporate annualizations or other similar adjustments to the estimates. Rather the Period II cost of service should reflect only those system costs which, at the time of filing, the utility actually and reasonably anticipates incurring during the twelve months of the selected test

[1] By letter dated December 20, 1978, Detroit Edison Company was advised of certain deficiencies in its November 20, 1978 submittal. On January 10, 1979, the company filed additional information satisfying the deficiency.

[2] The City of Croswell, the Villages of Clinton and Sebewaing, Michigan Municipal Cooperative Power Pool, Southeastern Michigan Rural Electric Cooperative, Thumb Rural Electric Cooperative, and Consumers Power Company. *See* Attachment A for rate schedule designations.

[3] Public notice of Edison's submittal was issued on December 1, 1978, with protests or petitions to intervene due on or before December 22, 1978.

[4] On January 10, 1979, Munis/Coops filed a response to Edison's answer, together with a motion for leave to file such response. While Munis/Coops acknowledge that "responses to answers are not contemplated by the Commission's Rules of Practice and Procedure," they contend that this additional pleading is necessary for a full comprehension of the disputed matters. In the interest of limiting cumulative and continuous pleadings, we shall decline to separately entertain the discussion presented in that document. However, we note that the arguments therein stated would not warrant conclusions other than those expressed in this order.

year. Therefore, we shall require Edison to refile its cost of service and proposed rates so as to eliminate any annualizing adjustments associated with the Greenwood Plant.

The second major rationale set forth by Munis/Coops in support of their motion to reject Edison's submittal concerns the alleged absence of adequate explanation and support for various cost of service components underlying the tendered rates. Because of such inadequacies in Edison's original filing, that submittal was deemed deficient and the company was so notified by letter dated December 20, 1978. Edison responded to the deficienty letter by providing additional information on January 10, 1979. Our review of the materials submitted by Edison indicates that the filing, as supplemented, substantially complies with the Commission's Regulations. *Municipal Light Boards* v. *FPC*, 450 F. 2d 1341 (D.C. Cir. 1971). Accordingly, we shall deny the motion of Munis/Coops to reject Edison's filing.[5]

Munis/Coops further request that the Commission grant summary disposition with respect to three issues: (1) functionalization of general plant; (2) depreciation rates; and (3) allocation of contributions to the Electric Power Research Institute (EPRI) and the Liquid Metal Fast Breeder Reactor (LMFBR) programs. In its January 8 answer, Edison opposes the motion for summary disposition. Although the answer disputes the stated revenue impact of these items, it does not discuss the merits of the contentions raised by Munis/Coops. Instead, Edison states that its deficiency response should adequately address these contentions.

Munis/Coops challenge Edison's filing insofar as it functionalizes general plant expenses on the basis of total plant costs rather than labor ratios. Summary disposition will not be granted with regard to this issue but, consistent with stated Commission policy,[6] we shall require Edison to meet the burden of showing by appropriate evidence that the use of labor ratios for all general plant functions is unreasonable as applied to the company, not merely that its alternative method of functionalization may be reasonable.[7]

We shall also deny the request for summary disposition concerning Edison's proposed depreciation rates. Munis/Coops protest Edison's utilization of increased depreciation rates which have been approved by the Michigan Public Service Commission, but not by this Commission. this Commission clearly is not bound by the determination of that state regulatory body and we emphasize that in the instant proceeding Edison bears the burden of justifying the increased depreciation rates. However, as in the case of functionalization, this issue if properly the subject of an evidentiary hearing.

With regard to Edison's EPRI and LMFBR contributions, we shall grant summary disposition as requested by Munis/Coops. Such contributions are voluntary in nature and are made on the basis of retail sales. Thus, wholesale customers should be free to decide whether to contribute independently to these research programs. Our summary resolution of this issue comports with the Commission's policy objectives as stated in *Connecticut Light and Power Company*, Docket No. ER78-517.[8] Accordingly, we shall direct Edison to revise its rates to reflect elimination of EPRI and LMFBR contributions from its wholesale cost of service.

In addition to the foregoing, Munis/Coops protest Edison's filing and request a five-month suspension based on a variety of cost of service issues.[9] In each instance, it appears that the matters raised will be resolved most appropriately on the basis of a full evidentiary record.

Munis/Coops also allege that the proposed wholesale rates give rise to a "price squeeze" when compared to Edison's retail rates. *Conway Corp. v. FPC*, 510 F.2d 1264 (1975), *aff'd*, 426 U.S. 271 (1976). Pursuant to the policy set forth in Order No. 563, and in Section 2.17 of our Regulations, we find it appropriate that price squeeze procedures be initiated in this case.

In their December 22, 1978 submittal, Munis/Coops objected to Edison's use of comprehensive interperiod tax normalization pursuant to the Commission's Order No. 530-B. The stated purpose of their protest was "to preserve [their] rights in the event the Commission is reversed by the Court of Appeals in *Public Systems, et al. v. FERC*, D.C. Cir. No. 76-1609." On March 2, 1979, Munis/Coops filed a pleading entitled "Motion of Munis/Coops for Order Directing Detroit Edison Company to Supplement Rate Filing With Respect to Tax Normalization." Munis/Coops note that on February 19, 1979, the United States Court of Appeals for the District of Columbia Circuit issued an order remanding Order No. 530-B for further action. Based upon the court's decision, Munis/Coops request an order directing Edison to Supplement its rate filing with an evidentiary presentation in support of normalization. For several reasons, we shall decline to issue such a directive at this time.

The court's decision in *Public Systems* has yet to become final. Pending possible reconsideration or review, we think it the better course to preserve the Commission's position by adhering to our present policies. We note that the court did not hold that the Commission's conclusions in Order No. 530-B were impermissible. Rather, the matter was remanded by the court on the ground that the Commission had not adequately explained and supported its decision.

Whether the court's decision is the subject of further litigation or Commission proceedings on remand are initiated, we shall separately consider the need for interim procedures. Our present view is that it will be more efficient and practical to consider such procedures on a generic rather than on a case-by-case basis, although the procedures, themselves, could provide for case-by-case consideration of the question. Therefore, in this proceeding we shall deny the motion of Munis/Coops without prejudice to its resubmittal at a later time.

The Commission finds that participation in this proceeding by Consumers Power Company and Munis/Coops may be in the public interest.

Our review of Edison's filing indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable,

[5] Edison's response to the deficiency letter again requested a January 20, 1979 effective date and sought waiver of the appropriate Regulations. On January 18, 1979, Munis/Coops filed a pleading which opposed Edison's request for waiver and challenged portions of the company's deficiency response as incomplete. As indicated above, we have determined that the data submitted by Edison are sufficiently responsive. The designation of an effective date for the proposed rates is discussed *infra*.

[6] *See, e.g., Pennsylvania Electric Company*, Docket No. ER78-494 (order issued September 29, 1978); *Public Service Company of Colorado*, Docket No. ER78-507 (order issued October 4, 1978); Opinion Nos. 20 and 20-A, issued August 3, 1978 and October 30, 1978, respectively, *Minnesota Power & Light Company*, Docket Nos. E-9499 and E-9502, and *Superior Water, Light and Power Company*, Docket No. ER76-20.

[7] We note that Edison's deficiency response does include an alternative cost of service study which utilizes labor ratios for functionalizing general plant.

[8] Order issued August 31, 1978, and Order on Rehearing issued November 22, 1978. *See also Carolina Power & Light Company* Opinion No. 19, Docket No. ER76-495 (Phase II), issued August 2, 1978 (affirming Initial Decision issued September 7, 1978).

[9] Edison's January 8 answer states the company's general disagreement with the contentions enumerated by Munis/Coops. Among the disputed cost of service issues are: an allegedly excessive rate of return; the incluson of "emergency" facilities in rate base as pollution control-related CWIP; the inclusion of a "preliminary survey" in rate base rather than CWIP; purportedly dubious demand and expense projections; the development of demand allocation factors and an allegedly discriminatory capacity credit to industrial customers; and ratemaking treatment of expenses associated with the cancellation of a generating unit as well as losses related to a 1976 ice and wind storm.

unduly discriminatory or otherwise unlawful. Good cause has not been shown by Edison to grant waiver of the Commission's notice requirements. Therefore, we shall accept the proposed rates for filing and suspend those rates for five months from sixty days after the filing date of January 10, 1979, to become effective, subject to refund, on August 11, 1979.

The Commission orders:

(A) The motion of Munis/Coops to reject Edison's filing is hereby denied.

(B) Edison's request for waiver of the Commission's notice requirements is hereby denied.

(C) Edison's proposed rates are hereby accepted for filing and suspended for 5 months from 60 days after the filing date of January 10, 1979, to become effective on August 11, 1979, subject to refund.

(D) Summary disposition is hereby granted with respect to the allocation of EPRI and LMFBR contributions and the annualizing adjustments related to the Greenwood No. 1 plant. Within sixty (60) days from the issuance of this order, Edison shall refile its cost of service and its rates to reflect elimination of EPRI and LMFBR contributions from its cost of service and to eliminate the annualizing adjustments associated with the Greenwood plant.

(E) Edison must meet the burden of showing that the use of labor ratios is an unreasonable method of functionalizing all of its general plant.

(F) The motion of Munis/Coops for an order directing Edison to supplement its rate filing by submitting evidence in support of tax normalization is hereby denied without prejudice.

(G) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the DOE Act and by the Federal Power Act, and pursuant to the Commission's Rules of Practice and Procedure and the Regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of the rates proposed by Edison.

(H) Pursuant to §2.17 of the Commission's Regulations, we hereby order initiation of price squeeze procedures.

(I) The Staff shall serve top sheets in this proceeding on or before May 25, 1979.

(J) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose shall convene a conference in this proceeding to be held within ten (10) days of the serving of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The designated Law Judge is authorized to establish procedural dates and to rule on all motions (except motions to consolidate or sever and motions to dismiss), as provided for in the Commission's Rules of Practice and Procedure. The Presiding Administrative Law Judge shall convene a prehearing conference within fifteen (15) days of the issuance of this order for the purpose of hearing intervenors' requests for data required to present their case, including a *prima facie* showing, on price squeeze issues.

(K) The petitioners listed in footnote 2, *supra*, are hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission: *Provided, however,* that Participation by such intervenors shall be limited to the matters set forth in their petitions to intervene; and *Provided, further,* that the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(L) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

ATTACHMENT A.—*The Detroit Edison Company*

[Docket No. ER79-70]

Dated: Undated

Filed: January 10, 1979

FERC Electric Tariff 1st Revised Volume No. 1

Designation	*Supersedes Sheet No.*
1st Revised Sheet No. 1	Original Sheet No. 1.
1st Revised Sheet No. 2	Original Sheet No. 2.
1st Revised Sheet No. 4	Original Sheet No. 4.
1st Revised Sheet No. 5	Original Sheet No. 5.
1st Revised Sheet No. 6	Original Sheet No. 6.
1st Revised Sheet No. 7	Original Sheet No. 7.
1st Revised Sheet No. 8	Original Sheet No. 8.
1st Revised Sheet No. 9	Original Sheet No. 9.
1st Revised Sheet No. 10	Original Sheet No. 10.
1st Revised Sheet No. 14	Original Sheet No. 14.
1st Revised Sheet No. 15	Original Sheet No. 15
Original Sheet No. 19A	
Original Sheet No. 19B	
Original Sheet No. 19C	

[FR Doc. 79-8434 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-211]

DUKE POWER CO.

Notice of Filing

MARCH 12, 1979.

Take notice that Duke Power Company (Duke) on February 9, 1979, tendered for filing a certificate of concurrence with South Carolina Electric & Gas Company's (South Carolina) Second Amendment to the Interchange Agreement between Duke and South Carolina.

Any person desiring intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before March 23, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8414 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-210]

ELECTRIC ENERGY, INC.

Notice of Filing

MARCH 12, 1979.

Take notice that on February 23, 1979, Electric Energy, Inc. (EEInc.) tendered for filing a Letter Agreement dated February 2, 1979, modifying Amendment No. 5 to the Interim, Supplemental and Surplus Power Agreement (FERC Schedule No. 8) between EEInc. and its Sponsoring Companies (Central Illinois Public Service Company (CIPS), Illinois Power Company (IP), Kentucky Utilities Company (KU), and Union Electric Company (UE) and a Letter Agreement dated February 2, 1979 between EEInc. and the United States Department of Energy (DOE), as successor to the Energy Research and Development Administration (ERDA), modifying Power Contract No. AT-(40)-1312 between EEInc. and DOE (FERC Schedule No. 7).

Copies of the filing have been sent to all the parties, to the Illinois Commerce Commission, Springfield, Illinois, the Kentucky Public Service Commission, Frankfort, Kentucky, and to the United States Department of Energy, according to EEInc.

The two agreements would make available to IP, KU and UE a portion of the capacity of EEInc.'s Joppa, Illinois electric plant for a period beginning June 1, 1979, and extending through September 30, 1981, and would correspondingly reduce the capacity made available to DOE for its Paducah Project.

The proposed changes came about because of DOE's desire to reduce its budget and use less electric power at the Project, according to EEInc. IP, KU, and UE agreed to purchase the resulting surplus capacity because they had need for such capacity and EEInc. would be able to supply the power at reasonable rates, according to EEInc.

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, N.E., Washington, DC. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 23, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8415 Filed 3-20-79; 8:45 am]

[6450-1-M]

[Docket No. RP79-37]

EL PASO NATURAL GAS CO.

Notice of Tariff Filing and Proposed Change in Rate

MARCH 12, 1979.

Take notice that on February 28, 1979, El Paso Natural Gas Company ("El Paso") filed, pursuant to Part 154 of the Commission's Regulations Under the Natural Gas Act, the following revised and original tariff sheets to its FERC Gas Tariff:

Tariff volume and tariffs sheet

Original Volume No. 1; First Substitute Twenty-third Revised Sheet No. 3-B, First Revised Sheet No. 68-B, Original Sheet No. 68-C, Original Sheet No. 68-D, Original Sheet No. 68-E, Original Sheet No. 68-F.

Third Revised Volume No. 2; First Substitute Thirteenth Revised Sheet No. 1-D.

Original Volume No. 2A; First Substitute Fifteenth Revised Sheet No. 1-C.

Pursuant to the Federal Energy Regulatory Commission's ("Commission") Order No. 10 issued August 28, 1978, at Docket No. RM78-23, which established certain procedures governing interstate pipeline recovery of the Louisiana First-Use Tax ("LFUT") on natural gas and Order NO. 10-A issued December 20, 1978, which, *inter alia*, permitted pipelines to collect the LFUT from their customers commencing April 1, 1979, subject to refund, provided that such pipelines file an application, on or before March 1, 1979, for temporary tracking authority, El Paso tendered such tariff sheets which are designed to (i) establish a temporary LFUT tracking mechanism in its FERC Gas Tariff, Original Volume No. 1, which provides for semi-annual rate adjustments to coincide with El Paso's semi-annual Purchased Gas Cost Adjustment Provision ("PGAC") rate adjustments, and (ii) give notice of a change in rate pursuant to the provisions of said LFUT tracking mechanism to be effective April 1, 1979.

El Paso further states that the change in rate required to recover the annualized increases attributable to the LFUT equates to an increase in El Paso's currently effective rates of 0.04¢ per Mcf. In compliance with the Commission's Order No. 10-A, El Paso states that all revenues collected as a result of the proposed 0.04¢ per Mcf increase attributable to the LFUT will be placed in escrow during the pendency of litigation concerning the constitutionality of the LFUT. Further, accompanying the instant filing is an affidavit signed by an authorized representative stating that El Paso will comply with Section 47:1576 of the Louisiana Revised Statutes.

El Paso also states that copies of the filing have been served upon all of El Paso's interstate system customers and all interested state regulatory commissions.

Any person desiring to be heard or to many any protest with reference to said tariff filing should, on or before March 22, 1979, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10) and the Regulations Under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make any 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. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8416 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket Nos. RP72-155, RP78-18 (PGA79-1) (AP79-1)]

EL PASO NATURAL GAS CO.

Notice of Proposed Change in Rate Pursuant To Purchased Gas Cost Adjustments

MARCH 9, 1979.

Take notice that El Paso Natural Gas Company (El Paso) on March 1, 1979, tendered for filing a notice of change in rates for jurisdictional gas service rendered to customers served by its interstate gas transmission system. Such service is rendered under rate schedules affected by and subject to ARTICLE 19, Purchased Gas Cost Adjustment Provisions (PGAC), contained in the General Terms and Conditions applicable to El Paso's FERC Gas Tariff, Original Volume No. 1, Third Revised Volume No. 2 and Original Volume No. 2A, and under rate schedules affected by and subject to the PGAC-Clean High Pressure Gas Provisions (PGAC-CHPG) contained in El Paso's FERC Gas Tariff, Original Volume No. 2A.

El Paso states that the instant notice of change in rates occasioned by the PGAC and PGAC-CHPG provisions will compensate El Paso for (i) changes in the cost of purchased gas (including certain produced gas from leases acquired after October 7, 1969), to be in effect on or before April 1, 1979, applied to volumes of natural gas purchased (or produced) during the calendar months December, 1978, annualized and adjusted, and (ii) changes in the surcharge adjustment resulting from the actual balance in El Paso's Account 191, Unrecovered Purchased Gas Cost as of December 31, 1978, including the applicable carrying charges, and the estimated impact of the Natural Gas Policy Act of 1978 (NGPA) maximum lawful rates for the period December 1, 1978, through March 31, 1979,[1] El Paso also states that the instant notice of change in rates includes the adjustments in El Paso's rates occasioned by the variations in cost attributable to the Advance Payment Adjustment, Transportation Cost and Revenue Adjustment and Gas Well Royalty Cost Variations provisions contained in El Paso's Stipulation and Agreement dated June 23, 1978, (Stipulation and Agreement) approved and accepted by the Commission's order issued September 5, 1978, at Docket No. RP78-18.

El Paso states that the overall net increase in El Paso's currently effec-

[1] Order No. 18 issued December 1, 1978, at Docket No. RM79-7 amended section 154.38(d) of the Commission's Regulations to permit a one-time passthrough of certain estimated NGPA costs which may be added to the actual amounts reflected in Account 191.

tive rates for which notice is given herein is 43.57 cents per Mcf as to its EOC customers and 39.03 cents per Mcf as its California customers.

The current net PGAC adjustments proposed for El Paso's east-of-California (EOC) customers and the California customers are 37.55 cents per Mcf and 33.01 cents per Mcf, respectively. Such net PGAC adjustments are comprised of (i) a gas cost adjustment, (ii) the unrecovered purchased gas cost balance in Account 191, as of December 31, 1978, applicable to each of said customer categories, (iii) an addition to such balance in Account 191 of certain estimated cost increases attributable to the NGPA, and (iv) elimination of the PGAC surcharge adjustments applicable to the EOC and California customers, respectively, presently included in El Paso's currently effective rates.

El Paso states that the current net PGAC-CHPG adjustment, for which notice is also given herein, aggregates an increase of 15.9073 cents per Mcf. Such current net adjustment is comprised of (i) an increase in the weighted average purchased cost of clean, high-pressure gas, (ii) a surcharge adjustment representing the unrecovered purchased gas cost balance in Account 191 as of December 31, 1978, (iii) the addition to such balance in Account 191 for certain estimated cost increases directly attributable to the NGPA, and (iv) elimination of the surcharge adjustment presently included in El Paso's currently effective rates.

El Paso further states that said Stipulation and Agreement, among other matters, established certain adjustment mechanisms designed to track variations in El Paso's costs attributable to advance payments, transportation costs and revenues, and gas well royalty cost variations. The rate per Mcf adjustments required by the Stipulation and Agreement are summarized below:

Adjustment	EOC Rate (Cents)	California Rate (Cents)
Advance Payment	(0.02)	(0.02)
Transportation	0.16	0.16
Gas Well Royalty	2.36	2.36

The current net Transportation and Gas Well Royalty adjustments proposed herein are 0.13 cents per Mcf and 5.91 cents per Mcf, respectively, after the elimination of the Transportation surcharge rate of 0.03 cents and Gas Well Royalty surcharge of (3.55 cents) reflected in El Paso's August 31, 1978, PGA filing.

El Paso has requested that waiver be granted of all applicable rules, orders and regulations of the Commission, as may be deemed necessary, to permit the effectiveness on April 1, 1979, of the tariff sheets tendered as a part of the instant notice of change in rates. El Paso states that the instant PGAC-CHPG adjustments are predicated upon effectiveness, on or before April 1, 1979, of the maximum lawful NGPA rates, as provided under Parts 271 and 273 of the Interim Regulations, for El Paso's producer-suppliers. In the event that any of such producer-supplier rate increases are not effective by April 1, 1979, in accordance with said Interim Regulations, El Paso states that it will undertake to adjust the proposed April 1, 1979, rates in accordance with Commission directives prior to billing its customers for April deliveries.

El Paso states that copies of the filing and attachments have been served upon all parties of record in Docket Nos. RP72-155 and RP78-18, and, otherwise, upon all affected customers and interested state regulatory commissions.

It appears reasonable and consistent with the public interest to prescribe a period for filing protests and petitions to intervene shorter than fifteen days. Accordingly, any person desiring to be heard or to make any protest with reference to said tariff filing should, on or before March 19, 1979, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make any 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. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8400 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. CP74-122]

ENERGY TERMINAL SERVICES CORP.

Notice of Second Amendment to Application

MARCH 9, 1979.

Take notice that on March 1, 1979, Energy Terminal Services Corporation (Applicant), 80 Park Place, Newark, New Jersey 07101, filed a second amendment to its application in Docket No. CP74-122 pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a peak-shaving facility at Rossville, Staten Island, New York, utilizing one of its existing LNG storage tanks and appurtenant facilities, all as more fully set forth in the amendment to the application which is on file with the Commission and open to the public inspection.

Energy Terminal Services Corporation was formerly known as Distrigas of New York Corporation. By amendment dated November 8, 1976, the existing facilities of Applicant were proposed for use in conjunction with the proposed importation of LNG by Eascogas LNG, Inc., in Docket No. CP73-47, *et al.*

Applicant by this amendment is requesting authorization to operate a peak shaving facility at its existing facilities in Rossville, using one of its existing 900,000 barrel (3,100,000 Dt) storage tanks and appurtenant facilities, including vaporization (nominal 360,000 DtD) and compression equipment and to construct and operate a liquefaction unit with a net nominal 15,000 DtD capacity. The existing facilities on the site which would be used for the peaking service have cost $64,597,000, which does not include the second tank, dock facilities and piping within the plant, and other facilities not needed for use in this proposal. The total estimated direct additional capital cost for the peaking plant, including the liquefaction unit, would be $24,384,000 in current 1979 dollars with some $15,030,000 being attributable to the cost of the liquefaction unit itself.

It is planned that construction of the liquefaction facilities could commence as early as April 1, 1980, and, therefore, the operation of this facility for peak shaving could begin on July 1, 1982, with the liquefaction of natural gas for redelivery during the winter of 1982-1983. It is stated that no equipment will be ordered prior to a final certificate being obtained from this Commission.

The service proposed by Applicant is (1) the receipt and liquefaction of customers' own supplies of natural gas which customers will arrange to have delivered to the facility by means of existing pipelines generally during the spring, summer, and fall months, (2) the storage of the LNG throughout the year and (3) the vaporization of LNG and the delivery of natural gas after vaporization to customers, or to transporting pipelines for delivery. The customers of the proposed peaking service will be Public Service Electric and Gas Company and Brooklyn Union Gas Company.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 3, 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 (17 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8401 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP72-136 (PGA79-1) and RP79-35]

FLORIDA GAS TRANSMISSION CO.

Proposed Changes in Rates and Charges Under Purchased Gas Adjustment Provisions

MARCH 12, 1979.

Take notice that on February 28, 1979, Florida Gas Transmission Company (FGT), P.O. Box 44, Winter Park, Florida 32790, tendered for filing Substitute Twentieth Revised Sheet No. 3-A, Original Sheet No. 22-O and Original Sheet No. 22-P to its FERC Gas Tariff, Original Volume No. 1, containing the changes in its resale rates in Rate Schedules G and I for effectiveness on April 1, 1979.

According to FGT, the changes in rates contained on Substitute Twentieth Revised Sheet No. 3-A are in accordance with the purchased gas cost adjustment provision in its Tariff (Section 15, General Terms and Conditions). FGT states that the rates contained on Substitute Twentieth Revised Sheet No. 3-A are proposed to supersede those on Twentieth Revised Sheet No. 3-A. FGT further states that the following shows a comparison between the rates in effect pursuant to Twentieth Revised Sheet No. 3-A and those to be made effective on April 1, 1979 under this filing.

¢/Therm

	Effective Prior to April 1, 1979	Effective April 1, 1979
Rate Schedule G	12.774¢	14.785¢
Rate Schedule I	11.514¢	13.525¢

According to FGT, the annual effect of the proposed rate changes is an increase of $16,649,336 based on sales under Rate Schedules G and I for the twelve months ended December 31, 1978.

Original Sheet No. 22-O and Original Sheet No. 22-P contained a new part in the General Terms and Conditions of FGT's tariff to establish a provision for the Louisiana First Use Tax. FGT has established this provision pursuant to Order No. 10-A. According to FGT, the effect of the Louisiana First Use TAx on the resale rates is .105¢ per therm which would amount to approximately $869,000 annually in revenue, and would result in rates as follows:

¢/Therm

	Rates With PGA Effective April 1, 1979	Rates With PGA and Louisiana First Use Tax Effective April 1, 1979
Rate Schedule G	14.785¢	14.890¢
Rate Schedule I	13.525¢	13.630¢

FGT states that a copy of its filing has been served on all customers purchasing gas under its FERC Gas Tariff, Original Volume No. 1 and the Florida Public Service Commission.

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 or protests should be filed on or before March 22, 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. 79-8438 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-206]

THE HARTFORD ELECTRIC LIGHT CO.

Notice of Amendment to Purchase Agreement With Respect to Middletown Station

MARCH 12, 1979.

Take notce that on February 21, 1979, the Hartford Electric Light Company (HELCO) tendered for filing a proposed Amendment to Purchase Agreement With Respect to Middletown Station (Amendment), dated November 1, 1978, between HELCO and Village of Hardwick Electric Light Department (Hardwick).

HELCO states that a change has been made to the text of the Purchase Agreement With Respect to Middletown Station (Purchase Agreement). The change increases Hardwick's entitlement in Middletown Station from 500 kilowatts to 1,100 kilowatts for the period from November 1, 1978 to October 31, 1979.

HELCO states that they were not notified of Hardwick's intent to increase their entitlement to capacity of Middletown Station until a date which prevented the filing of the Amendment thirty days prior to the expected effective date of the Amendment. Therefore, HELCO requests that the Commission waive the thirty-day notice period and permit the Amendment to become effective as of November 1, 1978.

HELCO states that copies of this rate schedule have been mailed or delivered to Hardwick, Hardwick, Vermont.

Any person desiring to be heard or to protet said application 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 Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 23, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8431 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. ES79-31]

INTERSTATE POWER CO.

Application

MARCH 12, 1979.

Take notice that on February 28, 1979, an application was filed with the Federal Energy Regulatory Commission pursuant to Section 204(a) of the Federal Power Act by Interstate Power Company (Applicant) seeking an order authorizing the issuance and sale of not exceeding 300,000 shares of New Preferred Stock of the par value of $50 per share, authorizing entry into loan agreements relative to the issuance of pollution control revenue bonds by the City of Clinton, Iowa, and obligations with respect to the acquisition of coal cars for the Company's certain unit train and of additional Common Stock of the par value of $3.50 per share pursuant to its Employee and Stockholder Automatic Dividend Reinvestment and Stock Purchase Plan ("DRP") and Employee Stock Ownership Plan ("ESOP"). Applicant is incorporpated under the laws of the State of Delaware, with its principal business office in Dubuque, Iowa, and is engaged principally in the electric utility business in northern and northeastern Iowa, in southern Minnesota and a few small communities in Illinois.

Applicant proposes to issue and sell through negotiated private placement subject to the approval of exemption from the requirements of Section 34.1(b) of the Commission's Regulations.

According to the application, the net proceeds to be received by the Applicant from the issuance and sale of the New Preferred Stock will be used by the Applicant to secure funds for the 1979 construction program and for other corporate purposes.

The pollution control revenue bonds of the City of Clinton will be sold to finance the construction by the Applicant of pollution abatement equipment on Unit 2 at Applicant's Milton L. Kapp Power Station in Clinton, Iowa, installation of which is expected to be completed in 1979. The proceeds from the sale of the pollution control revenue bonds will be loaned by the City of Clinton to the Applicant pursuant to loan agreements (estimated not to exceed $8,500,000 in the aggregate) and payments by the Applicant under said loan agreements will be sufficient to pay principal, premium if any, and interest due on said pollution control revenue bonds. The rate of interest will be negotiated at a private sale of the bonds between the City and the underwriters.

The Company proposes subject to obtaining a favorable Revenue Ruling from the IRS, to enter into a Loan Agreement with the City of Montrose, Iowa for financing by the City's issuance of Industrial Development Revenue Bonds of the Company's acquisition of certain unit train coal cars at a cost of approximately $4.5 million. In the event such Revenue Ruling is not timely and favorably forthcoming, the Company proposes to enter into a conditional sales agreement or other financing arrangement to acquire such cars, such alternative financing not to exceed $4.5 million. The costs and interest rates of such acquisition are not known at present.

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 sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 27, 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. 79-8417 Filed 3-20-79; 8:45 am]

[6450—01—M]

[Docket No. ES79-30]

INTERSTATE POWER CO.

Application

MARCH 12, 1979.

Take notice that on February 28, 1979, Interstate Power Company (Applicant) filed an application with the Commission, pursuant to Section 204 of the Federal Power Act, for authorization to negotiate a proposed exchange of old Preferred Stock, par value $18,300,000, under a recapitalization plan and to negotiate the private placement of up to $10 million of new Preferred Stock. Applicant is incorporated under the laws of the State of Delaware, with its principal business office in Dubuque, Iowa, and is engaged primarily in the electric utility business in Iowa, Minnesota, and Illinois.

The net proceeds from the sale of the new Preferred Stock will provide additional funds for construction and for other corporate purposes.

Any person desiring to be heard, or to make any protest with reference to the application should on or before March 27, 1979, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8439 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. ES79-29]

IOWA ELECTRIC LIGHT & POWER CO.

Notice of Application

MARCH 12, 1979.

Take notice that on February 23, 1979, the Iowa Electric Light and Power Company (Applicant) filed an application with the Federal Energy Regulatory Commission seeking an order pursuant to Section 204 of the Federal Power Act authorizing the issuance of short-term notes in the aggregate principal amount of $75,000,000. Applicant is incorporated under the laws of the State of Iowa and is authorized to do business in the States of Iowa, Minnesota, Colorado and Nebraska with its principal business office at Cedar Rapids, Iowa. Applicant is engaged primarily in the generation, transmission and sale at retail of electric energy in 55 counties in the State of Iowa.

The notes to be issued to commercial banks and/or commercial paper dealers will have a term not in excess of one year with a final maturity date of not later than December 31, 1981. The notes issued as commercial paper will bear the rate of interest then in effect for such commercial paper of like term and quality and the notes issued to banks will bear interest based on the prime rate. The purpose for which the said notes are to be issued is for the company's continuing construction program and for other corporate purposes.

Any person desiring to be heard or to make protest with reference to this Application should on or before March 30, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The Ap-

plication is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8418 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-141]

KANSAS CITY POWER & LIGHT CO.

Order Accepting Rate Changes, Denying Requests for Waiver of Notice Requirement, Denying Request for Suspension and Granting Intervention

MARCH 13, 1979.

On January 10, 1979 Kansas City Power & Light Company (KCPL) tendered for filing superseding Service Schedules providing for increased rates for firm power sales to the Cities of Baldwin City, Garnett, and Osawatomie, Kansas, and the City of Carrollton, Missouri (Cities). KCPL has also proposed changes in the design of its billing demand ratchets.[1]

The proposed rate schedules supplement the Cities' Municipal Participation Agreements with KCPL which provide for various interchange services in addition to firm power. In its transmittal letter KCPL states that the tendered rate schedules, each designated C-MPA-4, supersede and replace the C-MPA-3 schedules for Baldwin City, Garnett and Carrollton, and the C-MPA-2A rate schedule for Osawatomie. The proposed rates specify a demand charge of $4.59 per kW per month, a transformation charge of 20 cents per kW per month for deliveries below 34.5 kV, an energy charge of 9.5 mills per kWh, and a fuel adjustment clause.

KCPL states that there exists good cause for the waiver of our 60 day notice requirement [2] and therefore requests that the proposed rates be made retroactively effective as of May 1, 1978. KCPL explains the lateness of its filing is due to the fact that its management employees who normally process rate filings were on assignment in the company's operating departments during a strike of 1200 of its 2600 employees which began July 1, 1978 and ended November 16, 1978.

Notice of KCPL's filings was given on January 19, 1979, with protests or petitions to intervene due on or before February 12, 1979. On February 12, 1979, the City of Osawatomie filed a Protest, Petition to Intervene and Request for Suspension. On February 23, 1979, KCPL filed an Answer to Osawatomie's Protest.

KCPL states that the tendered schedules provide rates and charges corresponding to those in effect since January 31, 1978, under a settlement agreement filed with the Commission on March 2, 1978, and approved by letter order dated June 2, 1978, in Docket No. ER77-522. KCPL asserts that the service to the Cities is similar to its service to other customers which purchase full requirements under rates in the settlement agreement. KCPL further asserts in its January 10, 1979, filing that the Cities agreed the rate level for service to them would be subject to the Commission's acceptance of the settlement agreement and the instant filing. However, in its Answer of February 23, 1979, KCPL merely asserts that its discussion with Osawatomie in April 1978 centered on the ER77-522 settlement rates of $4.59 per kW per month and 9.5 mills per kWh.

The relationship between Cities' purchases and the settlement rates from Docket No. ER77-522 is now relevant only to Osawatomie. The other Cities have not purchased firm power since May 1, 1978. In April 1978, pursuant to its Municipal Participation Agreement, Osawatomie requested KCPL to provide it with 2400 kW of firm power and energy for a 12-month period beginning May 1, 1978, to allow the City to overhaul two of its diesel generators. By letter dated April 24, 1978, KCPL agreed to provide the service as requested. The proposed rates would increase revenues from Osawatomie for its one-year 2400 kV purchase about $48,000.

While KCPL states the proposed C-MPA-4 rate schedule with the $4.59 per kW per month demand charge is intended to replace a C-MPA-2A rate schedule and a $3.71 per kW per month demand charge, Osawatomie states that KCPL has not filed a C-MPA-2A rate schedule with a $3.71 per kW demand charge applicable to the City. Rather, Osawatomie maintains the proposed rate schedule would replace a C-MPA-2 rate schedule and a $3.46 per kW per month demand charge (less 20 cents for deliveries at 69 kv).[3]

Osawatomie states in its Protest that it has never consented to a retroactive application of any increase in its rate or agreed that the rates for its 2,400 kW one-year purchase are subject to this Commission's acceptance of the settlement agreement in Docket No. ER77-522 and of the instant filing. Osawatomie contends that the language of its C-MPA-2 firm power rate schedule precludes retroactive application of any rate change. The rate schedule provides:

> "Effective Term:
> This Schedule C-MPA-2 shall be effective as of the Operative Date of the said Municipal Participation Agreement to which it is attached and shall remain and continue in effect until superseded by a substitute schedule *tendered* by the Company and *accepted for filing* by the governmental regulatory agencies having jurisdiction." (emphasis added)

Osawatomie also notes it was not a party to the rate proceeding in Docket No. ER77-522.

Osawatomie requests that the proposed rates be suspended for two months to cover the contract period, ending April 1979, for its 2,400 kw purchase of power. However, Osawatomie does not protest the level of the proposed rates and does not provide support for its suspension request.

Upon our review of all the submittals we shall accept the proposed rates for filing to be effective March 12, 1979, 60 days after filing. There is no basis for granting KCPL's request that we waive our 60 day notice requirement and make the proposed rates effective seven months before the date of filing. Thus, we deny KCPL's waiver request. Similarly, we deny Osawatomie's request for a two month suspension of the proposed rates.

Our review of the submittals also indicates the proposed $4.59 demand rate will supersede and replace the currently applicable $3.46 per kw per month rate for Osawatomie. The $3.46 rate is specified in both KCPL's C-MPA-2A rate schedule filed with the Commission on January 2, 1976 in Docket No. ER76-435, and the C-MPA-2 rate schedule filed September 17, 1975 in Docket No. ER76-131.[4]

We also note that KCPL's rate schedules contain a tax adjustment clause. KCPL is hereby advised that any adjustment which it may contemplate pursuant to the clause will have to be filed as a change in rates under Section 35.13 of our Rules and Regulations. It is our regulatory policy that such tax clauses may not serve as a basis for automatic changes in rates. *See* Order in *Boston Edison Company*, Docket No. ER78-304, issued May 30, 1978.

The Commission orders: (A) KCPL's proposed rate schedules, tendered for filing on January 10, 1979, are accepted for filing and permitted to become effective March 12, 1979.

(B) KCPL's request for waiver of our 60 day notice requirement is denied as good cause has not been shown.

[1] *See* Attachment A for Rate Schedule designations.

[2] *See*, Changes in Notice Requirements Part 35—Filing of Rate Schedules, January 2, 1979.

[3] The demand component of the present rates for Baldwin City and Carrollton is $3.71 per kw per month and $3.74 per kw per month for Garnett. It appears from the filings of KCPL and Osawatomie that the company has billed the City at a rate based on a demand charge of $3.71 per kw per month.

[4] We note that the "Effective Term" provision of the C-MPA-2 schedule, *supra* at 3, is identical to that contained in the C-MPA-2A schedule.

(C) The City of Osawatomie, Kansas, is hereby permitted to intervene subject to the Rules and Regulations of the Commission: *Provided, however,* that the participation of this intervenor shall be limited to matters set forth in their petitions to intervene; and *Provided, further,* that the admission of this intervenor shall not be construed as recognition by the Commission that it might be aggrieved because of any order or orders by the Commission entered in this proceeding.

(D) Osawatomie's request for a two-month suspension of the proposed rate schedule is denied.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

ATTACHMENT A—KANSAS CITY POWER & LIGHT COMPANY, Docket No. ER79-141, RATE SCHEDULE DESIGNATIONS

Filed: January 10, 1979
Dated: Undated
Other Parties: (1) Baldwin City, (2) Garnett, and (3) Osawatomie, Kansas; (4) Carrollton, Missouri

Service Schedule C-MPA-4 for Firm Power Service

(1) Supplement No. 7 to Rate Schedule FERC No. 78 (Supersedes Supplement No. 3 thereto).
(2) Supplement No. 7 to Rate Schedule FERC No. 85 (Supersedes Supplement No. 3 thereto).
(3) Supplement No. 7 to Rate Schedule FERC No. 77 (Supersedes Supplement No. 3 thereto).
(4) Supplement No. 7 to Rate Schedule FERC No. 86 (Supersedes Supplement No. 3 thereto).

[FR Doc. 79-8449 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Project No. 2890]

KINGS RIVER CONSERVATION DISTRICT

Application for Major License

MARCH 9, 1979.

Take notice that on November 28, 1978, an application for a major license was filed under the Federal Power Act (16 U.S.C. §§ 791(a)-825(r) by the Kings River Conservation District, California, for the Dinkey Creek Project No. 2890. The proposed project would be located on Dinkey Creek, a tributary of the Kings River in Fresno County, near the cities of Fresno, Hanford, and Visalia, California. The project would affect lands of the United States within the Sierra National Forest. Correspondence regarding the application should be sent to: Mr. Jeff L. Taylor, General Manager-Chief Engineer, Kings River Conservation District, 4886 East Jensen Avenue, Fresno, California 93725; and International Engineering Company, Inc., 220 Montgomery Street, San Francisco, California 94104.

Applicant proposes to construct a hydroelectric project with an installed capacity of 120 megawatts (MW). The project would consist of a 380-foot high, zoned compacted rockfill dam with a reinforced concrete upstream face, having a crest length of 1,750 feet at elevation 5,710 feet mean sea level (m.s.l.), impounding a reservoir with a storage capacity of about 95,000 acre-feet with a surface area of about 950 acres. A spillway would be constructed at the left abutment of the dam and would consist of a 500-foot long, ungated concrete crest section (elevation 5,710), and a 75-foot wide, 1,000-foot long unlined chute.

Two power plants would be constructed, each with a 60-MW unit.

Power Plant No. 1—to be located 5.7 miles downstream from the main dam on the right bank of Dinkey Creek at elevation 3,484 (normal maximum tail water)—would be connected to the intake at the Dinkey Creek Reservoir by a 28,250-foot long power tunnel 10 feet in diameter and a 1,250-foot long steel penstock.

Power Plant No. 2—to be located on the right bank of the Kings River approximately 1,000 feet upstream from the North Fork-Dinkey Creek confluence at elevation 1,264 feet m.s.l. (normal maximum tail water)—would receive water from Power Plant No. 1 through a 18,580-foot long, 10-foot diameter power tunnel and a 1,500-foot long steel penstock.

To acquire more water for power generation, Applicant would construct four diversion weirs. The uppermost diversion weir (Deer Creek Diversion Weir) would be located at elevation 5,900 feet m.s.l., 2.5 miles upstream from the Deer Creek-Dinkey Creek confluence. Water from the Deer Creek Diversion Weir would flow through the 16,610-foot long Deer Creek Tunnel to the Bear Creek Channel at a point 2,100 feet upstream from the Bear Creek-Laurel Creek confluence. One thousand feet below this point would be the Bear Creek Diversion Weir at elevation 5,745 feet m.s.l. An 800-foot long tunnel would extend from the Bear Weir to a point on Laurel Creek 500 feet from the Bear Creek-Laurel Creek confluence. At this location, another diversion weir would be constructed. From this weir, a 10-foot diameter 3,590-foot-long tunnel would carry the flow of Laurel, Deer and Bear Creeks to a point on Dinkey Creek Reservoir, approximately 2,000 feet north of the left abutment of the dam. The fourth diversion weir would be located immediately downstream from Power Plant No. 1 at elevation 3,470 feet m.s.l. This weir would divert water from Dinkey Creek to Power Tunnel No. 2.

Applicant would construct seven access roads, including two bridges, for the project, totalling about 7 miles in length. A 2.5-mile section of the relocated McKinley Grove Road, including a new bridge across Dinkey Creek, would also be constructed. Transmission facilities would be provided by the power purchasers and are not included as part of this project. It is anticipated, however, that the project would tie in with an existing transmission line corridor approximately four miles away.

Applicant states that the power to be developed by this project would be utilized by the State of California for the State Water Project or by the Pacific Gas & Electric Company System.

Recreation development would include two picnic areas, a 50-unit campground, public use cabins, a boat ramp, and parking facilities.

Applicant states that impoundment of flows from Dinkey, Bear, Laurel and Deer Creeks will reduce the availability of habitat to the fishery in these watercourses. Applicant states that the loss of fishery resources, if any, would be mitigated by a trout stocking program.

Development of the Dinkey Creek Project is expected to remove approximately 1,124 acres of wildlife habitat. Applicant states that habitat losses will be mitigated through acquisition of other key wildlife habitat. Additional wildlife mitigation would consist of habitat manipulation efforts (such as creation of scenic and wildlife preservation areas). While some deer trails would be disrupted, Applicant will encourage deer and other wildlife to cross the crest of the dam.

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 May 4, 1979. The Commission's address is: 825 N. Capitol Street, N.E., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8435 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket RP79-43]

MICHIGAN WISCONSIN PIPE LINE CO.

Notice of Proposed Changes in F.P.C. Gas Tariff

MARCH 12, 1979.

Take notice that on March 1, 1979, in accordance with the FERC's Order No. 10-A at Docket No. RM78-23, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) tendered for filing a proposed increase in its resale rates of 3.60¢ to cover the estimated impact of the Louisiana First Use Tax (LFUT) for the month of April, 1979. In addition, per terms of the same order, Michigan Wisconsin also filed a temporary LFUT tracking provision to be effective May 1, 1979.

Michigan Wisconsin states that in the event the Commission grants it the waiver requested on January 25, 1979, which would defer the first tracking date to May 1, 1979 the April 1 requested increase would be cancelled.

To accomplish the April 1, 1979 increase Michigan Wisconsin filed two tariff sheets, one which reflects a general rate increase also filed on March 1, 1979 and the second which adjusts currently effective rates in the event the general rate increase filing is suspended.

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, N.W., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10) All such petitions or protests must be filed on or before March 22, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8419 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket RP79-39]

MICHIGAN WISCONSIN PIPE LINE CO.

Proposed Changes in FERC Gas Tariff

MARCH 9, 1979.

Take notice that on March 1, 1979, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1 and First Revised Volume No. 2 to become effective April 1, 1979. Michigan Wisconsin states that the proposed changes result in an increase in revenues of approximately $42 million based on sales for the twelve months ended November 30, 1978, as adjusted, at rates currently effective. The increase in charges above the current rates after adjusting for surcharges which will expire April 30, 1979 is approximately $84 million or 6.4%.

Michigan Wisconsin further states that the principal reasons for the proposed rate changes are: (1) substantial investments in facilities related to gas supply acquisitions and continued storage development; (2) increased costs of capital; (3) increased levels of operation and maintenance expenses; and (4) a reduction in the statutory Federal income tax rate from 48% to 46%.

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, N.W., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests must be filed on or before March 20, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8402 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-208]

MID-CONTINENT AREA POWER POOL

Notice of Filing

MARCH 12, 1979.

Take notice that the Mid-Continent Area Power Pool on February 15, 1979, tendered for filing Amendment No. 7 to the Pool Agreement, proposed to be effective May 1, 1979.

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, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rule of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before March 23, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8420 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP79-32]

MID LOUISIANA GAS CO.

Proposed Change in Rates

MARCH 12, 1979.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on February 26, 1979, tendered for filing as a part of First Revised Volume No. 1 of its FERC Gas Tariff, First Revised Sheet No. 3b, Original Sheet Nos. 26e and 26f.

The proposed tariff pages set forth the procedure by which Mid Louisiana will calculate the impact of the Louisiana First Use Tax and the surcharge rate to become effective April 1, 1979. First Revised Sheet No. 1 3b will set an initial rate of 1.52¢ per Mcf for Rate Scheules G-1, SG-1 and I-1. Mid Louisiana states that the filing is being made in accordance with Commission Order No 10-A, and that copies of the filing have been served on interested customers and state commissions.

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 or protests should be filed on or before March 22, 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. 79-8440 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. E-9502]

MINNESOTA POWER & LIGHT CO.

Compliance Filing

MARCH 9, 1979.

Take notice that Minnesota Power & Light Company on November 24, 1978 tendered for filing a revised cost of service and Rate Schedule Nos. 92F and 93F in compliance with Opinions 20 and 20A.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such protests should be filed on or before March 21, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8403 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-207]

MISSISSIPPI POWER CO.

Notice of Filing of Agreement

MARCH 12, 1979.

Take notice that Mississippi Power Company (MPC) on February 21, 1979, tendered for filing Supplement Agreement with Coast Electric Power Association (CEPA) under its FERC Electric Tariff Original Volume No. 1. MCP indicates that this agreement provides for an increase in the delivery voltage and contracted capacity at the New Saucier delivery point of CEPA on or about January 1, 1979. To effect these changes, MPC and CEPA have entered into a supplemental agreement under the Company's FERC Electric Tariff Original Volume No. 1 (Second Revised Sheet No. 14).

MPC agrees to deliver up to a maximum of 2,000 kilowatts at 115,000 volts at the primary terminals of the 115 KV switch located inside Customer's substation located adjacent to Company's Gulfport-Hattiesburg 115 KV line in the NE ¼ of SE ¼ of SE ¼ of Section 23, Township 5 South, Range 12 West, Harrison County, Mississippi.

MPC states that this supplement may not be terminated until January 1, 1984, or until five years after the date the power systems of parties are actually connected, whichever is later.

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, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 23, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8421 Filed 3-20-79; 8:45 am]

[6450—01—M]

[Docket No. ER79-212]

MONONGAHELA POWER CO. AND WEST PENN POWER CO.

Proposed Changes in Rates and Charges

MARCH 12, 1979.

Take notice that Allegheny Power Service Corporation (APSC) on February 25, 1979 tendered for filing on behalf of Monongahela Power Company (Monongahela) and West Penn Power Company (West Penn), two of the electric utilities which make up the integrated Allegheny Power System, Amendment No. 6 dated December 15, 1978 to the Interchange Agreement dated October 17, 1968 between Monongahela, West Penn and the Ohio Edison Company and Pennsylvania Power Company (Ohio Edison) designated Monongahela Rate Schedule FPC No. 29, West Penn Rate Schedule FPC No. 27, Ohio Edison Rate Schedule FPC No. 69, and Pennsylvania Power Rate Schedule FPC No. 20.

According to APSC Amendment No. 6 provides for an increase in the demand charge for short-term power from $0.60 to $0.70 per kilowatt week and an increase in the charge for short-term power obtained by the supplying party from another system from $0.15 to $1.175 to become effective May 1, 1979. Applicants state that since short-term power transactions are scheduled from time to time as load capacity conditions on the systems of the parties dictate it is impossible to estimate the increase in revenues which would result from Amendment No. 6.

Any person desiring to be heard or 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 Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before March 23, 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 inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8422 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP77-98]

NATURAL GAS PIPELINE CO. OF AMERICA

Certification of Revised Settlement Agreement

MARCH 9, 1979.

Take notice that on February 9, 1979, Presiding Administrative Law Judge Sherman P. Kimball certified to the Commission a revised settlement agreement in this proceeding. An earlier settlement proposal (Exhibit 189) and the supporting evidentiary record were certified to the Commission on December 7, 1978. Two contested issues were also certified to the Commission, with a request to omit the initial decision on the contested issues. By order issued December 27, 1978, the Commission denied the request to omit the initial decision and remanded the entire record to the Presiding Judge.

Minor modifications have been made to the settlement agreement previously certified. A revision in Article IV reflects the fact that the settlement will be certified to the Commission separately from the reserved issues. Articles IV and XXII have been changed to provide for the interim refunds after approval of the revised settlement agreement, and to provide for additional refunds after the Commission's decision on the contested issues, if necessary.

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 20, 1979. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the

Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8404 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP79-38]

NATURAL GAS PIPELINE CO. OF AMERICA

Proposed Changes in FERC Gas Tariff

MARCH 12, 1979.

Take notice that on February 28, 1979, Natural Gas Pipeline Company of America, (Natural) tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1. Natural states that the proposed changes will make effective Thirty-eighth Revised Sheet No. 5 and Original Sheet Nos. 147 through 149.

Natural states that Thirty-eighth Revised Tariff Sheet No. 5, reflects a unit rate adjustment to recover, subject to refund, Natural's payments of the State of Louisiana First Use Tax during the period April 1 through August 31, 1979. The unit rate adjustment was calculated pursuant to the provisions of Section 154.38(h) of the Commission's Regulations as amended by Order No. 10-A, Docket No. RM78-23, issued December 20, 1978. Original Sheets Nos. 147 through 149 contain a temporary tracking clause, designed in accordance with the provisions of amended Section 154.38(h), to provide for the semi-annual recovery of the Louisiana First Use Tax under deferred accounting procedures.

Copies of this filing were served upon the company's jurisdictional customers and interested state commissions.

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, 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 or protests should be filed on or before March 22, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8441 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP79-41]

NORTHERN NATURAL GAS CO.

Notice of Proposed Addition to FERC GAS Tariff

MARCH 12, 1979.

Take notice that Northern Natural Gas Company (Northern), on March 1, 1979, in compliance with Commission Order No. 10-A issued in the above proceeding, submitted for filing tariff sheets incorporating a provision for the tracking of the Louisiana First Use Tax payments, in its FERC Gas Tariff, Volume No. 1 and Volume No. 2. Northern also proposes a rate adjustment of 1.32¢ per Mcf in the commodity rate effective April 1, 1979 to recover the cost of such tax.

The Tariff Sheets are:

Third Revised Volume No. 1

Original Sheet Nos. 74a and 74b.
First Revised Sheet 74.
Eighteenth Revised Sheet 4a.

Original Volume No. 2

Original Sheet Nos. 1m, 1n, and 1o.
First Revised Sheet No. 1L.
Eighteenth Revised Sheet No. 1c.

Northern states that copies of its filing were served on all jurisdictional customers and affected State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 22, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8423 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP72-154]

NORTHWEST PIPELINE CORP.

Change in Rates Pursuant to Purchased Gas Cost Adjustment

MARCH 12, 1979.

Take notice that Northwest Pipeline Corporation, on February 15, 1979, tendered for filing a proposed change in rates applicable to service rendered under rate schedules affected by and subject to Article 16, Purchased Gas Cost Adjustment Provision ("PGAC"), contained in its FERC Gas Tariff, Original Volume No. 1. Such change in rates is for the purpose of reflecting changes in Northwest's cost of purchased gas which will become effective by April 1, 1979, applied to volumes purchased for the twelve (12) month period ending December 31, 1978, as adjusted, and its change in unrecovered purchased gas costs since Northwest's prior semiannual PGAC filing dated August 16, 1978.

The current PGAC adjustment, for which notice is given herein, aggregates to a net increase of .904¢ per therm in all rate schedules affected by and subject to the PGAC. The annualized change in Northwest's purchased gas cost aggregates an increase of $24,752,696. Northwest proposes to recover, through a surcharge, the adjusted balance of $19,126,309 in its FERC Account No. 191, as of December 31, 1978. The proposed change in rates would increase Northwest's annual revenues from jurisdictional sales and service by $43,558,452.

Northwest is concurrently filing notices of change in rates applicable to the currently effective Section 13.4, contained in its Original Volume No. 1 Tariff. In accordance with Articles 13.4, Change in Rates to Reflect Curatilment Credits, contained in the aforementioned tarrif, the current rate adjustment under the Demand Charge Credit Adjustment provision is to become effective on Northwest's PGAC adjustment date. Accordingly, both rate adjustments are reflected on the tendered Twenty-second Revised Sheet No. 10, which is proposed to become effective on April 1, 1979.

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, Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 22, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8424 Filed 3-20-79; 8:45 am]

[6450-01-M]

NORTHWEST PIPELINE CORP.

Notice of Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

MARCH 12, 1979.

On March 7, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

STATE OF NEW MEXICO, ENERGY AND MINERALS DEPARTMENT, OIL CONSERVATION DIVISION

FERC Control Number: JD79-687.
API Well Number: 3003907884.
Section of NGPA: 108.
Operator: Northwest Pipeline Corporation.
Well Name: S/J 30-5 Unit No. 35.
Field: Blanco.
County: Rio Arriba.
Purchaser: Northwest Pipeline Corporation.
Volume: 19 MMcf.

FERC Control Number: JD79-688.
API Well Number: None.
Section of NGPA: 108
Operator: W. K. Byrom.
Well Name: Cooper G. 3.
Field: Eumont Queen.
County: Lea.
Purchaser: El Paso Natural Gas Company.
Volume: 20 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission within fifteen (15) days of the date of publication of this Notice. Please reference the FERC Control Number in any correspondence concerning a determination.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8428 Filed 3-20-79; 8:45 am]

[6450-01-M]

PALMER OIL & GAS CO.

Notice of Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

MARCH 12, 1979.

On March 5, 1979, the Federal Energy Regulatory Commission received notice from the State of Utah, Board of Division of Oil, et al. of a determination pursuant to 18 CFR 274.104 and Section 103 of the Natural Gas Policy Act of 1978 applicable to:

FERC Control Number: JD79-637.
API Well Number: 4901930451.
Operator: Palmer Oil & Gas Company.
Well Name: State No. 32-1.
Field: San Arroyo.
County: Grand.
Purchaser: Natural Gas Pipeline Company of America.
Volume: 256 MMcf.

The application for determination in this matter together with a copy or description of other materials in the record on which such determination was made is available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to this final determination may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before April 5, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8426 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP79-34]

PANHANDLE EASTERN PIPE LINE CO.

Change in Tariff

MARCH 12, 1979.

Take notice that on February 28, 1979 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing Twenty-Eighth Revised Sheet No. 3-A, Fifth Revised Sheet No. 3-B and Original Sheet No. 43-6 to its FERC Gas Tariff, Original Volume No. 1. An effective date of April 1, 1979 is proposed.

Panhandle submits that these revised tariff sheets are filed in accordance with Commission Order No. 10-A issued December 20, 1978 in Docket No. RM78-23 and pursuant to § 154.38(h) of the Commission's Regulations. These revised tariff sheets contain (1) rates which reflect the estimated costs attributable to the Louisiana First Use Tax for the period April 1, 1979 through August 31, 1979, and (2) the temporary Louisiana First Use Tax tracker provision.

Panhandle states that copies of this filing have been served on all jurisdictional customers and applicable state regulatory agencies.

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, 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 or protests should be filed on or before March 22, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8442 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-213]

PUBLIC SERVICE COMPANY OF INDIANA, INC.

Proposed Tariff Change

MARCH 12, 1979.

Take notice that Public Service Company of Indiana, Inc. on February 23, 1979, tendered for filing pursuant to the Service Agreement between the City of Logansport, Indiana, and Public Service Company of Indiana, Inc. a notification of its intention to terminate such Service Agreement on May 22, 1980.

Such notice of intention to terminate is in accordance with Paragraph 3 of the Service Agreement, according to Applicant.

A copy of the filing was served upon the City of Logansport, Indiana, according to Applicant.

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, 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 should be filed on or before March 23, 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 the filing are available for public inspection at the Federal Energy Regulatory Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8429 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP79-45]

SEA ROBIN PIPELINE CO.

Filing of Revised Tariff Sheets

MARCH 12, 1979.

Take notice that on March 1, 1979, Sea Robin Pipeline Company (Sea Robin) tendered for filing as a part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective on April 1, 1979:

Original Sheet No. 8
Original Sheet No. 9
Original Sheet No. 10
Original Sheet No. 11
Twentieth Revised Sheet No. 4

These tariff sheets are filed pursuant to Commission Order Nos. 10 and 10-A and contain provisions whereby Sea Robin's rates will be adjusted to recover tax expenditures under the Louisiana First Use Tax and reflect Sea Robin's initial First Use Tax Adjustment to recover estimated tax expenditures from April 1, 1979 to June 30, 1979.

Copies of the revised tariff sheets and supporting data are being mailed to Sea Robin's jurisdictional customers and interested state commission.

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, 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 or protests should be filed on or before March 22, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8443 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP79-48]

SOUTHERN NATURAL GAS CO.

Proposed Changes in FERC Gas Tariff

MARCH 12, 1979.

Take notice that Southern Natural Gas Company (Southern) on March 1, 1979, tendered for filing proposed changes to its FERC Gas Tariff, Sixth Revised Volume No. 1, to become effective on April 1, 1979, subject to refund. Such filing is for the purpose of including a tariff provision to permit special rate filings to reflect the Louisiana First Use Tax as provided for by the Commission's Order Nos. 10 and 10-A and filing of the initial rate adjustment pursuant to such provision. The initial rate adjustment will increase Southern's commodity and one-part rates by 2.229¢ per Mcf.

Copies of the filing are being served upon the Company's jurisdictional customers and interested State commissions.

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 22, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8444 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RI79-23]

SOUTHERN UNION GATHERING CO.

Order Granting Rehearing for Purposes of Further Consideration

MARCH 13, 1979.

On December 11, 1978, Southern Union Gathering Company (Southern Union) filed, *inter alia*, two notices of change in rate, designated as Supplement Nos. 22 and 23 to its FERC Gas Rate Schedule No. 1, proposing to increase the gathering charge from 11.2743 cents to 19.2740 cents per Mcf at 14.73 psia for sales of natural gas to El Paso Natural Gas Company from the Kutz and San Juan Basin Areas, New Mexico. By order of January 17, 1979, the Commission, *inter alia*, rejected such rate filings. On February 9, 1979, Southern Union filed, *inter alia*, an application for rehearing of the January 17 order.

The Commission orders: Rehearing of the Commission's order herein issued January 17, 1979, is hereby granted solely for the purpose of affording further time for consideration of Southern Union's application for rehearing. Since this order is not a final order on rehearing, no responses to the order will be entertained by the Commission in accordance with the terms of § 1.34(d) of the Commission's Rules of Practice and Procedure.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc. 79-8450 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP72-121 PGA79-1]

SOUTHWEST GAS CORP.

Change in Rates Pursuant To Purchased Gas Cost Adjustment

MARCH 9, 1979.

Take notice that on February 28, 1979, Southwest Gas Corporation ("Southwest") tendered for filing Third Revised Sheet No. 10 constituting the Statement of Rates of its FERC Gas Tariff, Original Volume No. 1. According to Southwest, the purpose of this filing is to adjust rates of Southwest under its Purchased Gas Adjustment Clause in Section 9 of the General Terms and Conditions contained in said tariff, as a result of changes in rates from its supplier, Northwest Pipeline Corporation ("Northwest"), effective April 1, 1979. The proposed effective date for Southwest's proposed change in rates is April 1, 1979.

Southwest states that copies of the filing have been mailed to the Public Service Commission of Nevada, the California Public Utilities Commission, Sierra Pacific Power Company and CP-National (formerly California-Pacific Utilities Company).

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, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 20, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8405 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. ER79-209]

SOUTHWESTERN PUBLIC SERVICE CO.

Notice of Rate Filing

MARCH 12, 1979.

Take notice that on February 22, 1979, Southwestern Public Service Company (Southwestern) of Amarillo, Texas, tendered for filing a new contract and rate schedules for electric power service to the City of Tucumcari, New Mexico (Tucumcari). This service would be rendered through Southwestern's 115 KV transmission system to its connection with Tucumcari, according to Southwestern.

Southwestern states that Tucumcari is a partial requirements customer and the new contract provides for Firm Power Service, Emergency Service and Non-Firm Energy Service to supplement Tucumcari's generation of electricity.

Southwestern requests waiver of the Commission's notice requirements to allow for an effective date of September 1, 1979.

Any person desiring to be heard or to protest said filing shall file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, protests or petitions to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests or petitions to intervene must be filed on or before March 23, 1979. All protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8430 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP74-41 (PGA79-2) and (DCA79-1)]

TEXAS EASTERN TRANSMISSION CORP.

Proposed Changes in FERC Gas Tariff

MARCH 9, 1979.

Take notice that Texas Eastern Transmission Corporation on February 28, 1979, tendered for filing proposed changes in its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets:

Second Substitute Forty-sixth Revised Sheet No. 14
Second Substitute Forty-sixth Revised Sheet No. 14A
Second Substitute Forty-sixth Revised Sheet No. 14B
Second Substitute Forty-sixth Revised Sheet No. 14C
Second Substitute Forty-sixth Revised Sheet No. 14D

These tariff sheets are being issued in substitution of tariff sheets filed by Texas Eastern on December 18, 1978 pursuant to Texas Eastern's PGA and DCA tariff provisions. By order dated February 2, 1979 the Commission accepted such December 18, 1978 filing to be effective February 1, 1979 subject to modification for changes in pipeline supplier rates and elimination of costs from producer supplier rates which those suppliers are not authorized to charge pursuant to the NGPA and the regulations thereunder. Texas Eastern states that the above referenced tariff sheets reflect changes in Texas Eastern's pipeline supplier rates as follows: (i) United Gas Pipe Line Company's revised rates filed January 16, 1979; (ii) Southern Natural Gas Company's revised rates filed December 15, 1978 and (iii) Texas Gas Transmission Corporation's revised rates filed February 16, 1979. In addition, Texas Eastern states that these tariff sheets do not reflect any change in costs from producer suppliers. However, Texas Eastern points out that in those cases where contracts with producer-suppliers contain area rate clauses it has reflected the maximum lawful prices prescribed in Section 104 of the Natural Gas Policy Act of 1978 subject to reduction and refund depending on the outcome of the rulemaking pending before the Commission in Docket No. RM79-22. Finally, Texas Eastern states that the above referenced tariff sheets reflect the reduction in the federal income tax rate from 48% to 46%.

The proposed effective date of the above tariff sheets is February 1, 1979.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

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, DC 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 21, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8406 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP79-40]

TEXAS EASTERN TRANSMISSION CORP.

Proposed Changes in FERC Gas Tariff

MARCH 12, 1979.

Take notice that Texas Eastern Transmission Corporation on March 1, 1979, tendered for filing proposed changes in its FERC Gas Tariff, Fourth Revised Volume No. 1, the following sheets:

Forty-eighth Revised Sheet No. 14
Forty-eighth Revised Sheet No. 14A
Forty-eighth Revised Sheet No. 14B
Forty-eighth Revised Sheet No. 14C
Forty-eighth Revised Sheet No. 14D
Original Sheet No. 118
Original Sheet No. 119
Original Sheet No. 120

The above tariff sheets are filed in complaince with FERC Order No. 10-A and are expressly made subject to and without prejudice to Texas Eastern's appeal from Order No. 10-A presently pending in the United States Court of Appeals for the Fifth Circuit. These tariff sheets contain increased rates to track Texas Eastern's estimated payments of Louisiana First Use Tax and a tariff provision by which Texas Eastern will track such tax payments coincident with its semiannual PGA trackers.

The proposed effective date of the above tariff sheets is April 1, 1979.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

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, N.E., Washington, DC 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 22, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8445 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP79-31]

TEXAS GAS TRANSMISSION CORP.

Proposed Changes in FPC Gas Tariff

MARCH 12, 1979.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on February 23, 1979, tendered for filing Fifth Substitute Twenty-Fourth Revised Sheet No. 7 and Original Sheet Nos. 108 and 109, to its FPC Gas Tariff, Third Revised Volume No. 1, to be effective April 1, 1979.

These sheets are being filed to reflect (1) the initial rate increase for the Louisiana First Use Tax (LFUT); and (2) the provisions for tracking and deferred accounting for the LFUT, all as provided for in Docket No. RM78-23, approved by Commission Order Nos. 10 and 10-A issued on August 28, 1978 and December 20, 1978, respectively.

Copies of the filings were served upon the company's jurisdictional customers and interested state commissions.

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 22, 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 proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8446 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP79-46]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Notice of Tariff Filing

MARCH 12, 1979.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following tariff sheets to its FERC Gas Tariff:

SECOND REVISED VOLUME NO. 1

Fourteenth Revised Sheet No. 12
Thirteenth Revised Sheet No. 15
Original Sheet No. 254
Original Sheet No. 255
Unnumbered Tariff Sheet Reserving Sheet Nos. 256 through 299

ORIGINAL VOLUME NO. 2

Twentieth Revised Sheet No. 121

Transco states that the purpose of this filing is to provide for the tracking of the State of Louisiana First Use Tax on Natural Gas (LFUT) during the pendency of litigation on the constitutionality of the LFUT. Original Sheet Nos. 254 through 255 contain a new Section 25 in Transco's General Terms and Conditions which set forth the procedures to be followed in the tracking of costs related to the LFUT. The remaining tariff sheets reflect the necessary rate changes in the affected rate schedules to be made effective April 1, 1979 pursuant to Section 25.

Transco further states that the Commission, in Docket No. RM78-23, issued Order No. 10 on August 28, 1978 and Order No. 10-A on December 20, 1978, which Orders amended Section 154.38 of the Commission's Regulations under the Natural Gas Act (Regulations) by adding a new Section 154.38(h) establishing procedures governing pipeline recovery of the LFUT and that this filing is being made under such new Section 154.38(h).

The Company states that copies of the filing have been mailed to each of its jurisdictional customers and interested State Commissions.

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, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 22, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8432 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP72-128 (PGA79-1)]

TRANSWESTERN PIPELINE CO.

Notice of Proposed Changes in FERC Gas Tariff

MARCH 19, 1979.

Take notice that Transwestern Pipeline Company (Transwestern) on March 1, 1979, tendered for filing as part of its FERC Gas TAriff, Second Revised Volume No. 1, the following sheets:

Twelfth Revised Sheet No. 5
Twelfth Revised Sheet No. 6

These sheets are issued pursuant to Transwestern's Purchased Gas Cost Adjustment provision as set forth in Section 19 of the General Terms and Conditions of its FERC Gas Tariff Second Revised Volume No. 1. This increase in Transwestern's rate reflects a Cost of Gas Adjustment to track increased purchased gas costs including increases due to the NGPA of 1978, and a Surcharge Adjustment to clear the balance of the Gas Cost Adjustment Account, as adjusted for NGPA costs in accordance with the Commission's Order No. 17 in Docket No. RM79-7.

The proposed effective date of the above tariff sheets is April 1, 1979.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

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, N.E., Washington, D.C., 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 C.F.C. 1.8, 1.10). All such petitions or protests should be filed on or before March 20, 1079.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8407 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP79-33]

TRUNKLINE GAS CO.

Change in Tariff

MARCH 12, 1979.

Take notice that on February 28, 1979 Trunkline Gas Company (Trunkline) tendered for filing Twenty-Seventh Revised Sheet No. 3-A, Original Sheet No. 21-M and Original Sheet No. 21-N to its FERC Gas Tariff, Original Volume No. 1. An effective date of April 1, 1979 is proposed.

Trunkline submits that these revised tariff sheets are filed in accordance with Commission Order No. 10-A issued December 20, 1978 in Docket No. RM78-23 and pursuant to § 154.38(h) of the Commission's Regulations. These revised tariff sheets contain 1) rates which reflect the estimated costs attributable to the Louisiana First Use Tax for the period April 1, 1979 through August 31, 1979, and 2) the temporary Louisiana First Use Tax tracker provision.

Trunkline states that copies of this filing have been served on all jurisdictional customers and applicable state regulatory agencies.

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, 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 or protests should be filed on or before March 22, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8447 Filed 3-20-79; 8:45 am]

[6450-01-M]

Docket Nos. RP 73-35 (PGA79-1) and RP78-11 (AP79-1)]

TRUNKLINE GAS CO.

Notice of Change in Tariff

MARCH 9, 1979.

Take notice that on February 14, 1979 Trunkline Gas Company (Trunkline) tendered for filing First Substitute Twenty-Sixth Revised Sheet No. 3-A to its FERC Gas Tariff, Original Volume No. 1. Trunkline submits that this substitute revised tariff sheet reflects a rate adjustment ordered by the Commission in its letter order dated January 26, 1979 in the subject dockets. An effective date of February 1, 1979 is proposed.

Trunkline states that copies of this filing have been served on all jurisdictional customers and applicable State regulatory agencies.

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 19, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8408 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No RA79-1]

UNION OIL CO.

Order Designating New Presiding Officer and Appointing Commission Designee

MARCH 13, 1979.

On December 27, 1978, the Commission appointed Seymour Spolter as the presiding officer in the above captioned proceedings. For reasons of administrative convenience and expediency, the designated presiding officer must be changed. Consequently, the Commission designates William P. Sweeney as the presiding officer.

The Commission further appoints the Director or the Deputy Director of the Office of Opinions and Review as the Commission's designees for the purpose of designating, if necessary, another person to act as the presiding officer in this proceeding.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc. 79-8457 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP79-44]

UNITED GAS PIPE LINE CO.

Filing of Revised Tariff Sheets

MARCH 12, 1979.

Take notice that on March 1, 1979, United Gas Pipe Line Company (United) tendered for filing as a part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective on April 1, 1979:

Original Sheet No. 74-L
Original Sheet No. 74-M
Original Sheet No. 74-N
Original Sheet No. 74-O
Forty-Eighth Revised Sheet No. 4

These tariff sheets are filed pursuant to Commission Order Nos. 10 and 10-A and contain provisions whereby United's rates will be adjusted to recover tax expenditures under the Louisiana First Use Tax and reflect United's initial First Use Tax Adjustment to recover estimated tax expenditures from April 1, 1979 to June 30, 1979.

Copies of the revised tariff sheets and supporting data are being mailed to United's jurisdictional customers and interested state commissions.

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, 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 or protests should be filed on or before March 22, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8448 Filed 3-20-79; 8:45 am]

[6450-01-M]

[Docket No. RP79-30]

UNITED GAS PIPE LINE CO.

Filing of Revised Tariff Sheet

MARCH 9, 1979.

Take notice that on February 22, 1979, United Gas Pipe Line Company (United) tendered for filing with the Federal Energy Regulatory Commission (Commission) as a part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet

No. 67, being part of the General Terms and Conditions. It is proposed that this tariff sheet become effective on April 1, 1979.

United states that such sheet has been modified to reflect, for purposes of computing interest charges on late payments from customers, the current rate of interest on pipeline refunds established by the Commission rather than a stipulated percentage as was previously utilized. United further states that copies of this filing will be mailed to all of its jurisdictional customers and interested state commissions.

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, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 21, 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-8409 Filed 3-20-79; 8:45 am]

[6450-01-M]

Office of Assistant Secretary for International Affairs

PEACEFUL USES OF ATOMIC ENERGY

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 Governments of Canada, Norway, Sweden, Switzerland, and the Agreement for Cooperation Between the Government of the United States of America and the International Atomic Energy Agency: Cooperation in the Peaceful Application.

The subsequent arrangements to be carried out under the above mentioned agreements involves approval of the following retransfers:

RTD/CA(NO)-1 Retransfer from Norway to Canada, 15,198g Urnaium, containing 525.2g U-235 and 24.1g Plutonium, for further irradiation experiments, post irradiation examinations, and subsequent storage and disposal.

RTD/EU(IAEA)-1 Retransfer from the International Atomic Energy Agency (IAEA), Vienna, Austria to the United Kingdom, 6 MTR core plates, containing 72g Uranium and 60g U-235, for core counting standards in the frame of MTR fuel element manufacture.

RTD/EU(SD)-26 Retransfer from Switzerland to Belgium, 188g Uranium, containing 175g U-235 and 44g Plutonium, for post-irradiation examination.

RTD/SW(EU)-100 Retransfer from West Germany to Sweden, 868.640 kgs Uranium, containing 27.788kgs U-235, for fuel elements for Ringhals 2 reactor.

RTD/SW(EU)-101 Retransfer from West Germany to Sweden, 49,700kgs Uranium, containing 1,172.920kgs U-235, for fuel for Forsmark II reactor.

RTD/SW(EU)-98 Retransfer from West Germany to Sweden 25,300kgs Uranium, containing 847.290kgs U-235, for fuel for Barsebaeck II reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the approval of these retransfers will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than April 5, 1979.

For the Department of Energy.

Dated: March 14, 1979.

HAROLD D. BENGELSDORF,
Director for Nuclear Affairs, International Programs.

[FR Doc. 79-8372 Filed 3-20-79; 8:45 am]

[6450-01-M]

MANDATORY PETROLEUM PRICE REGULATIONS

Delegation of Enforcement Authority to the State of New Jersey

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Delegation.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has delegated to the Governor of New Jersey the authority to enforce the provisions of 10 CFR Subpart F, Part 212, and ancillary provisions of DOE regulations, with respect to the pricing practices of independent retailers of gasoline in New Jersey.

EFFECTIVE DATE: March 21, 1979.

FOR FURTHER INFORMATION CONTACT:

William Webb (Office of Public Information), Room B-110, 2000 M Street, NW., Washington, D.C. 20461 (202) 634-2170

Leon Snead, Office of Enforcement Policy and Planning, Economic Regulatory Administration, Room 5204-C, 2000 M Street, NW., Washington, 20461 (202) 254-6990.

SUPPLEMENTARY INFORMATION:

I. Delegation of Authority and Letter to Governor of New Jersey.

II. Governor of New Jersey's Letter Requesting Authority from DOE.

Issued in Washington, D.C. on March 15, 1979.

DAVID J. BARDIN,
Administrator, Economic Regulatory Administration.

DEPARTMENT OF ENERGY DELEGATION ORDER NO. 0204-4-R1 TO THE GOVERNOR OF THE STATE OF NEW JERSEY

Pursuant to the authority vested in me as Administrator of the Economic Regulatory Administration (ERA) by the Department of Energy Organization Act (Pub. L. 95-91) and Delegation Order No. 0204-4 from the Secretary of Energy (delegating enforcement authority), there is hereby delegated to the Governor of New Jersey, in accordance with the provisions of the Emergency Petroleum Allocation Act of 1973 (Pub. L. 93-159), as amended, the authority vested in me by law to enforce the provisions of 10 CFR Subpart F, Part 212, and ancillary provisions of DOE regulations, with respect to the pricing practices of independent retailers of gasoline in New Jersey. The ancillary provisions are 10 CFR 210.61, 210.62, 210.92; and 10 CFR 212.128, 121.129.

The authority delegated herein to the Governor of New Jersey shall authorize him to:

A. Take all investigatory and administrative enforcement action which is available to the ERA under 10 CFR 210.91 and 10 CFR Part 205 of DOE regulations.

B. Further delegate this authority, in whole or in part, as may be appropriate.

In exercising the authority delegated by this Order, the delegate shall be governed by the rules and regulations of the DOE and the polices and procedures prescribed by the Secretary of Energy, the Administrator of the Economic Regulatory Administration, and the Assistant Administrator for Enforcement.

There is no delegation to the Governor of the State of New Jersey of the authority to issue rules or regulations.

Noting in this order precludes the Administrator of the ERA from exercising any of the authority so delegated whenever in his judgement his exercise of such authority is necessary or appropriate to administer the functions vested in him.

Further, nothing in this order precludes the Administrator of the ERA from withdrawing the delegated authority at any time.

This order is effective March 21, 1979.

Issued in Washington, D.C. on March 15, 1979.

DAVID J. BARDIN,
Administrator, Economic Regulatory Administration.

Department of Energy
Washington, D.C.

MARCH 15, 1979.

HONORABLE BRENDAN T. BYRNE,
Governor of New Jersey,
Trenton, New Jersey.

DEAR GOVERNOR BYRNE: On behalf of Secretary Schlesinger, thank you for your letter of March 9, 1979, requesting that the Department of Energy delegate to the State of New Jersey the authority to enforce Fedeal price regulations at retail gasoline pumps. We welcome your innovative suggestion.

We are delegating to you on a trial basis the authority to enforce gasoline prices at the retail level within the State of New Jersey. We believe that the added resources of the State in the enforcement of price regulations at the retail level will bring greater protection to the consumer. There is all the more need for such increased protection in light of current market uncertainties.

I understand that the Office of Enforcement is working with the New Jersey Department of Energy to arrange for appropriate training. We will be glad to provide any further assistance you desire in setting up the enforcement program.

Please have your staff call Mr. Barton Isenberg, Assistant Administrator for Enforcement, (202) 254-8740, if you would like to discuss this matter further.

Sincerely,

DAVID J. BARDIN,
Administrator, Economic Regulatory Administration.

State of New Jersey
Office of the Governor

MARCH 9, 1979

THE HONORABLE JAMES R. SCHLESINGER,
Secretary of Energy,
Washington, D.C.

DEAR MR. SECRETARY:From the time that gasoline was placed under Federal price controls in February 1974, the Federal Government has done an excellent job of enforcing its price regulations.

The State of New Jersey is especially concerned that stringent enforcement of the price controls is necessary at the retail level if the general public is to perceive that its economic interests are truly being protected. Since the gasoline retailer is the final link in the chain to the consumer, the enforcement activities at the refinery level are not being wasted.

Rather than expand the Federal workforce to handle this task, individual states should be authorized to enforce gasoline price controls at the retail level. In this way, existing enforcement personnel within state energy agencies, consumer protection offices, and weights and measures divisions could be assigned to this duty. Thus, the public could be afforded additional protection without the need to expand government payrolls.

I would, most respectfully, request that the authority of the Administrator of the Economic Regulatory Administration under existing legislation (the Department of Energy Organization Act, P.L. 95-91 as amended; the Emergency Petroleum Allocation Act of 1973, P.L. 93-159; and the Economic Stabilization Act of 1970 as amended, P.L. 92-210 to determine the compliance of retailers of motor gasoline with the mandatory prime regulations, 10 C.F.R. 212.91 et seq.,) be delegated to the State of New Jersey.

I want to thank the U.S. Department of Energy for working so closely with New Jersey in working out the legal and administrative details of this delegation. I understand that the U.S. Department of Energy has agreed to train our accountants and that matters of venue and courts of competent jurisdiction for enforcement purposes can be settled in the official delegation to the State.

As we approach the start of another summer driving season, with lower than normal gasoline inventories, the public needs assurances that the Federal and state Governments are prepared to act to prevent the type of unscrupulous activities which often characterize high demand/low supply situations.

We are eager to join in serving the public interest in this manner.

Respectfully,

BRENDAN T. BYRNE,
Governor.

[FR Doc. 79-8749 Filed 3-20-79; 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).

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[6570-06-M]

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: S-517-79.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, March 20, 1979.

CHANGE IN THE MEETING: The following matter is added to the agenda for the open portion of the meeting:

Report by Chair on Senate Appropriations Subcommittee hearings on fiscal year 1980 budget.

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required this change and that no earlier announcement was possible.

In favor of Change: Eleanor Holmes Norton, Chair; Daniel E. Leach, Vice Chair; Ethel Bent Walsh, Commissioner; Armando M. Rodriquez, Commissioner; and J. Clay Smith; Jr., Commissioner.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat, at 202-634-6748.

This notice issued March 16, 1979.

[S-557-79 Filed 3-19-79; 10:51 am]

[6740-02-M]

2

MARCH 19, 1979.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 2 p.m., March 19, 1979.

PLACE: Room 9306, 825 North Capitol Street NE., Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

(1) Conduct of an investigation.
(2) Continued closed meeting from March 15, 1979, on civil litigation and on-the-record proceeding.

CONTACT PERSON FOR FURTHER INFORMATION:

Kenneth F. Plumb, Secretary, 202-275-4166.

[S-561-79 Filed 3-19-79; 1:57 pm]

[6740-02-M]

3

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published March 19, 1977.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., March 21, 1979.

CHANGE IN THE MEETING: The meeting scheduled for March 21, 1979, at 10 a.m. has been changed to March 21, 1979 at 2 p.m.

KENNETH F. PLUMB,
Secretary.

[S-562-79 Filed 3-19-79; 3:04 pm]

[6730-01-M]

4

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 10 a.m., March 27, 1979.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Eastern Forwarding International, Inc.—Application for an independent ocean freight forwarder license.
2. Angel Alfredo Romero—Application for an independent ocean freight forwarder license.
3. I.M.S., Inc.—Independent ocean freight forwarder licensee.
4. Ikeda International Corporation—Independent ocean freight forwarder licensee.
5. Special Docket No. 574: *Ingersoll Rand International* v. *Peralta Shipping Corp.*—Filing agent for Iran Ocean Shipping Co., Inc.—Petition to intervene and to reopen.
6. Docket No. 78-10: Union Camp Corporation, et al., Possible Violation of Sections 15, 16, 18 and 44 of the Shipping Act, 1916, and Commission General Order No. 4—Petition for order of dismissal.

CONTACT PERSON FOR MORE INFORMATION

Francis C. Hurney, Secretary, 202-523-5725.

[S-563-79 Filed 3-19-79; 3:48 pm]

[7550-01-M]

5

NATIONAL MEDIATION BOARD.

TIME AND DATE: 2 p.m., Wednesday, April 4, 1979.

PLACE: Board Hearing Room, 8th Floor, 1425 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

(1) Ratification of Board actions taken by notation voting during the month of March, 1979.
(2) Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's Office following the meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Rowland K. Quinn, Jr., Executive Secretary, 202-523-5920.

Date of Notice: March 16, 1979.

[S-558-79 Filed 3-19-79; 11:50 am]

6

NATIONAL RAILROAD PASSENGER CORPORATION.

Board of Directors Meeting

In accordance with rule 4a. of Appendix A of the By-laws of the National Railroad Passenger Corporation, notice is given that the Board of Directors will meet on March 28, 1979.

A. The meeting will be held on Wednesday, March 28, 1979, in the National Guard Association Building, 3rd Floor, 1 Massachusetts Avenue, Northwest, Washington, D.C., beginning at 9:30 a.m.

B. The meeting will be open to the public at 10:30 a.m. beginning with agenda item no. 3, as described below.

C. The agenda items to be discussed at the meeting follow.

AGENDA—NATIONAL RAILROAD PASSENGER CORPORATION

MEETING OF THE BOARD OF DIRECTORS—MARCH 28, 1979

Closed session (9:30 a.m.)

1. Internal personnel matters.
2. Litigation matters.

Open session (10:30 a.m.)

3. Approval of minutes of regular meeting of February 28, 1979.
4. Commitment approval requests:

79-13 Michigan City, Ind.—Drawbridge Repairs.
79-21 Track Restoration—Harrisburg Line.
79-50 Safety Tie Program—Corridor Spine.
79-52 Station Improvements—Harrisburg, Pa.
77-266S3 AEM-7 Purchase Agreement Option.

5. Approval of Engineering Services Contract.
6. Approval of Outside Auditor for Annual Audit.
7. Approval of Board Meeting Dates for Remainder of 1979.
8. Board Committee Reports: Audit, Equipment, Northeast Corridor Improvement Project, and Planning and Finance.
9. President's Report.
10. New Business.
11. Adjournment.

D. Inquiries regarding the information required to be made available pursuant to Appendix A of the Corporation's By-laws should be directed to the Corporate Secretary at 202-383-3973.

Dated: March 16, 1979.

ELYSE G. WANDER,
Corporate Secretary.

[S-555-79 Filed 3-19-79; 8:58 am]

[7590-01-M]

7

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Week of March 19, 1979 (changes).

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

THURSDAY, MARCH 22, (REVISED), 9:30 A.M.

1. Discussion of Staff's final report, "Regulation of Federal Radioactive Waste Activities" (approximately 1 hour)—public meeting.

2. Affirmation Session (approximately 10 minutes—public meeting):
Amendments to 10 CFR 35;
Amendments to 10 CFR 140;
Modification of Price-Anderson Act.
"Briefing on Upgrade Rule" and "Discussion of Proposed Executive Branch Format", previously scheduled for Thursday, March 22, are cancelled.

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

MARCH 19, 1979.

WALTER MAGEE,
Office of the Secretary.

[S-559-79 Filed 3-19-79; 1:56 pm]

[7590-01-M]

8

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Friday, March 23, 1979.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:
FRIDAY, MARCH 23, 2 P.M.
Commission Meeting on Tarapur Export License (XSNM-1222) (approximately ½ hour—public meeting).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

WALTER MAGEE,
Office of the Secretary.

MARCH 16, 1979.

[S-560-79 filed 3-19-79; 1:56 pm]

[8120-01-M]

9

TENNESSEE VALLEY AUTHORITY.

"FEDERAL REGISTER CITATION" OF PREVIOUS ANNOUNCEMENT: 44 FR 16095-96, March 16, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:30 a.m., Tuesday, March 20, 1979.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: Conference Room B-32, West Tower, 400 Commerce Avenue, Knoxville, Tenn.

STATUS: Open.

CHANGES IN MATTERS FOR ACTION: The following item is added to the previously announced agenda:

H—UNCLASSIFIED

1. Payment from nonpower proceeds for fiscal year 1978 to the Treasury of the United States pursuant to Section 26 of the TVA Act.

CONTACT PERSON FOR MORE INFORMATION:

James L. Bentley, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-3257, Knoxville, Tenn. Information is also available at TVA's Washington Office, 202-566-1401.

SUPPLEMENTARY INFORMATION:

TVA BOARD ACTION

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires the subject matter of this meeting to be changed to include the additional items shown above and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below.

Dated: March 19, 1979.

Approved:

S. David Freeman.

Richard M. Freeman.

Disapproved:

[S-556-79 Filed 3-19-79; 8:58 am]

federal register

WEDNESDAY, MARCH 21, 1979

PART II



ENVIRONMENTAL PROTECTION AGENCY

■

PROGRAMS UNDER CLEAN WATER, SAFE DRINKING WATER AND RESOURCE CONSERVATION AND RECOVERY ACTS

Guidance for FY 1980 State/EPA Agreements

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL-1069-6]

GUIDANCE FOR FISCAL YEAR 1980 STATE/EPA AGREEMENTS

This notice is published to advise that the following policy statement and guidance document on FY 1980 State/EPA Agreements were distributed to the Environmental Protection Agency (EPA) Regional Offices in February 1979. The policy statement and guidance document set forth EPA requiremens for the development and implementation of FY 1980 State/EPA Agreements for programs under the Clean Water Act, the Safe Drinking Water Act and the Resource Conservation and Recovery Act.

Although there is currently no central EPA regulation dealing with State/EPA Agreements, the requirement for such Agreements appears in the following five EPA regulations: (1) Section 35.738-6 of the Resource Conservation and Recovery Act grant regulations; (2) Section 35.660(d) of the Underground Injection Control grant regulations; (3) Section 35.1016(c) of the Construction Management Assistance grant regulations; (4) Section 35.1600 of the Clean Lakes grant regulations; and (5) Section 35.1507 of the proposed Water Quality Management grant regulations.

For additional information, contact: Ms Merna Hurd, Director, Water Planning Division (WH-554), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Dated: February 28, 1979.

JAMES N. SMITH,
Assistant Administrator for Water and Waste Management.

PURPOSE

This memorandum sets forth EPA policy requirements on the development and implementation of FY 1980 State/EPA Agreements for programs under the Clean Water Act, the Safe Drinking Water Act and the Resource Conservation and Recovery Act (that is, those programs under the Office of Water and Waste Management.)[a] This memorandum also sets forth general requirements for the content of the Agreement. We are enclosing guidance on State/EPA Agreements which expands upon this policy.

The Administrator, in his memorandum of December 27, 1978, stated that guidance on State/EPA Agreements would be issued in lieu of a central regulation this year. He reaffirmed the Agency's commitment to the development of Agreements and gave the policy the Agency's highest priority. This Office has been designated to implement that policy.

BACKGROUND

Over the next two years, almost one-half billion dollars is expected to be granted to States by the Environmental Protection Agency for planning and management under the Clean Water Act (CWA), the Resource Conservation and Recovery Act (RCRA), and the Safe Drinking Act (SDWA). It is the goal of both EPA and the States to ensure that these laws are being implemented in an integrated, cost-effective and coordinated manner. Beginning in FY 1980, the State/EPA Agreements will present a practical and comprehensive mechanism by which the States and EPA can integrate and manage the technical and financial assistance programs to States under sections 106, 205(g), 208 and 314 of the CWA, sections 3011 4008 and 4009 of RCRA and sections 1442(b)(3)(C) and 1443(a) and (b) of SDWA.

The idea of an integrated approach to solving environmental problems is not new. A number of Regions and States have had integrated problem solving procedures for years, such as multi-year environmental strategies and use of consolidated grants. EPA Headquarters has further encouraged this type of integration in FY 1979 by directing the Regions and States to develop State/EPA Agreements covering the Clean Water Act programs.

The State/EPA Agreement process is designed to (1) ensure that the large sums of money going to the States produce tangible results in solving priority environmental problems; and (2) maximize available resources to identify and solve priority environmental problems that separate programs cannot handle alone. The Agreement process will reflect important EPA, State and local decisions on environmental and program problems, priorities, timing, responsibilities and allocation of resources. At the same time, the Agreement process will comply with the national commitment to eliminate unnecessary paperwork and reduce duplication of effort. It will focus top management attention in EPA Regional Offices and the States on environmental problem solving decisions, and on the evaluation of how the decisions are carried out.

POLICY

- Beginning in FY 1980, the State/EPA Agreement is to include the EPA and State program responsibilities and activities under sections 106, 205(g), 208 and 314 of the Clean Water Act, sections 3011, 4008 and 4009 of the Resource Conservation and Recovery Act (RCRA) and sections 1442(b)(3)(C) and 1443(a) and (b) of the Safe Drinking Water Act (SDWA) (hereafter referred to as the "covered" programs). In addition, the States are encouraged to integrate and/or coordinate other environmental programs into the State/EPA Agreement wherever feasible.
- The State/EPA Agreement (SEA) must be completed and signed before award of grants under any "covered" program, except that for the 205(g) program, it must be completed before execution of the delegation agreements.[a]
- Under the proposed WQM regulations which are scheduled for final publication in March 1979, the State 106 grants for water pollution control programs will be allocated to the Regions using the existing formula. The allotments to the States, however, will be based on negotiations in the State/EPA Agreement process.
- Although the State and EPA are responsible for negotiating the Agree-

[a] The EPA is mandating State/EPA Agreements based on the following authorities: Sections 1006 and 2002 of RCRA, 42 U.S.C. 6905, 6912; Sections 101(f) and 501(a) of the CWA, 33 U.S.C. 1251(f), 1361(a); Section 1450(a)(1) of SDWA, 42 U.S.C. 300j-9(a)(1); Section 3 of the Reorganizational Plan No. 3 of 1970 and the accompanying President's Message (5 U.S.C. App.); and the Joint Funding Simplification Act, 42 U.S.C. 4251-4261.

[a] Following are EPA Grant Regulations that cover State/EPA Agreements:

1. Section 35.738-6 of the RCRA grant regulations states that, "Beginning in FY 1980, State programs funded under the Act will be part of the State/EPA Agreement, and the State/EPA Agreement must be completed before grant award." (Interim Regulations, published September 25, 1978.)

2. Section 35.660(d) of the Underground Injection Control grant regulations states that, "Beginning in fiscal year 1980, State programs funded under the Act will be part of the State/EPA Agreement and the State/EPA Agreement must be completed before grant award." (Final Grant Regulation, published October 12, 1978.)

3. Section 35.1016(c) of the 205(g) regulations states, "In fiscal year 1979, the Regional Administrator and the State must develop the State/EPA Agreement sufficiently before executing a delegation agreement under this subpart so that the latter will be consistent with the State/EPA Agreement. Beginning in FY 1980, State programs funded under § 205(g) of the Act will be part of the State/EPA Agreement and the State/EPA Agreement must be completed before execution of the delegation agreement." (Final Regulation, published September 20, 1978.)

4. Section 35.1507 states that EPA funding for the State's WQM work program shall be withheld by the Regional Administrator pending execution of the SEA, except as otherwise determined by the Regional Administrator.

5. Section 35.1650-2 of the proposed Clean Lakes grant program regulations states that State programs funded under section 314 of the Act are a part of a State/EPA Agreement which must be completed before the grant is awarded.

ment, the public and other interested parties must also have the opportunity to participate in each step of the development of the agreement. In addition, the Regional and local planning and implementation agencies that the States have designated to participate in solid waste management (RCRA), water quality management (CWA) and other environmental programs must work closely with EPA, the States and the public to assure that agreement on cooperative strategies, priorities and responsibilities is attained.

● The State and EPA should also work closely with Interstate agencies funded under section 106 of the Clean Water Act in the development of strategies, priorities and responsibilities that will be set forth in the State/EPA Agreement. The States may delegate responsibility and funding to an Interstate agency for carrying out some portions of a State/EPA Agreement.

● Where an Indian tribe receives EPA assistance under two or more "covered" programs, the Regional Administrator and the Indian tribe may develop an Agreement to integrate, coordinate and manage the programs. The State should be involved in this process, wherever possible.

Enclosure:

GUIDANCE FOR FY 1980 STATE/EPA AGREEMENTS

OFFICE OF WATER AND WASTE MANAGEMENT

FEBRUARY 1979.

INTRODUCTION

The 1980 fiscal year (FY) will mark the start of a new era in planning, implementing and managing environmental programs at the Regional and State levels. Beginning in FY 1980, State/EPA Agreements will present integrated approaches to solving water supply, solid waste and water pollution control problems. The integration of these program areas will be a major step toward the objective of overall environmental planning and management versus an approach which tries to solve interrelated environmental problems in a piecemeal fashion, program by program.

The idea of an integrated approach to solving environmental problems is not new. EPA required all Regions and States to develop comprehensive State/EPA Agreements in FY 1979 covering Clean Water Act programs. Furthermore, a number of Regions and States have had an integrated orientation to problem-solving for years. What is new is that, starting in FY 1980, State/EPA Agreements will drive the integration and coordination of environmental programs in all States creating joint planning and implementation of Safe Drinking Water Act, Resource Conservation and Recovery Act and Clean Water Act programs.*

The State/EPA Agreement, which each State and its corresponding EPA Region will negotiate, will include a brief statement of environmental problems and objectives based on State problem assessments and strategies. Agreements will also include or reference work programs which integrate the various outputs under each of the "covered" programs.

The State/EPA Agreement will be a decision document which reflects important decisions on environmental priorities (including those set forth in the annual EPA operating guidance), administrative problems, timing, responsibilities and allocation of funds. It will be management tool which focuses top management attention on the evaluation and accomplishment of major environmental objectives. Finally, it will be a communication and information document useful to local governments, areawide agencies, affected or interested publics and others, developed with their participation and reflecting their views.

THE NEED FOR INTEGRATION

Enactment of the Clean Water Act (CWA), Safe Drinking Water Act (SDWA), and Clean Air Act (CAA) provided for controls on air and water pollution. Passage of the Resource Conservation and Recovery Act (RCRA) in 1976 closed the gaps in the waste disposal cycle, providing control for the disposal of pollutants on or in the land. Congress recognized the relationship among air, water and solid waste pollution and controls in section 1002(b)(3) of RCRA, which says:

> * * * as a result of the Clean Water Act, the Water Pollution Control Act, and other Federal and State laws respecting public health and the environment, greater amounts of solid waste * * * have been created. Similarly, inadequate and environmentally unsound practices for the disposal or use of solid waste have created greater amounts of air and water pollution and other problems for the environment and for health.

There are a number of reasons why it makes sense to emphasize the coordination and integration of environmental programs. Linking planning, implementation, and management of major environmental programs will allow a comprehensive and systematic approach to problem solving. This type of approach should lead to an identification of the best place in their overall life cycle to control pollutants. Furthermore, as a result of program integration, generators of pollution should be able to plan all necessary controls at one time. If dischargers are aware of the total costs of environmental controls, they may consider control strategies which include both source controls and product or process changes to reduce overall generation of pollutants and treatment costs.

Coordination and integration of environmental programs should also result in the reduction of procedural and substantive duplications. Since resources are limited at all levels of government, an integrated approach should maximize the environmental benefits from limited available resources. In addition, an integrated approach should minimize the unplanned migration of pollutants from one medium to another, i.e., from the air or water to the land and back to the water. Moreover, early and continuing public involvement will ensure that the evaluation and trade-off decisions made among alternative priority actions will include a broader set of concerns. As a result, the priority actions determined through the Agreement process will more likely be viable, reflecting a broader definition of the public interest.

STATE AND FEDERAL ROLES

Through passage of the Clean Water Act, Safe Drinking Water Act, and Resource Conservation and Recovery Act, Congress made clear its intent that States are to play a major role in environmental programs. Section 101(b) of the Clean Water Act, for example says:

> It is the policy of Congress to recognize, preserve and protect the primary responsibilities of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources * * *.

Congress charged EPA with establishing national environmental standards carrying out research and development, funding State programs and charting national objectives and policies. It is the State and local governments however, who plan, develop and carry out pollution abatement programs. In delineating Federal and State roles in SDWA, RCRA and CWA, Congress clearly had in mind a Federal-State partnership. The State/EPA Agreement is an example of the Federal-State partnership in action. It is a tangible product of joint negotiation, and includes a two-way obligation.

For its part, the State with EPA assistance, where necessary and feasible, will perform a series of problem-solv-

* For FY 1980 the Agreement should include sections 106, 205(g), 208 and 314 of the Clean Water Act, sections 3011, 4008 and 4009 of the Resource Conservation and Recovery Act and sections 1442(b)(3)(C), 1443(a) and 1443(b) of the Safe Drinking Water Act (here after referred to as the "covered" programs). In addition, States are encouraged to integrate other environmental programs into the State/EPA Agreement wherever feasible.

ing activities, arrived at through a problem assessment, a multi-year strategy and the determination of what needs to happen in the first year to implement the strategy. EPA recognizes the difficulty of making a multi-year commitment, and therefore views the multi-year strategy as a commitment to a general policy direction, not necessarily to long-term outputs. EPA does however expect the States to be committed to the one-year schedule and outputs outlined in the Agreement and to integrate the programs of RCRA, SDWA and CWA at the State level. EPA realizes that the integration of State programs will be a complex and gradual process, and that while new arrangements are developing, statutory requirements must still be met. Limited resources along with difficult technical and administrative problems will vary and pose constraints in initiating Agreements. Nevertheless, EPA and the States must begin to develop and implement the State/EPA Agreement process.

For its part, EPA will provide grant funds to help finance the activities to which the State and EPA agree. The EPA involvement does not end there, however. It is recognized that coordination and integration of programs at the State level have associated costs, and EPA will provide technical assistance to help the States integrate programs. EPA will also conduct monitoring, issue permits in many cases and administer the construction grants program, delegating authority to the States, consistent with the overall Agreement.

Although the States and EPA will have primary responsibility for negotiating the Agreements, participation of the public and other governmental agencies is important to the negotiation process and to implementation of the Agreements. The regional and local planning and implementation agencies that the States have designated to participate in solid waste management (RCRA) and water quality management (CWA) should work closely with EPA and the States to agree on cooperative strategies, priorities and responsibilities. In accordance with the national policy of encouraging and assisting public participation as set forth in EPA's proposed public participation regulations published in August 1978 (40 CFR Part 25), interested and affected publics will have an opportunity to participate in each step during the development of the Agreements.

The information which follows illustrates how to proceed in developing and negotiating an Agreement, and how to take advantage of some of the opportunities afforded by an integrated approach to environmental problem solving. It presents a series of illustrations where integration across programs could occur through the State/EPA Agreements to avoid duplication of effort and obtain greater protection of the environment through maximizing benefits from overlapping statutes.

II. How to Proceed

STEPS IN THE NEGOTIATION PROCESS

Development of a State/EPA Agreement is an iterative process requiring the personal commitment of high level EPA and State officials as well as local citizens. It requires consultation among EPA Regional program managers, State agencies, regional and local planning and implementation agencies, related Federal agencies and affected or interested publics. The involvement of each participant is important if the objectives of the Agreement are ultimately to be met.

Staff at EPA Headquarters appreciate the vast bank of experience of staff in EPA Regional Offices in negotiating and working with the States on the implementation of environmental programs. This guidance, therefore, is simply a recommended framework or concept. The Regions and States must mold this framework to their unique situations within the limits of available resources. The role of Headquarters is to provide assistance, to promote the integration of various EPA administered programs and to facilitate information exchange on innovative and successful approaches to integrated environmental management through State/EPA Agreements.

DEVELOPMENT OF THE STATE/EPA AGREEMENT PROCESS

The negotiation of the State/EPA Agreement should be part of a process which gets decision-makers together to determine priorities for environmental problems and develop creative solutions. The State and EPA Regional personnel should begin development of the Agreement as early as possible each year. Prior to development, the State, EPA and the public should review basic background information such as current State plans, strategies, and problem assessments, annual EPA operating guidance, applicable laws and deadlines, and funding sources.

The State/EPA Agreement submission schedule should be adapted to the existing submission schedules of the "covered" programs to avoid confusion and duplication of effort. Generally, this means that the draft Agreement should be completed and submitted to the Regional Administrator by June 1 of each year. The Regional Administrator should review the draft and provide comments to the State within 30 days. The final Agreement should be submitted to the Regional Administrator in September of each year.

Generally, the Agreement process should include the following broad activities: (1) Identification of priority problems, (2) identification of available resources, (3) identification of optimal funding, (4) development of a work program, including timing, funding, outputs and responsible parties, (5) implementation of the Agreement, and (6) evaluation and annual revision. However, EPA recognizes that each State has a unique set of environmental problems, political forces and administrative institutions. We therefore wish to emphasize that the Agreement is a flexible mechanism which is intended to accommodate such variations in each State.

Program barriers to coordination and integration of environmental programs under the Agreement process may be encountered and will have to be overcome. A number of States will face problems in attempting to integrate programs because the programs are located in different agencies within the State. This guidance is not intended to force reorganization and consolidation of current State agency structures, responsibilities and authorities or to change existing grantor-grantee relationships.

To facilitate program integration, the Governor may decide to appoint someone in his or her office to coordinate among departments and act as negotiator in the Agreement process. State interagency work groups may provide another way to reduce program barriers. Such work groups will improve communication, but may not be able to overcome "turf" conflicts among various agencies and interests. The resolution of such conflicts and the overall success of the State/EPA Agreement will be determined by the commitment of the Governor, the environmental management agencies, local governments, citizens and other interested parties along with US EPA.

The Regional Administrator has the option of negotiating the Agreement with one or more agencies. Where the Regional Administrator negotiates with more than one agency, it is recommended that a lead State contact be designated.

COMPONENTS OF THE STATE/EPA AGREEMENT

The key to the success of the Agreement is flexibility and accommodation of individual problems and resource constraints, as well as capabilities, in each State. Keeping this in mind, the major components of the Agreement are:

(1) A brief statement of the environmental problems, goals and objectives to be met through activities under the State/EPA Agreement. The statement

should be based on the State problem assessments, strategies or other identification of needed activities for the "covered" programs. To the extent feasible, the State is encouraged to prepare an integrated multi-year strategy to be updated annually. EPA recognizes the difficulty in making a long-term commitment and therefore views the strategy as a commitment to a general policy direction, not as a long-term commitment to specific outputs.

(2) A detailed work program based on a multi-year strategy, or reference to such detailed work program, strategies and individual program memoranda which are to be considered covered by the signed Agreement. The detailed work program may be an overall compilation of specific work programs which meet the requirements of the regulations governing each of the "covered" programs.

(3) A summary of the major integrated work elements compiled from the detailed work program(s), as well as EPA actions needed.

(4) Other information and coordination requirements which the Regional Administrator determines are necessary to meet the goals of the Agreement.

(5) A signature page for the State and Regional Administrator to sign the State/EPA Agreement.

If the Agreement is longer than 20-25 pages, it is recommended that a summary be prepared for use by EPA, the States and the public as an overview of the State/EPA Agreement and of the work to be performed during the coming year.

PUBLIC INVOLVEMENT IN THE STATE/EPA AGREEMENT PROCESS

Although the States and EPA are responsible for negotiating the Agreement, it is crucial that the public and other interested parties also participate in the process. In accordance with the national and EPA policy of encouraging and assisting public participation, and proposed regulations under 40 CFR Part 25 and 40 CFR Part 35, Subpart G requiring public participation, interested and affected publics have the opportunity to participate in each step of the development of the Agreements. Specific requirements for public participation are contained in the proposed public participation regulations (40 CFR Part 25) and the proposed water quality management regulations (40 CFR Part 35, Subpart G).

In addition, the regional and local planning and implementation agencies that the States have designated to participate in solid waste management (RCRA), water quality management (CWA), and other environmental management programs must work closely with EPA, the States, and the public to agree on cooperative strategies, priorities and responsibilities.

It is recommended that at least 30 days prior to beginning work on the State/EPA Agreement, the public should be notified through the uses of existing State and EPA mailing lists, the mass media, and other available means about the goals and scope of the potential Agreement. During the development of the Agreement, the State should also consult, in a timely manner, with advisory committees, such as those set up by the 208 process, and other interested and affected individuals and groups. As a draft Agreement nears completion, a fact sheet should be prepared, mailed, and otherwise made public along with the notice of a public meeting or hearing. Public comments from the meeting or hearing and other sources should be considered and integrated where possible into the final Agreement. A summary of public comments presented during the development of the Agreement, and a summary of the State's responses to those comments, should be included with the final Agreement when it is submitted to the Regional Administrator. This information should be made available to the public. The State/EPA Agreement should be summarized and widely distributed to the public. In addition, the public's views should be considered in any EPA evaluations of State/EPA Agreements.

Wherever possible, the public participation requirements of the "covered" programs should be combined. For example, the water quality management and solid waste management programs have similar requirements which could be coordinated readily. Possible areas for consolidation and coordination include advisory committees, public information programs and public hearings or meetings. It should be emphasized that the public remain actively involved in the implementation of the specific programs within the State/EPA Agreement, once the Agreement is negotiated.

GRANT APPLICATION AND ADMINISTRATION

In general, applicants for grants from EPA must complete an application form for each grant, along with a work plan. Since the State/EPA Agreement should result in an integrated FY 1980 work plan covering water quality, water supply and solid waste programs, the process should greatly simplify grant procedures. The Agreement, with attached work program(s), can serve as the narrative portion of grant requests, thereby reducing paperwork.

Generally, integrated work programs may include common work elements, drawing funding from more than one "covered" program. In such cases, the grant application should specify the amount and percentage of EPA program funds attributable to each of the "covered" programs for each work element.

The State, with approval of the EPA Regional Administrator, may use the same integrated work plan in its applications for the various categorical grants (e.g., solid waste, drinking water), so long as it clearly identifies the source or sources of funds it will use to pay for each product and provides details on projected work outputs. The Regional Administrator should ensure that each State agency involved in the Agreement has effective financial management procedures to ensure that the funds are used for the purposes agreed to.

One of the major goals of the State/EPA Agreement is to reduce paperwork. Use of the integrated work program in each grant application is one way it will reduce paperwork. However, it is recognized that initially there will be additional paperwork to develop the Agreement. But after this initial period, it is anticipated that not only will the paperwork and time required to manage the environmental programs be reduced, but more importantly, the quality of environmental protection programs will be enhanced.

FUNDING FLEXIBILITY

Funding shifts among the "covered" programs (except for 205(g) construction management assistance grants) are possible. The annual EPA operating guidance will contain advice concerning this funding flexibility and the procedures for State funding transfers based on EPA reprogramming. At this time, EPA headquarters has authority to shift approximately 10% of its funds among any agency programs. No transfer of funds will be allowed, however, which diminishes the ability of a program to achieve its statutory objectives. At the State and areawide or local level, the flexibility may not be as great.

BUILDING STATE AND AREAWIDE CAPABILITY

It is the intent of EPA to strengthen the capability of States and areawide agencies to manage their environmental programs through the State/EPA Agreement process. To help in developing the Agreements, a new section is being established within the Office of Water and Waste Management in EPA Headquarters. It will assist the Regions in reviewing proposed State/EPA Agreements and establish an information exchange and assistance mechanism. Procedures and approaches which are innovative and successful in integrating various environmental programs will be provided

to the States and Regions through this exchange mechanism. The new section will also develop guidance regarding approaches for integrating environmental management programs and provide "hands on" assistance in developing the Agreements to the extent that resources are available.

III. Illustrations

The following section illustrates how the State/EPA Agreement could be used to integrate various programs to resolve common problems facing the Regions and States.

These illustrations indicate opportunities for linking authorities from the Safe Drinking Water Act, the Clean Water Act, and the Resource Conservation and Recovery Act. It should be emphasized that other environmental program authorities could also be included. Although they are only illustrations, hopefully they will stimulate Regions and States to explore approaches to integrate programs to solve specific environmental problems. Illustrations are presented for municipal sludge management and groundwater pollution, as well as a variety of other opportunities for coordinating and integrating environmental programs.

The funding situation which accompanies cross-cutting program integration promoted by the State/EPA Agreement is complex. To help clarify the situation, the following hypothetical illustrations include funding eligibility matrices which correlate general program activities and State and Federal sources of funds. The Regions and States may find similar tools useful as they negotiate their strategies and one-year work programs.

The accompanying illustrations emphasize the importance of assessments and State multi-year strategies in developing State/EPA Agreements. It is important to note that although a strategy is desirable, it is not necessarily part of the Agreement itself.

Illustration 1—Municipal Sludge Management

INTRODUCTION

Disposal of sludge has become a major issue in recent years, as disagreements over selection of sites and disposal techniques have occurred at the local, State and Federal levels. Municipal waste treatment plants generate five million dry metric tons of sludge per year. This rate is likely to substantially increase as a result of environmental legislation calling for high standards of wastewater treatment. Presently, about 25 percent of the sludge is landfilled, 25 percent is applied to the land, 15 percent is disposed of in the oceans and 35 percent incinerated.

Each disposal method poses potential environmental problems. Landfilling may result in ground and surface water contamination by heavy metals, viruses and bacteria, as well as the common pollutants. Land application of sludges containing heavy metals can pose a threat to public health as the pollutants enter the food chain. Ocean dumping adversely impacts the marine environment and incineration of sludge contributes to air pollution.

BACKGROUND

Federal requirements, guidance and financial assistance to States and local agencies for the management of municipal sludge are authorized by the Resource Conservation and Recovery Act (RCRA), Clean Water Act (CWA), Safe Drinking Water Act (SDWA) and Marine Protection Research and Sanctuaries Act (MPRSA).

RCRA

According to definitions in RCRA, wastewater treatment sludge is a solid waste, falling under the authority of the State Solid Waste Management (SWM) programs outlined in Subtitle D. Section 4004(a) of that Subtitle requires EPA to issue regulations containing minimum criteria for determining which solid waste disposal facilites pose a "reasonable probability of adverse effects on health or the environment." For municipal sludge, EPA is initiating development of an integrated regulation under both section 4004(a) and section 405(d) of the Clean Water Act. (See below.)

In Subtitle D, RCRA prohibits unacceptable open dumping practices. Over the next several years, each State will compile an Open Dump Inventory which will consist of a list of disposal sites (including sludge disposal sites) to be closed or upgraded. The Open Dump Inventory is one component of State Solid Waste Management planning.

CWA

The Clean Water Act has many requirements which relate to management of municipal wastewater treatment sludge. First, in compliance with section 405(d) which Congress added to CWA in 1977, EPA is developing regulations for municipal sludge disposal and use. This regulation for municipal sludge will satisfy both section 405(d) and also section 4004(a) of RCRA.[a] All sludges originating from publicly owned treatment works (POTW) are included under these regulations. NPDES permits will, whenever possible, include sludge disposal conditions, thereby eliminating the need for separate permits.

[a] Regulations for sludge management are being developed by EPA, and will be proposed in mid-1979.

The regulations for municipal sludge will specify requirements for owners and operators to analyze sludge for cadmium and other toxics and to determine appropriate application rates and monitoring requirements for land application. The regulations will also cover thermal reduction, as well as giveaway and sale programs.

The second aspect of CWA affecting municipal sludge is the construction grants program in Title II. This program provides Federal grants for construction of municipal wastewater treatment facilities, including those for sludge management. During the facility planning phase of the construction grant process, local sewage agencies evaluate the alternatives by which ultimate disposal of sludge can be affected. EPA will not approve such a facility plan without a cost-effective sludge management portion.

The pretreatment requirements in section 307 are the third part of CWA related to municipal sludge management. Pretreatment of industrial discharges into municipal wastewater treatment systems can substantially reduce contaminant levels in sludge and reduce the dangers of sludge disposal. EPA has published final general pretreatment regulations (40 CFR Part 403) and is developing specific pretreatment standards (40 CFR Part 200-to-end) for the 21 most significant industry groups, with special emphasis on toxic pollutants.

The Water Quality Management (WQM) program operating under sections 106, 208 and 303 is another important CWA program related to municipal sludge. The WQM plans developed by States and areawide agencies must include a program to control the disposition of all residual waste generated in an area which would affect water quality. However, the amount of emphasis a particular WQM agency gives to municipal sludge depends on local, State and EPA priorities.

SDWA

Three major activities under SDWA relate directly to the management of municipal sludge. First, under section 1442, each State is conducting a Surface Impoundment Assessment (SIA) to locate all surface impoundments and assess them for pollution potential. (See also the next illustration on groundwater pollution.) The SIA can be a screening device to assist the States in setting priorities for their Open Dump Inventories under RCRA, Subtitle D.

Second, the designation of a sole source aquifer under section 1424(e) can affect sludge disposal. Sole source aquifer designation may provide protection of a drinking water aquifer and prohibit funding of any Federal project which endangers this source. The

siting of landfills or land application of sludge over a designated sole source aquifer as part of a Federally assisted project could be prohibited if it may endanger the aquifer.

The third SDWA program which concerns municipal sludge is the Underground Injection Control (UIC) program under section 1421. Any sludge injected into the ground, or into an abandoned well or mine, would come under the authority of the UIC program once it is finalized.

MPRSA

The Marine Protection Research and Sanctuaries Act (MPRSA) requires EPA to establish a permit system for ocean dumping. Except in accordance with published criteria, ocean dumping is to be phased out by December 31, 1981. Municipal wastewater treatment sludges and other wastes dumped in the ocean are included in the coverage. Ocean dumping of sludge is currently managed through interim permits which EPA issues for one year only.

MUNICIPAL SLUDGE MANAGEMENT IN THE STATE/EPA AGREEMENT

Problem Assessment

An essential step in developing a comprehensive program for sludge management is the problem assessment, which identifies the magnitude of the problem that the strategy must address. The sources of information vary from program to program. Under the Safe Drinking Water Act, the Surface Impoundment Assessment is currently in progress and will provide valuable information for the comprehensive RCRA Open Dump Inventory that the States will conduct beginning in 1979. The Water Quality Management process can offer valuable information on sludge management needs on a local or statewide basis and provide an assessment of the political, institutional and financial implications of sludge disposal.

Strategy Development

The State and EPA should develop a multi-year strategy which will define long-term goals, set priorities and establish responsibilities. It should correlate environmental programs with priority problems and provide for a logical progression of problem resolution specifically addressed in the annual work program. Public participation is strongly encouraged in strategy development. In addition, the strategy should include a funding summary for the various priority activities scheduled over the multi-year period.

Outlined below are hypothetical strategy elements that a State might develop to address a municipal sludge problem:

Goals. A State faced with a municipal sludge disposal problem might establish multi-year goals similar to these:

- End the practice of disposing municipal sludge within open dumps.
- Implement industrial pretreatment programs to encourage beneficial use of municipal sludge for land spreading applications.
- End ocean dumping of municipal sludges by 1981.

Priorities. The multi-year strategy should identify specific priority activities related to the above goals. Because the strategy will likely address several important related problems, it should assign a priority to the overall residuals problem, in light of the total resources available to the State and according to public values in the affected community. Of course, the States and EPA must always consider schedules and deadlines mandated by law or established by regulation when setting priorities. Violation of statutory deadlines can cause funding delays in some cases.

Once overall priorities are established, specific priorities within the municipal sludge problem area should be developed. Priorities could be assigned on a case-by-case basis, on a geographical basis or determined on the relative problem severity of a disposal method.

Anticipated Activities. Once goals and priorities are established, the State would proceed to define specific activities as necessary to accomplish the goals. With respect to the first hypothetical goal, to end the practice of disposing municipal sludge within open dumps, the State may define the following activities:

- Identify and classify all open dumps for the Open Dump Inventory under RCRA; utilize criteria published by EPA to establish those sites which pose significant environmental and health hazards.
- Develop compliance schedules for open dumps that fail to meet RCRA criteria.
- Coordinate sludge forecasting and disposal alternatives between construction grant and solid waste management agencies.
- Incorporate sludge conditions into NPDES permits; include requirements for monitoring in and adjacent to sludge disposal sites to determine levels of heavy metals, persistent organics, pathogens and nutritents entering surface and groundwater.
- Develop legislation to allow for implementation of open dump corrective programs.
- Ensure that adequate public participation programs are developed and operational during all phases of this management program.
- Encourage the use of alternative and innovative technologies (e.g., beneficial use, energy recovery) in developing options for sludge disposal.

The second hypothetical goal, to implement an industrial pretreatment program for sludge disposal, may include the following activities:

- Incorporate pretreatment conditions into NPDES permits.
- Develop procedures for landfilling operations in accordance with the Guidelines for Land Disposal of Solid Wastes (40 CFR Part 241 Appendix III); pretreatment requirements and procedures may also be necessary to protect air quality where sludge is disposed of through incineration.

The final goal of ending ocean dumping of municipal sludges by 1981 could result in the State planning the following activities over the multiyear period:

- Develop compliance schedule for phasing out the dumping of sludges at sea.
- Develop alternative methods for the disposal of sludges.
- Establish enforcement mechanisms for interim permits and the eventual prohibition of ocean dumping.
- Establish priorities for use of construction grants to fund sludge disposal facilities.

Responsible Agencies. The strategy should identify the responsibilities of State and other (Regional, local and interstate) authorities in the development and implementation of proposed programs.

Funding Sources. Agreements on the distribution of Federal and State funds to responsible authorities should be established in the strategy. In the following section a discussion of the one-year work program and a funding matrix are included. They identify the range of possible funding sources available to address the municipal sludge problem area.

One-year Work Program

As in the strategy development section, a hypothetical State one-year work program may be useful to illustrate several of the possible components and relationships in an annual work program for sludge management. A more generalized list of possible activities conducted under a sludge management program is included in a matrix following this discussion.

For the sake of brevity, the sample work program outlined here will focus on only *one of the three example goals—to prohibit the practice of disposing municipal sludges within open dumps.* Each of the activities outlined in the strategy for this goal is translated into specific outputs expected within the one-year time frame.

For the purpose of this discussion, assume that the State has delegated many responsibilities for addressing the municipal sludge problem in several adjacent counties within the State to a Regional planning body. Because the municipal sludge issue is frequently a concern in urban and metrpolitan areas, a Regional planning organization may be best suited to conduct some of the tasks.

Listed below are the sample outputs for a hypothetical municipal sludge management program that will be produced either by the State or delegated to a Regional agency:

Output 1: Identify throughout the Region all facilites disposing of municipal sludges. Coordinate with the SDWA Surface Impoundment Assessment.

Agency Responsible: Regional Solid Waste Office.

Funding Sources: RCRA 4008, SDWA Special Project, CWA 208, CWA 106.

Output 2: Determine which facilities are unacceptable and are serious pollution contributors based on RCRA land disposal criteria, and State standards.

Agency Responisble: Regional Solid Waste Office.

Funding Sources: RCRA 4008, RCRA 3011, CWA 208, CWA 106.

Output 3: Monitor facilities contributing the most pollution.

Agency Responsible: Regional Water Pollution Control Office

Funding Sources: RCRA 4008, RCRA 4009, CWA 106, CWA 208, SDWA 1442.

Output 4: Establish compliance schedules for (x) open dumps accepting municipal sludgers, in conjunction with the State.

Agency Responsible: State Solid Waste Office.

Funding Sources: RCRA 4008, CWA 208, CWA 106.

Output 5: Establish new facility sites for (x) open dumps by August 1979.

Agency Responsible: Regional Solid Waste Office.

Funding Sources: RCRA 4008, SDWA 1442, CWA 106, CWA Facility Planning, CWA 208.

Output 6: Adopt enforcement and permitting procedures for the sludge disposal practices, in conjunction with the State.

Agency Responsible: State Solid Waste Office.

Funding Spurces: RCRA 4008, RCRA 4009, RCRA 8006, CWA 208, CWA 106.

Output 7: Develop public participation program keyed to activities occurring during the fiscal year.

Agency Responsible: Regional Solid Waste and Water Pollution Control Office.

Funding Sources: RCRA 4008, CWA 208.

It is important to keep in mind that the above work program is only meant to be a simple example of outputs negotiated between the local agencies, States and EPA. Each out put wiill likely have several components that must be identified and agreed to. These components may include: Costs, disbursement schedules, milestones, responsible agencies and funding sources.

[6560-01-C]

MUNICIPAL SLUDGE MANAGEMENT

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FUNDING MATRIX

(includes State matching share)

Note: "x" indicates activity is eligible for either full or partial funding.

ACTIVITIES / FUNDING SOURCES	CWA								RCRA				SDWA					
	106 - State program grants	109 - State training grants	Step 1 - Construction grant (Facility planning)	Step 2 & 3 - Construction grants (plans, specs, construction)	Construction mgmt - Asst grants (§205(g))	208(f) - Areawide waste treatment management grants	208(j) - Cost-sharing for rural BMP's (USDA)	314 - Clean lakes grants	3011 - State hazardous waste program grants	4008 - Solid waste mgmt, resource cons., haz waste mgmt grants	8005/- Special studies & resource 8006 recovery facilities grants	8001/- Research & demonstrate facil- 8004 ity grants	SIA - Special project	1442 - Research, assistance, training grants	1443(a) - State program grants for public water supervision	1443(b) - State program grants for underground inject. cont.	1444 - Special study and demonstration grants	Sec 3 - Rural water survey
Locate sludge disposal sites	X		X[a]			X				X			X					
Assess surface and groundwater quality in sludge disposal areas	X		X[a]			X	X	X[b]		X				X				
Determine problem severity of sludge disposal sites	X		X[a]			X				X			X					
Develop slude volume projections	X					X				X								
Develop monitoring programs for sludge disposal facility	X					X				X				X				
Develop procedure for giving notice of closure, hearing & appeals						X			X	X								
Develop administrative procedures for sludge disposal operations					X	X			X	X	X	X						

[a]Grants on a site specific basis to POTW owners and operators

[b]Grants on a site specific basis.

MUNICIPAL SLUDGE MANAGEMENT

FUNDING MATRIX -- (includes State matching share)

Page 2 of 2

ACTIVITIES	FUNDING SOURCES	CWA								RCRA				SDWA							
		106 - State program grants	109 - State training grants	Step 1 - Construction grant (facility planning)	Step 2 & 3 - Construction grants (plans, specs, construction)	Construction mgmt - Asst grants (Excess) (§205(g))	208(f) - Areawide waste treatment management grants	208(j) - Cost-sharing for rural BMP's (USDA)	314 - Clean lakes grants	3011 - State hazardous waste program grants	4008 - Solid waste mgmt, resource cons., haz waste mgmt grants	8005/- Special studies & resource 8006 recovery facilities grants	8001/- Research & demonstrate facil- 8004 ity grants	SIA - Special project	1442 - Research, assistance, training grants	1443(a) - State program grants for public water supervision	1443(b) - State program grants for underground inject. cont	1444 - Special study and demonstration grants	Sec 3 - Rural water survey		
Assess feasibility of resource conservation & recovery programs							X			X	X	X	X								
Implement alternatives to control pollution from sludge disposal				X[a]	X[a]		X	X		X	X	X	X		X						
Develop training and technical assistance programs		X	X				X				X	X			X						
Develop hazardous sludge regulatory programs							X			X			X								
Build enforcement capabilities to close & upgrade disposal sites							X			X	X	X									
Establish reporting & recording mechanims for hazardous sludges							X			X	X										
Permit development and issuance		X								X	X										
Establish public involvement program		X		X[a]		X	X	X	X[b]	X	X	X	X								

Note: "X" indicates activity is eligible for either full or partial funding.

[6560-01-M]

ILLUSTRATION 2.—GROUNDWATER POLLUTION (PITS, PONDS AND LAGOONS)

INTRODUCTION

Groundwater pollution from pits, ponds and lagoons is an environmental problem that requires coordinated action under several EPA authorities. If other sources are adversely impacting the groundwater quality, such as underground injection or failing septic tanks, control programs for these sources should be included. Pits, ponds and lagoons—generally known as surface impoundments—have the following characteristics: (1) They are used primarily for storage, treatment or disposal of wastes in the form of fluids; (2) they are constructed above, below or partially in the ground; (3) they may or may not have permeable bottoms or sides, allowing their contents to infiltrate into the water. Surface impoundments are used for the treatment or storage of wastes or by-products from municipalites. industries, agriculture, mining and oil and gas drilling.

The problem on which this example focuses is unplanned discharges from surface impoundments as opposed to regular discharges to surface streams regulated by NPDES permits. Surface impoundments used for the planned storage of materials, such as polishing ponds or sludge lagoons, are not as crtical to the pollution problem as are accidental discharges or poorly designed surface impoundments. These unplanned discharges, generally in the form of seepage into groundwater, are a shared responsibility of EPA solid waste, drinking water, and water quality management programs.

BACKGROUND

Many EPA planning and implementation programs are involved in the study and solution of groundwater contamination from pits, ponds and lagoons. EPA and the States may plan for and implement controls on surface impoundments through the mechanisms of the Clean Water Act, Resource Conservation and Recovery Act and Safe Drinking Water Act.

RCRA

A major planning effort related to pits, ponds and lagoons is State Solid Waste Management (SWM) planning conducted under Subtitle D of RCRA. States must develop SWM plans which assign planning and implementation responsibilities among State and local governments, prohibit open dumping, identify regulatory powers needed to implement the plan and include several other provisions.

One major requirement of the State SWM plans is completion of the Open Dump Inventory, which EPA must publish under Subtitle D of RCRA. The States will assess every pit, pond, lagoon, landfill and land spreading facility to determine if it is an open dump. Open dumps must be closed or upgraded to sanitary landfills within five years after EPA publishes the inventory. The Office of Solid Waste has suggested the following priorities for the development of the Open dump Inventory: municipal landfills in FY 1980, municipal sludge disposal sites in FY 1981, industrial sites in FY 1982, and agricultural and mining sites after FY 1982.

Since the Open Dump Inventory will initially focus on municipal solid waste landfills and sludge disposal sites, it will probably not include all pits, ponds and lagoons until after FY 1981. In the meantime, the Surface Impoundment Assessment (SIA) will contain most of the information on the location and potential of groundwater pollution threats from pits, ponds and lagoons.

If a surface impoundment is used to hold or dispose of a hazardous waste, the State or EPA will issue a permit specifying the conditions under which it may be disposed of or stored. It is likely that there may be some lag time before every surface impoundment holding a hazardous material receives a permit. Therefore, once an impoundment operator has applied for a permit, the operation will be considered to have "interim status." This means that the facility should comply with the § 3004 regulations (standards applicable to owners and operators of hazardous waste treatment, storage or disposal facilities) until it gets a final permit. Development and implementation of State hazardous waste permit programs is supported by grants to States under Subtitle C of RCRA.[a]

If the material disposed of or stored in the surface impoundment is not a hazardous material, EPA is relying on the States to implement controls under the SWM program or the WQM program. While implementation is partially supported by State program grants, its success is strongly dependent on State and local funds and initiative and the support of other Federal agencies.[b] If a State fails to act on a groundwater pollution problem involving a nonhazardous substance, EPA could withhold State program grants under the CWA and RCRA.

CWA

The Water Quality Management (WQM) program is another major effort which may address groundwater pollution from pits, ponds and lagoons. Under sections 208(b)(2)(J) and (K) of the CWA, States and designated areawide agencies must prepare comprehensive plans to control pollution from disposal of residual wastes and subsurface disposal of pollutants. State and areawide WQM planning efforts are funded primarily by § 208 grants. As of August 1978, there were 225 State and areawide WQM agencies.

Where severe local or Statewide groundwater pollution problems exist as a result of surface impoundments, WQM funding could help bring about a solution to the problem. One of the highest priorities of the WQM program in the next five years is protection of groundwater quality.

NPDES permits issued by EPA or the States under section 402 of CWA, may also affect surface impoundments. The CWA provides authority to require as a condition of an NPDES permit, the use of best management practices (BMP) at industrial sites to control pollution from toxic and hazardous pollutants. BMP may also be used at municipal wastewater treatment ponds for the protection of groundwater quality, and may be prescribed to control spills, runoff, leaks, storage and disposal of wastes.

SDWA

Under the authority of section 1442 of SDWA, States are beginning to conduct the nationwide Surface Impoundment Assessment (SIA) which is scheduled for completion in July 1979. In the SIA, the States locate and count surface impoundments, select random samples for analysis and determine groundwater pollution potential from the various types and locations of impoundments.

Also, section 1431 of SDWA gives the Administrator of EPA broad emergency powers to protect the health of persons from imminent and substantial danger through contaminated drinking water supplies. This emergency power could be initiated if there is a threat to public health resulting from surface impoundment seepage.

GROUNDWATER POLLUTION IN THE STATE/EPA AGREEMENT

Problem Assessment

To develop an effective and coordinated program for control of groundwater pollution from pits, ponds and lagoons, a problem assessment is essential. The information necessary to determine the extent of groundwater contamination should be available from the Open Dump Inventory required under section 4005 of RCRA, the Surface Impoundment Assessment under section 1442(b)(3)(c) of SDWA,

[a] EPA published proposed hazardous waste criteria regulations and hazardous waste permit regulations in December 1978.

[b] For example, surface mining permits issued by the Office of Surface Mining, Department of Interior or by States authorized to issue such permits.

the State WQM plans under sections 208 and 303 of the CWA and the State SWM plans under section 4008(a)(1) of RCRA.

The SDWA Surface Impoundment Assessment, together with data from facility plans and information from the USGS could provide a strong data base to assist in the conduct of the RCRA Open Dump Inventory. The WQM program can play a large role in the problem assessment of groundwater pollution from pits, ponds and lagoons. Through both past planning efforts and the continuing planning phase, the WQM program can provide technical experience, insight into overcoming institutional barriers and can highlight the ineffectiveness of existing controls in achieving water quality goals. The State should identify in the one-year work program any additional data needs for studying groundwater pollution and assign responsibility as appropriate.

Strategy

If the State assessment indicates that surface impoundments are a water quality problem, either across a State or in a particular substate area, the State should develop a multi-year strategy for addressing the problem. This long-term strategy should include the goals, priorities, a summary of anticipated planning and implementation activities, an identification of responsible agencies, a public participation work plan and a funding summary.

The following discussion presents hypothetical multi-year strategy elements for addressing groundwater pollution from pits, ponds and lagoons:

Goals: A State faced with a major groundwater pollution problem might establish multi-year goals similar to these:

- Identify and assess pollution potential of all surface impoundments in the State, especially with regard to toxics and groundwater contamination.
- Close or upgrade all surface impoundments which are classified as open dumps.
- Write permits for all remaining pits, ponds and lagoons, including those with surface discharges, hazardous wastes, municipal sludge and the disposal associated with an industrial site that has a surface discharge. Where applicable, these permits should be part of an integrated permitting process. For those pits, ponds and lagoons not covered by a permit, implement alternative controls such as best management practices.

Priorities. As the State is developing its multi-year strategy, it should reflect on the relative importance of groundwater pollution from pits, ponds and lagoons to the overall pollution situation in the State. With this in mind, together with the intermedia effects that this includes, the State might proceed to identify the worst cases of pollution from surface impoundments and assign them high priority for remedial action. These cases shoul be identified by name, geographic area, basin, or type, such as industrial or mining disposal site. This priority setting should incorporate public views gained through the public participation process.

Anticipated Activities. Having set goals and determined priorities, the States would proceed in this hypothetical example to define the anticipated multi-year planning and implementation activities necessary to reach the goals. With respect to the first goal, to identify and assess the pollution potential of all the surface impoundments in the State, the State might plan to:

- Locate all pits, ponds and lagoons on maps and classify them.
- Assess these surface impoundments against the open dump criteria being developed under section 4005 of RCRA.
- Determine if the impoundments hold hazardous wastes as defined in the hazardous waste criteria being developed under section 3004 of RCRA.
- Coordinate monitoring of the pollution from surface impoundments with other monitoring efforts directed at surface and groundwater.
- Determine the potential health hazard associated with each given surface impoundment.

In support of the second goal to close or upgrade surface impoundments classifed as open dumps, the State should plan, over a multi-year period to:

- Classify surface impoundments as open dumps or sanitary landfills.
- Develop procedures for giving notice of closure, hearing and appeal.
- Set up enforcement mechanisms, develop a new State legislation as necessary and conduct enforcement training.
- Use the WQM process to develop locally acceptable solutions and raise public consciousness regarding the problems of surface impoundments, especially toxic groundwater pollution.
- Implement BMP to control pollution from pits, ponds and lagoons.

To achieve the third goal of writing permits or implementing alternative controls the State might plan the following activities over a multi-year period:

- Coordinate permits for surface impoundments with existing permit programs (NPDES, sludge, hazardous waste).
- Develop a permitting function, including the identification of staff, budget and responsibilities.
- Coordinate enforcement activities for surface impoundments with other applicable enforcement authorities (e.g., NPDES).
- Coordinate monitoring of pollution from surface impoundments to support and document permitting process.
- Where appropriate, compliance schedules should be tied into grants for accountability.
- Implement BMP to control pollution from pits, ponds and lagoons.
- Use the WQM process to evaluate the effectiveness of past control techniques.
- Coordinate public participation activities, especially emphasizing toxics and groundwater contamination from disposal of wastes.

Responsibilities Agencies. The strategy should identify the responsibilities of State and other (Regional, local and interstate) authorities in the development and implementation of proposed programs.

Funding Sources. Activities included in the multi-year strategy should be tied to a specific funding source or combination of sources to provide budget accountability. Both the one-year work program and the funding matrix which follow, provide examples of the range of possible funding sources and how these sources might be used for addressing groundwater pollution.

One-year Work Program

When the State and EPA have worked out a strategy for dealing with groundwater pollution from pits, ponds and lagoons, the State should proceed to develop a one-year work program to be attached to the Agreement.

In the work program the State would examine the strategy and set priorities for the upcoming year. The State would also identify the time frame for completing its selected outputs. Outputs should be tied to line items in the budget for accountability. The following funding matrix matches the generalized groundwater pollution program activities to funding sources. Many activities may be funded by several possible sources.

In this hypothetical illustration, the State will produce six outputs related to groundwater pollution from pits, ponds and lagoons in FY 1980. Assume that the State organization includes a State Department of the Environment with three divisions—Water Pollution, Solid Waste and Water Supply. The six outputs for the first goal are:

Output 1: Transfer of data from the Surface Impoundment Assessment, the WQM plans and USGS data to the Open Dump Inventory.

Agency Responsible: State Solid Waste Division.

Funding Sources: RCRA 4008, SDWA Special Project.

Output 2: Screen the data transfer for indications that a site may be an open dump or hold a hazardous waste.

Agency Responsible: State Solid Waste Division.

Funding Sources: RCRA 4008, RCRA 3011.

Output 3: Assess (x) surface impoundments to determine extent of contamination.

Agency Responsible: State Water Supply Division.

Funding Sources: SDWA 1442, SDWA 1444, CWA 106, RCRA 4008.

Output 4: Visit all municipal sludge disposal sites, conduct field work and assess sites against open dump criteria.

Agency Responsible: State Solid Waste Division.

Funding Sources: RCRA 4008, RCRA 3011, RCRA 8006, CWA 106, SDWA 1442.

Output 5: Monitor surface impoundments, expecially for groundwater contamination and toxics.

Agency Responsible: State Water Pollution Division.

Funding Sources: CWA 106, CWA 208, SDWA 1442, RCRA 4008.

Output 6: Develop and adopt enforcement and permitting procedures to control toxic and other wastes discharged into (x) surface impoundments that are contaminating the ground water.

Agency Responsible: State Solid Waste Division.

Funding Sources: RCRA 3011, RCRA 4008, CWA 106.

These outputs are meant to be only skeletel. The State and EPA negotiation of outputs will be much more complex. Each output has several components including cost, disbursement schedule, milestones, responsible agencies and funding sources. These must be determined in the negotiation process. Since the outputs are agreed to by the State and EPA, both should be accountable for completing them. The Agreement provides valuable information for evaluating the progress being made to clear up pollution across the State and the nation.

GROUNDWATER PROTECTION

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FUNDING MATRIX -- (includes State matching share)

Note: "x" indicates activity is eligible for either full or partial funding.

ACTIVITIES	FUNDING SOURCES	CWA								RCRA				SDWA					
		106 - State program grants	109 - State training grants	Step 1 - (Construction grant (Facility planning)	Step 2 & 3 - Construction grants (plans, specs, construction)	Construction mgt - Asst. grants (Excess)	208(f) - Areawide waste treatment management grants	208(j) - Cost-sharing for rural BMP's (USDA)	314 - Clean lakes grants	3011 - State hazardous waste program grants	4008 - Solid waste mgmt, resource cons., haz waste mgmt grants	8003/- Special studies & resource recovery facilities grants 8006	8004/- Research & demonstrat. facility grants	SIA - Special project	1442 - Research, assistance, training grants	1443(a) - State program grants for public water supervision	1443(b) - State program grants for underground inject. cont	1444 - Special study and demonstration grants	Sec 3 - Rural water survey
Location of impoundments		X		X[a]			X				X			X	X				
Dev. and impl. monitoring pgrms.		X		X[a]			X				X				X				
Assess surface and groundwater quality near pits, ponds & lagoons		X		X[a]			X	X	X[b]	X	X			X	X	X		X	X
Det. potential health hazards		X		X[a]			X				X				X			X	
Estb. reporting mech. for haz. wastes							X			X	X		X	X		X	X	X	
Compile Open Dump Inventory		X					X				X			X					
Estb. enforcement mech for closing dumps							X			X	X		X						

[a] Grants on a site specific basis to POTW owners and operators.
[b] Grants on a site specific basis.

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FUNDING MATRIX

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(includes State matching share)

Note: "x" indicates activity is eligible for either full or partial funding.

GROUNDWATER POLLUTION

ACTIVITIES / FUNDING SOURCES	CWA									RCRA				SDWA						
	105 - State program grants	109 - State training grants	Step 1 - (Construction grant facility planning)	Step 2 & 3 - Construction grants (plans, specs, construction)	Construction mgmt - Asst grants (Excess)	208(f) - Areawide waste treatment management grants	208(j) - Cost-sharing for rural BMP's (USDA)	314 - Clean lakes grants	3011 - State hazardous waste program grants	4008 - Solid waste mgmt, resource cons., haz waste mgmt grants	8005-Special studies & resource recover facilities grants	8004 - Research & demonstrate facility grants	SIA - Special project	1442 - Research, assistance, training grants	1443(a) - State program grants for public water supervision	1443(b) - State program grants for underground inject. cont	1444 - Special study and demonstration grants	Sec 3 - Rural water survey	
Dev. closure & appeals process	X					X			X	X		X							
Dev. training & assistance programs	x	x				x				x			x	x					
Review existing legis & authorities	X		X			X				X									
Permit development & issuance	X								X	X									
Dev and implement new legis/ control alternatives	X					X	X	X[1]	X	X				X			X	X	
Assess feasibility of resource conservation & recovery programs						X			X	X	X	X							
Establish public involvement program	X		X[a]			X	X	X[b]	X	X					X	X			

[6560-01-M]

OTHER OPPORTUNITIES FOR INTEGRATION

In addition to the illustrations, there are many other opportunities for integration among CWA, RCRA, SDWA and other environmental protection programs. Regions and States may wish to address additional problems and issues as they negotiate State/EPA Agreements. A few such examples include:

1. *Population, Economic, Waste Load and Land Use Projections.* Projections are essential components of all planning programs and some implementation programs. Facility planning, water quality management planning and solid waste management planning, for example, are all concerned with municipal sludge projections. These projections in turn are used to develop NPDES permits.

Uniform population, economic, land use and waste load projections would contribute greatly to the coordination of environmental programs. These projections are frequently mentioned by State, Federal and local interests as needing coordination and integration. It is recommended that State/EPA Agreements contain procedures for preparing disaggregations, making land use projections, and other related tasks. The cost-effectiveness guidelines (40 CFR Part 35, Subpart E, Appendix A) govern both WQM and facility planning with respect to population projections. The Regions and States may also wish to use the same guidelines for projections affecting solid waste and drinking water.

2. *Problem Assessment.* An assessment of environmental problems is another area often cited as suitable for integration. Problem assessment is important to all programs and should drive long-term strategies for problem solving. Assessments are also closely related to population, land use and waste load projections since they cover future as well as present problems.

There are many legislative and regulatory requirements for problem assessments which could be meshed into a single State assessment. Some of the major components might be the Surface Impoundment Assessment, the Open Dump Inventory, discharger inventories and segment classifications, detailed problem assessments funded under the WQM and SWM programs and the Clean Lakes Assessment. Regions and States may wish to adopt a goal of a single problem assessment satisfying the needs of RCRA, SDWA, and CWA and also serving as the 305(b) report to Congress (CWA).

An integrated problem assessment would provide opportunities for innovative techniques, such as a cross-cutting toxics/hazardous assessment to identify the locations, sources and amounts of toxic and hazardous materials, especially toxic "hot spots." Other problem assessment possibilities include analyzing rarely used sources of data (e.g., NPDES self-monitoring data) or to use existing data in new ways (e.g., locate toxic hot spots in relation to drinking water intakes). One related innovative technique already under development is the environmental profile, which four Regions are currently testing. The profile employs an environmental index to describe the overall water quality of specific segments.

An integrated assessment would address both surface and groundwater. Necessary data on groundwater quality and quantity might be obtained from NPDES self-monitoring, from studies funded under WQM or SWM, or from the U.S. Geological Survey (USGS).

3. *Monitoring.* Environmental monitoring conducted under various EPA programs is a potential area in which inefficient or duplicated services may be improved. One output of the State/EPA Agreement might be an integrated monitoring program with funding contributed by all of the various environmental authorities and programs. Such joint monitoring may involve, in addition to EPA and the States, other Federal agencies, local governments and independent associations such as the USGS, the Fish and Wildlife Service, regional planning commissions and private interest groups.

An integrated monitoring program would likely result in shared responsibilities and procedures, provide for easier and more useful data transfer as well as reduce overall costs. Different program areas may share sampling sites, sampling procedures, laboratory certification, quality control programs, training programs and record keeping and data retrieval.

Toxic monitoring and analysis are very complicated and expensive and should be coordinated. States and Regions may wish to give greater emphasis to biological monitoring, such as bioassays for lethal dose and bio-accumulation determinations and measurements of species diversity. This monitoring, together with discharge and ambient monitoring, would be helpful to all program areas and contribute to a better understanding of sources, types and effects of toxic pollutants.

4. *Toxics.* Of the many laws addressing the problems of toxic materials, CWA, SDWA and RCRA provide the authority to control toxics in the environment (as opposed to during manufacture, distribution, and use). Since none of these three laws give blanket authority to control toxic pollution, integration of the various programs dealing with toxic substances is desirable. Integration would be extremely useful in the areas of data collection, permitting as well as monitoring.

States and Regions need information for collecting data on toxic parameters in discharges, surface impoundments, urban runoff, combined sewer overflows, injection wells, landfills, land spreading sites and nonpoint sources such as agricultural runoff. Since isolation and quantification of toxic chemicals is generally difficult and expensive, data collection should be closely coordinated. (See also the discussions of monitoring and problem assessment.)

It is recommended that any permits issued should incorporate toxic limits where appropriate as established in the CWA effluent guidelines (40 CFR Parts 405-460). Development of toxic permit conditions could be a joint responsibility of the NPDES authority and the WQM and SWM programs. Once such a permit is drafted, the Regions and States should establish an interdisciplinary permit review process to ensure that the expertise of all disciplines are included in the review. Procedures for permit development and review could be incorporated specifically into the State/EPA Agreements.

5. *Public Participation.* Public participation in environmental programs is often dispersed among various programs, concerns and issues. This splintering effect makes it more difficult for people to understand the details of environmental problems and the arsenal of Federal, State and local tools available to solve those problems. Further, it diminishes the effectiveness of public input to decisions concerning actions and plans. An integrated public participation strategy (a requirement of the proposed public participation regulations, 40 CFR Part 25) will enhance the public role in the decision process. The proposed public participation regulations apply to programs under RCRA, SDWA and CWA. These proposed regulations require that public participation activities and materials be combined for closely related programs or activities wherever feasible and when such combination would not be detrimental to participation by the widest possible public.

The WQM and SWM programs have similar public participation requirements and coodination between the two programs could be readily achieved. The NPDES public participation requirements could also be meshed with the WQM and SWM requirements through the State public participation strategy.

To attain this integration of public participation as part of the State/EPA Agreement, the States and Regions

should consider the full range of public information and participation activities and events. Possible areas for coordination and consolidation include advisory committees, public participation staff, publications, meetings, hearings, and training courses. Such coordination and consolidation would likely promote better organized dialogue with the public. It would also produce an increased understanding among all decision-makers of the nature of environmental problems and the Federal, State and local programs and capabilities for attacking them, and produce a clear set of priorities for resolving these problems.

6. *Pretreatment and Industrial Waste Management.* Hazardous wastes generated by existing pretreatment and Best Available Technology (BAT) requirements of the CWA although reducing the amount of such wastes discharged into the nation's waters, will continue to increase on-site storage and off-site disposal problems in the coming years. Industrial hazardous waste generation was estimated at 30-35 million metric tons in 1976 (enough to fill the New Orleans Superdome every other day). With implementation of BAT and pretreatment regulations it is estimated that this figure could double by 1990.

Primary Federal authorities and programs for dealing with the treatment, storage and disposal of hazardous wastes are sections 307 and 402 of the Clean Water Act and Subtitle C of the Resource Conservation and Recovery Act (Hazardous Waste Management). Some States have also developed independent, but similar programs.

However, on-site storage is becoming limited and off-site disposal areas are in short supply. Growth in certain industries is being curtailed by lack of economic and environmentally acceptable disposal options. At the same time, the risk of illegal ("midnight") or careless off-site dumping is increasing. Further, significant institutional barriers exist which limit dealing with pretreatment and industrial waste management problems. In many States hazardous waste and pretreatment programs are operated by separate agencies. Although a number of State and areawide water quality management agencies have identified industrial waste storage and disposal problems as a planning priority, there is little evidence that the RCRA authorities are being combined with the Clean Water Act authorities to deal with the problem.

The State/EPA Agreement can be used as the mechanism to coordinate and integrate the development and implementation programs needed to manage industrial wastes and pretreatment. The Agreement can be used to raise the visibility and significance of this problem and can help activate the participation of State and local governments in resolving pretreatment and industrial waste problems.

States unwilling to pursue a comprehensive pretreatment and industrial waste management program should at least be encouraged to integrate the NPDES and RCRA permit programs.

For those States including pretreatment and industrial waste management problems in the State/EPA Agreement, the following areas are among those which can be considered for coordination: joint permits, new disposal site studies and plans for dealing with abandoned wastes. Initially provisions should be made to combine diverse waste management practices and planning options into a unified strategy. This strategy should integrate pretreatment with all other hazardous waste management programs such as standards for spill control (section 311 of the Clean Water Act) requirements for shipping and transporting wastes (DOT regulations) and requirements to control unsafe practices during temporary storage and waste transfer (OSHA regulations). The integration of related requirements for disposal of dredge or fill material and municipal sludge (sections 404 and 405 of the Clean Water Act) should also be considered.

IV. Summary

Congress charged EPA with establishing national environmental standards, carrying out research and development, funding State programs and charting national objectives and policies. Federal, State and local governments plan, develop and carry out pollution abatement programs. In delineating Federal and State roles in the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), and the Resource Conservation and Recovery Act (RCRA), Congress clearly had in mind a Federal/State partnership. The State/EPA Agreement is an example of the Federal/State partnership in action. The Agreement will be the result of a negotiation process between each State and the corresponding EPA Region. Regional and local planning and implementation agencies, and interested or affected publics will also be included in the negotiation process. The process should get together Federal, State and local entities to determine environmental priorities, define intermedia problems and develop creative, efficient and effective solutions.

Two major categories of integration efforts should be undertaken during development and implementation of the Agreement. These include (1) improvement of program management practices through such tasks as the combination of duplicative requirements of two or more programs into a single product which satisfies the legal and administrative requirements of all "covered" programs; and (2) utilization of the resources and authorities of several EPA programs in a joint effort to identify and solve environmental problems that each program has had inadequate resources or authority to deal with.

Beginning in FY 1980, State/EPA Agreements will serve as the mechanism to manage, integrate and coordinate environmental programs in all States, creating joint planning and implementation of SDWA, RCRA and CWA. Each Agreement will be the result of an assessment of the environmental problems facing the State, development of a multi-year strategy to solve those problems, and a determination of specific steps to take during the next year.

The Agreement will reflect State and EPA priorities, timing, responsibilities and allocation of funds. It should also serve as a management tool for use within the Regional office as well as the State, reduce paperwork, and serve as a public information document. The participation of the public and other governmental agencies is important to the negotiation process and to the implementation of the Agreements.

It is the intent of EPA to strengthen the capability of States and areawide agencies to manage their environmental programs in the context of the State/EPA Agreements.

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WEDNESDAY, MARCH 21, 1979

PART III



ENVIRONMENTAL PROTECTION AGENCY

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CLEAN AIR ACT

Assessment and Collection of Penalties for Noncompliance

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Parts 66 and 67]

[FRL 1051-5]

ASSESSMENT AND COLLECTION OF NONCOMPLIANCE PENALTIES

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: The regulations below establish the procedures by which EPA and the States will assess and collect noncompliance penalties under Section 120 of the Clean Air Act (42 U.S.C. 7420). The regulations also set forth the means by which the States may assume delegation of the noncompliance penalty program. The purpose of these mandatory penalties is to recover the costs avoided by a source in not complying with Clean Air Act requirements after mid-1979. The proposed regulations define which sources are subject to the noncompliance penalty, as well as setting forth the situations in which the source may qualify for an exemption. To calculate the economic benefits of noncompliance EPA has developed a mathematical model that is set forth below.

DATES: Comments must be received on or before June 19, 1979. Proposed effective date: 30 days after promulgation. Public hearings on this proposal will be held on May 3 and 4, May 7 and 8, and May 10 and 11, at the locations listed under "ADDRESSES."

ADDRESSES: Questions or comments on this proposal should be directed to the Director, Division of Stationary Source Enforcement, EN-341, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Public hearings on this proposal will be held at the following locations:

Conference Room 2409, 2126, U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C.—May 3 and 4.

Adams Room, Midland Hotel, 172 W. Adams, Chicago, Illinois—May 7 and 8.

Sixth Floor Conference Room, U.S. Environmental Protection Agency, 2153 Fremont Street, San Francisco, California—May 10 and 112.

All hearings on the first day will commence at 9:30 A.M. with an evening session beginning at 7:30 P.M. On the second day hearings will commence at 9:30 A.M. and conclude when appropriate.

FOR FURTHER INFORMATION CONTACT:

Robert Homiak, Attorney-Advisor, Division of Stationary Source Enforcement, Environmental Protection Agency, at (202) 755-2581.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 (Pub. L. 95-95) added Section 120 to the Clean Air Act (42 U.S.C. 7420). This section requires promulgation of regulations for the assessment and collection of noncompliance penalties against stationary source violators of certain requirements under the Clean Air Act.

I. Background

The 1970 Clean Air Act established mid-1975 as the deadline for achieving public health related National Ambient Air Quality Standards. Two additional years were available in areas with particularly difficult air pollution control problems. While the majority of the Nation's 23,000 major sources of air pollution are in compliance with State and Federal requirements, a substantial number are not. Many of these noncomplying sources have particularly high levels of pollutant emissions. For example, many steelmaking facilities emit great quantities of particulate matter, while electric power plants are a significant source of SO_x emissions.

Those sources that have violated the law by failing to install and operate pollution control devices necessary to achieve compliance with applicable requirements have enjoyed an economic advantage over the larger number of sources that have made the expenditures necessary to comply. The economic savings a source may realize by not installing the necessary controls has created an incentive to delay compliance in many instances. Until the passage of the 1977 Amendments, the regulatory and enforcement measures authorized by the Act lacked direct economic incentives to ensure prompt and continous compliance.

In enacting Section 120, Congress required EPA to assess and collect administratively a penalty designed to capture the economic savings realized by a firm as a result of noncompliance with the law after mid-1979. Thus, the penalty will eliminate most of the economic advantage gained by a noncomplying firm after mid-1979 relative to a firm that achieves compliance by this date.[1]

Assessment of noncompliance penalties against sources subject to Section 120 of the Act is mandatory. Such penalties are in addition to, not in lieu, of, any other payments, sanctions or requirements under the Clean Air Act. The noncompliance penalty program is separate from all other enforcement actions under the Act, and will not affect or be affected by any civil or criminal proceedings brought under any other provision of the Act or State or local law.

Noncompliance penalties must be assessed administratively by EPA or by a State. It is clear that Congress intended that the States should play a major role in implementing this program. EPA encourages States to seek a delegation of authority to implement the noncompliance penalty program as soon as possible.

II. Applicability of Regulations

A. General Applicability

The Act requires that noncompliance penalties be assessed against any major stationary source that is not in compliance with any emission limitation, emission standard or compliance schedule under an applicable implemenatation plan. The only exception to this rule is for primary nonferrous smelters that have received primary nonferrous smelter orders under Section 119.

Section 302(j) of the Act defines a "major stationary source" as one that emits or has the potential to emit one hundred tons per year or more of any air pollutant. The regulations define "potential to emit" as the capability at maximum capacity to emit a pollutant in the absence of air pollution control equipment. "Air pollution control equipment" includes control equipment which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation. These definitions are the same as the definition of a parallel statutory term contained in EPA's regulations covering the prevention of significant deterioration (PSD) of air quality. (40 CFR 52.21(b)(3) and have been subjected to extensive public review and comment. EPA's position on this issue is set forth in the preamble to the final PSD regulations. *See* 43 Fed. Reg. 26391-92 (June 19, 1978).

In addition to major stationary sources that are in violation of SIP requirements, all stationary sources (regardless of size) that are out of compliance with any emission limitation, emission standard, standard of performance or other requirement established under Section 111 (New Source Performance Standards) or 112 (National Emission Standards for Hazardous Air Pollutants) of the Act are also subject to the penalty.

Finally, any source that is exempted from the penalty must remain in compliance with all interim emission control requirements or schedules of com-

[1] The noncompliance penalty is designed to remove the economic benefits gained by a noncomplying source from mid-1979 until such time as final compliance is achieved. In order to capture those savings a source realized from its noncompliance prior to mid-1979, EPA could commence a civil action pursuant to section 113(b) and seek appropriate civil penalties.

pliance established under the extension, administrative order, consent decree or court order, or suspension which led to the exemption. If the source fails to meet an interim requirement or schedule, it will be subject to penalties. This includes a primary nonferrous smelter that is not in compliance with any iterim requirement under a primary nonferrous smelter order. No source may be excused from the penalty unless it meets one of the exemptions specified in Subpart D of Part 66 of the regulations.

In most instances, the source's noncompliance will result from a failure to install control equipment or use required fuels. In others, however, the noncompliance will be caused by a failure to operate and maintain control equipment or other processes in a manner adequate to ensure continuous compliance. Both types of violation subject the source to a noncompliance penalty.

The fact that a source is subject to a court-imposed schedule contained in a consent decree, court order, or an administratively issued DCO does not by itself relieve it from liability for the penalty. In order to obtain an exemption, any such source must satisfy the criteria set forth in Section 120(a)(2)(B) or (C).

B. APPLICABLE DATES

In Section 120 of the Act there are apparently contradictory indications as to the earliest date from which the noncompliance penalty will be assessed. Section 120(d)(3)(C)(i) provides that for sources issued a notice of noncompliance on or before August 7, 1979, the "period of covered noncompliance" begins on this date. Section 120(d)(3)(C)(ii), however, provides that the "period of covered noncompliance" commences on the date of issuance of the notice of noncompliance, whenever such notice is issued after July 1, 1979. Thus, for any source issued a notice of noncompliance after July 1, but prior to August 7, 1979, the appropriate date for the assessment of the penalty would be uncertain. In order to ensure consistency, EPA has chosen August 7, 1979, as the date from which the noncompliance penalty will be calculated for those sources issued notices of noncompliance on or prior to this date, but invites comment on this issue. Where the notice is issued after August 7, 1979, the applicable period will begin on the date of issuance of the notice.

If a source becomes subject to a newly-imposed emission limitation or to an additional increment of control, Section 120(g) provides that the date for imposition of the penalty relating to the newly-imposed emission limitation or additional increment of control will be July 1, 1979, or the date on which the source must demonstrate compliance with such emission limitation or increment of control, but in no event later than three years after the approval or promulgation of the requirements. This provision should be extremely important in light of the nonattainment SIP revisions required to be submitted to EPA by January 1979. The date on which the source must demonstrate final compliance will be specified in the SIP itself. Thus, if the new emission control regulations require immediate compliance with the newly-imposed emission limitation or additional increment of control, the noncomplying source will be subject to a noncompliance penalty as of August 7, 1979. If the new regulations require compliance at a future date, the source will not be subject to a noncompliance penalty for violations of the newly-imposed emission limitation or additional increment of control until that date, not later than three years after the approval or promulgation of that requirement, provided of course that it satisfies all applicable interim requirements.

The provision in Section 120(g) that imposition of the penalty will occur no later than three years after the promulgation of the new requirement immediately raises the question of how the Section 120 penalty applies in cases in which other provisions of the statute explicitly allow compliance with SIP provisions more than three years after they have been promulgated. For example, in the case of carbon monoxide or photochemical oxidants standards, Section 172(a)(2) provides that final compliance for some sources in certain areas may be delayed until as late as December 31, 1987. Section 172(c) requires that SIP provisions to ensure attainment of the ambient air quality standards by December 31, 1987, be approved or promulgated by July 1, 1982. For these sources, Section 120(g) would seem to require that a penalty be assessed no later than July 1, 1985. The question thus arises whether a source that is in compliance with the interim requirements contained in the SIP through 1987 would still be subject to a noncompliance penalty. The Agency believes that in this case, no penalty would be imposed, provided of course that the SIP itself specified a final compliance date of 1987. The Agency solicits comments on this issue.

C. CONTINUITY OF EXISTING SIP REQUIREMENTS

As noted, SIP revisions submitted to meet the requirements of Part D of the Act are expected to establish new requirements for some sources. Whether the revised SIP contains immediately effective or future effective regulations, the Agency will require any source subject to new SIP requirements to meet the requirements of the pre-existing SIP until such time as it has demonstrated continuing compliance with the new requirements. Keeping the pre-existing SIP requirements in effect is necessary to prevent a source from operating uncontrolled or under less stringent controls while it is moving towards compliance with the new regulations. Violations of these pre-existing requirements will subject the source to noncompliance penalties.

The only exception to this rule would occur when the new regulations require a type of control equipment that is incompatible with that already in operation. In such cases the source will not be required to meet the provisions of the old SIP during that time in which it is physically impossible to keep the existing equipment in operation while simultaneously installing the new device. This exception will be construed narrowly. Only the period during which an actual physical impossibility exists may be covered by an exception. For example, in the design and contract phases of a new compliance schedule, there should normally be no exception from the pre-existing emission limit. Similarly, a source that did not have any type of control equipment in operation at the time the new requirement was adopted would normally not be eligible for this exception. (Further guidance on this issue is available from EPA Regional Offices.)

III. PROCEDURES FOR ASSESSMENT AND CALCULATION OF THE NONCOMPLIANCE PENALTY

A. ISSUANCE OF NOTICE OF NONCOMPLIANCE

EPA or State issuance of a notice of noncompliance is the trigger for assessing and collecting the noncompliance penalty. Notices will generally be issued by August 7, 1979, or thirty days after discovery of the source's noncompliance, whichever is later. The notice will inform the source of its duty to calculate the amount of its penalty and schedule of payments as requred by Section 120(b)(4)(A) (based on instructions contained in an enclosed Manual and Technical Support Document), and of its right to petition for a hearing to challenge the finding of noncompliance or to claim an exemption. The source must, within forty-five days of receipt of the notice, either calculate the penalty and schedule, or submit such a petition.

Where a source does not properly submit its calculation and schedule or the data necessary to verify these, EPA may enter into a contract to determine the amount of the penalty and the payment schedule applicable

for that source. The costs of such a contract will be added to the amount of the source's penalty.

B. CALCULATION OF THE PENALTY

Section 120 of the Act provides that the penalty be not less than the economic value of delay to the owner of the source, including three elements: (1) the quarterly equivalent of the capital costs; (2) the operation and maintenance costs; and (3) "any additional economic value which such a delay may have for the owner or operator of such source."

The first component arises because owners of sources that have not invested in required air pollution controls have had the opportunity to invest their funds instead in projects that yield a direct economic benefit to the firm. The second component of savings from delayed compliance is the operation and maintenance costs that would have been incurred if the source had complied. These include labor, raw materials and energy costs, as well as any other expenditures directly associated with the operation of the pollution control equipment. In addition, certain operation and maintenance costs may be required to achieve compliance even where no pollution control equipment is required. Delaying compliance means that these expenditures are avoided. The noncompliance penalty also removes these savings.

The economic model accounts only for these two components. By so doing, we believe the model captures the most significant portion of any saving that can be realistically quantified. It is conceivable that there might be instances in which a source owner realizes additional economic benefit from his noncompliance. If such a situation exists, EPA would have to balance carefully the benefits of recovering these additional benefits against the administrative burdens involved. We encourage the public to suggest possible situations in which EPA's present economic model would not be capable of calculating additional benefits of a source's noncompliance, and indicate possible ways in which these additional benefits might be estimated.

The Act specifies that all penalty payments be equal; however, the legislative history surrounding its enactment indicates that this should be interpreted as an equality in real dollar terms. That is, if inflation is expected to cause costs to escalate, that escalation ought to be reflected in the noncompliance penalty. A penalty that does not rise with expected inflation, but merely averages inflation, gives an overestimate of the savings from noncompliance in the early years of equipment life and an underestimate in the final years.

Calculation of the penalty is based on widely accepted principles of financial and economic theory. The model itself utilizes twelve financial parameters. These parameters, their impact on the penalty, and the sources for obtaining them are discussed in detail in the Technical Support Document. One of these parameters concerns the appropriate way for EPA to discount a source's future cash flows. The discount rate used in this proposal is based upon the source's return on equity. An alternative to this equity discounting method utilizes the weighted average cost of capital. Both of these methods of discounting are discussed in the accompanying Technical Support Document, along with our rationale for selecting the return on equity. EPA encourages public comment on the appropriateness of our approach.

In developing the model, the Agency carefully considered the feasibility and cost of administration to EPA, the States, and the sources. Wherever feasible, the model uses data that is specific to the individual source. However, some of the functions for a specific source are often difficult to determine in advance. For this reason, industry-wide averages are used for certain parameters (inflation rate, discount rate, and the after-tax return on shareholder's equity), and national averages are used for the rates of return on debt and preferred stock. The use of such industry and national averages greatly reduces the administrative costs, both to the firm and EPA. In utilizing this data, care has been taken to ensure that the effect on the size of the resulting penalty will be slight. In most instances, where a choice among alternative assumptions or data sources had to be made, the one resulting in the lowest penalty was selected. In framing this model, EPA has relied on accepted methods of financial calculation that are widely used by businesses making calculations for their own business purposes.

C. THE EFFECT OF PRECOMPLIANCE EXPENDITURES

Section 120(d)(2)(B) provides that the noncompliance penalty should be reduced to reflect any expenditures made by the source during any quarter for the purpose of achieving compliance, but only "to the extent that such expenditures have not been taken into account" in the initial calculation. In this proposal, the Agency has adopted an approach that grants the source owner an allowance for expenditures made toward the purchase of pollution control equipment, while also capturing a significant portion of the costs avoided by noncompliance. Any expenditure that the source anticipates making in any quarter towards achieving compliance will be factored into the initial calculation of the penalty. The model divides the expenditures avoided into a capital component and an operation and maintenance (O&M) component, and reduces the penalty by an amount representing the same proportion to the quarterly payment as that quarter's estimated expenditure is to the total amount necessary to comply. For example, if a source by avoiding compliance is saving $200,000 per quarter in capital costs and $100,000 in O&M costs, then the penalty would be $300,000 per quarter in the absence of any consideration of credits. Under the approach EPA is proposing, if by the end of a given quarter the source would have made half the capital expenditures, the capital portion of the penalty would be reduced by the same proportion, to $100,000. Similarly, if in that quarter the source made $40,000 in O&M expenditures directly related to correcting the noncompliance at issue, the O&M portion of the penalty would be reduced by $40,000 (or 40%). The Agency believes that this approach is the one that most exactly recaptures the cost savings from delay beginning after the notice of noncompliance was issued, and is therefore the one that most nearly fits the statutory intent. This position is explained in more detail in the Technical Support Document.

EPA evaluated several different methods of implementing this statutory language. One alternative would permit the source to deduct from its quarterly penalty assessment an amount equal to that expended during that quarter towards achieving compliance. This "dollar for dollar" credit interpretation was rejected for several reasons.

First, giving a source a "dollar for dollar" credit would radically diminish and probably eliminate all penalties, thus defeating the purpose of the noncompliance penalty provision. Congress included Section 120 to remove the economic advantages that accrue to noncomplying sources. If the Agency were to utilize a "dollar for dollar" credit approach, sources would be able to offset their penalty payments completely. Thus, these sources would have achieved an unfair competitive edge by failing to install the necessary pollution controls. This result would frustrate the purpose of the penalty program.

There are also sound air quality reasons for rejecting a "dollar for dollar" credit approach. Because it would be able to offset completely any penalty assessed, the source would be encouraged to extend its projected compliance schedule as far into the future as possible. This incentive to delay compliance would have the effect of fur-

ther worsening the air quality in nonattainment areas, as well as possibly consuming the SO_2 and particulate matter increments in areas where the air quality is currently better than the National Ambient Air Quality Standards. For these reasons the Agency believes that adopting a "dollar for dollar" credit approach would be unwarranted.

The net payments for all of the quarters of noncompliance will be discounted and summed to derive their total present value. This present value will then be converted into a series of escalating payments to take into account the effects of inflation. These payments will be due at the beginning of each quarter.

D. REPLACEMENT FACILITIES

Another issue which the Agency is considering is whether sources that desire to replace older facilities should be granted some allowance in the initial calculation of the penalty for control equipment installed on the new replacement facility. As a statutory matter, the Agency is not required to recognize a replacement facility as a means of compliance. (See Section 113(d)(3), which contains the only statutory reference to sources that are replacing existing facilities. This section provides that the source must shut down its existing facility no later than July 1, 1979, in order to receive an administrative order.) As a policy matter, however, the Agency wishes to encourage modernization since it usually results in the replacement of older facilities with more efficient and cleaner ones. For this reason, sources constructing replacement facilities will be granted a reduction in the penalty, in accordance with the criteria specified below.

For the purposes of this section, the Agency is considering defining a "replacement facility" as one that serves the same function and produces the same product as the one it replaces. It would not be necessary that the new facility be *identical* to the one being replaced, but it must be of substantially the same, or greater, capacity as the existing facility in making the same product and no more polluting per unit of production. Thus, a steelmaking company that decided to substitute a new electric arc furnace for its noncomplying open hearth furnace could be eligible for a replacement allowance. This allowance would be granted on a pro rata basis. Cases may arise in which the production capacity of the replacement facility is less than that of the existing facility. In this case the Agency might wish to determine an appropriate credit in a different manner. We encourage comment on other situations that might arise, and how the Agency may best determine an appropriate credit amount.

The Agency is considering calculating noncompliance penalties for replacement facilities in the following manner. The appropriate penalty, reflecting the economic value the source has gained by virtue of its noncompliance, would be based upon the estimated costs of retrofitting needed control equipment on the existing facility. These costs appear to form the proper basis for computing the penalty, since it is the existing source that is continuing to derive an economic benefit by not complying with applicable requirements. The amount of the credit, however, would be premised upon the costs the source would actually incur in constructing and operating pollution control equipment at the new facility. Utilizing these inputs, the noncompliance penalty would be calculated using the existing economic model. The payment schedule will run, and the source will be assessed a penalty, until it has closed down operation of its existing noncomplying facility, commenced operation of its replacement facility, and demonstrated compliance with all applicable legal requirements. For example, if the cost of constructing pollution control equipment at the new facility would be $10 million and the source spends $1 million prior to the first quarter in which the penalty is assessed, it would be able to reduce the capital portion of the penalty for that quarter by 10%. This method of calculation would be employed whether the costs associated with the construction of the new facility exceeded, or were lower than, those that the source would have incurred in retrofitting the existing plant. If the source replaces its existing facility with one that utilized an inherently less polluting production process, EPA will again determine what controls would have been necessary on the old facility to achieve compliance. Based on this data the Agency would then determine an appropriate credit amount. The Agency welcomes comment on both the desirability of granting an allowance to sources replacing older facilities and also upon the method we have proposed to accomplish this.

Because computation of the noncompliance penalty requires lengthy arithmetic calculations, the EPA Office of Enforcement will make available, at nominal cost, a program listing for time-shared computers that calculate the penalty. Calculation of the penalty must be in accordance with the formulae contained in the Manual and Technical Support Document. (These documents appear as Appendices A and B to the proposed regulations.) Though sources are free to use other programs if they wish, the proposed regulations state that any program which gives different results from the program which appears as Appendix C to these regulations will be automatically disregarded.

E. PAYMENT OF PENALTY

The penalty will be paid quarterly, and the first payment will be due six months after the notice of noncompliance was issued or on January 1, 1980, whichever is later. If any source is late in making a quarterly payment, Section 120(d)(5) of the Act requires that a twenty percent late payment penalty shall be added to the aggregate penalty that is unpaid.

F. FINAL ADJUSTMENT

After a source has come into compliance, it must so notify the Administrator, who must make the determination that the source is no longer violating applicable requirements. If this determination is made, the Act requires that a final accounting of the penalty, based on the actual costs of compliance to that source, be made within 180 days. Where an underpayment occurred, the source must pay that deficiency plus interest within thirty days after the adjustment. Similarly, EPA or the State administering the program will reimburse a source with interest for any overpayment that has occurred.

EPA would prefer to use the same rate of return on equity that is used to calculate the penalty as the defined interest rate. This is the rate most consistent with the statutory purpose in EPA's opinion, since any other rate would result in either penalizing or rewarding sources whose estimated penalties differ from the final calculation as against those whose payments do not. This difference would give firms an incentive to estimate their penalties incorrectly. The prevailing government or commercial interest rates are, of course, also candidates for designation. The Treasury would prefer to use the rate of return on equity as the prevailing rate for firms that underpay and the interest rate the United States must pay to borrow as the interest rate for firms that overpay. Another alternative would be to use the interest rate for long-term bonds. This rate could be used both for overpayments and underpayments. A letter from Assistant Secretary of the Treasury Roger C. Altman and a memorandum setting forth EPA's position are both contained in the administrative record. EPA invites comments on this question.

IV. EXEMPTIONS

Section 120(a)(2)(B) and (C) of the Act sets forth several limited instances in which a source may be exempted from the duty to pay a noncompliance

penalty. If the source desires to request an exemption, it must do so within 45 days of receipt of a notice on noncompliance. Hearings on such requests will be on the record and will follow the procedures set out in the Agency's "Consolidated Rules of Practice" (40 CFR Part 22), except to the extent provided in Subpart J of these regulations. (These Rules were proposed on August 4, 1978, 43 *Fed. Reg.* 34738, and will be promulgated shortly. Citations are to be proposed Rules.)

One category of exemptions is based on the prior issuance of specified orders, extensions or suspensions. Coal conversions pursuant to prohibition orders or delayed compliance orders issued pursuant to Section 113(d)(5), delayed compliance orders based on use of innovative technology under Section 113(d)(4), and emergency implementation plan suspensions under Section 110(f) and (g) are within this category. In each case, however, the order, extension or suspension on which the exemption is premised must actually have been issued. It will not be enough for a source to argue that issuance is authorized or even required.

Section 120(a)(2)(B)(iv) provides that an exemption is also available if a source is unable to comply with applicable requirements for reasons that are entirely beyond its control. The first eligibility criterion for this exemption is that the source must have received a delayed compliance order (DCO) under Section 113(d)(1) of the Act,[2] or an order issued pursuant to Section 113 as in effect prior to enactment of the 1977 Amendments.

A. THE TERM OF THE (B)(IV) EXEMPTION

The first question to be considered is the time period for which such exemptions may be issued. As noted above, prior to making an exemption request under Section 120(a)(2)(B)(iv), a source must have received a delayed compliance order issued under authority of Section 113(d)(1) or a Section 113 order issued prior to the Amendments. Section 113(d)(1)(D) states that any DCO must "provide for final compliance . . . as expeditiously as practicable, but . . . in no event later than July 1, 1979, or three years after the date for final compliance specifed in the state implementation plan, whichever is later." A similar limitation applies to orders and consent decrees issued under Section 113 of the Act as in effect prior to the 1977 Amendments. Section 113(d)(12) voids any such order or decree that provides for a compliance extension beyond July 1, 1979, "unless [the order or decree] is modified under this subsection within one year after the enactment of the Clean Air Act amendments of 1977 to comply with the requirements of this subsection." One of the requirements of Section 113(d) is that final compliance must be required by July 1, 1979.

The legislative history contains numerous expressions of disapproval of the prior practice of EPA and the States in issuing "open-ended" compliance orders with long deadlines. The House Committee questioned the validity of this practice, noting that some EPA orders extended until as late as 1983 or 1985.[3] Similarly, the Senate Committee concluded that EPA's practice had "no basis in law."[4] The new DCO provisions embodied in Section 113(d) were intended to remedy EPA's practice.[5] As a result, the Agency has adopted the position that DCOs may not extend beyond July 1, 1979, unless the compliance date in the applicable implementation plan is later than July 1, 1976.

The Agency's reading of Section 113(d) significantly limits the Section 120(a)(2)(B)(iv) "inability to comply" exemption, since the noncompliance penalty program does not take effect until after July 1, 1979. As with Section 113(d) DCO's, a literal approach to Section 113(d)(1)(D) results, to a great extent, in reading the reference to prior Section 113 orders out of the (B)(iv) exemption provision.

Under this literal interpretation of Section 113(d)(1)(D), there are four categories of sources that would be eligible to receive DCOs extending beyond July 1, 1979, since their SIP final compliance dates could be later than July 1, 1976:

(a) sources not subject to emission limitations under the existing SIP, made subject to such limitations by a SIP revision;

(b) sources subject to emission limitations in the existing SIP made subject to an additional increment of control (i.e., a more stringent limitation) in the new SIP;

(c) sources located in areas for which the date for final compliance under the SIP is later than July 1, 1976; and

(d) sources located in areas attaining the national ambient air quality standards which can be permitted additional time to achieve compliance because such sources will not impact on the continued attainment and maintenance of the standards.

In cases (a) and (b), the DCO may be issued for a period extending up to three years from the date for final compliance with the newly-imposed emission limitation or for the added increment of control (but not for the degree of control required in the existing SIP). This three year period may extend beyond July 1, 1979, in cases in which the final compliance date in the new requirement or newly-added increment of control is a date after July 1, 1976. For the most part, such new emission limitations or newly-added increments of control will be imposed in the SIP revisions for nonattainment areas required to be submitted to EPA by Sections 110(a)(2)(I) and 172 of the Act as a precondition for new source construction or source modification after July 1, 1979. In cases (c) and (d), the DCO may be issued for a period extending up to three years from the date for final compliance specified in the SIP. This three year period could extend beyond July 1, 1979, in any case in which the SIP compliance date is later than July 1, 1976. Any sources receiving a DCO extending beyond July 1, 1979, may be eligible for an exemption under Section 120(a)(2)(B)(iv) if they can demonstrate an inability to comply as discussed below.

While the Agency's literal interpretation of Section 113(d) will allow many sources to receive DCOs extending beyond July 1, 1979, other sources will be ineligible to receive such DCOs or modifications of Section 113(a) orders issued prior to the 1977 Amendments. Under a literal reading of Section 120(a)(2)(B)(iv), such sources would be unable to receive an exemption from the noncompliance penalty, even though they were unable to comply for reasons entirely beyond their control.

There are indications in the statute and legislative history, however, that an interpretation of the Act that allows relief to be granted to such sources may be supportable. The legislative history indicates that Congress intended that such exemptions be available for sources subject to pre-1977 SIP requirements. The House bill provided that such sources could be exempted from the penalty based on a complete inability to comply at least through mid-1980.[6] The Senate also apparently contemplated that a source could obtain relief from the penalty if it were unable to comply for reasons entirely beyond its control. The 1977

[2] The reference in (B)(iv) to Section 113(d) orders should be interpreted as meaning delayed compliance orders issued pursuant to (d)(1). Exemptions based upon orders issued pursuant to Sections 113(d)(4) [innovative technology] and (d)(5) [coal conversions] are covered by Section 120(a)(2)(B)(i) and (iii).

[3] H.R. Rep. No. 95-294 95th Cong., 1st Sess 56, FN. 2 (1977), [House Report].

[4] S. Rep. No. 95-127 95th Cong., 1st Sess. 45 (1977) [Senate Report]

[5] *Id.*

[6] H.R. 6161, the House version of the 1977 Clean Air Act Amendments, provided that DCOs could extend five years beyond the final SIP compliance date. Since most pre-existing SIPs provided for final compliance by mid-1975, sources subject to these requirements could be issued DCOs extending until mid-1980. These DCOs would have allowed sources to petition for an exemption from the noncompliance penalties.

[7] Senate Report at 49-50; S. 252 Section 120(e)(2)(B), 95th Cong., 1st Sess. (1977).

Senate bill provided that such sources could seek relief from the penalty in the United States District Court. The opportunity to seek such relief was not predicated upon the prior issuance of an administrative order, and was not limited to any particular time period.[7] This provision for direct judicial relief based on a source's inability to comply was not adopted by the Conference Committee. There is no indication in the legislative history, however, that by tying the grant of an exemption to receipt of a DCO, the Conference Committee intended to prohibit sources that were unable to receive post-79 DCOs from obtaining relief from the penalty.

Section 113(d)(1)(E) also appears to contemplate that major sources which have received DCOs may not achieve compliance until after July 1979, since it explicitly requires DCOs to notify each such source that "unless exempted under Section 120(a)(2)(B) or (C), it will be required to pay a noncompliance penalty effective July 1, 1979, as provided under Section 120 . . . in the event such source fails to achieve final compliance by July 1, 1979."

Third, the Conference Report states explicitly that DCOs may be issued after July 1, 1979, if they establish a delayed compliance penalty.[8] In addition, the Senate bill clearly contemplated that some sources with DCOs would not comply by July 1, 1979, and required that any source issued a DCO with a compliance date later than July 1, 1978, would have to compute its noncompliance penalty. The DCO was to be amended "to include such penalty, to accrue after July 1, 1979."[9] Although the Senate provision for amendment of enforcement orders was not included in Section 113(d)(1)(E), the Conference Committee indicated that the Senate provision on issuance of enforcement orders was being adopted.

B. EPA'S PROPOSED RESOLUTION OF THIS STATUTORY CONFLICT

In order to resolve the problems created by the conflicting provisions contained in Sections 113(d) and 120(a)(2)(B), the Agency proposes the following:

1. No administratively issued DCOs would be issued by EPA or a State under Section 113(d)(1) that provided in any manner for compliance after July 1, 1979, or three years after the applicable SIP compliance date.

2. Federal or State court orders, whether consent decrees or litigated dispositions, that provide for compliance beyond this period would potentially make a source eligible for an exemption, provided they were reviewed by EPA and found to satisfy the criteria specified in Section 113(d). The source must also show, upon application for the exemption, that the inability to comply arose from reasons entirely beyond the control of the owner or operator of such source or of any affiliated person.

In order to satisfy the criteria set forth in Section 113(d), the order must contain an expeditious compliance schedule, require compliance with interim requirements, provide for emission monitoring and reporting, and notify the source that, unless exempted by EPA, it would be required to pay a noncompliance penalty. Finally, all orders would have to be final; that is, a source could not seek an exemption from the noncompliance penalty on the basis of an unconsented judicial order or decree if it was appealing that order or decree. EPA will not enter into consent decrees unless they satisfy these criteria. Thus, EPA review will be limited to State consent decrees, as well as federal and State unconsented orders.

There are two provisions of Section 113(d) that the judicial order would not have to satisfy to be approvable by EPA. First, it would not have to be made subject to public notice and comment. Also, it would not have to require final compliance by July 1, 1979. As noted earlier, Congress plainly sought to limit EPA's discretion to issue enforcement orders that extended beyond certain specified dates. Judicial orders, however, present less risk of the abuses Congress had in mind. Indeed, Congress did not directly address post-1977 judicial orders at all.

We believe that this proposal reflects Congress' intent in enacting these sections of the Act. Prohibiting the issuance of administrative DCO's that extend beyond July 1, 1979, responds to Congress' concern that open-ended administrative compliance orders, whether issued by States or EPA, carry with them an unacceptable risk of undermining the statutory compliance scheme. Allowing sources to petition for an exemption based upon a judicial decree responds to Congress' concern that some vehicle for providing relief to sources that meet the substantive conditions of the Section 120(a)(2)(B)(iv) exemption be provided beyond July 1979. However, the decision to grant any order which would enable the Agency to consider a source for relief under Section 120(a)(2)(B)(iv) would have to be made by a court, not by the Agency directly, and would be subject to the oversight and enforcement powers of the court. This would ensure that the procedural door to any such exemption would be more tightly held than if committed to Agency discretion alone.

The requirement for EPA determination of consistency of court orders with Section 113(d) is included for two reasons. First, it is EPA's position that court orders and consent decrees entered after the effective date of the Clean Air Act Amendments of 1977 must comply with the substantive requirements of Section 113(d), except that they need not provide for final compliance by July 1, 1979. That section set standards for all administrative orders issued in the future, and required all court orders and administrative orders issued in the past to be conformed to those standards; it is consistent with the Congressional policy embodied in these measures to read those requirements as applicable to court orders to be issued in the future as well. Second, it is a fundamental premise of Section 120(a)(2)(B) that all exemptions under it must be preceded by the issuance to the source of some other formal document which EPA (or, in the case of an exemption under Section 120(a)(2)(B)(v) [energy emergencies authorized by Section 110(f)], the President) has expressly approved.

It is important to note that the judicial decree or order by itself would not exempt the source from the noncompliance penalty. It would, however, enable the source to petition EPA for such relief. Only if EPA determined, in accordance with the criteria set forth in Section 66.31 of the regulations, that the source's inability was for reasons entirely beyond its control would the exemption be granted.

C. WHAT CONSTITUTES INABILITY TO COMPLY FOR REASONS ENTIRELY BEYOND THE CONTROL OF THE SOURCE

The second major eligibility criterion for an exemption under Section 120(a)(2)(B)(iv) relates to the source's inability to comply. The statute provides that in order to qualify for an exemption, the source must demonstrate that its inability to comply was for reasons entirely beyond the control of the owner or operator of such source or of any entity controlling, controlled by, or under common control with the owner or operator of such source. Language in the House Committee Report discussing H.R. 6161, the Clean Air Act Amendments of 1977, indicates that the (B)(iv) exemption "should be construed narrowly, so as not to open a loophole or defeat the purposes" of the penalty program.[10] The Report specifies only embargoes, strikes, fires, natural disasters, and the complete impossibility fo a supplier or contractor to furnish materials necessary to achieve compliance as situations that are entirely beyond the control of the source, but indicates that some other situations

[7] H.R. Rep. No. 95-564 95th Cong., 1st Sess. 133 (1977).

[8] Senate Report at 48.

[10] House Report at 76.

might also qualify for an exemption.[11] Such situations should arise infrequently. Section 66.31 of the proposed regulations specifies the criteria that the Agency would consider in evaluating exemption requests based on fires, strikes, natural disasters, embargoes, and the complete impossibility of a supplier to furnish needed goods. To qualify for the exemption, the source must demonstrate that it had done nothing to encourage the situation that prevented its compliance. Additionally, the source must demonstrate that the procurement of any needed pollution control equipment has been and is being given the highest priority in the source's planning and budgeting process, and that the source has been and is taking all available steps to minimize its emissions.

In addition to the circumstances clearly specified in the legislative history of Section 120, there may be other situations that the Agency would consider as being entirely beyond the control of the source. A possible ground for exemption might arise if a source were subject to a SIP requirement that has not been achieved despite installation of all available control equipment. Cases of true technological impossibility are extremely rare. In addition, one of the major premises of the Clean Air Act is that the State may require a source to research and develop the technology necessary to achieve SIP standards, or else shut down. This technology-forcing aspect of the Act has been recognized by the courts. (*See, e.g., Union Electric Co.* v. *EPA*, 427 U.S. 246 (1976)).

Whether Congress, for the purposes of the noncompliance penalty program, intended to depart from this technology-forcing philosophy is uncertain. The House Committee on Interstate and Foreign Commerce indicated that the absence of any adequately demonstrated pollution control equipment would constitute grounds for an exemption from the noncompliance penalty, provided that the source "had made maximum feasible efforts to research and develop the necessary technology or to assist some other persons to do so.[12] Senator Muskie, however, in discussing the Conference Report accompanying the 1977 Amendments, emphasized that claims that technology is not available to meet a certain emission standard would not exempt a source from the penalty.[13]

While the House and Senate differed somewhat in their discussions of this question, both recognized that a source should not be totally exempted from the noncompliance penalty by reason of its being subject to a technologically impossible SIP requirement. The language in the House Report suggests that the source must be doing everything possible to find a means of achieving the SIP standards even to be considered for an exemption. While Senator Muskie apparently understood that no exemption based on technological impossibility would be available under any circumstances, the difference between these two approaches is, as a practical matter, small. If there is no control equipment adequate to achieve compliance with the SIP, the Agency or State would be unable to determine accurately the costs being avoided by the noncomplying source. EPA believes that the only penalty the Agency could assess in this situation would necessarily be based upon the costs associated with the installation of all available controls, as determined on a case-by-case basis, as well as a commitment to an appropriate research and development (R&D) program designed to develop the new means of emission control necessary to achieve the standards. A source that, at the time the SIP requirement was first promulgated, had taken, and was continuing to take all possible steps to achieve compliance including the installation of the best available controls and, where appropriate, by commencing an EPA approved and supervised R&D program, would be considered to be deriving no economic benefit from its failure to comply and would, therefore, be exempt from the penalty, provided it had received a DCO or judicial order. These interim conditions should be incorporated into DCO or judicial order and would thus be enforceable under Section 120(a)(2)(A)(iii). Sources not meeting these criteria would be assessed a penalty based upon the costs avoided by reason of their failure to take these steps. We solicit comment on the appropriateness of this approach.

A related issue is whether a source that is experiencing severe economic difficulties could be exempted from the penalty. The legislative history is unclear on this point. The 1977 Senate Report states that the cost associated with controlling a facility would not constitute a defense to the penalty.[14] The 1976 House bill, however, provided that the term "inability to comply" included an inability to obtain financing due to temporary conditions in capital markets.[15] This standard was incorporated into the inability to comply standard adopted by the 1977 House Committee.[16] The House Committee's "inability to comply" standard was adopted by the Conference Committee.

The Agency's believes that granting an exemption based on the source's inability to obtain financing would be appropriate in certain, limited circumstances. To qualify for this exemption, the source would have to demonstrate that its inability to obtain capital resulted from temporary, verifiable market conditions. Merely being a poor loan risk would not entitle the source to an exemption. Finally, in no event could an exemption be granted if capital is available to the source owner or operator for the purpose of improvement or expansion of the existing production capacity, or for construction of new production capacity. We solicit comment on the appropriateness of its approach.

De Minimis Exemptions

Section 120(a)(2)(C) provides that an exemption is also available if the Administrator determines, after notice and opportunity for a public hearing, that a source's noncompliance is *de minimis* in nature and duration. The criteria that the Administrator will utilize in evaluating whether a particular violation is *de minimis* are set forth in Section 66.32 of the regulations. These include the magnitude of the noncompliance, whether such noncompliance is of a recurring nature, the steps being taken to minimize the emissions, and the extent to which the source has derived an economic advantage from its noncompliance.

The Agency has decided to include within the *de minimis* exemption violations that are caused by a sudden and unavoidable breakdown of process or air pollution control equipment. Section 66.33 of the regulations specifies the criteria the source must satisfy to be granted an exemption based upon an equipment malfunction. These include a finding that the source's pollution control equipment was designed, operated, and maintained properly, that all practicable steps were taken to minimize the amount and duration of the excess emissions, and that the source has not gained a significant economic advantage from the breakdown. The Agency encourages comments on the desirability of including such malfunctions within the *de minimis* exemption, as well as on the criteria that the Administrator should use in evaluating exemption requests based on malfunctions.

Federally and Municipally Owned Facilities

The Agency also considered whether municipalities and federal facilities should be exempt from the noncompliance penalty. It is anticipated that

[11] *Id.*

[12] House Report, FN at 76. *See also id.* at 66.

[13] 123 Cong. Rec. S. 13698-99 (daily ed. Aug. 4, 1977) (remarks of Sens. Muskie and Stafford).

[14] Senate Report at 50.

[15] H.R. Rep. No. 94-1175 94th Cong., 2d Sess. 42 (1976).

[16] House Report at 59.

municipalities may argue that their sources are not profit-making in the same sense that commercial facilities are. Secondly, federal facilities may argue that assessment of the penalty against them would be a meaningless exercise since the money involved will be paid by, as well as received by, the U.S. Treasury, unless the State has been delegated the program.

The Agency believes that in enacting Section 120, Congress intended to recover the out-of-pocket savings accruing to any source from its failure to install pollution controls, unless such source is specifically exempted. No exemption was created for either federal facilities or municipalities; in fact, the Congress strongly indicated its intention that federal facilities be treated the same as other sources of air pollution in the amendment to Section 118 of the Act.

Under this reading, federal facilities and municipalities should be subject to noncompliance penalties unless one of the specified exemptions is applicable. We invite comment on this issue.

V. Administrative and Judicial Review

A. Adjudicatory Hearings

If a source wishes to challenge the finding of noncompliance that led to issuance of the notice of noncompliance, or to claim entitlement to an exemption, it may petition for a hearing. The Administrator or delegated State authority may then either withdraw the notice, grant the hearing, or deny the request if the source has not raised any significant questions. Where a hearing is graned, it will be of an adjudicatory nature except as otherwise provided, and will be conducted in accordance with the Agency's Consolidated Rules of Practice (40 CFR Part 22). Hearings of this type are also available where a source's penalty submittal is recalculated by the Agency and after a final adjustment.

B. Informal Hearings

The Act provides that hearings to determine whether a source should be exempted because its noncompliance is *de minimis* will be informal in nature. Such hearings need not meet the requirements of the Consolidated Rules. A source applying for a *de minimis* exemption must submit information sufficient, in the opinion of the Administrator, to justify the request. In determining whether an exemption is justified, the Administrator will consider the factors set forth in the regulations. If the Administrator determines that the source has not supported its exemption request with sufficient information, a hearing will be denied.

Finally, where a State has been delegated the noncompliance penalty program, its hearings on challenges to notices and exemption requests may be informal so long as the conditions established in Section 67.11 of the Regulations are met. Where a State hearing was held, any EPA hearing to review State exemption decisions or penalty assessments may be of an informal nature.

C. Judicial Review

Several EPA decisions under these regulations can be appealed to the appropriate United States Court of Appeals. The first of these is the finding of violation that leads to the issuance of the notice of noncompliance. The second is a decision to deny an exemption request. In addition, revision by EPA of a penalty schedule submitted by a source, either at the start of the penalty assessment process or at the time of final adjustment, may be appealed. Such decisions are appealable only if all administrative remedies, including appeal to the Administrator, have been exhausted.

VI. State Involvement

A. Delegatons

Part 67 deals with State involvement in assessing and collecting noncompliance penalties. EPA encourages all States that are interested in the program to seek delegation of it as soon as possible. Penalties assessed by a State will be paid into that State's Treasury.

In order to be delegated the authority to administer this program, a State must request a delegation by describing its proposed program. The request must indicate the availability of adequate staff and funds and the capability for conducting the necessary financial analysis and administrative hearings. Where specific assistance from EPA will be necessary, the State request should so indicate.

After a State delegation is in effect, the Agency will retain concurrent authority to assess and collect a penalty against any source within that State that is subject to the penalty and against which the State has failed to take appropriate action. Where the Administrator determines that a source has been overlooked, or that other steps subsequent to the issuance of a notice of noncompliance have not been taken, he will notify the State to that effect. If the State does not take corrective action within thirty days, the Agency will do so.

Provision is also made in the regulations for review of State exemption decisions and penalty assessments. Where the Administrator disapproves a State action, the Agency will then take whatever steps are necessary to assess the penalty against that source in accordance with these regulations. If the Administrator determines that the State has repeatedly failed to administer the program as required in the guidelines set out in the regulations, he shall so notify the State, setting forth the reasons for such a determination. The State may then respond and demonstrate that it is in fact acting in conformity with these guidelines or that it is taking reasonable steps to meet those guidelines. If the State cannot so demonstrate, the Administrator will withdraw the delegation and implement the program.

VII. Public Hearings on This Proposal

Public comment is invited and will be received until June 19, 1979. EPA has decided to provide a 90 day comment period, rather than the normal 60 days, because of the extremely technical nature of this proposal. We believe that this 90 day period provides the public with adequate time to analyze and comment upon these proposed regulations. Because the Clean Air Act requires that the noncompliance penalty program take effect on August 7, 1979, EPA will not be able to provide any further extension of the comment period. Comments should be addressed to:

Director, Division of Stationary Source Enforcement (EN-341), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Informal (legislative) public hearings on these proposed rules will be held at the following times and places:

Conference Room 2409, 2126, U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C.—May 3 and 4.

Adams Room, Midland Hotel, 172 W. Adams, Chicago, Illinois—May 7 and 8.

Sixth Floor Conference Room, U.S. Environmental Protection Agency, 2153 Fremont Street, San Francisco, California—May 10 and 11.

All hearings on the first day will commence at 9:30 A.M. with an evening session beginning at 7:30 P.M. On the second day hearings will commence at 9:30 A.M. and conclude when appropriate.

A presiding officer and panel will be designated for each hearing. The presiding officer will have the responsibility for maintaining order, excluding irrelevant or repetitious material, scheduling presentations and, to the extent possible, notifying the participants of the time at which they may appear. The hearings will be conducted informally. Technical rules of evidence will not apply.

Interested persons wishing to make a statement at the hearing will be afforded the opportunity to do so. The time for making a statement will be limited. Such persons are requested to file a notice of their intent to make a statement no later than ten days prior to the hearing and, no later than five days prior to the hearing, if practicable, to submit five copies of the proposed statement to Robert Homiak at the above address (telephone: 202-755-2580). All other inquiries and comments prior to and after the hearing should be addressed to the same. The record of each public hearing will remain open for thirty days following the completion of that hearing for the submittal of rebuttal and supplementary information.

The documents on which this proposal is based are contained in Docket Number EN-79-1. All comments received during the comment period will be promptly added to the docket, and all documents upon which the final rules are based will be included in the docket. The docket will be open for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at:

U.S. Environmental Protection Agency, Central Docket Section, Room 2903B, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

Interested persons are reminded that Section 307(d)(7)(B) of the Act provides that objections to proposed rules must be raised with reasonable specificity by public comments for those objections to be cognizable during judicial review. In the view of EPA, this requires comments of a technical nature to be accompanied by sufficiently detailed supporting documentation to permit the Agency's technical staff to evaluate the comments in detail. This is particularly important where the information necessary to evaluate the comments properly is in the control of the commenters.

In addition, a regulatory analysis of the impact of these regulations has been prepared as required by Executive Order 12044. Copies of this analysis entitled "The Economic Effects of Noncompliance Penalties Under Section 120 of the Clean Air Act" may be obtained from the Agency's Central Docket Section, at the above address.

Copies of the Agency's "Plan For Evaluating the Effects of the Noncompliance Penalty Program" may also be obtained from the Director, Division of Stationary Source Enforcement at the above address. This evaluation is required by Executive Order 12044, and will be conducted in mid-1984, five years after these regulations become effective.

Finally, in accordance with the provisions of Executive Order 12044, these proposed regulations have been distributed to State and local air pollution control groups for their review and comments.

(Section 120 of the Clean Air Act, as amended, 42 U.S.C. 7420)

DOUGLAS M. COSTLE,
Administrator.

MARCH 9, 1979.

Title 40 of the Code of Federal Regulations is proposed to be amended by adding new Parts 66 and 67 as set forth below:

PART 66—ASSESSMENT AND COLLECTION OF NONCOMPLIANCE PENALTIES

Subpart A—Purpose and Scope

Sec.
66.1 Applicability.
66.2 Program description.
66.3 Definitions.
66.4 Re-examination of positions taken.
66.5 Savings clause.

Subpart B—Notice of Noncompliance

66.11 To whom notices must be sent.
66.12 Timing of notices of noncompliance.
66.13 Contents of notices of noncompliance.
66.14 Duties upon receipt of a notice of noncompliance.

Subpart C—Calculation of noncompliance penalties

66.21 How to calculate the penalty.
66.22 Contracting out penalty calculation.

Subpart D—Exemption Requests

66.31 Exemptions based on an order, extension or suspension.
66.32 De Minimis exemptions.
66.33 Excess emissions/upsets.
66.34 Revocation of exemptions.

Subpart E—Decisions on Exemption Requests and Challenges to Notices of Noncompliance

66.41 Petitions.
66.42 Decision on petitions.
66.43 Procedures for hearing.
66.44 Final decision.

Subpart F—Review of Penalty Calculation

66.51 Review of assessments.
66.52 Hearing requests.
66.53 Decisions on hearing requests.
66.54 Procedures for hearing.
66.55 Adjustment of penalty.

Subpart G—Payment

66.61 Duty to pay.
66.62 Method of payment.
66.63 Late payment penalty.

Subpart H—Compliance and Reimbursement

66.71 Determination of compliance.
66.72 Additional payment or reimbursement
66.73 Hearing requests.
66.74 Payment or reimbursement.

Subpart I—Final Action

66.81 Final action.

Subpart J—Supplemental Rules for Formal Adjudicatory Hearings

Sec.
66.91 Scope of these supplemental rules.
66.92 Beginning of hearings.
66.93 Time limits.
66.94 Burden of presentation; burden of persuasion.
66.95 Issues for hearings.
66.96 Penalty assessed.
66.97 Appeals from or review of initial decision.

AUTHORITY: Section 120 of the Clean Air Act, as amended, 42 U.S.C. 7420

Subpart A—Purpose and Scope

§ 66.1 Applicability.

This Part applies to all proceedings for the assessment by EPA of a noncompliance penalty as provided by Section 120 of the Clean Air Act. This penalty is designed to remove the economic advantage which might otherwise accrue to a source by reason of its failure to comply with air pollution control standards after mid-1979.

§ 66.2 Program description.

This Part sets forth the procedures by which EPA will administer the noncompliance penalty provisions of Section 120 of the Clean Air Act. Subpart B states which sources of air pollution are subject to these penalties and the form and substance of the notice of noncompliance. Subpart C and the accompanying Technical Support Document and Manual state how a source must compute the penalty which it owes. Subpart D describes the conditions for which an exemption from the penalty may be available, and Subpart E sets forth the procedures for requesting such an exemption. Subpart F states how EPA will review penalties calculated by sources under Subpart C, and Subpart G describes the method of payment. Subpart H provides for adjustment of the penalty after the source has come into compliance and the actual costs of doing so are known. Finally, Subpart I states EPA's position on which actions under these regulations are subject to judicial review and on what conditions, and Subpart J provides supplemental procedures for adjudicatory hearings.

§ 66.3 Definitions.

In this part and Part 67:

(a) "Act" means the Clean Air Act, 42 U.S.C. 7401 et seq.

(b) "Affiliated person" means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the owner or operator of a source within the meaning of Section 120 of the Act.

(c) "Applicable legal requirements" means any of the following:

(1) In the case of any major source, any emission limitation, emission standard, or compliance schedule

under any applicable implementation plan (regardless of whether the source is subject to a Federal or State consent decree);

(2) In the case of any source, an emission limitation, emission standard, standard of performance, or other requirement (including, but not limited to, work practices) established under Section 111 or 112 of the Act;

(3) In the case of a source which is subject to an extension, order, or suspension described in Section 66.31 which has resulted in an exemption from noncompliance penalties, any interim emission control requirement or schedule of compliance under that extension, order or suspension.

(4) In the case of a nonferrous smelter which has received a primary nonferrous smelter order under Section 119 of the Act, any interim emission control requirement or schedule of compliance under that order.

(d) "Computer Program" means the computer program that EPA will use to calculate noncompliance penalties under Section 120 of the Clean Air Act. This computer program appears as Appendix C to these regulations.

(e) "Control" (including the terms "controlling," "controlled by" and "under common control with") means the power to direct or cause the direction of the management and policies of a person or organization, whether by the ownership of voting securities, by contract or otherwise.

(f) "Major stationary source" means any stationary facility or source of air pollutants which, at full capacity, and in the absence of air pollution control equipment, directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant regulated under the Clean Air Act (including fugitive emissions). "Air pollution control equipment" includes control equipment which is not, aside from air pollution control laws and regulations, vital to production of the normal product of the source or to its normal operation.

(g) "Manual" means the "Noncompliance Penalties Instruction Manual" whch accompanies these regulations. This Manual appears as Appendix B to these regulations.

(h) "Owner or operator" means any person who owns, leases, operates or supervises a facility, building, structure or installation which emits any air pollutant regulated under the Act.

(i) "Source" means any source of air pollution subject to applicable legal requirements as defined in paragraph (c).

(j) "Technical Support Document" means the "Noncompliance Penalties Technical Support Document" which accompanies these regulations. The Technical Support Document appears as appendix A to these regulations.

All other terms are defined as they are in the Act.

§ 66.4 Reexamination of positions taken.

(a) No conclusions expressed in this Part or Part 67 may be re-examined in any agency hearing conducted under this Part or Part 67.

(b) This bar on re-examination includes, but is not limited to, the situations described in (1), (2), and (3) below.

(1) No exemptions may be granted unless explicitly authorized by these regulations. Arguments that the statute is more or less restrictive than the regulations will not be considered in any subsequent agency proceeding.

(2) When penalty calculations are at issue, only the accuracy of the inputs to the calculation model which are specific to that particular source, as set forth in the Manual and the Technical Support Document, may be challenged in an agency hearing. Neither the terms and conditions of the model nor the conclusions as to what form of evidence will be considered in deciding on the accuracy of a particular input not specific to the source will be re-examined in individual proceedings.

(3) Sources are free to use methods of penalty calculation other than the Computer Program, if such methods are consistent with the Manual and Technical Support Document. (See Appendices A-C for these documents). However, any such method of calculation that gives results different from the Computer Program in the case being calculated is automatically unacceptable.

§ 66.5 Savings clause.

Imposition of a penalty under Section 120 is in addition to, and not in substitution for, any other permits, orders, payments, sanctions or other requirements of State or Federal law. No action under this Part or Part 67 shall affect in any way an civil or criminal enforcement proceeding brought under any provision of the Clean Air Act or State or local law.

Subpart B—Notice of Noncompliance

§ 66.11 To whom notices must be sent.

(a) The Administrator shall send a notice of noncompliance to any source located in a State without a Section 120 program approved under Subpart B of Part 67 which is in violation of applicable legal requirements.

(b) The Administrator shall send a notice of noncompliance to any source located in a State with a Section 120 program approved under Subpart B of Part 67 when he determines as provided in § 67.21 that the source is in violation of applicable legal requirements and the State has failed to send a notice of noncompliance to it, or has failed to diligently prosecute any subsequent steps for the assessment or collection of the penalty.

(c) A source is in violation of applicable legal requirements on the day it fails to comply with them in their officially issued or promulgated form. The existence of any pending litigation or judicial or administrative stays of the regulation shall not affect the issuance of a notice of noncompliance.

§ 66.12 Timing of notices of noncompliance.

(a) Notices of noncompliance in States without EPA approved Section 120 programs shall be issued by EPA on or before the later of:

(1) August 7, 1979; or

(2) Thirty days after EPA determines that a source is in violation of applicable legal requirements.

(b) Notices of noncompliance in States with EPA approved Section 120 programs shall be issued by EPA when the Agency determines, in accordance with § 67.21, that the State has failed to issue a satisfactory notice of noncompliance or to diligently prosecute any subsequent step for assessing or collecting the penalty.

(c) Failure of EPA to issue a notice of noncompliance within the time limits set forth above shall not affect the obligation of a source to pay a noncompliance penalty but shall affect the date from which the penalty is calculated. The noncompliance penalty shall in all cases be calculated from the later of:

(1) August 7, 1979, where the notice of noncompliance was sent on or prior to that date; or

(2) The date the notice of noncompliance under this section was issued to the source.

§ 66.13 Contents of notices of noncompliance.

(a) Each notice of noncompliance shall be in writing and shall include:

(1) A specific reference to each applicable legal requirement of which the source is in violation;

(2) A concise statement of the factual basis for the finding of violation, together with a citation to any necessary supporting materials and a statement of when and where they may be inspected;

(3) Instructions on how to calculate the amount of the penalty owed and the schedule for payments, including (i) a statement of the date from which penalties should be calculated and (ii) a copy of the Technical Support Document and the Manual; and

(4) Notice of the right to petition for a hearing to challenge the finding of noncompliance or to claim an exemption as provided in Subpart D.

(b) Each notice of noncompliance shall be transmitted to the source

named either by personal service or by registered or certified mail, return receipt requested.

§ 66.14 Duties upon receipt of a notice of noncompliance.

Within forty-five days after receiving a notice of noncompliance under this Part a source shall either:

(a) Calculate the amount of the penalty owed and the appropriate quarterly payment schedule, and transmit that calculation, together with the necessary data for verification, to the Administrator as provided in the Manual; or

(b) Submit a petition alleging either that the source is not in violation of applicable legal requirements or that it is entitled to an exemption as provided in §§ 66.31 through 66.33.

Subpart C—Calculation of Noncompliance Penalties

§ 66.21 How to calculate the penalty.

All noncompliance penalties shall be calculated in accordance with the Technical Support Document and the Manual, and by a method that gives the same results as the Computer Program.

§ 66.22 Contracting out penalty calculation.

If any person who is required by § 66.14 to submit (a) a calculation of the penalty assessment, (b) a schedule for payment, and (c) the data necessary for an independent verification of (a) and (b), fails to submit any of these materials in the time specified by that section or submits them in a form other than the one required by the Technical Support Document and the Manual, the Administrator may enter into a contract with any qualified person who is not an affiliated person to assist in determining the amount of the penalty assessment or payment schedule with respect to such source. The cost of carrying out this contract shall be added to the penalty to be assessed against the owner or operator of the source.

Subpart D—Exemption Requests

§ 66.31 Exemptions based on an order, extension or suspension.

(a) A source that would otherwise be subject to a noncompliance penalty under the standards set forth in Subpart B will be exempted from that penalty during the period for which and upon a demonstration that its noncompliance with applicable legal requirements is due solely to:

(1) A conversion by such source from the burning of petroleum products or natural gas, or both, as the permanent primary energy source to the burning of coal pursuant to an order under Section 113(d)(5) or Section 119 of the Clean Air Act as in effect before the date of enactment of the Clean Air Act Amendments of 1977.

(2) In the case of a coal-burning source, the issuance of a prohibition to that source against burning petroleum products or natural gas, or both, by means of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 or under any legislation which amends or supersedes these provisions, *provided* that to qualify for an exemption under this subparagraph the source must also have received an extension under the second sentence of Section 119(c)(1) as in effect before the date of enactment of the Clean Air Amendments of 1977.

(3) The use of innovative technology by the source pursuant to an enforcement order under Section 113(d)(4).

(4) An inability to comply with an applicable legal requirement resulting from reasons entirely beyond the control of the owner or operator of such source or of any affiliated person, *provided* that in order to qualify for an exemption under this subparagraph, the source must demonstrate that its inability to comply resulted from reasons entirely beyond the control of its owner or operator or any affiliated person and that it has received an order under Section 113(d) (or an order under Section 113 issued before the date of enactment of this section) or a Federal or State judicial decree or order which has the effect of permitting a delay or violation of the legal requirement at issue. Additionally, the source must meet the requirements of paragraphs (c) and (d) of this section.

(5) Existence of an energy or employment emergency demonstrated by issuance of an order under Section 110(f) or 110(g).

(b) To qualify for an exemption under this section, the source in question must demonstrate in its § 66.14 petition that it has received the order, extension or suspension described in the subparagraph under which the exemption is claimed. No exemption will be granted that goes beyond the terms of the relevant extension, order, or suspension. No exemption will be granted based on a claim that the source is entitled to any such order, extension or suspension even though it has not received it.

(c) In any exemption claim based on subparagraph (a)(4) above, the source must demonstrate to the satisfaction of the Administrator that the inability to comply resulted from one of the following situations:

(1) Natural disaster;

(2) Fire;

(3) Embargo;

(4) Strike; or

(5) The complete impossibility of a supplier or contractor to furnish materials necessary to achieve compliance, provided it can be demonstrated:

(i) That the source owner or operator or other affiliated person in no manner caused, encouraged or contributed to the impossibility; and

(ii) That the source in no way unduly delayed negotiation for needed equipment or fuel supply by making unusual demands not typical of contract negotiations in its industry, by placing unusual restrictions on the supplier, or by delaying in any other manner the completion of the necessary construction or delivery.

(d)(1) In any demonstration under paragraph (c), the source also has an affirmative burden to show that all reasonable steps were taken to prevent the situation causing the inability to comply, that procuring the needed pollution control equipment or fuel supply has been and continues to be given the highest priority in the source's planning and budgeting process, and that alternative sources of fuel supply have been explored.

(2) Any exemption granted under subparagraph (a)(4) may include a requirement that the source accelerate its schedule for compliance in any manner that the Administrator shall provide.

(3) Any exemption granted under subparagraph (a)(4) shall insulate the source from liability for the penalty only so long as the inability to comply continues to be beyond the control of the source as defined in this section.

§ 66.32 De minimis exemptions.

(a) The Administrator may exempt any source from the penalty where he finds that the noncompliance of that source is de minimis in nature and duration.

(b) Where a source issued a notice of noncompliance submits a petition pursuant to § 66.14 alleging an exemption based on a claim of de minimis violation, the source must include information sufficient, in the opinion of the Administrator, to justify a finding that the instance of noncompliance is de minimis in both nature and duration.

(c) In ruling upon such a petition, the Administrator will consider the following factors:

(1) The magnitude of the noncompliance and whether such noncompliance is of a recurring or persistent nature;

(2) What steps the source is taking to minimize the problem and the resulting excess emissions; and

(3) Whether any significant economic savings are likely to accrue to the source as a result of the noncompliance.

(d) Where a hearing is granted under § 66.42 on any petition filed under § 66.14 alleging an exemption

under this section, such hearing shall be informal and of a legislative nature.

§ 66.33 Excess emissions/upsets.

(a) Where the noncompliance of a source is caused solely by a sudden and unavoidable breakdown of process or air pollution control equipment, the Administrator may determine that such noncompliance is de minimis.

(b) A source claiming such an exemption must submit in its § 66.14 petition information sufficient, in the opinion of the Administrator, to demonstrate the following:

(1) The air pollution control equipment, process equipment, or processes, including appropriate back-up systems, were at all times designed, maintained and operated, to the maximum extent practicable, in a manner consistent with good practice for minimizing emissions;

(2) Repairs were made in an expeditious fashion when the operator knew or should known that applicable emission limitations were being exceeded. Off-shift labor and overtime must have been utilized to ensure that such repairs were made as expeditiously as possible;

(3) The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;

(4) All practicable steps were taken to minimize the impact of the excess emissions on ambient air quality;

(5) The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(6) No significant economic savings to the source have resulted.

(c) Any activity which can be foreseen and avoided or planned for shall not constitute grounds for an exemption under this section. Such activities include, but are not limited to, sudden breakdowns avoidable by better maintenance precedures, phasing in and out of process equipment and routine maintenance.

(d) Where a hearing is granted under § 66.42 on any petition filed under § 66.14 alleging an exemption under this section, such hearing shall be informal and of a legislative nature.

§ 66.34 Revocation of exemptions.

(a) The Administrator may move to revoke any exemption granted to any source at any time.

(b) An exemption may be revoked if:

(1) The grounds for it no longer exist or never did exist, or

(2) in the case of an exemption under § 66.31, the source has failed to comply with any interim emission control requirements or schedules of compliance (including increments of progress) under any extension, order or suspension on which the exemption was based.

(c) If the Administrator decides to move to revoke an exemption, he shall provide the source written notice containing both the information required by § 66.13 and a statement of why the provisions of paragraph (b) of this section apply. The notice shall be transmitted as required by § 66.13 and the source shall respond to it as provided for notices of noncompliance by § 66.14.

Subpart E—Decisions on Exemption Requests and Challenges to Notices of Noncompliance

§ 66.41 Petitions.

(a) Any petition filed under § 66.14 alleging either that a source is not in violation of applicable legal requirements or that it is entitled to an exemption under Subpart D shall either contain or be physically accompanied by a complete statement of the legal, factual, and policy arguments on which the source relies, including all necessary supporting data. No such petition shall raise issues or arguments extraneous to the questions of compliance or entitlement to an exemption.

(b) For purposes of these regulations, the existence of an outstanding unsatisfied enforcement order or judicial decree governing a source shall be *prima facie* evidence that the source is out of compliance with applicable legal requirements.

§ 66.42 Decision on petitions.

Within thirty days after receiving a complete petition under § 66.41 the Administrator shall:

(a) Withdraw or modify the notice of noncompliance to the extent he concludes that the source is clearly entitled to the relief it has requested;

(b) Deny a hearing and affirm the notice to the extent he concludes that the source has not raised any significant questions of material fact that might affect the terms of the notice of noncompliance; or

(c) Grant a hearing under §§ 66.31, 66.32, 66.33 or 66.34, or on the issue of whether the source is in violation of applicable legal requirements, to the extent he concludes that the source has raised such questions.

§ 66.43 Procedures for hearing.

(a) Except as provided in §§ 66.32 and 66.33, hearings granted under § 66.42(c) shall be held as provided in Subpart J.

(b) If hearings are requested and granted under both §§ 66.32 or 66.33 and under Subpart J, no separate hearing under §§ 66.32 or 66.33 shall be held. The issues that would otherwise have been considered at that hearing shall be considered at the hearing under Subpart J.

§ 66.44 Final decision.

Within forty-five days after EPA has made a final Agency decision to deny a source's exemption request or allegation that it is not in violation with applicable legal requirements, the source shall submit the penalty calculation required by § 66.14(a) in accordance with the Technical Support Document and the Manual, including the instructions for accelerated payment schedules and extra interest to make up for any delay. The penalty runs from the date of the original notice.

Subpart F—Review of Penalty Calculation

§ 66.51 Review of assessments.

(a) Within thirty days after receipt of a source's penalty calculation under §§ 66.14(a) or 66.44, the Administrator shall respond in writing, in accordance with one of the options described in (1) through (3) below, that:

(1) The penalty will be accepted as calculated, but without prejudice to any recalculation that may be called for under Section 66.72 after the source has achieved compliance.

(2) The penalty has been recalculated based on the data provided by the source. The Administrator shall furnish the source a brief statement of the basis of the recalculation and inform it when and where any supporting data may be examined. The Administrator shall also notify the source of its right to petition for a hearing under Section 66.52.

(3) The source has not submitted enough material to enable EPA to make a satisfactory independent verification of the penalty calculation. The Administrator shall specity what deficiencies exist and require the source to furnish the missing material within fifteen days of receipt of that notification. If no further submission is made within this time, EPA may calculate the penalty as provided in § 66.22.

(b) Any missing material furnished under subparagraph (a)(3) of this section shall be evaluated as provided in paragraph (a) just as if it were an original penalty calculation.

§ 66.52 Hearing requests.

Within forty-five days after receipt of notice under Section 66.51(a)(2) that its penalty has been recalculated, a source may request in writing a hearing to challenge the Administrator's assessment. Any such petition shall either contain or be physically accompanied by a complete statement of the legal, factual, and policy arguments on which the source relies, including all necessary back-up data.

§ 66.53 Decisions on hearing requests.

Within thirty days after receiving a hearing request under § 66.52 the Administrator shall:

(a) Accept the source's version of the penalty calculation to the extent he concludes it is clearly correct;

(b) Deny a hearing and affirm the calculation to the extent he concludes that the source has not raised any significant questions of material fact that might affect the calculation of the penalty; or

(c) Grant a hearing under Section 66.54 to the extent he concludes that the source has raised such questions.

§ 66.54 Procedures for hearing.

(a) Except as provided in paragraph (b), hearings granted under § 66.52 shall be held as provided in Subpart J.

(b) The Presiding Officer shall schedule any hearing under this section so as to enable the initial decision to be issued within ninety days after the Administrator grants a hearing and shall issue an initial decision within that period, unless such time is extended by the Presiding Officer with the approval of the Administrator.

§ 66.55 Adjustment of penalty.

A source must pay the penalty which it has calculated under § 66.14 while proceedings to decide an agency challenge to that calculation are in progress. If a different penalty is established after Agency hearings, penalty installments will be recalculated in accordance with the Technical Support Document and the Manual to take account of the delay.

Subpart G—Payment

§ 66.61 Duty to pay.

Each source shall pay the first installment of its noncompliance penalty on the date six months after issuance of the notice of noncompliance to it or on January 1, 1980, whichever is later. Installments shall be paid quarterly thereafter. Quarters shall be measured in increments of three months from the date the first payment was due.

§ 66.62 Method of payment.

Payment of noncompliance penalties under this part shall be made by cashier's or certified check made out to the United States Treasury, sent by registered or certified mail, and addressed to the Administrator.

§ 66.63 Late payment penalty.

(a) Any source which fails to pay the penalty due under § 66.61 when it is due shall pay in addition to the penalty owed a quarterly nonpayment penalty for each quarter in which payment is not made by the due date. The penalty shall be equal to 20 percent of the aggregate amount of the penalties and nonpayment penalties accrued against that source which had not been paid on the due date. Payment is made on the due date if it is postmarked or received on or before the due date.

(b) If a nonpayment penalty becomes due, the Administrator shall notify the source to that effect in writing. Such nonpayment penalty, as well as the noncompliance penalty past due, shall be payable immediately.

Subpart H—Compliance and Reimbursement

§ 66.71 Determination of compliance.

(a) If a source which is paying a noncompliance penalty under this Part believes it has come into compliance and is maintaining compliance with all applicable legal requirements, it shall so notify the Administrator. The notice shall include all factual, analytical, and legal arguments in support of its claim, including any necessary back-up data.

(b) The Administrator shall review any notice and supporting materials submitted under paragraph (a) and shall inform the source within thirty days whether he is able to conclude on the basis of the notice and supporting materials that the source is in compliance with applicable legal requirements. If he is not able to make this conclusion, his response to the source shall briefly state the reasons why not and identify any additional material that is needed.

§ 66.72 Additional payment or reimbursement.

(a) Within 120 days after the Administrator has informed a source under § 66.71 that it has achieved and is maintaining compliance with applicable legal requirements, the source shall submit to the Administrator a revised penalty calculation as provided in the Technical Support Document and the Manual.

(b) Within thirty days after receiving a source's revised penalty calculation under paragraph (a), the Administrator shall evaluate it and shall respond in writing and state either:

(1) That the revised penalty will be accepted as calculated;

(2) That the penalty has been recalculated based on the data provided by the source. The Administrator shall furnish the source a brief statement of the basis of the recalculation and shall inform it when and where any supporting data may be examined. The Administrator shall also notify the source of its right to petition for a hearing under § 66.73; or

(3) That the source has not submitted enough material to enable EPA to made a satisfactory independent verification of the penalty calculation. The Administrator shall require the source to furnish the missing material within thirty days of receipt of the notice.

(c) If a source fails to submit a revised penalty calculation when due under this secton or the calculation it submits is inadequate, the Administrator may enter into a contract for independent calculation of the penalty as provided in § 66.22.

§ 66.73 Hearing requests.

Within forty-five days of receipt of a notice under Section 66.72(b)(2) a source may request a hearing in the form and manner provided in § 66.52. The hearing request shall be evaluated as provided in § 66.53 and any hearing shall be held in conformity with §§ 66.54 and 66.55.

§ 66.74 Payment or reimbursement.

(a) Within thirty days after any adjustment of a noncompliance penalty under this Subpart has become administratively final:

(1) If the source owes a deficiency it shall pay that deficiency as provided in § 66.62.

(2) If there has been an overpayment by the source, the Administrator shall transmit to the source a check from the United States for the deficiency by registered or certified mail, return receipt requested.

(b) Any payment under paragraph (a) shall be calculated with interest at prevailing rates from the date it should have been paid, as set forth in the Technical Support Document and the Manual.

(c) Any source which dos not make a payment under this section when it is due shall pay a penalty equal to 20% of the amount not paid for each calendar quarter or portion of a quarter for which payment was not made as provided in § 66.63.

Subpart I—Final Action

§ 66.81 Final action.

(a) Each of the following constitutes final Agency action appealable to the courts provided the conditions of paragraph (b) are met:

(1) Any finding that a source is in violation of applicable legal requirements;

(2) Any decision to deny an exemption under Subpart D;

(3) Any revision by EPA of a penalty schedule under Subpart F; and

(4) Any revision by EPA of a final penalty calculation submitted under Subpart H.

(b) The actions listed in paragraph (a) constitute final Agency action only if all administrative remedies have been exhausted. To exhaust administrative remedies a source must request

an administrative hearing where available to challenge the decision in question and must appeal or attempt to appeal any unfavorable decision to the Administrator.

Subpart J—Supplemental Rules for Formal Adjudicatory Hearings

§ 66.91 Scope of these supplemental rules.

The Supplemental Rules in this Subpart, in conjunction with the Consolidated Rules of Practice (40 CFR Part 22) shall govern all formal adjudications held under §§ 66.43, 66.54, and 66.73. Where inconsistencies exist between these Supplemental Rules, or any other provision of this Part, and the Consolidated Rules, the provisions of this Part shall govern.

§ 66.92 Beginning of hearings.

(a) Hearings under this Part shall not begin with the filing of a complaint and there shall be no complaint or answer as such. Instead, a hearing shall begin as soon as the Administrator grants a hearing under §§ 66.42, 66.53, or 66.73. 40 CFR 22.08 shall become applicable at that time.

(b) Upon granting a hearing the Administrator shall immediately transmit to the Regional Hearing Clerk two copies of the notice granting the hearing and:

(1) In the case of a hearing under § 66.42, two copies of the notice of noncompliance under § 66.13 (or the revocation notice under § 66.34) and of the petition under § 66.41, together with any supporting documents; and

(2)(i) In the case of a hearing under § 66.54, two copies of the source's penalty calculation under §§ 66.14(a) or 66.72, of the modifications to that calculation by the Agency under §§ 66.51(a)(2) or 66.72(b)(2), and of the source's petition for a hearing under § 66.52, together with any supporting documents.

(ii) The Regional Hearing Clerk shall open and maintain the official file of the proceeding upon receipt of these documents. These documents shall serve the function of the complaint and answer in other proceedings and any information they contain shall automatically be received in evidence in the hearing.

(c) Upon granting a hearing the Administrator shall immediately request the Chief Administrative Law Judge to assign an Administrative Law Judge as the Presiding Officer. The Chief Administrative Law Judge shall make this assignment within seven days of receiving the request. The Chief Administrative Law Judge shall inform the Regional Hearing Clerk when the Presiding Officer is designated and the Regional Hearing Clerk shall then promptly forward to the Presiding Officer one set of the documents described in paragraph (b).

§ 66.93 Time limits.

The Presiding Officer promptly upon designation shall schedule any prehearing conferences (or alternative procedures) under 40 CFR 22.19 and shall issue notice of hearing under 40 CFR 22.21. The Presiding Officer shall issue an initial decision no later than ninety days after the hearing is granted, and is authorized to shorten any deadline in 40 CFR Part 22 where necessary to that end.

§ 66.94 Burden of presentation; burden of persuasion.

(a) In hearings under § 66.43 the Agency has the burden of going forward and presenting evidence that the source is in violation of applicable legal requirements. Following the establishment of a *prima facie* case, the source shall have the burden of presenting and of going forward with any rebuttal evidence.

(b) In hearings under § 66.43 the source has the burden of going forward and presenting evidence that it is entitled to an exemption. Following the establishment of a *prima facie* case, the Agency shall have the burden of presenting and of going forward with any rebuttal evidence.

(c) In hearings under §§ 66.54 an 66.73 the Agency has the burden of going forward and presenting evidence that its revisions to the source's penalty calculations are correct. Following the establishment of a *prima facie* case, the source shall have the burden of presenting and of going forward with any rebuttal evidence.

(d) Each matter of controversy shall be determined by the Presiding Officer upon a preponderance of the evidence.

§ 66.95 Issues for hearings.

(a) In any hearing under § 66.43, no other issues may be raised except the question of noncompliance and the source's entitlement to an exemption.

(b) Where a source intends to claim that it is entitled to an exemption if its claim that it is in compliance with applicable legal requirements is unsuccessful, the source must raise the exemption issues in its original petition under § 66.14. The Presiding Officer shall consider all such issues so that the initial decision addresses both questions.

(c) In any hearing under § 66.54, the validity of the formulae for calculating the penalty shall not be in question. As set forth in § 66.4, only the values of those parameters which are specific to that particular source, as authorized by the Manual and the Technical Support Document, may be challenged.

§ 66.96 Penalty assessed.

(a) The dollar amount of the penalty shall be based upon the formulae contained in the Technical Support Document and the Manual. The Presiding Officer may determine the accuracy of the data submitted by the source, but may not alter the penalty amount determined by the formulae.

(b) Payment shall be made according to the schedule established under the guidelines of the Technical Support Document and the Manual.

§ 66.97 Appeals from or review of initial decision.

An appeal to the Administrator from an adverse ruling or order of the Presiding Officer shall be made within fifteen (15) days after service of the initial decision.

PART 67—EPA APPROVAL OF STATE NONCOMPLIANCE PENALTY PROGRAMS

Subpart A—Applicability

67.1 Applicability.
67.2 Program description.

Subpart B—Approval of State programs

67.11 Standards for approval of State programs.
67.12 Application for approval of programs.
67.13 Approval.
67.14 Amendments to the program.
67.15 Revocation.

Subpart C—Federal Notice of Noncompliance to Sources in States With Approved Programs

67.21 Federal notice of noncompliance to sources in States with approved programs.

Subpart D—EPA Review of State Exemption Decisions

67.31 When EPA will review.
67.32 Procedure where no formal State hearing was held.
67.33 Procedure where formal State hearing was held.

Subpart E—EPA Review of State Penalty Assessments

67.41 When EPA will review.
67.42 Procedures where no formal State hearing was held.
67.43 Procedures where a formal State hearing was held.

APPENDIX A—TECHNICAL SUPPORT DOCUMENT

APPENDIX B—INSTRUCTION MANUAL

APPENDIX C—COMPUTER PROGRAM

AUTHORITY: Section 120 of the Clean Air Act, as amended, 42 U.S.C. 7420.

Subpart A—Applicability

67.1 Applicability.

This Part sets the standards and procedures under which EPA will approve State programs for assessing noncompliance penalties under Section 120 of the Clean Air Act and evaluate actions taken by States with approved programs.

67.2 Program description.

In Part 67, Subpart A covers the applicability of the Part. Subpart B states the conditions under which EPA will approve State programs to administer the nonompliance penalty provisions. Subparts C and D state when and how EPA will issue own its notices to sources in States with approved programs, and how it will review State decisions on whether to grant exemptions from the penalty. Finally, Subpart E states how EPA will review State assessments of the amount of a penalty.

Subpart B—Approval of State Programs

67.11 Standards for approval of State programs.

(a) The Administrator shall approve any State program for administing the noncompliance penalty provisions of Section 120 of the Clean Air Act upon finding that the program conforms to the requirements of the Act and substantially conforms to the requirements of 40 CFR Part 66, governing federally assessed noncompliance penalties.

(b) The Administrator shall not approve any State program that does not provide explicity for:

(1) A level of staffing and funding satisfactory, in the judgment of the Administrator, to carry out the requirements of Section 120 in that State, together with assurances that an adequate level of funding and staffing will be maintained in the future;

(2) A capability either through State personnel or through contractors, for carrying out analysis of financial data and for applying the Manual satisfactorily, in the judgment of the Administrator, to implement the requirements of Section 120 in that State, together with assurances that such capability will be maintained in the future;

(3) An administrative hearing whenever a source challenges a finding of noncompliance or denial of an exemption or the amount of a penalty under Section 120. This hearing need not conform to the full formal requirement of 5 U.S.C. 554 as long as it provides for:

(i) A decision on the record;

(ii) A decision by a person who has not performed investigative or litigating functions in that case or a related case;

(iii) Opportunity for any cross-examination necessary for full disclosure of material facts, or an equivalent opportunity for confrontation between and resolution of differing positions on material factual matters; and

(iv) An initial decision by the hearing officer within ninety days of commencement of the hearing to decide a petition for an exemption or challenge to a State penalty calculation.

(4) Explicit provision that:

(i) The record of each hearing held under subparagraph (3) shall be transmitted to the Administrator within thirty days of the final State decision in the matter;

(ii) A copy of each notice of noncompliance and of any subsequent correspondence regarding the notice of noncompliance (other than correspondence covered by subparagraph (i) above) shall be sent to the Administrator at the time it is mailed or received by the State agency administering the Section 120 program; and

(iii) A copy of each calculation of a noncompliance penalty and of any subsequent correspondence regarding that penalty (other than correspondence covered by subparagraph (i) above) shall be sent to the Administrator at the same time it is mailed or received by the State agency administering the Section 120 program.

(c) The State may authorize a local agency to carry out a Section 120 program, or part of it, within that local agency's jurisdiction as long as the role of that local agency is clearly identified in the program submission and it meets the requirements for approval under this section.

(d) No State penalty program shall be disapproved because it is more stringent in any manner than the program established by Section 120 as long as the Administrator concludes that the State has independent authority under State law to administer the more stringent portions of the program.

§ 67.12 Application for approval of programs.

A State that wishes to administer a Section 120 program shall submit an application in writing to the Administrator describing its proposed program in detail sufficient to justify a conclusion that the requirements of § 67.11 have been met. All necessary supporting materials shall be transmitted along with the application.

§ 67.13 Approval.

(a) The Administrator after evaluating any application submitted under § 67.12 shall:

(1) Approve the State program if he determines that the requirements of § 67.11 have been met;

(2) Request additional information if he determines that the information submitted is not sufficient to allow him to determine whether the requirements of § 67.11 have been met; or

(3) Disapprove the State program if he determines that the information submitted establishes that the requirements of § 67.11 have not been met.

(b) The Administrator shall provide the applying State with written notice of any action under paragraph (a) which shall briefly state the reasons for his determination. In addition, any approval of a program under paragraph (a)(1) shall delegate to the State the authority which the Administrator has to establish and administer a noncompliance penalty program under Section 120 of the Clean Air Act. Despite any such delegation, the Administrator shall retain concurrent authority to assess and collect these penalties.

(c) Where a State is delegated the authority to implement this program, proceedings arising out of notices previously issued by the Administrator shall continue to be handled by EPA under Part 66 except to the extent the Administrator specifically delegates the handling of them to the State.

§ 67.14 Amendments to the program.

(a) Any State with a program approved under § 67.13 may at any time submit amendments to that program to the Administrator. Any such submission shall conform to the requirements of § 67.12.

(b) The Administrator shall evaluate whether the State program as proposed to be amended would conform to the requirements of § 67.11 and shall respond as provided in § 67.13.

§ 67.15 Revocation.

If the Administrator determines that a State with a program approved under § 67.13 is no longer administering the program in conformity with § 67.11 he shall provide the State written notice of that determination, setting forth his reasons. Copies of all supporting materials shall accompany the notice, or shall be placed on file in the relevant Regional Office and made available for inspection during normal business hours. The State shall have ninety days to respond in writing to this determination. If the Administrator finds after reviewing the State response that either (ai) the State is in fact administering the program in conformity with Section 67.11 or (ai) there are reasonable grounds to believe the State program will be brought into conformity with that section to the extent it is not aready in conformity with it, he shall withdraw his determination. If he determines that neither of these conditions has been met, he shall issue a final determination disapproving the State program and withdrawing any delegation that has been made to the State.

Subpart C—Federal Notice of Noncompliance to Sources in States With Approved Programs

§ 67.21 Federal notice of noncompliance to sources in States with approved programs.

(a) The Administrator may assess and collect noncompliance penalties against any source in a State with an approved program if he determines that the State has failed to do so.

(b) The Administrator shall inform a State with an approved program of his intent to issue a notice of noncompliance to any source(s) in that State whenever:

(1) The State has failed to issue such a notice; or

(2) The State has issued the source such a notice but has failed to diligently prosecute any subsequent step in the recovery of the penalty.

The Administrator shall inform the State that a notice of noncompliance will be issued to the source(s) in question unless the State cures the defect in its proceedings within thirty days. The Administrator shall issue the notice unless he determines that the actions taken by the State are likely to cure the defect identified as the ground for issuing the notice.

(c) Any notice issued under this section shall be issued as provided in Subpart B of Part 66 and shall be treated procedurally just like a notice issued under that section. By issuing a notice under this Section, EPA assumes exclusive jurisdiction to conduct the penalty assessment proceedings in question.

Subpart D—EPA Review of State Exemption Decisions

§ 67.31 When EPA will review.

(a) The Administrator, within 90 days of receipt of a State's notice of penalty assessment, may review any State decision to grant an exemption under the standards laid down in the Act and Subpart D of Part 66 to determine whether it conforms to those requirements.

(b) Nothing in this subpart shall preclude a State from being more stringent than these regulations would otherwise require.

§ 67.32 Procedure where no formal State hearing was held.

Whenever the Administrator decides to review a State exemption decision for which no hearing conforming to § 67.11(b)(3) was held, he shall evaluate the documents relating to that decision transmitted to him by the State as provided § 67.11(b)(4). The Regional Administrator shall then proceed in accordance with § 66.42.

§ 67.33 Procedure where a formal State hearing was held.

(a) Whenever the Administrator decides to review a State exemption decision for which a hearing conforming to § 67.11(b)(3) was held, he shall prepare an evaluation of and draft conclusions based on the State hearing record transmitted to EPA as provided in § 67.11(b)(4), as well as any other pertinent information.

(b) Upon completing the evaluation of the State hearing record, the Administrator shall send a copy to each person who participated in the State hearing, and shall issue public notice summarizing the reasoning and conclusions of the evaluation and stating that a public hearing on the State exemption decision will be held at a given time and place.

(c) Public hearings under this section shall be informal and of a legislative nature. Agency participants shall include persons who will have substantial responsibility for advising the Administrator in preparing his final decision. No new evidence may be introduced. Instead, the proceeding shall be in the nature of an appellate review of the State decision based on the State record. A verbatim transcript of the hearing shall be made.

(d) As soon as feasible after the close of the hearing under paragraph (c), but no later than sixty days after receipt of a petition under or issuance of a notice under this Section, the Administrator shall issue a final decision. The final decision shall contain a response to all significant points raised at the hearing.

Subpart E—EPA Review of State Penalty Assessments

§ 67.41 When EPA will review.

Whenever the Administrator determines that a penalty assessed by a State is less than the Technical Support Document and the Manual require, he shall object in writing to the State as provided in §§ 67.42 or 67.43. Any such objection shall be made within ninety days of receipt of either the final State decision in the matter or any item of information considered in the State proceeding which is necessary to enable the Administrator to independently evaluate the State assessment, whichever occurs last.

§ 67.42 Procedures where no formal State hearing was held.

Where the Administrator objects under § 67.41 to a State penalty assessment in a case in which no formal hearing under § 67.11(b)(3) was held, he shall issue his objection in the form of an evaluation conforming to § 66.51 of the State documents relating to that assessment transmitted as provided by § 67.11(b)(4). That objection shall be treated procedurally in the same manner as any other notice issued under § 66.51.

§ 67.43 Procedures where a formal State hearing was held.

(a) Whenever the Administrator objects under § 67.41 to a State penalty assessment in a case in which a formal hearing conforming to § 67.11(b)(3) was held, he shall issue that objection in the form of an evaluation of and draft conclusions based on the State hearing record transmitted to EPA as provided in § 67.11(b)(4), as well as any other pertinent information.

(b) The Administrator shall send a copy of this evaluation and objections to each person who participated in the State hearing, and shall issue public notice summarizing the reasoning and conclusions of the evaluation and stating that a public hearing on the State penalty calculation will be held at a given time and place.

(c) Public hearings under this section shall be informal and of a legislative nature. Agency participants shall include persons who will have substantial responsibility for advising the Administrator in preparing his final decision. No new evidence may be introduced. Instead, the proceeding shall be in the nature of an appellate review of the State decision based on the State record. A verbatim transcript of the hearing shall be made.

(d) As soon as feasible after the close of the hearing under paragraph (c) but no later than sixty days after issuance of a notice under § 67.41, the Administrator shall issue a final decision. The final decision shall contain a response to all significant points raised at the hearing.

I. INTRODUCTION AND SUMMARY

II. ECONOMIC SAVINGS AND THE NONCOMPLIANCE PENALTY

III. ASSUMPTIONS UNDERLYING THE PENALTY CALCULATIONS

IV. DEFINITIONS OF PARAMETERS AND SOURCES OF DATA

V. DERIVATION OF FORMULAE

Attachment

A DEFINITION OF SYMBOLS

B INVESTMENT TAX CREDIT QUALIFICATION

C DEPRECIATION

D TAX RATE ADJUSTMENTS

E FACILITIES WITH LIMITED USEFUL LIVES

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G DERIVATION OF NONCOMPLIANCE PENALTY WHEN THE INFLATION RATE EQUALS THE DISCOUNT RATE

APPENDIX A

CLEAN AIR ACT

SECTION 120

NONCOMPLIANCE PENALTIES

TECHNICAL SUPPORT DOCUMENT

INTRODUCTION AND SUMMARY

The decision to install pollution control equipment implies a decision to commit financial resources, both initially in the form of capital investment and over time in the form of operating and maintenance expenses. While the acquisition of such equipment and its operation may result in improved environmental quality, it is unlikely to yield any direct economic benefit to the firm. If these financial resources were not required for pollution control equipment, they presumably would be invested in projects which would give a direct economic benefit to the firm. Thus, from a strictly economic point of view, it is usually in the firm's best interest to delay the commitment of funds for pollution control equipment.

Congress acted in 1977 to remove this incentive for noncompliance. The Clean Air Act ("the Act") was amended to require the imposition of penalties against firms not in compliance with pollution control regulations. These penalties must be based on the savings which accrue to a firm as a result of its noncompliance. Section 120 of the Act states:

> "The amount of the penalty which shall be assessed and collected with respect to any source under this section shall be equal to--
>
> (A) the amount determined.....which is no less than the economic value which a delay in compliance beyond July 1, 1979, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period, not to exceed ten years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source."

The Administrator of the Environmental Protection Agency (EPA) is given responsibility for carrying out this provision. This appendix describes the economic basis and the mathematical formulation of a noncompliance penalty to be used in conforming with the requirements set forth in the Act. It is intended to serve three distinct purposes. First, it presents in broad, conceptual terms the nature of economic savings which can accrue to a firm through delayed compliance and the calculation of a penalty to remove those savings. Second, it provides a precise mathematical formulation of the noncompliance penalty and the assumptions used in deriving it. Finally, it provides a complete specification of the sources of all of the data needed to calculate the penalty for a particular incidence of noncompliance.

This appendix is not intended to serve as an instruction manual for persons calculating noncompliance penalties. A separate appendix will be issued by EPA for that purpose.

THE VALUE OF DELAY

For the purposes of noncompliance penalties, the economic value, or savings, from noncompliance is defined to have two components: (1) the returns which can be earned on the capital costs of pollution control equipment whose purchase has been delayed, and (2) the operating and maintenance costs avoided as a result of not having installed the equipment and the returns on these savings. The first component arises because owners of noncomplying sources have the opportunity to invest their funds in projects other than pollution control equipment. These other investments yield a monetary

return whereas the purchase of pollution control equipment typically yields no monetary return. Thus a delay in compliance creates the opportunity for the owner of such sources to benefit by the amount of earnings which could be expected from alternative investments.

The second component of savings from delayed compliance is based on the operating and maintenance costs which would be incurred if the pollution control equipment were installed. These include the costs of labor, raw materials, energy and any other expenditures directly associated with the operation of the pollution control equipment. Delaying compliance allows these expenditures to be avoided altogether and therefore the noncomplying firm benefits by their amounts plus the return that can be earned on these savings (all net of tax effects, as described below).

THE NONCOMPLIANCE PENALTY

The two components of economic savings can be quantified using generally accepted economic and financial principles and estimates of such factors as equipment costs, financing costs, the inflation rate, the length of the delay, and so forth. These same techniques can then be employed to convert the savings into the basis for a penalty. As part of that conversion, an adjustment is made to incorporate the effect of capital and operating expenditures made after notice of noncompliance has been given but prior to the time at which full compliance is achieved. The resulting penalty schedule appears as a series of quarterly payments which increase with inflation.

As implied above, the calculation of the penalty requires estimates of both capital and operating costs. Because these estimates are often made well in advance of the actual expenditures, they are subject to substantial error. Once compliance has been achieved the capital cost is known and a better estimate of the operating and maintenance costs may be possible. The Act calls for a recalculation of the penalty using these revised figures. A refund will then be paid or additional penalty payment assessed based on the new estimate of economic savings.

PLAN OF THIS APPENDIX

Following the introductory section, Section II contains a discussion of the legal and economic rationale for the procedures which have been adopted for calculating the penalty. Although an attempt has been made to present the discussion in such a way that it can be understood by persons not familiar with this subject, the need to keep intact the integrity of the underlying financial theory requires that the discussion remain somewhat technical.

Section III contains a summary of the assumptions used in deriving the formulae and the reasons for adopting these assumptions. Section IV defines the various parameters included in the formulae and the sources which should be used to acquire the data needed to calculate the penalty in specific cases.

Finally, Section V presents the development of the formulae needed to compute the noncompliance penalty. The attachments describe the treatment of certain cases which require adjustment of either the data or the formulae.

SECTION II

ECONOMIC SAVINGS AND THE NONCOMPLIANCE PENALTY

The costs associated with controlling pollution arise from many sources. The most apparent are the original purchase cost of the capital equipment and the annual operating and maintenance expenditures. There may also be costs associated with the financing of the original purchase; for example, interest would be paid if a portion were financed with borrowed funds.

In addition to the direct costs, other financial impacts result from the purchase of equipment. Depreciation, for example, has the effect of reducing income tax liability in years subsequent to the original investment. Similarly, the original purchase may result in an investment tax credit, acting much the same as if a discount were given on the purchase price. Both of these have the effect of lowering the net cost to the firm.[1]

To calculate the economic value to a firm from delaying compliance with pollution control regulations, it is necessary to evaluate on a consistent basis the effect of all costs avoided, and related tax consequences, between the date by which compliance is required and the date on which compliance actually occurs. Because the various savings do not all occur at the same time, they must first be converted into values which are comparable with respect to the

[1]The term "firm" will be used to designate the owner of the pollution source. The discussion is equally applicable to sources owned by individuals.

time-value of money (that is, the sooner a savings is generated, the more valuable it is). This conversion is accomplished by discounting all estimated future savings into their "present value" equivalents, a technique described below. Finally, the sum of the discounted values must be converted into series of level quarterly penalty payments as prescribed by the Act.

This section describes the process of translating the estimated costs and tax consequences associated with the purchase and operation of pollution control equipment into a penalty. That penalty reflects the savings that a firm realizes by delaying its compliance with pollution control regulations.

POLLUTION CONTROL CASH FLOWS

The above discussion of the financial impact of delaying an investment in pollution control equipment was expressed in terms of costs, net of related tax consequences. A question arises as to the appropriate metric with which to measure these costs. The financial literature is clear on this subject: the appropriate metric is the incremental cash flow, positive or negative, associated with each cost.[1]

[1] See, for example, Weston, J.F. and Brigham, E.F., Managerial Finance, p. 275-281, or Van Horne, R.C., Financial Management and Policy, p. 78-81.

In order to properly measure each incremental cash flow, account must be taken not only of the initial effect but also of any offsetting tax effects. For example, payments for operations and maintenance are tax deductible. Therefore, the incremental cash flows resulting from such payments consist of the initial expense less any reduction in tax liability. Stated differently, all flows are measured on an after-tax basis. For most large corporations this means that the net cash flow resulting from tax-deductible payments will usually be about one-half of the stated pre-tax cost.

There are three categories of cash flow arising from the purchase and operation of pollution control equipment. These are: (1) the initial capital outlay required to purchase and install equipment; (2) the subsequent annual flows associated with depreciation and financing of the initial capital outlay: and (3) the subsequent annual expenses of operating and maintaining the equipment. The first category is equal to the cost of purchasing or constructing the equipment, less the amount of any applicable investment tax credit. The investment tax credit constitutes a reduction in tax liability which has the effect of a discount on the purchase price. Both of these flows are repeated when the equipment is replaced at the end of its useful life and will become successively larger at each future replacement point because of inflation in equipment cost.

The second category consists of those cash flows occurring in subsequent years as a direct result of the initial capital expenditure. One of these, depreciation, does not itself involve a cash outflow; however, its effect is to reduce pre-tax income and hence to reduce tax. If the firm were to install the equipment, the tax savings associated with depreciation in subsequent years would have the effect of reducing its costs. In the context of noncompliance, the effect of expected depreciation is to decrease the savings associated with not installing the equipment. Other annual capital-related cash flows arise from the financing of the incremental capital outlay for the pollution control equipment in question. For example, if the equipment is partially financed with debt, both principal and interest (net of tax effects) payments will result. Similarly, if preferred stock is used, its redemption and its dividends will give rise to cash outflows.

Each of these cash flows will occur over the depreciable life of the equipment. As in the case of the initial acquisition costs, these capital-related flows will become larger in successive replacement cycles because inflation will have increased the capital cost on which they are based.

The final category of cash flows consists of those resulting from operating and maintenance expenditures. Since these costs are tax deductible, the relevant cash flows are simply the after-tax value of their estimated amount in each year. These cash flows are assumed to increase each year due to inflation in the cost of the expenditures (e.g., labor, materials, energy, etc.) which trigger them.

DISCOUNTING OF CASH FLOWS

Once all incremental cash flows have been estimated, they must be converted into a set of values which reflect the timing of their occurrence. This procedure is necessary because two cash flows of equal dollar value occurring many years apart do not have equal impact on the firm. This differential arises because the firm can invest funds at some positive rate of return. If a dollar of expenditure can be postponed for one year, that dollar can be invested in the interim. At the end of the year the dollar of expenditure can be made and the return on the investment during the intervening period accrues to the benefit of the firm.

The technique used to compensate for this effect is called discounting. Discounting involves reducing the value of future cash flows to amounts which are equivalent in terms of present dollars. As an example, suppose that a firm faced with a $100 expenditure could delay that expenditure by one year (assume no inflation). If the firm could invest money for that year at a 10 percent return, it would not need to put aside a full $100 to make the payment one year later. In fact, if it invested only $90.91 at a 10 percent return, that amount would grow to $100 in one year. Therefore, $90.91 is the present value, at 10 percent, of a $100 cash flow one year in the future.

Similarly, $82.64 invested at 10 percent would grow to $100 in two years (it would grow to $90.91 in one year and to $100 in the second year). $82.64 is therefore

the present value, at 10 percent, of a $100 cash flow two years hence. The present value of cash flows for other numbers of years in the future is found in a similar fashion. The formula is given by:

$$\text{Present Value} = \frac{\text{Future Value}}{(1+E)^j} \qquad (1)$$

where E = the discount rate.

j = the number of years in the future in which the cash flow occurs.

Future Value = the cash flow expected in the future.

Applying this technique to all future pollution control cash flows converts each of them into its present value equivalent[1]. The sum of these individual values represents the equivalent after-tax cost, in terms of a single present value, of all future cash flows arising out of the requirement to purchase and operate pollution control equipment.

THE VALUE OF DELAY

For each polluting facility there is a date by which compliance should be achieved. Under Section 120 of the Act, the period of covered noncompliance--i.e., the period over which a noncompliance penalty must be assessed--begins on the date on which a notice of noncompliance is issued but not before August 7, 1979. Therefore, for

[1] For a more thorough discussion of this concept see the capital budgeting chapters in the Weston and Brigham or Van Horne texts previously cited.

purposes of calculating the penalty, it will be assumed that all capital expenditures should have been made by that date and that operating and maintenance expenditures should begin on that date.

In comparing the cost of compliance with the cost of delay, there are two sets of cash flows to be considered. The first consists of the flows that the firm would have experienced had it come into compliance on time. These include the flows attributable to the purchase and operation of the original equipment as well as those associated with all future replacement cycles. The second set of flows consists of those which the firm will experience when, following the delay, it actually does come into compliance. This second set of flows will have three properties:

- It will be similar to the first set in that it will have the same sequence of capital expenditures, depreciation tax savings, operating and maintenance flows, and so forth.
- It will begin at some time after the first day of noncompliance.
- The magnitude of each of its individual component flows will be greater than the corresponding flow in the first set because any given cost will have inflated during the period of projected delay.

The present value of both sets of cash flows, as of the first day of noncompliance, can be calculated in the manner described above. The present value of the second set will be lower, reflecting the fact that delaying compliance yields a financial benefit to the firm. That benefit is equivalent to the economic savings from delay; its magnitude

is equal to the present value of the cash flows in the first set less the present value of those in the second set. This calculated value of economic savings in turn becomes the basis on which the noncompliance penalty is derived.

THE EFFECT OF PRE-COMPLIANCE EXPENDITURES

It is implicitly assumed in the above discussion that capital expenditures associated with delayed compliance were made in a single payment on the first day that the firm is projected to come into compliance and that no operating and maintenance expenditures were required prior to that time. If these expenditures instead involve a series of payments made prior to the eventual compliance date, the firm's savings from delay is reduced in relation to the amount which would have been calculated according to the preceding discussion. This effect can best be understood by reference to the following diagrams, where the effect of one or more pre-compliance capital expenditures is shown.

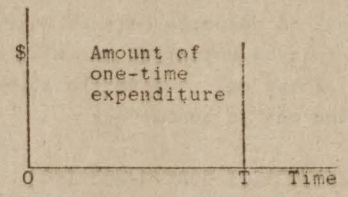


Diagram A: Lump Sum Capital Expenditure

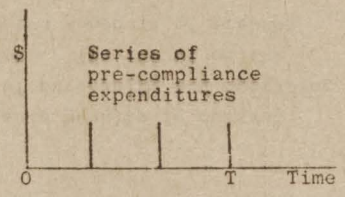


Diagram B: Pre-compliance Capital Expenditure

Diagram A illustrates the case described earlier--compliance is delayed from O until T at which time the entire capital expenditure is made. Diagram B depicts the case where the same total expenditure has been divided into three equal payments, the third of which occurs at time T, the date on which the firm finally comes into compliance. Because the effect of discounting is least when cash flows are least distant in the future, the present value of the cash flows in diagram B is greater (because they have been discounted less) than the present value of the single cash flow in diagram A. Thus, a firm whose expenditures are similar to those depicted in diagram B will experience greater costs when it eventually complies, and hence lower savings from delay, than a firm whose expenditures are as depicted in diagram A. To account for this difference, an adjustment is made in the penalty calculation for firms which must make capital expenditures prior to achieving full compliance. A similar adjustment is made where there are pre-compliance operating costs.

CONVERSION OF SAVINGS INTO THE NONCOMPLIANCE PENALTY

The Act specifies that the total penalty assessment is to be paid in a series of equal quarterly payments. The legislative history accompanying the Act implies that the payments should be equal in real dollar terms.[1] The quarterly payments, therefore, should be structured so as to increase at the projected rate of inflation. Such a series, when deflated, will contain penalty payments which are level in real terms (that is, in constant dollars).

[1] Congressional Record/Senate, August 4, 1977, p. 13,698.

Once the present value of the savings from delay has been calculated and adjustments have been made to account for pre-compliance expenditures, the magnitude of the required quarterly payments may be determined. Since the period of noncompliance is assumed to be known,[1] all that needs to be done is to create a series of quarterly payments during this period with each payment increasing at the rate of inflation and with the present value of all payments summing to the value of delay which was just calculated. A formula for making this conversion is described in Section V.

POST COMPLIANCE SETTLEMENT

The amount of the noncompliance penalty is derived from an estimate of the future costs of purchasing and operating the required pollution control equipment. The amount of the penalty is also affected by the estimated schedule of pre-compliance capital and operating expenditures. These estimates will represent the best judgement of the firm's management or of independent engineers and, as such, will clearly be subject to error. For this reason the law requires that a procedure be established whereby the penalty can be adjusted after compliance has been achieved and less uncertainty surrounds some of the estimates.

[1] Any error in its estimation can be corrected at the time of the post-compliance settlement.

As described in the preceding discussion, the noncompliance penalty has two components, one related to capital costs and the other to operating and maintenance expense. The settlement process is similarly divided into capital and operating and maintenance components.

Once the capital equipment has been purchased and installed, the associated costs can be determined from the firm's accounting records. These, however, do not represent the costs which, had estimation been perfectly accurate, would have been used in the original penalty calculation. The cost used then was the estimated amount which should have been expended at the time the penalty was first assessed. The actual expenditure, coming at a later date, would reflect the impact of inflation. Therefore, for purposes of recomputing the penalty, the amount actually spent to comply must be adjusted downward to remove the effect of inflation.

Similarly, the actual size of operating and maintenance costs cannot be determined until after the pollution control equipment has been in operation for some time. In order for a post-compliance settlement to accurately reflect the actual level of such costs, settlement could not take place for months or even years after compliance has been achieved. However, the Act requires settlement within six months of the date on which compliance is achieved. If during this six-month period of operation it is apparent that the original estimate for operating and maintenance expense was inaccurate, an adjustment to the original savings calculation should be made by revising the operating and maintenance component.

These revised costs, both capital and operating and maintenance, and the actual schedule of pre-compliance expenditures are then substituted into the noncompliance penalty formula and a revised penalty series is calculated. The difference between the penalties actually paid and the revised amounts constitutes the basis for the post-compliance settlement. If the penalty has been overpaid, the excess will be refunded with interest. If it has been underpaid, the deficiency must be paid, also with interest. Under the Act, the rate of interest is set by the Secretary of the Treasury.

SECTION III

ASSUMPTIONS UNDERLYING THE PENALTY CALCULATION

The basic concept underlying calculation of the noncompliance penalty is that the economic savings resulting from delaying compliance with pollution control regulations should be removed. Implementing this concept requires making several important assumptions, many of which were only implicit in the discussion in the previous section. A list of those assumptions and an explanation of why certain of them have been made follows.

The calculation of the savings to a firm from delaying compliance is based on widely accepted principles of financial and economic theory. Moreover, the methodology is one which most firms routinely employ in making their own investment decisions. Most of the assumptions made are not unique to the analysis of pollution control investments but rather are an integral part of the methodology itself. Similarly, the parameters required and their respective data sources are, with few exceptions, those which would commonly be employed by financial analysts.

However, there are some instances in which either the assumptions made or the data sources specified are not those most commonly employed. In many of these cases, the need to eliminate ambiguity in the regulations dictated the choice among alternatives. In others, the goal of controlling the administrative costs both to the firm and to EPA was the major factor. In all such cases, care was exercised to insure that the effect on the size of the resulting penalty would be slight In fact, in most instances where a choice among alternative assumptions or data sources had to be made, the one resulting in the lowest penalty was selected.

1. The relative mix of debt, preferred stock and common equity allocated to pollution control equipment is the same as that found in the firm's capital structure as shown on its balance sheet.

On the balance sheet of any firm, total net assets, including net working capital, are exactly equal to total long-term financing. Any increase or decrease in net assets must be accompanied by a similar change in long-term financing. Under the assumed allocation scheme, each asset is allocated a share of each source of long term financing (long-term debt, preferred stock, and equity) proportionate to its share of the total net asset structure. Thus the sum of the shares of each source of long-term financing allocated to an asset will exactly equal the net book value of that asset. As the asset is depreciated, its share of each source of long-term financing declines but, other factors being equal, the mix of debt, preferred stock, and equity associated with that asset is unchanged.

Implicit in the assumed allocation system is the related assumption that the mix of total sources of financing is constant over the life of any particular asset. The mix may fluctuate on a year-to-year basis due to short-run discontinuity.[1] The mix may also be subject to long-term,

[1] Firms are often observed issuing new stock or selling bonds, but rarely do the two occur simultaneously. Thus, the capital structure of a firm may fluctuate from year to year. However, as discussed below, an accepted principle of financial theory is that each firm has an optimal financial structure which it aims to preserve over the long run. Obtaining long-term financing, such as a new debt or equity issue, is expensive and time-consuming and, therefore, firms tend to secure large amounts at one time. Thus, the firm's capital structure may fluctuate on a year-to-year basis, even though the long-term structure remains unchanged.

secular changes due to gradual changes in the evaluation of management or financial markets as to what mix is optimal. During the intermediate period in which the useful lives of most assets fall, however, the mix of debt, preferred stock, and equity is assumed to be constant and unaffected by the addition or subtraction of any particular asset for which financial support is required. Given this assumption, it follows that an appropriate basis for allocating financial sources to particular assets is the pro rata basis used here.

An alternative approach would be to assume that the addition or subtraction of particular assets from a firm's total net asset structure will lead to a long-term change in the firm's financial structure. At the margin, therefore, it would be appropriate to assign to an asset a pattern of financing different from that of the firm as a whole. In the case of pollution control equipment, this approach can be illustrated by two extremes. At one extreme is the assumption[1] that the entire cost of the equipment is financed by equity, typically the most expensive source. The argument for this assumption is that a "normal" investment which a firm might make would hold the promise of creating future returns. It is the expectation of those future returns which enables the firm to convince investors to lend it money. However, a so-called "investment" in pollution control equipment is not really an investment; that is, it does not represent an expenditure of funds made in the expectation of generating future cash returns. Therefore, it does not add to

[1] See, for example, Pogue, Garald A., Estimation of the Cost of Capital for Major United States Industries With Application to Pollution Control Investments, p. 5-15.

the firm's ability to carry debt. Such an "investment" would therefore be required to be funded entirely by equity shareholders. This would tend to increase the cost of the pollution control investment and hence increase the penalty for delaying that investment.

This argument has a certain amount of intuitive appeal; however, it also has a major weakness in that it assumes that the addition of pollution control equipment does not increase, pro rata, a firm's revenues and thus its debt coverage. In the long-run, pollution control, including related capital costs, is one of the costs which a firm must recover through the sale of products. Assuming that pollution control costs do not represent too great a fraction of a firm's total assets and that pollution control requirements are applied equally throughout the economy, there is no reason to believe that pollution control costs will not be eventually recovered. Thus, the addition of pollution control assets does not alter a firm's inherent debt-coverage capability.

At the other extreme is the assumption that the investment in pollution control equipment will be financed entirely by debt. Since debt is generally the least expensive form of financing, such an assumption would result in a lower cost of compliance and ultimately a lower penalty for delaying that compliance. The argument advanced for making this assumption is that a firm may issue new debt, often in the form of pollution control bonds or some other low-cost instrument, in order to raise the funds needed to purchase the pollution control equipment.

Like the previous argument, this argument also has some degree of intuitive appeal. Again, however, the objection must be raised that without some related change in the firm's earning capability, there is still a financial mix that management and outside financial sources perceive to be optimal. Thus, while pollution control equipment may create an increase in debt in the short-run (because new debt can be acquired on favorable terms), this will be offset eventually by corresponding increases in equity and/or reductions in other long-term debt. The rationale for such an adjustment is clear. Any firm will borrow the maximum amount it can because debt is a less expensive form of financing than equity. That maximum amount, in turn, depends on management's and lendors' joint perception of risk--that is, the underlying ability of the firm to support a certain proportion of debt. As stated above, the addition of pollution control equipment should not change this perception of risk, other factors being equal. Thus, a temporary increase in debt would be quickly adjusted to the perceived optimal level.

As implied by the above discussion, the assumption of a constant financial structure over the life of an asset represents the most theoretically sound approach among the various alternatives available. Given this assumption and the several related assumptions discussed above, it is appropriate to assign to any particular asset a mix of financing which is identical to the overall mix which supports the total asset base. Hence, the pro rata system utilized in this formulation follows directly. This assumption also represents a middle ground, in terms of actually computing the noncompliance penalty, with respect to the size of the resulting penalty.

2. Cash flows are discounted using the equity method.

The rate used to discount future cash flows is the firm's return on equity. This equity discounting method is one of several different approaches to evaluating capital investments which have been developed, no single one of which has won universal acceptance from financial theorists. The equity discounting method is based on an analysis of the cash flows affecting equity shareholders. All cash flows arising out of debt or preferred stock financing are netted out. The residuals, which represent payments either to or from equity shareholders, are then discounted at the rate of return on equity.

This method has several advantages. The most important is that it measures the benefit of noncompliance from the point of view of the true beneficiary. The increased cash flow resulting from the delay of pollution control expenditures does not directly benefit the bondholders of the company. They will continue to receive the same interest payments and when their bonds mature they will be paid the face value of the bonds. Similarly, preferred stockholders will receive no direct benefit from delay. Therefore, any incremental cash flow benefits mainly the common stockholders since they are the owners of the residual cash flow (total cash flow less financing payments).

An alternative to the equity discounting method is the weighted average cost of capital. This is the method most often illustrated in introductory textbooks in corporate finance.[1] The method works by discounting incremental operating cash flows. That is, it computes cash flows resulting from investment in pollution control equipment without considering how the investment is financed. The financing aspects are accounted for in the discount rate. This rate is given by computing a weighted average cost of capital with the weightings based on the overall capital structure of the firm.

As a practical matter, there is little difference between the weighted average cost of capital method and the equity discounting method, given the previously described assumption of a constant capital structure. The weighted average cost of capital approach is conceived in terms of maximizing the total value of the firm, with total value defined as both debt and equity. However, if the proportion of debt is optimal, the objective of maximizing the total value of the firm is synonymous with that of maximizing the value ascribed to equity shareholders. The equity discounting method focuses directly on the value of equity shareholders and has been selected to emphasize the fact that the benefits of noncompliance accrue to this group.

3. The noncompliance penalty is computed as a non tax-deductible expense to the firm.

In calculating the costs on which the penalty is based, the normal tax consequences of interest, depreciation, and so forth, are taken into account. If the penalty were

[1] See Weston and Brigham, op cit.

to be allowed as an expense for tax purposes, it would need to be adjusted upward such that its after-tax cost to the firm would be the amount calculated herein.

4. Cash flows take place at the end of each year.

While expenditures such as those for operating and maintaining equipment obviously are incurred throughout the course of the year, this assumption greatly simplifies the computation. Its effect is to lower the penalty very slightly from the level it would have if these expenditures were assumed to be made on a continuous basis throughout the year.

Similarly, the cash flows arising from depreciation and those associated with long-term financing, both principal repayment and interest or dividend payments, are assumed to take place at the end of each year.

5. The rate of inflation of pollution control operating and maintenance expenditures is the same as that for pollution control equipment costs.

Currently there is no identifiable index of pollution control operating and maintenance expense. The development of an index reflecting past increases in operating and maintenance expense would require substantial resources and would not result in a significant increase in the accuracy of the penalty.

Most of the Environmental Protection Agency's studies of pollution control costs have estimated operating and maintenance expenses as a constant fraction of capital costs. This

relationship, plus the desire to keep the penalty calculation as straightforward as possible, led to the use of a single inflation rate.

6. A continuous sequence of replacement cycles is required.

As the equipment reaches the end of its useful life, it is replaced at a cost which reflects the rate of inflation. This process continues for an indefinite period, implying that the underlying source of pollution is never retired. The assumption of an infinite number of replacement cycles is common in the fields of engineering economics and corporate finance.[1]

An alternative assumption would be that the equipment is needed for a fixed number of replacement cycles, perhaps one or two. However, to make this assumption would be to imply that the economic life of the underlying source of pollution somehow depends on that of the pollution control equipment. A more reasonable alternative might be an assumption that the pollution control equipment would be needed for a fixed number of years, say twenty or thirty. The difficulty with using either of these assumptions is that it would require the selection of an arbitrary horizon at some distant time in the future. It would be extremely difficult to provide a reasonable estimate of the period of need for pollution control equipment, that is, the life of the underlying source of pollution. Fortunately, however, the effect of discounting is to reduce the importance of distant cash flows. That is, the present value of cash flows occurring

[1] A technical discussion of the use of an infinite replacement cycle is available in, Fama, Eugene F. and Miller, Merton H., The Theory of Corporate Finance, Dryden Press, 1972, pages 128-134.

twenty or thirty years in the future is very small and hence the effect of these flows on the penalty is likewise very small. This, plus the increased computational convenience and the ability to avoid having to choose a fixed horizon, led to the adoption of the continuous replacement assumption.

7. The discount rate is greater than the inflation rate.

If a firm has a choice between making an investment which yields a positive return and an investment such as pollution control equipment which returns nothing, it would obviously choose to make the former. The firm realizes that it will eventually have to comply with pollution control requirements but the longer it delays, the longer it can keep its funds invested in income-producing projects.

However, when the inflation rate is greater than the discount rate, this benefit from delay no longer exists. For example, assume that the firm could invest $1000 in projects returning seven percent but that the pollution control equipment costs were increasing each year at an eight percent rate. If the firm delayed compliance one year it would have earned $70 on its investment but the pollution control equipment would cost $80 more. Under such circumstances the firm would be better off complying immediately if it planned to comply at some time.

The formulae developed in Section V cannot be used to produce a penalty figure if the inflation rate is greater than or equal to the discount rate. If the rate of inflation of pollution control equipment cost is greater than a firm's return on equity, delaying the purchase will result in a

greater present value of cost. (The inflation will increase the future value more than the discounting will reduce it.) A firm which appears to be violating this assumption is most likely doing so because its own estimate of the returns available to it on alternative investments is higher than the discount rate used in computing the penalty.[1] This issue is discussed further in Attachment G.

[1] An alternative explanation is that the firm thinks it may be able to avoid compliance forever. This possibility is not considered further.

DEFINITIONS OF PARAMETERS AND SOURCES OF DATA

Calculation of the penalty requires estimates of a large number of financial parameters, many of which are peculiar to the non-complying firm. This section contains definitions of these parameters and sources from which their actual numerical values may be drawn. In some cases, a particular source of data is specified which is different than that which might result from a strict interpretation of financial theory. Such choices were based on the costs (in resources, time or possible inconsistencies) or lack of availability of alternatives and are explained below.

1. Capital investment schedule. This schedule is an estimate of monthly expenditures to be made for purchase and installation of the required pollution control equipment. It includes not only direct purchase costs, but also such expenditures as site preparation, engineering design, and so forth. It is measured in dollars as of the first day of noncompliance.

In the event that contracts have been signed for construction or purchase of the required equipment, they should be used as the basis for such costs. Other possible bases include engineering estimates, quotations from equipment manufacturers and, where no other data are available, reasonable estimates by the owner of the facility. These costs must be stated in dollars as of the beginning of the noncompliance period.

2. Operating and maintenance expense. This parameter is an estimate of the annual cost of operating and maintaining the required pollution control equipment. It must be expressed in the same terms as capital costs. That is, the amount should represent the annual operating and maintenance expense in constant dollars as of the beginning of the first year of noncompliance. There is a provision in the formulation which automatically adjusts future years' operating and maintenance expense for anticipated inflation.

Losses in production and incremental energy costs which will be incurred as a direct result of operating the pollution control equipment should be counted as an expense in this category. On the other hand, the value of any by-product recovery resulting from such operating should be deducted. To the extent that these or other factors will result in the real cost of operating and maintenance varying over time, an estimated schedule of payments must also be provided.

Sources of estimates for operating and maintenance expense include equipment manufacturers, engineering consultants and the owner of the facility. These estimates should include all recommended operating and maintenance procedures, training and planning costs, cost of warranties, record-keeping and costs of monitors.

3. Investment tax credit. This credit is a reduction in federal or state income taxes payable as a result of making qualified capital investments. It is equal to a specified percentage of the portion of the initial capital costs which qualify under IRS regulations. The investment tax credit is included in the formulation because it has the effect of reducing the cash outflow required to purchase the pollution control equipment.

The applicable percentage is given in the Internal Revenue Code as are the criteria for qualifying investments. Further details are provided in Attachment B.

4. Marginal income tax rate. This rate is the fraction of the last dollar of taxable income which must be paid by the firm to federal, state and local governments. It is the amount by which taxes would increase if taxable income were to increase. It is different than the average tax rate--total tax divided by taxable income.

The tax rates of the various levels of government are specified by statute and depend on the level of taxable income reported by the owner of the polluting facility. A formula for computing the marginal income tax rate for a firm subject to income taxation by more than one level of government is given in Attachment D.

The noncompliance penalty is based on the incremental savings (net of tax consequences) from delaying investment in pollution control equipment. The tax effects will depend on the rate applied to the incremental cash flows--the firm's marginal tax rate.

An alternative to using the marginal income tax rate would be to use the average rate. The advantage of using such a rate is that it can be calculated directly from data contained in the firm's normal financial statements. However, the use of an average rate would not result in a correct computation of the tax consequences of an incremental investment. It was therefore rejected as a data source.

5. Inflation rate. This is the annual rate at which both capital and operating and maintenance costs are expected to grow. These cost increases are the result of inflation in various factors: labor, capital goods, energy, and so forth.

For purposes of computing the noncompliance penalty, the compounded change in the Chemical Engineering Plant Cost Inflation Index for the most recent 20 quarters of data is to be used as an estimate of the future rate of increase in pollution control expenditures.[1] The Chemical Engineering Plant Cost Index is based on a weighted average of four cost components:

[1] Chemical Engineering, McGraw-Hill, Inc., April 28, 1975 and subsequent issues. For the years 1972-1977 this rate was 8.3 percent.

fabrication and equipment, engineering and supervision, construction labor and building costs. The weights are determined by a survey of the chemical industry made by Chemical Engineering magazine. The cost components are derived from the producer price indices compiled by the Bureau of Labor Statistics.

There is no widely available index of pollution control equipment costs as such. The Chemical Engineering index is based on factors which are clearly important components of such costs. The principal alternative considered was to use some broader and more universally recognized index, such as the GNP implicit price deflator. This was considered to be a much inferior choice since it is based on a broad range of factors (food costs, housing costs, and so forth) only loosely related to the cost of pollution control equipment.

A problem with using any historical index to extrapolate the future is that changing conditions may make the forecasts inaccurate. Using an inflation rate over the past several years as an estimate of the future rate may appear to be an example of such a problem. Offsetting this problem to a great extent is the fact that a similar approach is being used for the discount rate. Since the inflation and discount rates act in opposite directions with respect to pollution control cash flows (that is, the inflation rate is used to increase future values while the discount rate is used to reduce them), it is the difference between them which largely determines the size of the penalty. However, because the firm's historic return on equity is used as the discount rate (see below), the difference between the two rates should remain fairly constant. This is true because the return on equity depends on three principal factors:

the time value of money, the riskiness of the investment and the rate of inflation. Since the first two of these are relatively independent of inflation, there tends to be a parallel movement of the return on equity and the inflation rate over the long term. Thus, any error introduced by using a historic inflation rate is counteracted by using a historic return on equity as the discount rate.

6. Discount rate. This percentage rate is to be used as the basis for discounting cash flows in future years. Such discounting is necessary to convert cash flows occurring in different years into present values. The source of the discount rate is the industry average return on the net book value of common stockholder's equity. This rate is reported by the Federal Trade Commission in its Quarterly Financial Report for Manufacturing, Mining and Trade Corporations.[1] It is based on an exhaustive sample of the firms in each industry and, subject to the limitations found in all accounting data, represents an accurate estimate of the past performance of U.S. industries. To smooth out year-to-year fluctuations, the discount rate used in computing the noncompliance penalty is the average of the most recent twenty quarters. However, as was discussed in Section III, a discount rate cannot be used that is lower than the inflation rate.

In theory, the appropriate rate to include in the formulae is the rate which investors would require in order to commit additional common equity funding to the firm. Such a

[1] For public utilities, the return on equity data is found in the April issues of Citibank's Monthly Economic Letter.

rate is usually unobtainable. A possible alternative would be to employ the internal "hurdle rate" which firms use to evaluate capital investments. This rate would automatically provide an insight into the firm's own estimate of its opportunity cost of equity capital. This rate would generally be higher than any of the others considered and would, therefore, result in higher penalties. Because this rate is not used in all firms and because it is often very subjectively determined, it was rejected as a source of the discount rate.

An alternative discount rate is the expected future return on a share of the firm's common stock. Unfortunately, only the small percentage of firms which are publicly held and frequently traded have realistic share prices. Moreover, even if such prices exist, the expected return would have to be estimated. It is doubtful whether a satisfactory means could be found for providing these estimates.

Although these alternatives are attractive from a theoretical standpoint, their shortcomings have led to the selection of a return on equity which is based on book values. Even this basis, however, is often an unrealiable guide to actual returns for individual firms. Smaller owners, especially, can significantly alter the amount and timing of reported earnings such that a rate of return computed on their book value might be meaningless. The likelihood that substantial resources would be needed to verify the accuracy of these data and that, even so, significant problems would still exist argues strongly for the use of industry average rather than individual firm data.

Given that a return on book equity is to be used, there is another important argument for using an industry average. If firm-specific data were employed, those firms with high historical returns would, all else being equal, be required to pay higher penalties. Similarly, firms whose returns have been below industry average would pay lower penalties. Since the savings to a firm from delaying compliance is related to future returns on equity, the question becomes whether the future returns of a specific firm will be better estimated by its own past performance or that of its industry. The fact that individual firm performance is influenced by a variety of factors, often peculiar to the firm and not likely to be repeated, and that future returns are more closely related to the investment opportunities available to the industry argues for the use of industry average data.

7. Interest rate. This is the rate of interest which would be paid by the firm if additional debt were to be acquired. The interest rate is found by taking the current rate of interest on bonds of a grade equal to that on the firm's bonds having the highest rating as published in Moody's Bond Record.

If a firm's debt is not rated, the interest rate is found by using the current rate of interest on grade "A" corporate industrial bonds, published in the Bond Record. The current interest rate on grade "A" corporate bonds was chosen because it is a widely available figure which estimates the rates appropriate to a large percentage of firms.. If a firm's debt is rated "Baa" or lower, the "Baa" rate of interest is used.

8. Preferred stock dividend rate. This is the rate paid by the firm to its preferred stockholders. Like return on equity and the interest rate, the dividend rate on preferred stock represents a cost of long-term financing.

If a firm has preferred stock outstanding which has a rating, the preferred stock dividend rate is given by taking the current yield on stock of that rating as reported in Moody's Bond Record. If the stock is not publicly traded or has no rating, the rate is found by using the current preferred stock yield on grade "a" issues. If the stock is rated "baa" or lower, the "baa" rate is used. For stocks rated "aa" or higher, the "aa" rate should be used.

9. Equity share. This share is the proportion of the firm's long-term financing which is provided by common shareholders. It is a fraction, the numerator of which is the sum of all common equity accounts on the firm's balance sheet including common stock, retained earnings, capital surplus and any other accounts representing common equity investments.[1] The denominator of the fraction is given by adding to the numerator the sum of the preferred stock account plus all long-term debt issued by the owner (excluding portions of such debt in the current account).

The source of the fraction of equity in the investment is the average fraction of equity in the capital structure as given in the firm's five most recent annual financial statements. The five year average is used to smooth out year-to-year fluctuations.

10. Preferred share. This share is the fraction of long-term financing provided by preferred stock. The numerator is given by the preferred stock accounts in the firm's balance sheet and the denominator by the quantity: long-term debt plus preferred stock plus common equity interest.

The source of the fraction of preferred stock in the investment is the average fraction of preferred stock in the capital structure as given in the firm's five most recent annual financial statements.

[1] Some firms carry treasury stock as an asset on their balance sheet. Such stock should properly be shown as a contra-account to common stock. In cases where it is shown as an asset, it should be used to reduce the common equity accounts for purposes of this calculation.

11. Depreciation. Computation of the noncompliance penalty involves consideration of the depreciation-related tax benefits of an investment in pollution control equipment. The firm may choose the method of depreciation to be used, subject to conformity with Internal Revenue Service guidelines. The computer program used by EPA to calculate the penalty automatically selects the depreciation method which results in the minimum penalty. This is done under the assumption that the firm would use the depreciation method which resulted in the lowest possible cost of compliance.

The depreciation life is the minimum number of years over which a particular investment in pollution control equipment may be depreciated. The source of this figure is the lower limit on the asset depreciation range for the appropriate class of assets as given in the Internal Revenue Service publication Revenue Procedure 77-10. If the lower limit is greater than ten years, the Act requires use of a ten year figure.

12. Useful life. The useful life of the pollution control equipment is the number of years it can be expected to operate before replacement

The source of the useful life of the pollution control equipment is the asset guideline period for the appropriate class. These are provided by the Internal Revenue Service in Revenue Procedure 77-10. They represent IRS estimates of the average lives of assets within a particular industry. They were established after an exhaustive study of actual asset lives and they are continually updated as the need arises.

SECTION V

DERIVATION OF FORMULAE

Section II described the procedure used to determine the noncompliance penalty. This section follows the same general outline in deriving the formulae used to make the calculations. All symbols used in this section are defined in Attachment A. A complete description of the parameters used and their sources was given in Section IV.

POLLUTION CONTROL CASH FLOWS

To compute the savings from delaying pollution control investment requires that the cash flows be estimated for a continuous series of replacement cycles. The simplest approach to calculating the present value of all future flows is to calculate the present value of cash flows in the initial cycle of N years and use that value as a basis for all others. The derivation described below uses such an approach.

The first category is the cash flow resulting from the initial investment of equity. It is given by:

$$EI = II * Q \qquad (1)$$

where II = the capital cost of the pollution control equipment.
Q = the fraction of the firm's capital structure made up of equity.

From this amount must be subtracted the effect of the investment tax credit whose cash flow is given by:

$$ITC = II * t_{ITC} \quad (2)$$

where t_{ITC} = the adjusted investment tax credit rate.

The investment tax credit rate must be adjusted if not all of the investment qualifies for the credit. This adjustment is explained in Attachment B. Further, if the investment is financed with industrial development bonds and rapid amortization is selected (see Attachment C), only one-half of the normal investment tax credit is allowed on that portion of the investment so financed.

The second category of cash flow is the capital-related flow which occurs over the depreciable life of the equipment. It is made up of depreciation and the flows associated with financing the equipment. The effect of depreciation is to reduce the firm's tax liability. The depreciation cash flow in year j is given by:

$$DEP_j = II * d_j * t_{TR} \quad (3)$$

where d_j = the fraction of the original cost depreciated in year j (see Attachment C).

t_{TR} = the firm's marginal income tax rate (see Attachment D).

The remainder of the annual capital-related cash flows consists of principal repayments and financing charges (i.e., interest and dividends) on the debt and preferred stock issued to finance the equipment purchase. The fraction of the initial investment financed by debt is given by:

$$DEBT\ SHARE = II * B \quad (4)$$

where B = the fraction of the firm's capital structure made up of debt. Debt is repaid each year in proportion to the depreciation of the asset. That is, at the end of each year the same fraction of the principal is repaid as the original book value of the investment is depreciated. Therefore, the repayment of principal in year j is given by:

$$PRIN_j = d_j * II * B \quad (5)$$

Interest is paid at the end of each year on the principal outstanding at the beginning of that year.

$$(INTEREST\ CHARGE)_j = R_{INT} * (PRINCIPAL\ OUTSTANDING)_j \quad (6)$$

where R_{INT} = the firm's interest rate.

Since interest is tax deductible, only the after-tax effects should be considered in calculating the cash flow. Therefore, the interest payment cash flow in year j becomes:

$$INT_j = R_{INT} * (PRINCIPAL\ OUTSTANDING)_j * (1-t_{TR}) \quad (7)$$

The principal outstanding is the original amount borrowed, II * B, less the amount which has been repaid prior to the beginning of the year. The amount repaid prior to the beginning of year j is:

$$(AMOUNT\ REPAID)_j = \sum_{k=0}^{j-1} II * d_k * B \quad (8)$$

where $d_o = 0$ by definition. The principal outstanding at the beginning of year j is the amount initially borrowed less the amount repaid by the end of j-1.

$$(\text{PRINCIPAL OUTSTANDING})_j = II * B - \sum_{k=0}^{j-1} II * d_k * B \quad (9)$$

Combining equations (7) and (9) yields a formula for the interest-related cash flow in year j:

$$INT_j = R_{INT} * II * B * (1-t_{TR}) * (1 - \sum_{k=0}^{j-1} d_k) \quad (10)$$

Preferred share is given by:

$$\text{PREFERRED SHARE} = II * F \quad (11)$$

where F is the fraction of preferred in the firm's capital structure.[1] Just as the additional debt is repaid, the preferred stock must be redeemed as the asset is depreciated. At the end of each year, the same fraction of the preferred stock is redeemed as the original book value of the investment is depreciated. Redemption in year j is given by:

$$PREF_j = d_j * II * F \quad (12)$$

Dividends on preferred stock are paid at the end of each year on the amount of stock outstanding at the beginning of the year.

$$DIV_j = R_{DIV} * (\text{PREFERRED OUTSTANDING})_j \quad (13)$$

where R_{DIV} = the dividend rate on preferred stock.

[1] Note that Q + B + F must be equal to 1.

These dividends are not tax-deductible. The preferred outstanding is the original amount issued, II * F, less the amount redeemed prior to the beginning of the year. The amount redeemed prior to year j is:

$$(\text{AMOUNT REDEEMED})_j = \sum_{k=0}^{j-1} II * d_k * F \quad (14)$$

where $d_o = 0$ as before. The amount of preferred outstanding at the beginning of year j is equal to the amount originally issued less the amount redeemed.

$$(\text{PREFERRED OUTSTANDING})_j = II * F - \sum_{k=0}^{j-1} II * d_k * F \quad (15)$$

The dividend paid at the end of year j is found by combining Equations (13) and (15).

$$DIV_j = R_{DIV} * II * F * (1 - \sum_{k=0}^{j-1} d_k) \quad (16)$$

The final category of cash flow is that associated with annual operating and maintenance expenditures. These expenses grow each year at the inflation rate. Like interest and dividend payments, they are assumed to be paid at the end of the year. They are tax deductible so their associated cash flows must reflect the effect of income taxes. Let M_j be the cash flow resulting from operating and maintenance expense in year j. Define M_0 as the annual operating and maintenance expense stated in current dollars. The first payment actually made will be this amount escalated by the inflation rate. The resulting cash flow is given by:

$$M_1 = M_0 * (1-t_{TR}) * (1+I)$$

$$M_2 = M_1 * (1+I) = M_0 * (1-t_{TR}) * (1+I)^2$$

$$M_j = M_{j-1} * (1+I) = M_0 * (1-t_{TR}) * (1+I)^j \quad (17)$$

DISCOUNTING CASH FLOWS

The cash flows just calculated must next be discounted to their present values. The cash flows in the first category, initial equity investment and the investment tax credit, take place immediately (i.e. in period zero). Therefore, no discounting is required to convert them to their present value. Using equations (1) and (2), that present value is given by:

$$\begin{aligned} PV_{INITIAL} &= EI - ITC \\ &= II * Q - II * t_{ITC} \\ &= II * (Q - t_{ITC}) \end{aligned} \quad (18)$$

The present value of the net cash flow in the second category, annual capital-related flows, is given in three steps. First, the total cash flow in year j is given by summing algebraically the individual contributions of the various components. The second step is to discount this sum to determine its present value. These two steps are combined in a single equation as follows:

$$PV_{\substack{ANNUAL \\ CAPITAL \\ RELATED}_j} = \frac{-DEP_j + PRIN_j + INT_j + PREF_j + DIV_j}{(1+E)^j} \quad (19)$$

where E = the discount rate.

The negative sign preceding the depreciation cash flow results from the fact that this component represents a reduction in cash outflow. The third step is to sum the individual present values for each year of the depreciation life of the equipment (n years).

$$PV_{\substack{ANNUAL \\ CAPITAL \\ RELATED}} = \sum_{j=1}^{n} PV_{\substack{ANNUAL \\ CAPITAL \\ RELATED}_j} \quad (20)$$

The final category, operating and maintenance cash flows, must be considered over the entire useful life of the equipment. The present value of the flow in year j is given by:

$$PV_{O\&M_j} = \frac{M_j}{(1+E)^j} \quad (21)$$

The present value over the N years of useful life is given by summing the present values for each year:

$$PV_{O\&M} = \sum_{j=1}^{N} PV_{O\&M_j} \quad (22)$$

The present value of all cash flows resulting from the purchase and operation of pollution control equipment throughout the N-year life of the original equipment, PV'_{PCE}, is given by summing the contributions of each of the three categories.

$$PV'_{PCE} = PV_{INITIAL} + PV_{\substack{ANNUAL \\ CAPITAL \\ RELATED}} + PV_{O\&M} \quad (23)$$

It is now necessary to expand this value to include the present value of cash flows in all future replacement cycles. This can be accomplished by recognizing that any given future cycle is identical to the original one except that its costs have increased by the inflation rate. For example, the replacement made after N years, when the original equipment wears out, gives rise to cash flows whose present value at the end of the first replacement cycle is equal to:

$$PV'_{PCE} * (1+I)^N$$

where I = the annual inflation rate.

The present value at time 0 of these flows is thus given by discounting:

$$\frac{PV'_{PCE} * (1+I)^N}{(1+E)^N}$$

where E = the discount rate.

The present value of the cash flows from the original cycle and all future replacement cycles is therefore given by summing:

$$PV_{PCE} = PV'_{PCE} + PV'_{PCE} * \frac{(1+I)^N}{(1+E)^N} + PV'_{PCE} * \frac{(1+I)^{2N}}{(1+E)^{2N}} + \ldots$$

$$= PV'_{PCE} * \left[\frac{1}{1 - \left(\frac{1+I}{1+E}\right)^N}\right], \quad E > I \qquad (24)^1$$

[1] Equation 24 is developed using the closed form for the sum of an infinite geometric series. This algebraic manipulation and the resulting formula is valid only when E>I. The case of E=I is discussed in Attachment G.

THE VALUE OF DELAY

The quantity just calculated is the present value, as of the day on which compliance should have been achieved, of pollution control cash flows which the firm would have experienced had they not delayed. If compliance is delayed, inflation will result in the firm's facing higher costs. Once it does comply the present value of those costs, as of the day on which compliance is actually achieved, is given by:

$$PV'_{DELAY} = PV_{PCE} * (1+i)^L \qquad (25)$$

where i = the monthly inflation rate[1]
L = the number of months of delay

The present value as of the day on which compliance should have been achieved is given by discounting:

$$PV_{DELAY} = \frac{PV'_{DELAY}}{(1+e)^L}$$

$$= PV_{PCE} + \left(\frac{1+i}{1+e}\right)^L \qquad (26)$$

where e = the monthly discount rate[1]

The savings from delay is thus given by the difference between these two present values:

$$SAVINGS = PV_{PCE} - PV_{DELAY}$$

$$= PV_{PCE} * \left[1 - \left(\frac{1+i}{1+e}\right)^L\right], \quad E > I \qquad (27)$$

[1] Both the inflation rate and the discount rate will normally be given in annual terms. If "A" is an annual rate, its monthly equivalent "a" is given by:

$$a = (1+A)^{\frac{1}{12}} - 1$$

CONVERSION OF SAVINGS INTO MONTHLY EQUIVALENTS

In order to convert the savings from noncompliance into a series of penalty payments, it is necessary to express savings as a series of equivalent monthly amounts.[1] This series, which will be referred to as the "savings equivalent", must have two attributes:

- It must have the same present value as the cash flows which would have resulted from investment in and operation of the required pollution control equipment. When these amounts are translated into a penalty, this requirement is intended to insure that a firm which continues to delay its pollution control expenditures will not benefit by doing so.
- The savings equivalents must escalate at the rate of inflation. If this requirement is not met, the early penalty payments overstate the savings to the firm while later payments understate it.

Let S_j be the savings equivalent at the beginning of month j. The requirement that the series escalate with inflation implies that:

$$S_2 = S_1 * (1+i)$$

$$S_3 = S_2 * (1+i) = S_1 * (1+i)^2$$

$$S_j = S_{j-1} * (1+i) = S_1 * (1+i)^{j-1} \qquad (28)$$

where i = the monthly inflation rate

[1] The final penalty payment will be made on a quarterly basis. However, in order to increase the accuracy of the penalty calculation, all adjustments to the economic savings are made on a monthly basis.

The present value of each of these terms is calculated by discounting:

$$PV_{S_j} = \frac{S_j}{(1+e)^{j-1}} \qquad (29)$$

Combining with equation (28) yields:

$$PV_{S_j} = \frac{S_1 * (1+i)^{j-1}}{(1+e)^{j-1}} \qquad (30)$$

The present value of these L monthly savings equivalents must be equal to the savings from delay. Thus,

$$\text{SAVINGS} = \sum_{j=1}^{L} PV_{S_j}$$

$$= \sum_{j=1}^{L} S_1 * \left(\frac{1+i}{1+e}\right)^{j-1}$$

or,

$$S_1 = \frac{\text{SAVINGS}}{\sum_{j=1}^{L} \left(\frac{1+i}{1+e}\right)^{j-1}}$$

$$= PV_{PCE} \frac{1 - \left(\frac{1+i}{1+e}\right)^{L}}{\sum_{j=1}^{L} \left(\frac{1+i}{1+e}\right)^{j-1}}$$

$$= PV_{PCE} * \frac{e-i}{1+e} \qquad (31)$$

This represents the first term in the series. All terms after the first month can be computed by multiplying S_1 by the quantity (1+i) raised to the appropriate power. For example, the savings equivalent at the beginning of the kth month would be:

$$S_k = S_1 * (1+i)^{k-1} \quad (32)$$

The present value of these monthly savings equivalents is equal to the present value of the costs avoided during the period of noncompliance.

THE EFFECT OF PRE-COMPLIANCE EXPENDITURES

The series of savings equivalents just developed is based on the assumption that a firm installing pollution control equipment will pay for it when installation is completed and operation begins. In fact, substantial intermediate payments will often be required before final installation is completed. In calling for the imposition of a noncompliance penalty, Congress explicitly required that these intermediate payments be accounted for in the penalty calculation. The adjustments needed to incorporate the effect of intermediate payments are described in the following paragraphs.

The procedure is begun by dividing the savings equivalent into its capital and its operating and maintenance components. The method used to account for intermediate capital payments is to adjust the capital component of a month's savings equivalent by multiplying it by a factor representing the proportion of the capital investment which is still to be made prior

to the beginning of that month. For example, if one-third of the total investment will have been made prior to the fifth month, the adjusted capital component of the savings for the fifth month is equal to two-thirds of the savings equivalent. Similarly, the operating and maintenance component of the savings in each month must be adjusted to a value which is net of any actual O&M expenditure made in the month. When all such adjustments have been made, the entire adjusted savings series is converted into a series of escalating quarterly penalty payments. This means that the schedule of intermediate payments and the compliance date must be known in advance.

The computational procedure starts by re-writing formula (31) using formula (23) and (24). This gives:

$$S_1 = \frac{e-i}{1+e} * PV_{PCE}$$

$$= \frac{e-i}{1+e} * (PV_{INITIAL} + PV_{ANNUAL\ CAP\ REL} + PV_{O\&M}) * \left[\frac{1}{1-\left(\frac{1+I}{1+E}\right)^N}\right]$$

$$= \frac{e-i}{1+e} * (PV_{INITIAL} + PV_{ANNUAL\ CAP\ REL}) * \left[\frac{1}{1-\left(\frac{1+I}{1+E}\right)^N}\right] +$$

$$\frac{e-i}{1+e} * PV_{O\&M} * \left[\frac{1}{1-\left(\frac{1+I}{1+E}\right)^N}\right]$$

$$= S_1^C + S_1^O \quad (33)$$

where the superscript C refers to the capital component of the savings equivalent and O refers to operating and maintenance component. Equation (32) for the two components can then be re-written as:

$$S_k^C = S_1^C * (1+i)^{k-1}$$

$$\text{and } S_k^O = S_1^O * (1+i)^{k-1} \qquad (34)$$

Let A_k^C be the month k capital component adjusted for pre-compliance expenditures. That is, A_k^C is equal to S_k^C times a factor representing the fraction of the total capital investment which remains to be made. If X_k is the fraction of the total investment which has been made prior to the beginning of month k, then:

$$A_k^C = (1-X_k) * S_k^C \qquad (35a)$$

The adjustment of the operating and maintenance component, the A_k^O, is equal to the fraction of required operating and maintenance expenditures avoided in each month times the savings component S_k^O. Thus:

$$A_k^O = (1-X_k) * S_k^O \qquad (35b)$$

where: X_k = precompliance operating and maintenance cost in month k divided by one-twelfth of annual estimated operating and maintenance expense required for compliance

The original series of capital components, the S_k^C, increased each month according to the monthly inflation rate. The new series, the A_k^C will sometimes increase and sometimes decrease, depending on whether the adjustment for pre-compliance payments made prior to the month is sufficient to overcome the effect of inflationary increases. Similarly, the operating and maintenance component will increase with inflation only until pre-compliance O&M expenditures are begun; at that time, the monthly amounts will decline. The resulting economic savings for each month will be equal to $A_k^C + A_k^O$. This amount will fluctuate up and down as described above.

CALCULATION OF QUARTERLY PENALTIES

The Act requires that the noncompliance penalty payments be made on a quarterly basis and all payments be of equal value. The legislative history indicates that this equality is to be in real terms. Consequently, the series of payments must increase with inflation. This can be done by converting the monthly values computed above into their present value equivalent and then converting that present value into a new series of escalating quarterly payments. Let L be the number of months which compliance is delayed. Then the present value is given by:

$$PV_{\substack{\text{ADJUSTED}\\\text{SERIES}}} = \sum_{k=1}^{L} \frac{A_k^C + A_k^O}{(1+e)^{k-1}} \qquad (36)$$

The series of escalating payments must have this same present value.[1] Thus, if P_j is the payment to be made at the beginning of quarter j, the following equality must exist:

$$\sum_{k=1}^{L} \frac{A_k^C + A_k^O}{(1+e)^{k-1}} = P_1 + \frac{P_2}{(1+e')} + \ldots + \frac{P_T}{(1+e')^{T-1}} \qquad (37)$$

where e' = the quarterly equivalent discount rate[2]

T = the number of quarterly payments

However, since $P_j = P_{j-1} * (1+i)$

$$\sum_{k=1}^{L} \frac{A_k^C + A_k^O}{(1+e)^{k-1}} = P_1 * \sum_{j=1}^{T} \left(\frac{1+i'}{1+e'}\right)^{j-1}$$

where i' = the quarterly equivalent inflation rate[2]

or,

[1]The number of required quarterly payments is determined from the months out of compliance using the formula:

$$T = \text{Integer } (L+2)$$

where, Integer = the closest integer less than or equal to the number in the brackets

L = number of months out of compliance

[2]The quarterly equivalent discount and inflation rate is found by taking the monthly equivalent discount and inflation rate to the third power. Thus:

$$e' = (1+e)^3 - 1$$
$$i' = (1+i)^3 - 1$$

where, e = monthly equivalent discount rate

i = monthly equivalent inflation rate

$$P_1 = \frac{\sum_{k=1}^{L} \frac{A_k^C + A_k^O}{(1+e)^{k-1}}}{\sum_{j=1}^{T} \left(\frac{1+i'}{1+e'}\right)^{j-1}} \qquad (38)$$

and $P_j = P_{j-1} * (1+i')$

$$= P_1 * (1+i')^{j-1} \qquad (39)$$

These payments have the following properties:

- They are equal in real terms.
- Their present value is equal to the present value of savings after adjustments for pre-compliance capital and operating and maintenance expenditures.
- If either the assumed schedule of expenditures for compliance, the amounts of those expenditures, or the compliance date are inaccurate, the payments must be revised. This is discussed below.

POST COMPLIANCE SETTLEMENT

The original penalty computation is based on the costs which the firm would have experienced had compliance not been delayed. If compliance is delayed, inflation will result in the actual expenditures being somewhat larger. This inflation-induced variation is already accounted for in the formulation described above. However, simple estimation error may also contribute to the difference and it is this error that the post-compliance settlement is intended to remedy.

The method involves re-computing the penalty using revised estimates of capital and operating and maintenance costs. These revised estimates are then used in conjunction with the actual schedule of pre-compliance expenditures to re-calculate the penalty payments. The settlement is based on the difference between these payments and those actually paid. The formula for these settlement payments is as follows: Let Δ_k be the difference between the penalty that was paid in each quarter and the amount which should have been paid during that quarter beginning k quarters ago. Then the settlement amount is:

$$Z_k = \Delta_k * (1+r)^{L-k+1}, \text{ if } k > 6 \qquad (42)$$

$$= \Delta_k, \text{ if } k \leq 6$$

where: Z_k = the amount to be paid (or refunded) on the date of compliance for each payment

k = the number of the month in which the original payment was made

Δ_k = the difference between the amount paid and the amount which is computed using revised figures for capital and operating costs

r = the monthly equivalent rate of interest determined by the Secretary of the Treasury[1]

L = the total number of months of noncompliance

[1]The Secretary of the Treasury will designate an annual rate of interest. This will be converted to a monthly equivalent rate using the following formula:

$$r = (1+R)^{\frac{1}{12}} - 1$$

where: R = annual interest rate specified by the Secretary of the Treasury.

As shown in equation 42, no interest is charged on the difference in penalty required compared to penalty paid for the first six months of noncompliance. The total post-compliance settlement as of the date of compliance is given by:

$$Z = \sum_{k=1}^{L} Z_k \qquad (43)$$

where: Z = the total post-compliance settlement as of the date of compliance

The total post-compliance settlement as of the day of compliance is then adjusted to reflect delay in the actual settlement payment. The final settlement amount is:

$$Z = Z * (1+r)^D \qquad (44)$$

where: Z = the actual settlement to be paid (or refunded) on the day of the settlement

Z = the total post-compliance settlement as of the date of compliance

r = the monthly equivalent rate of interest specified by the Secretary of the Treasury

D = the number of months between the date of compliance and the actual settlement

DELAYED EARLY PAYMENTS

In general, any time a penalty payment (P) is delayed by K months, the actual payment should be equal to:

$$P * (1+e)^K$$

The Act specifies that the first penalty payment is not due until six months after the notice of noncompliance has been given. This means that the first and second quarterly payments will be delayed for six and three months, respectively. However, a six month grace period exists after notice of noncompliance during which interest will not be charged on late payments. The first payment made by the firm at the beginning of the seventh month will thus equal the sum of the first three quarterly payments.

ATTACHMENT A

DEFINITION OF SYMBOLS

A_k^C = the monthly equivalent of the capital component of savings adjusted for pre-compliance expenditures

A_k^O = the monthly equivalent of the O&M component of savings adjusted for pre-compliance expenditures

B = the fraction of debt in the owner's capital structure (book value)

D = the number of months between the date of compliance and the payment of the post-compliance settlement

DEP_j = the net after-tax cash flow in year j resulting from depreciation of the initial investment

d_j = the fraction of original asset value depreciated in year j

Δ_k = the difference between the penalty paid in quarter k and the amount computed using revised figures for capital and O&M costs

DIV_j = the dividend payment in year j on the preferred stock used to finance the initial investment

E = the discount rate

e = the monthly equivalent of the discount rate E

e' = the quarterly equivalent of the discount rate E

EI = the amount of cash provided by equity investors to finance the initial investment

f	=	the fraction of the initial investment which is amortized on a straight line basis over five years
F	=	the fraction of preferred stock (at book value) in the owner's capital structure
I	=	the annual rate of inflation for pollution control expenditures
i	=	the monthly equivalent of the annual inflation rate I
i'	=	the quarterly equivalent of the annual inflation rate I
INT_j	=	the interest payment cash flow (after the effect of taxes) in year j on the debt used to finance the initial investment
II_{qual}	=	amount of initial capital investment which qualifies for the investment tax credit
II	=	the initial investment in pollution control equipment; the amount which will be capitalized on the books of the firm and amortized over the life of the equipment
ITC	=	the dollar amount of the investment tax credit
j,k	=	indices, usually indicating the year or month in which a cash flow occurs
K	=	the number of owners of the firm
L	=	the number of months the firm is expected to be out of compliance
M_o	=	annual operating and maintenance expense in current dollars
M_j	=	the net operating and maintenance cash flow in year j
N	=	the useful life of the pollution control equipment
n	=	the depreciation life of the pollution control equipment

P_j	=	the penalty payment to be made at the beginning of quarter j
PV	=	the present value of a cash flow
$PREF_j$	=	the repayment or reallocation of preferred stock in year j
$PRIN_j$	=	the repayment or reallocation of debt in year j
Q	=	the fraction of common equity (at book value) in the owner's capital structure
r	=	the monthly rate of interest to be paid on post-compliance settlement amounts
R_{DIV}	=	dividend rate on preferred stock
R_{INT}	=	the annual rate of interest on long-term debt
S_k^C	=	the monthly equivalent of the capital component of savings
S_k^O	=	the monthly equivalent of the O&M component of savings
S_k	=	the monthly equivalent of savings
T	=	the number of quarterly payments
t_{ITC}	=	the adjusted investment tax credit rate
t_{TR}	=	the marginal income tax rate (t_{FED} is the marginal federal rate and $t_{S\&L}$ is the marginal state and local rate)
W_j	=	the fraction of common stock held by stockholder j
X_k	=	the fraction of the capital investment which has been made prior to the beginning of quarter k
Y	=	the statutory investment tax credit rate

Z = the actual post-compliance settlement to be paid

Z_k = the additional amount to be paid (or refunded) for quarter K

$\bar{Z}$ = the total post-compliance settlement at the time of compliance

ATTACHMENT B

INVESTMENT TAX CREDIT QUALIFICATION

Only certain assets qualify for the investment tax credit, a notable exception being most buildings.[1] If the installation of pollution control equipment involves expenditures which will be capitalized and amortized over the tax life of the equipment, but which do not qualify for the investment tax credit, then the calculation of the credit must be adjusted.

Let II_{qual} be the investment which qualifies for the investment tax credit and let II be the total investment. If the investment tax credit rate specified in the Internal Revenue Code is Y, the adjusted rate for use in the noncompliance penalty calculation is:

$$t_{ITC} = \frac{II_{qual}}{II} * Y$$

A further adjustment must be made if the investment is financed by the sale of tax-exempt industrial development bonds. If rapid amortization is used, only one-half of the credit can be taken on the investment. Investment projects partially financed by industrial development bonds and using rapid amortization receive an investment tax credit weighted to reflect the loss of one-half of the credit on the portion paid for by bonds. This is shown below:

[1] The Revenue Act of 1978 allows use of the investment tax credit for rehabilitation expenditures in connection with business and productive structures in use at least twenty years since first placed in service or since the last qualifying rehabilitation.

$$t_{ITC} = \left[1 - \frac{b}{2}\right] * Y$$

Where

t_{ITC} = the adjusted investment tax credit rate

b = the percentage of the investment financed by industrial development bonds

Y = the investment tax credit rate specified in the Internal Revenue Code

Note that this formula is used only when rapid amortization is used.

Connecticut provides an investment tax credit for plants built in distressed areas. This tax credit lowers state taxes. Because state taxes are deductible from Federal taxes, only a portion of the credit benefits the firm. The total investment tax credit rate in states where the credit is based on actual investment is given by:

$$t_{ITC} = t_{ITC_{FEDERAL}} + \left[(1-t_{TR_{FEDERAL}}) * t_{ITC_{STATE}}\right]$$

where:

t_{ITC} = the adjusted investment tax credit rate

$t_{ITC_{FEDERAL}}$ = the adjusted Federal investment tax credit rate

$t_{TR_{FEDERAL}}$ = the marginal federal income tax rate

$t_{ITC_{STATE}}$ = the adjusted state investment tax credit rate

ATTACHMENT C

DEPRECIATION

The cash flow resulting from depreciation is given by:

$$DEP_j = d_j * II * t_{TR}$$

where d_j is the fraction of the original cost depreciated in year j and t_{TR} is the marginal income tax rate. The value of d_j will depend on the method of depreciation used by the owner of the facility. Formulae for the more common methods follow.

Straight line. Under this method, depreciation is the same during each year of the equipment's tax life (n).

$$d_j = \frac{1}{n}$$

Sum of years digits. Under this method, depreciation in year j is given by:

$$d_j = \frac{2 * (n-j+1)}{n * (n+1)}$$

Double declining balance. Under this method, depreciation in any year is the product of the remaining book value and twice the straight line rate. Switching to the straight line method is permitted after part of the asset has been depreciated. This switch, properly timed, increases the present value of the depreciation tax shield. The formula for double declining balance depreciation in year j is:

$$d_j = \max \begin{cases} \frac{2}{n} * (1 - \sum_{k=0}^{j-1} d_k) \\ \\ \frac{1}{n-j+1} * (1 - \sum_{k=0}^{j-1} d_k) \end{cases}$$

where "max" means that the greater of the two quantities to the right of the bracket should be chosen.

Rapid Amortization. A firm generally employs a depreciation method which minimizes the present value of its future income tax liability. This is accomplished by using the so-called accelerated depreciation methods, the most common of which are described above. Special rules governing the depreciation of pollution control equipment allow even faster write-offs than the accelerated methods, often resulting in still greater reductions in the present value of future tax liability. This approach, known as rapid amortization, was provided for in the Tax Reform Act of 1976.

The rules for rapid amortization are as follows:

- Divide the investment into two parts:
  - *i* the amount which would be depreciated during the first 15 years under straight line depreciation, and
  - *ii* the residual.

- The first part may be depreciated on a straight line basis over 5 years.
- The second part may be depreciated over the full tax life of the investment using whichever depreciation method the owner chooses.

The formula for the fraction depreciated in year j is most easily developed by considering the two parts separately. The fraction in year j for the first part is given by:

$$d_j^1 = \begin{cases} \frac{1}{5} * f, \text{ if } j \leq 5 \\ 0, \text{ if } j > 5 \end{cases}$$

where:

$$f = \min \begin{cases} \frac{15}{n} \\ 1 \end{cases}$$

The fraction of the second part depreciated in year j is given by the formula for straight line, sum of years digits, or double-declining balance, depending on the method used. This must be multiplied by (1-f), the fraction of the initial investment in the second part.

$$d_j^2 = (1-f) * (\text{standard fraction based on depreciation method})$$

The total depreciation fraction for year j under rapid amortization is then given by summing the two components:

$$d_j = d_j^1 + d_j^2$$

TAX RATE ADJUSTMENTS

The calculation of the savings from noncompliance requires use of the firm's marginal income tax rate. For most large corporations operating in states with no state income tax, this figure would be 46 percent.[1] However, a state income tax or a non-corporate form of organization complicates the matter. This appendix discusses the adjustments necessary to deal with these two factors.

State And Local Income Taxes

Firms in some locations are subject to income taxation by more than one level of government. If state and local income taxes are deductible on the federal return, the rate of taxation on income, t_{TR}, must be computed according to the following procedure.

Let t_{FED} be the federal marginal tax rate and $t_{S\&L}$ be the rate on state and local returns. Taxes paid to state and local governments are deductible expenses on the federal return. Hence, this after-tax rate is given by:

$$t_{S\&L} * (1-t_{FED})$$

The overall tax rate is the sum of federal and state and local effects. It is given by:

$$t_{TR} = t_{FED} + \left[t_{S\&L} * (1-t_{FED})\right]$$

[1] As of January 1979.

It is possible that certain local income taxes will be allowed as deductions when state income taxes are computed. In such cases, $t_{S\&L}$ is given by:

$$t_{S\&L} = t_S + t_L * (1-t_S)$$

where t_S = the marginal state income tax rate.
t_L = the marginal local income tax rate.

If the local income tax is not deductible from the state, the combined rate is given by:

$$t_{S\&L} = t_S + t_L$$

Multiple Ownership

The assumption in employing the tax rate, t_{TR}, and its components, t_{FED} and $t_{S\&L}$, is that these rates represent the marginal income tax rates applicable to the owning firm. If there is more than one owner, as might be the case if the firm were a partnership or a Subchapter S corporation, the rate used in the noncompliance penalty should be a weighted average of the rates appropriate to each owner.

The formula for either t_{FED} or $t_{S\&L}$ would then be given by:

$$t = W_1 t_1 + W_2 t_2 + \ldots + W_K t_K$$

$$= \sum_{k=1}^{K} W_k t_k$$

where:

t = the weighted average marginal income tax rate
W_k = the fraction owned by the kth owner
t_k = the marginal income tax rate of the kth owner
K = the number of owners

ATTACHMENT E

FACILITIES WITH LIMITED USEFUL LIVES

In some cases, a noncomplying source of emissions will not be brought into compliance but instead will be retired or replaced by a complying source. For example, a steel company with a noncomplying open hearth furnace may wish to retire that furnace rather than bring it into compliance, and may replace its steelmaking capability with a basic oxygen furnace. The basic oxygen furnace would have sufficient emission controls to allow it to meet the standards for new sources.

If the firm wishes to operate a noncomplying source for a limited period of time and then retire that source, the noncompliance penalty is calculated based on the capital and operating and maintenance costs which would have been incurred in bringing the source into compliance. These are the costs which are foregone in continuing to operate the noncomplying source and are the basis of the savings which accrue to the owner in so doing. Since the source is never brought into compliance, there are no precompliance expenditures. The full capital cost of compliance is assumed to be incurred in the final quarter before retirement.

When the firm plans to replace a noncomplying source with a new facility after some period of noncompliance, a similar approach is used. The basic calculation is based on the costs that would have been incurred in bringing the older source into compliance. However, an adjustment is then made for the precompliance expenditures made on the new complying facility. In other words, expenditures made on the construction of the new source are used to adjust the penalty much the same as precompliance expenditures on the older source would be used if they occurred. This procedure is explained below.

The basic equations utilized in the consideration of precompliance expenditures were detailed in Section V. These equations begin by breaking the savings equivalent into its capital and operating and maintenance components. The capital component is then adjusted for precompliance expenditures as shown in equation 35a:

$$A_k^C = (1 - X_k) * S_k^C \qquad (35a)$$

where A_k^C = adjusted capital component in month k

X_k = fraction of total investment made prior to the beginning of month k

S_k^C = unadjusted capital component in month k

In the case of a firm replacing an older noncomplying facility with a new source which meets the emission standards, the equation above would be used with X_k based on the total investment (for both productive capacity and pollution control equipment[1]) in the new facility and S_k^C based on the capital costs of bringing the old source into compliance. As such, X_k would represent the fraction of the total investment required for the new facility expended by the beginning of month k.[2]

The adjusted value of the operating and maintenance component--A_k^O--is equal in any month k to the amount which would have been spent at the old source in complying adjusted by the expenditures actually made for total operating and maintenance expenses of the equipment at the new source. The equation for adjusting operating and maintenance expenditures is written as:

$$A_k^O = (1 - X_k) * S_k^O \qquad (35b)$$

where A_k^O = adjusted operating and maintenance component in month k

X_k = operating and maintenance precompliance expenditure made in each month k at the new source divided by one-twelfth of the annual operating and maintenance expense of the new source[3]

S_k^O = unadjusted operating and maintenance component in month k

[1] Both production and pollution control expenditures are considered because in this case technology substitution itself as well as control equipment contribute to meeting the emission standards.

[2] Of course, this number will never be greater than one.

[3] The value of X_k cannot exceed one.

As described above, noncompliance penalties for facilities with limited useful lives are based on the costs which would have been incurred in bringing the facility into compliance. Because the source is retired rather than brought into compliance, no post-compliance settlement based on the capital and operating maintenance costs actually incurred is possible. However, if the noncomplying source is replaced with a new facility, the noncompliance penalty is adjusted based on planned precompliance capital and operating and maintenance expenditures. In such cases, a post-compliance settlement is possible and necessary to adjust for differences between planned vs. actual precompliance expenditures and the resulting alterations in the noncompliance penalty. Such a settlement involves three steps:

- The actual capital and operating and maintenance expenditures for each month are converted to dollars as of the date of noncompliance.
- Each monthly constant dollar expenditure's percentage of the total expenditure is calculated.
- The percentages of total capital expenditures and total operating and maintenance expenditures made in each month are used to adjust the respective penalty components computed in the initial penalty calculation.

The formulae are identical to those shown in Section V for the post-compliance settlement.

Attachment F

Application to Government Facilities

The noncompliance penalties described in this document are designed to remove the economic savings realized by a firm due to delayed compliance with pollution control requirements. Similar savings are also realized by government-owned facilities--emission sources owned or under the control of municipal, state, federal and other government and quasi-government entities. The statute contemplates that noncompliance penalties will be assessed against such facilities as well.

The calculation of penalties for government facilities is carried out using the same general logic as presented in this document with two important changes:

1. Cash flows due to tax and financing effects are no longer relevant.
2. A discount rate appropriate for use with government projects is used.

Each of these changes is described below.

Tax and Financing Effects

Because government facilities do not pay income taxes, cash flows which result from tax effects in the private sector are not included in the noncompliance formulae for government

facilities. As a result, cash flows due to tax savings from depreciation, interest expense, and so forth are not included in the formulae for government noncompliance penalties. The replacement of t_{ITC} and t_{TR} with zero in all formulae developed in Section V will accomplish this change.

Although governments often finance a portion of pollution control capital expenditures with debt as well as with tax revenues, the derivation of noncompliance penalties for government facilities assumes that the entire investment is made from tax revenues. This assumption is made because most government debt issues are related to specific projects (school buildings, sewer systems, highways, and so forth) and because the relationship of debt-issuing authorities in a single locale (school boards and municipal governments, highway commissions and state governments, and so forth) can be extremely complicated. The concept of investment dollars being drawn from a pool of funds with a fixed capital structure, while accurate in the private sector, is not realistic when applied to the government. Further, since noncompliance results from the lack of investment in pollution control equipment, it is impossible to utilize the actual financing mix which would have been used.

The assumption of financing with tax revenues can be carried through the formulae derived in Section V by setting the variables F (preferred stock share) and B (debt share) equal to zero and the variable Q (equity share, here assumed to be tax revenue share) equal to 1. These changes and those in the tax rate variables described above result in the following cash flow present values for government facilities.

$$PV_{INITIAL} = II * 1 \qquad (18)$$

$$PV_{\substack{ANNUAL\\CAPITAL\\RELATED}} = 0 \qquad (20)$$

$$PV_{O\&M} = \sum_{j=1}^{N} \frac{M_j}{(1+E)^j} \qquad (21 \text{ and } 22)$$

Thus, the present value of all cash flows resulting from the purchase and operation of pollution control equipment throughout the N-year life of the original equipment, for a government facility, is the sum of these contributions:

$$PV'_{\substack{PCE\\GOVERNMENT}} = II + \sum_{j=1}^{N} \frac{M_j}{(1+E)^j} \qquad (23a)$$

Equation 23a can be substituted for equation 23 in the subsequent formulae derivation presented in Section V.

Discount Rate

Considerable literature exists on the choice of a discount rate for use in analyzing government investment projects, yet there is little agreement concerning how such a rate should be developed. For the purpose of noncompliance penalties, the discount rate of 10 percent specified by the Office of Management and Budget for use in federal project analysis is utilized.[1] This discount rate is often used by

[1] Source: OMB Circular A 94 (Revised), March 27, 1972.

other governments as well, particularly in analysis of projects that will receive partial or full federal funding. Thus, use of this rate will insure that the calculation of noncompliance penalties for government facilities is accomplished on a basis consistent with the analysis of investment projects carried out by government decision-makers. In order to make this change in the formulae, the variable E is redefined to be the government discount rate and is set equal to 10 percent.

ATTACHMENT G

DERIVATION OF THE NONCOMPLIANCE PENALTY WHEN THE INFLATION RATE EQUALS THE DISCOUNT RATE

The derivation of the noncompliance penalty formulae presented in Section V assumes that the rate of inflation is less than the discount rate. In rare situations,[1] however, the rate of inflation may be greater than or equal to the discount rate. EPA proposes the following approach to calculating the noncompliance penalty in such cases. Comments on this or alternative approaches are invited.

Equation 27 on page V-9 defines the savings from delayed compliance as follows:

$$\text{SAVINGS} = PV_{PCE} * \left[1 - \left(\frac{1+i}{1+e}\right)^{L}\right], \quad E > i \qquad (27)$$

Where:

- i = monthly inflation rate
- I = annual inflation rate, $I = (1+i)^{12} - 1$
- e = monthly discount rate
- E = annual discount rate, $E = (1+e)^{12} - 1$
- L = months of delay
- PV_{PCE} = present value of all cash flows resulting from the installation and operation of pollution control equipment for an infinite series of replacement cycles

[1] If the inflation rate is greater than the average rate of return on equity for an industry, stockholders will cease investing in the less profitable firms in that industry. Some firms in the industry will then fail and the more profitable firms will remain. As a consequence the average return on equity for the industry will rise. Thus, situations where the inflation rate is truly greater than the discount rate will be rare and short-lived.

The variable PV_{PCE} is a function of PV'_{PCE} (the present value of all cash flows from one cycle of control equipment), the inflation rate, and the discount rate, as shown in equation 24 on page V-8.

$$PV_{PCE} = PV'_{PCE} * \left[\frac{1}{1 - \left(\frac{1+I}{1+E}\right)^N}\right], \quad E > I \qquad (24)$$

Substitution of equation 24 into 27 yields:

$$SAVINGS = PV'_{PCE} * \left[\frac{1 - \left(\frac{1+i}{1+e}\right)^L}{1 - \left(\frac{1+I}{1+E}\right)^N}\right], \quad E > I \qquad (27A)$$

When the inflation rate is greater than or equal to the discount rate, equation 27A has no solution. However, the limit of this equation as the inflation rate approaches the discount rate can be found using L'Hospital's Rule.[1] Application of this rule results in:

$$SAVINGS_{E=I} = \frac{PV'_{PCE}}{N} * \frac{L}{12} \qquad (27B)$$

[1]For an explanation of this rule, see any calculus text; for example, Calculus by G.E.F. Sherwood and A.E. Taylor, Prentice-Hall, 1957, pp. 177-181.

By reference to equation 23 on page V-7, the savings derived above can be expressed in terms of capital and operating and maintenance components as shown below:

$$SAVINGS_{E=I} = \frac{\left(PV_{INITIAL} + PV_{\substack{ANNUAL\\CAPITAL\\RELATED}} + PV_{O\&M}\right)}{N} * \frac{L}{12} \qquad (27C)$$

$$SAVINGS_{\substack{E=I\\CAPITAL}} = \frac{\left(PV_{INITIAL} + PV_{\substack{ANNUAL\\CAPITAL\\RELATED}}\right)}{N} * \frac{L}{12} \qquad (27D)$$

$$SAVINGS_{\substack{E=I\\O\&M}} = \frac{PV_{O\&M}}{N} * \frac{L}{12} \qquad (27E)$$

and by reference to equations 17, 21 and 22 on pages V-6 and V-7, the operating and maintenance component can be expressed as:

$$SAVINGS_{\substack{E=I\\O\&M}} = \frac{\sum_{j=1}^{N} \frac{M_o * (1+I)^j}{(I+E)^j}}{N} * \frac{L}{12} \qquad (27F)$$

which, for I=E, reduces to:

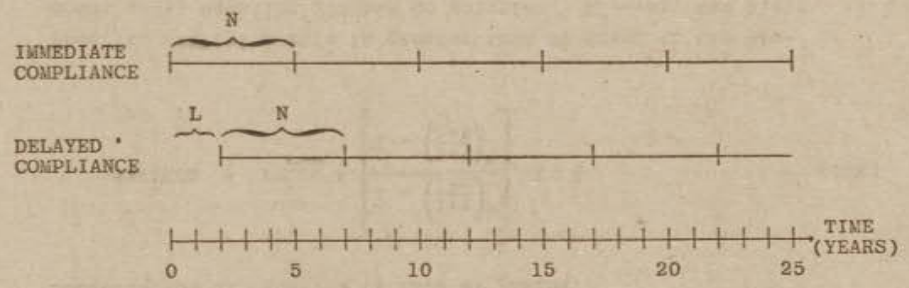
$$SAVINGS_{\substack{E=I\\O\&M}} = M_o * \frac{L}{12} \qquad (27G)$$

The results shown above can be interpreted as meaning that the savings from delay, in the case where the inflation rate is equal to the discount rate, consist of the annual share of the present value of the capital costs[1] and the yearly

[1]That is, $\left(PV_{INITIAL} + PV_{\substack{ANNUAL\\CAPITAL\\RELATED}}\right) \Big/ N$

operating and maintenance expense (M_o) both multiplied by the period of delay in years ($\frac{L}{12}$). In short, savings in this case equal some share of the capital costs of the control equipment plus the operating and maintenance expenses foregone through delay. Although both of these results are mathematically correct, the savings from the capital cost portion of PV'_{PCE} are based on an implicit assumption about the economic value of installed pollution control equipment with remaining useful life. This assumption requires further consideration.

In carrying out discounted cash flow analysis, it is necessary to analyze cash streams with equal lives in order to develop meaningful comparisons. Further, the analyst normally selects a time horizon which results in the full completion of replacement cycles for each alternative so that an economic value does not have to be specified for alternatives which have useful life remaining at the time horizon. However, because of the nature of the noncompliance penalty problem, it is impossible to choose a time horizon which will allow completion of all replacement cycles for both the immediate and delayed compliance alternatives. This is illustrated below.



Where: N = useful life = 5 years
L = delay = 24 months

At any point in the future, the immediate and delayed compliance alternatives will be at different points in their respective replacement cycles and thus will have different amounts of useful life remaining from the capital expenditures made. Thus, the analyst must make an explicit assumption about the economic value that can be realized from equipment which still has some useful life remaining at the end of the time horizon.

In the usual case where the inflation rate is less than the discount rate, the effect of discounting is to reduce the value of cash flows occurring far in the future. This fact and the use of an infinite number of replacement cycles[1] minimize the impact of the assumption concerning the economic value of the equipment with useful life remaining at the time horizon. However, when the inflation rate is equal to the discount rate, no effective discounting occurs and thus cash flows far in the future have an important impact on the present value. In this case, the assumption concerning economic value of the inplace equipment at different points in its useful life is very important.

Exhibit G-1 provides a simple numerical example of the economics of delay when the inflation rate equals the discount rate. As shown, control equipment installation is delayed one year, resulting in useful life remaining at the time horizon of four years. In this exhibit, no economic value is assigned to the remaining useful life nor is the value of the final year's depreciation tax shield ($6.83) received in the delayed alternative. Thus, the savings from delay are negative and equal the value of the tax shield lost.

[1] This assumption, which is standard practice in engineering economics and capital budgeting, relieves the analyst of the need to define a specific planning horizon and is reasonable when discounting removes the value of cash flows far in the future.

As an alternative, the analyst might assume that the remaining useful life is valued at the present value of the remaining depreciation tax shield. In other words, the single remaining year of useful life could be valued at $6.83. Such an assumption is roughly analogous to the firm writing off the book value remaining in the equipment at the time of early retirement and thus receiving all of the depreciation tax shield.[1] With this assumption, the capital savings from delay would be zero.

As a third alternative, the analyst might assume that the remaining useful life should be valued at its replacement cost at the time horizon. Exhibit G-2 shows an example using this assumption. In this case, the savings from delay are positive and equal $13.17.

The examples described above indicate that the capital savings due to delay, in the case where the inflation rate is equal to the discount rate, depend on the assumption made concerning the economic value of remaining useful life at the time horizon. The table below summarizes the results of these examples.

[1] In this example, if the firm were to write off the remaining book value of the equipment after three years of useful life, it would receive a depreciation tax shield of $20.00 or $15.02 on a present value basis. Thus, the present value of the final portion of depreciation would be $7.51 rather than $6.83 due to its occurrence one year earlier. The difference in present value of $.68 (7.51-6.83) would become the savings from delay of the capital expenditure. However, with the use of accelerated depreciation methods and longer equipment lifetimes the importance of the early depreciation would be negligible.

TABLE 1

RESULTS OF ASSUMPTIONS CONCERNING ECONOMIC VALUE OF USEFUL LIFE REMAINING AT TIME HORIZON

Assumption	Result
1. No value to remaining life.	1. Savings from delay negative and equal value of depreciation tax shield foregone.
2. Remaining life valued at worth of remaining depreciation tax shield.	2. Savings essentially zero.
3. Remaining life valued at replacement cost.	3. Positive savings.

Although the examples presented above have been relatively simple, more complex financing arrangements and longer time horizons do not alter the basic conclusions. Thus, the issue of capital savings when the inflation rate equals the discount rate becomes an issue of what is a reasonable assumption concerning the value of pollution control equipment with some portion of its useful life remaining.[1]

Most pollution control equipment is unlikely to have a positive salvage value due to the unique nature of many retrofit installations, the cost of removing reusable equipment and bringing it into operation at a new site, and so forth. Thus, it is most reasonable to assume that the firm,

[1] The mathematical formulae derived earlier predict that the capital savings from each year of delay should equal the present value of all capital-related flows divided by the useful life of the equipment. As shown in Exhibit G-1, the present value of capital-related flows is $48.31 and when divided by the useful life of four years, calculated capital savings for a one-year delay are equal to $12.08. This figure is close to the value calculated in Exhibit G-2 based on valuation of remaining life at replacement cost.

when faced with remaining useful life in equipment at the time horizon, would simply write the book value down to zero and thus capture the remaining depreciation tax shield. Although the timing of this action will determine its precise present value, the overall effect usually will be to eliminate for all practical purposes the capital savings due to delay.

In view of these factors, EPA proposes to calculate no capital savings in cases where the inflation rate is greater than or equal to the discount rate. Thus, total savings in such cases will equal the operating and maintenance component only, or

$$SAVINGS_{E=I} = M_o * \frac{L}{12} \qquad (27H)$$

This result can be used in the formulae developed in Section V in order to complete the calculation of noncompliance penalties.

Exhibit G-1

SAVINGS FROM DELAY ASSUMING NO VALUE FOR LIFE REMAINING AT TIME HORIZON

ASSUMPTIONS

1. Investment = $80 (II)
2. Useful life = 4 years (N)
3. Depreciation life = 4 years (n)
4. Inflation Rate = 10% (I)
5. Discount Rate = 10% (E)
6. Delay = 12 months (L)
7. Straight line depreciation
8. All equity financing
9. Time horizon = 4 years
10. Income Tax Rate = 50%

YEAR	0	1	2	3	4	5	6
Immediate Compliance							
Investment	(80)	-	-	-	-		
Depreciation Tax Shield	-	10	10	10	10		
Total Cash Flow	(80)	10	10	10	10		
Present Value at Time 0	(80)	9.09	8.26	7.51	6.83		
Total Present Value	(48.31)						
Delayed Compliance							
Investment		(88)	-	-	-		
Depreciation Tax Shield		-	11	11	11	11	
Total Cash Flow		(88)	11	11	11	11	
Present Value at Time 0		(80)	9.09	8.26	7.51	6.83	
Total Present Value	(55.14)						

Saving From Delay: 48.31 - 55.14 = (6.83)

Exhibit G-2

SAVINGS FROM DELAY ASSUMING REPLACEMENT VALUE FOR LIFE REMAINING AT TIME HORIZON

Assume one year of remaining life is valued at cost of replacement in year 4.[1]

- Cost of replacement: $\$80 * (1.10)^4 = 117.3$
- One year's share of replacement cost: $\frac{\$117.13}{4} = \$29.28$
- Thus, delayed alternative receives a cash inflow in year 4 of $29.28 as shown below

YEAR:	0	1	2	3	4	5	6
Delayed Compliance							
Investment		(88)	-	-	-		
Depreciation Tax Shield		-	11	11	11		
Value of Remaining Life		-	-	-	29.28		
Total Cash Flow		(88)	11	11	40.28		
Present Value at Time 0		(80)	9.09	8.26	27.51		
Total Present Value	(35.14)						

Savings from Delay: $48.31^{2} - 35.14 = 13.17$

[1] All remaining assumptions are as stated in Exhibit G-1.

[2] Present value of immediate compliance from Exhibit G-1.

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CLEAN AIR ACT

SECTION 120

NONCOMPLIANCE PENALTIES

INSTRUCTION MANUAL

SECTION I

INTRODUCTION

This appendix describes the procedures used to calculate the noncompliance penalty imposed by the 1977 ammendments to the Clean Air Act (the Act). The penalty, stipulated under Section 120 of the Act, removes the economic benefits which accrue to a firm from delaying investment in pollution control.

The method used to calculate the noncompliance penalty is based on the concept of costs avoided. The costs avoided by delaying the installation of pollution control equipment have two components. First, the firm benefits by delaying the capital expenditure needed for pollution control equipment. For this component, the cost avoided equals the return the firm expects on the money that should have been invested in pollution control equipment. That is, funds which should have been invested in pollution control equipment, but were not, can be invested in other assets, thus yielding a return. The second cost avoided through noncompliance results from the absence of

operating and maintenance expenses for the equipment. In this case, the costs avoided equal the value of all operating and maintenance expense avoided plus the earnings on such costs avoided.

IMPLEMENTING THE NONCOMPLIANCE PENALTY

A detailed discussion of the economic rationale for the noncompliance penalty and the computational method used is contained in Appendix A, the Technical Support Document. This appendix is designed to aid the user in determining the appropriate data for calculating the penalty and to describe the computer program which performs the actual computation.

To the extent practicable, the computer program has been written to accept data as it appears in the source. However, it is necessary in some instances to adjust the data for entry. When this adjustment requires several computations, a worksheet has been provided.

Level Of Knowledge Required

The appendix has been written on the assumption that the user has had little formal training in business finance. Use of this manual and the computer program do not require a knowledge of the mathematical formulae in the Technical Support Document. It is assumed, however, that the reader is familiar with the discussion sections in the Technical Support Document.

Plan Of The Document

Section II describes the sources of data needed to calculate the penalty and how the various data items are converted to a form suitable for entry into the computer program. As an aid in exposition, a hypothetical noncomplying firm is described and relevant penalty calculations are illustrated.

Section III describes the procedures necessary to operate the computer. An example of an actual use of the program to calculate a penalty is included. This example will utilize data calculated in Section II.

Section IV describes the calculation of the post compliance settlement based on data used in Sections II and III.

Section V discusses the calculation of the penalty under special conditions. These conditions include investments financed with industrial development bonds and penalties for limited life facilities.

DATA REQUIREMENTS AND DATA SOURCES

Calculation of the noncompliance penalty requires a substantial amount of financial data. It is expected that most of this data, as well as the calculation itself, will be provided by the firm. This is in accordance with Section 120 of the Clean Air Act which will:

> "...require each person to whom is given under paragraph (3) to--
>
> > (A) calculate the amount of the penalty owed (determined in accordance with subsection (d)(2)) and the schedule of payments (determined in accordance with subsection (d)(3) for each such source and, within forty-five days after the issuance of such notice or after the denial of a petition under subparagraph (B), to submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the State and to the Administrator".

However, some firms may not comply with the requirement. Section 120 further stipulates that if the firm fails to submit a calculation of the penalty, the State or the Administrator may contract with a third party to determine the penalty payments. This will require collection of data from several public sources. This section discusses the method used to collect data and prepare it for the calculation of the penalty.

Case Study

As an aid to understanding the issues discussed in this and the next section, an example has been formulated involving a hypothetical fertilizer company. While this case will utilize data from an actual corporation, the firm is not in the fertilizer industry. The example was created to illustrate many of the features of the computer program and thus may be more complex than many "real life" situations. Data prepared in the case discussion below will be entered in the computer program to determine a penalty in Section III.

THE FERTILIZER COMPANY

On September 1, 1979 the Fertilizer Company was issued a notice of noncompliance with Section 120 of the Clean Air Act. The source of emissions was an incinerator used for the disposal of a waste by-product from the manufacture of the firm's most profitable product.

A preliminary engineering study had been performed in which it had been determined that compliance could be reached with an investment of $500,000. The investment would involve the purchase of a baghouse and modifications to the firm's incinerator in order to reduce particulate emissions.

In addition to the capital investment, it was estimated that $15,000 in operating and maintenance expense would be needed each year the pollution control equipment was operated. It was also estimated that $1,890 in precompliance maintenance expense was necessary to make the equipment operational.

Engineers for the Fertilizer Company believed that it would be at least eleven months before the equipment was installed and shake-down was completed. Because the waste could be safely stored for short periods, production of fertilizer would not be interrupted while the incinerator was being modified.

The Fertilizer Company is a publicly-owned corporation with assets of $770 million. The company is mainly financed with investment by the common stockholders but some preferred stock and long term debt also exists.

The firm, in accordance with the Act, had computed the penalty owed and a schedule of payments. It had also submitted the data used in calculating the penalty. The enforcement official now had to arrange the data in the order it would be requested by the computer and verify that it was from an appropriate source. The computer program would check the accuracy of the firm's penalty calculation.

Preparing Data For Entry Into The Program

The computer program will request data in a specific sequence. Although the data submitted by the firm can be verified in any order, it is useful to verify the data in the same way so that omissions are avoided. The following paragraphs follow the same sequence as is used to enter data into the computer program.

1. The number of months the source will be out of compliance. The period of noncompliance is measured from the day on which the notice of noncompliance is issued until the time standards are actually met.[1] This will include installation time and shakedown period for the equipment. If the firm indicates that compliance will be achieved in the first fifteen days of a month, it is assumed to be in compliance for the entire month. In the Fertilizer Company example, the firm stated that it will come into compliance in eleven months.

2. Limited Life Facility. The program calculates a penalty based on eventual compliance at the source. However, some firms will attain compliance by shutting down the source or by replacing it with a new source. This option is discussed in detail in Section V. For the Fertilizer Company, the source is not a limited life facility.

[1] This date cannot be before August 7, 1979.

3. Industrial Development Bonds. The calculation of the percentage of a pollution control investment financed by tax-exempt industrial development bonds is discussed in Section V. For the Fertilizer Company, none of the investment is financed by issuing tax-exempt bonds.

4. Schedule of capital investments. This is an estimate, provided by the firm, of monthly capital expenditures for the purchase and installation of the pollution control equipment. It is assumed that all capital expenditures are completed when compliance is achieved.

The sources which firms will use to estimate monthly expenditures include engineering estimates, quotations from manufacturers, or estimates by management. They will consist of not only the direct purchase cost, including sales taxes, but also site preparation, engineering design work, shipping costs and installation expense. All costs must be stated in terms of dollars as of the beginning of the noncompliance period. Thus, a firm which will comply eleven months late should not inflate the cost estimates to reflect price changes during the period of noncompliance. The computer program automatically takes this into account.

The Fertilizer Company estimated that the total expenditure needed was $500,000. It submitted the data in Exhibit II-1 to justify the estimate. Expenditures to the manufacturer for the equipment will be made in three equal installments, during the second, fourth, and eleventh months of noncompliance. Each payment will thus be $166,666.67 ($500,000 ÷ 3).

5. Schedule of pre-compliance operating and maintenance expenditures and post-compliance annual operating and maintenance expense. These are costs the firm will incur for operation of the equipment. They may include operating and supervisory labor, power for equipment operation, supplies necessary for operation and a portion of the firm's overhead. If a by-product is created during equipment operation, disposal costs are included as an operating expense. If the by-product can be sold or used in another process, the value of the by-product should be subtracted from operating and maintenance expense.

In addition, operating and maintenance should include the incremental cost of changing plant operations to conform to the Act. For example, a firm forced to shift from high sulfur coal to low sulfur coal would include the increase in fuel costs as an operating expense. Operating expenses would also include the additional cost incurred if compliance requires shifting production to a less efficient or more expensive method.

EXHIBIT II-1

CALCULATION OF THE CAPITAL EXPENDITURE INPUT
FERTILIZER COMPANY[1]

1.	List price or estimated price of the equipment:	$485,908.65
2.	Less: Discount from manufacturer:	9,718.17
3.	Equals net price of equipment:	476,190.48
4.	Plus: Sales tax on equipment[2]:	23,809.52
5.	Plus: Freight and delivery charge:	0
6.	Equals estimated cost of equipment delivered:	$500,000.00
7.	Plus: Installation charge:	0
8.	Plus: Value of lost production:	0
9.	Plus: Cost of building modifications:	0
10.	EQUALS TOTAL CAPITAL EXPENDITURE:	$500,000.00

[1]This calculation uses Worksheet A in Attachment V.

[2]Some corporations subtract sales tax from revenue in the year of purchase. If this is the case, the sales tax is multiplied by (1 - Tax Rate) and subtracted from the cost of the equipment rather than added as in step four.

EXHIBIT II-1
(CONTINUED)

Note: Line 6 divided by line 10 is the percentage of qualified investment for calculation of the investment tax credit.

QUALIFIED PERCENTAGE INVESTMENT TAX CREDIT:

$$\frac{\text{Line 6}}{\text{Line 10}} = \frac{\$500,000}{\$500,000} \times 10^{*} = 10\%$$

*If the depreciable life of the equipment is less than seven years, this figure must be adjusted as described on page II-16.

Sources for operating and maintenance expense are engineering reports, manufacturer specifications, estimates by owners of actual data from similar operations. Two different estimates of operating and maintenance expense are necessary--those incurred before compliance and those estimated for the period after compliance. These amounts should be stated in dollar terms as of the beginning of the noncompliance period. Dollar estimates should not be increased by an estimate of inflation.

The Fertilizer Company supplied the data in Exhibit II-2 as estimated pre-compliance operating and maintenance expense.

EXHIBIT II-2

ESTIMATE OF MONTHLY PRE-COMPLIANCE OPERATING AND MAINTENANCE EXPENSE
FERTILIZER CORPORATION

PRE-COMPLIANCE OPERATING EXPENSE

Months 1-8		$ 0
Month 9		
Labor (10 hrs @ $10)	$100.00	$ 100.00
Month 10		
Labor (100 hrs @ $10)	1,000.00	
Power (1500 Kwh @ .0333 Kwh)	50.00	
Total		$1,050.00
Month 11		
Labor (50 hrs @ $10)	500.00	
Power (7200 Kwh @ .0333 Kwh)	240.00	
Total		$ 740.00

Pre-compliance monthly operating and maintenance expense cannot be larger than one-twelfth of the initial annual expense. For example, if the estimated initial annual expense is $15,000, no individual quarterly pre-compliance expenditure can be greater than $1,250 ($15,000 ÷ 12). If the pre-compliance operating and maintenance expense in a month is larger than the monthly equivalent of the initial annual expense, the computer program for calculating the penalty will not accept the data and will print an error message.[1]

For post-compliance operating and maintenance expense the Fertilizer Company supplied the data in Exhibit II-3.

[1] Monthly pre-compliance expenditures are used to adjust a penalty based on an estimate of the annual operating and maintenance expense throughout the life of the project. The requirement that pre-compliance expenditures be no more than one-twelfth of annual expense reflects the assumption that pre-compliance expenditures are similar to the annual expenditures avoided by noncompliance and do not include start-up costs and installation charges. These additional costs for installation and start-up should be included as a capital expenditure.

EXHIBIT II-3

POST-COMPLIANCE ANNUAL OPERATING AND MAINTENANCE EXPENSE

FERTILIZER COMPANY

1.	Annual Labor Expense 840 Hours x $10 per hour =	$8,400.00
2.	Power Cost 90090 Kwh x $.0333 per Kwh =	3,000.00
3.	Water Cost Gallons x $ per gallon =	0
4.	Raw Materials and Supplies 1000 Lbs x $1 per Lb =	1,000.00
5.	Yearly Increase in Property Tax =	3,000.00
6.	Cost of Production Lost Due to Maintenance or Use of Equipment =	0
7.	Total Cost (1 + 2 + 3 + 4 + 5 + 6) =	$15,400.00
8.	Less: Value of By-Products 800 Lbs at $.50 per Lb =	400.00
9.	Annual Operating and Maintenance (7 - 8) =	$15,000.00

[1] This calculation uses Worksheet B in Attachment V.

EXHIBIT II-3

(CONTINUED)

Note: One-twelfth of line 9 is the maximum amount of any monthly pre-compliance expenditure.

$\frac{\text{Line 9}}{12}$ = $1,250 Maximum amount which may be entered as a pre-compliance monthly operating and maintenance expense.

6. Investment tax credit rate.[1] The investment tax credit is a percentage of the investment which can be used to directly reduce federal income tax. Although the federal tax credit for an investment is currently ten percent, this rate may have to be adjusted to reflect two restrictions in the revenue code:[2]

- Investments of less than seven years do not receive the entire ten percent.
- Certain investments do not qualify for the credit.

An investment with a depreciable life of less than seven years does not qualify for the maximum investment tax credit. Currently, percentages allowed for such investments are as follows:

[1] Information on the investment tax credit is contained in the Internal Revenue Service Code, Chapter 1, Subpart B--Rules for Computing Credit for Investment in Certain Depreciable Property.

[2] In addition to the two listed restrictions, investments financed with industrial development bonds qualify for only a portion of the credit when rapid amortization is used. This adjustment is made automatically by the computer program. Further, for the purposes of noncompliance penalties the entire investment tax credit as calculated is used regardless of taxable income amount.

Depreciable Life (years)	Investment Tax Credit (percent)
Less than 3	0
At least 3 but less than 5	3.33
At least 5 but less than 7	6.67
7 or more	10.00

Items such as buildings and land are not usually allowable for purposes of computing the investment tax credit, so the percentage rate must be adjusted to yield a correct tax credit figure.[1] This adjustment is made by calculating the percentage of the investment qualifying for the tax credit and multiplying it by the percentage tax credit for equipment of similar depreciable life.

The state of Connecticut allows an investment tax credit to be applied against state taxes if the investment occurs in certain depressed areas. Because this credit reduces a tax deductible expense for federal income taxes, the credit must be adjusted to an after-tax basis. The adjustment is made by multiplying the state investment tax

[1]The Revenue Act of 1978 allows an investment tax credit for rehabilitation expenditures in connection with business and productive structures in use at least twenty years since first placed in service or since the last qualifying rehabilitation. Thus, the adjustment described above should be ignored for qualified rehabilitation investments.

credit by one minus the marginal federal tax rate. The adjusted state credit is then added to the federal credit.[1]

For the Fertilizer Company, the entire investment qualifies for the investment tax credit. If $150,000 of the investment had not been qualified, only a seven percent credit would be allowed.[2]

If the Fertilizer Company had a depreciation tax life of five years and the entire investment qualified for the investment, only a 6.67 percent credit would be allowed.

7. Income tax rate. The income tax rate to be entered into the program must be the marginal rate--that is, the rate which the firm would pay on an additional dollar of income. The firm must estimate its marginal federal income tax rate and, where applicable, its marginal state and local income tax rates. The state and local tax rates should not include sales tax, inventory tax, charter tax

[1]The formula for determining the investment tax credit in a state having a tax credit is:

$$t_{ITC} = ITC_{FEDERAL} + \left[(1\text{-Tax Rate}_{FEDERAL}) * ITC_{STATE}\right]$$

This must be multiplied by one hundred for entry into the computer.

[2]Computed as $\frac{(\$500,000 - 150,000)}{500,000} \times 10\% = 7\%$.

or taxes on property. If any of these taxes are material to the analysis, they should be included in either the investment or operating and maintenance expenditures, as appropriate. Sales tax has already been shown to increase investment while property taxes would be included in operating and maintenance expense.

In most cases involving large firms, the marginal tax rate will be 46 percent.[1] Small corporations and some partnerships or privately owned firms could have lower rates. In many penalty calculations it will be necessary to adjust the state and local tax rates to reflect the fact that the state and local income taxes are also deductible from federal taxes. The steps for calculation are as follows.

[1] As of January 1979. This rate must be adjusted for future changes in the tax laws. The rate applicable to a firm is determined by the amount of taxable income expected in the next year. The ranges of taxable income and the corresponding marginal tax rate are shown below.

Taxable Income	Marginal Tax Rate
$0 - $25,000	17%
$25,000 - $50,000	20%
$50,000 - $75,000	30%
$75,000 - $100,000	40%
$100,000 and above	46%

- The marginal federal, state and local income tax rates are determined.
- The adjusted local tax rate given state taxes is computed[1].
- The local and state tax are adjusted for the federal tax.
- The effective tax rate is computed.

Exhibit II-4 contains a calculation of the tax rate for the Fertilizer Company.

[1] If the local tax is not deductible from the state tax, the numbers should be added.

EXHIBIT II-4

CALCULATION OF THE TAX RATE[1]
FERTILIZER CORPORATION

1. Marginal Federal tax rate.	46%
2. Marginal State tax rate.	5%
3. Marginal Local tax rate.	2%

CALCULATION OF ADJUSTED LOCAL TAX

(1 - State Tax Rate) x Local Tax Rate
= (1 - .05) x .02
= .95 x .02
= .019 = Adjusted Local Tax Rate.

CALCULATION OF ADJUSTED STATE AND LOCAL TAX

(1 - Federal Tax Rate) x (State Tax Rate + Adjusted Local Rate)
= (1 - .46) x (.05 + .019)
= .54 x .069
= .0373 = Adjusted Local and State Tax.

CALCULATION OF TAX RATE

100 x (Federal Tax Rate + Adjusted Local and State Tax)
= 100 x (.46 + .0373)
= 100 x .4973
= 49.73 = Tax Rate.

[1]This calculation uses Worksheet C in Attachment V.

8. Inflation rate. This is the estimated future increase in the capital and operating cost of pollution control equipment.[1] The inflation rate to be used in the Fertilizer Company penalty calculation is 8.3 percent. This was the compound rate of increase in the Chemical Engineering Plant Cost Inflation Index for the years 1972-1977.[2]

9. Discount rate. The discount rate is an estimate of the firm's cost of new equity capital. For a manufacturing firm, calculation of the discount rate requires averaging the twenty most recent quarters of the after-tax return on equity as reported for the firm's industry in Table 4 of the Federal Trade Commission's Quarterly Report for Manufacturing, Mining and Trade. Attachment I contains a copy of Table 4 for the year 1977.

[1]Chemical Engineering, McGraw Hill, Inc., April 28, 1975 and subsequent issues. The compound rate of increase is computed as:

$$\left(\left[\text{(Index in Final Year)} \div \text{(Index in Initial Year)}\right]^{1/N} - 1\right) \times 100$$

where N equals the number of years between the first and last years.

[2]The inflation rate of 8.3 percent is only applicable to the example described in the manual. Actual penalty determination will require calculation of the inflation rate using the above formula and the past Plant Cost Inflation Indices for the most recent twenty quarters.

The annual rates of return on equity after taxes are reported by the FTC in broad industrial categories. To categorize a firm, the Standard Industrial Classification Manual published by the Office of Management and Budget should be used.

The FTC does not report rates of return on equity for public utilities. For these organizations, the annual percent return on net worth published in the April Monthly Economic Letter by Citibank (New York) should be used instead. Attachment I includes a table listing this information for 1973 to 1977.

For the Fertilizer Company, the correct category to use is Chemicals and Allied Products. The calculation of the average return on equity for twenty quarters is shown in Exhibit II-5.

EXHIBIT II-5

FERTILIZER COMPANY
JULY 1978
AVERAGE RETURN ON EQUITY, CHEMICALS AND ALLIED PRODUCTS

YEAR	QUARTER	RETURN %
1973	1	14.4
	2	15.5
	3	14.8
	4	15.5
1974	1	18.1
	2	21.3
	3	18.9
	4	14.8
1975	1	14.2
	2	16.2
	3	15.6
	4	15.2
1976	1	16.6
	2	17.2
	3	15.3
	4	12.8
1977	1	14.9
	2	16.8
	3	14.8
	4	13.8
	Total:	316.7

Average: 15.84%

10. Interest rate. The interest rate is the estimated cost of new debt for the firm. Determination of the firm's interest rate requires two steps.

- The quality rating for the firm's bonds is found in Moody's Bond Record. If the firm does not have rated debt, an "A" rating is assumed. If it has more than one issue, that with the highest rating is used.

- The most recent monthly yield reported for bonds of the same rating is found in the Corporate Bond Yield Averages section of the Bond Record.

Bonds are rated by Moody's in a system ranging from a high of "Aaa" to a low of "C". The lowest average yield reported is "Baa"; a firm whose bonds have a rating of "Baa" or lower will use the yield reports for the "Baa" average. The bonds are listed in the Bond Record in alphabetical order by corporation. Convertible bonds are considered in the same manner as all other bonds.

Note that the interest rate is not taken from the so-called coupon rate on the bond. For example, in Table II-1, rates of 9.75 percent and 4.5 percent are listed. These are historical rates which were in effect at the time the bonds were issued. They do not reflect current market rates.

The Bond Record reports a number of different yields. If the firm is a utility, the Public Utility Average is used. If the firm is not a utility, the Industrial Bond average is used.

For the Fertilizer Company, the debt was not rated, so the industrial bond average for "A" bonds is used (8.76). Attachment II contains the average bond yields as reported in a recent issue of the Bond Record.

11. Preferred dividend rate. The method used for determining the preferred dividend rate is identical to that used to select the interest rate. The quality rating of the firm's preferred shares is found in Moody's Bond Record in the Preferred Stock section. If the stock is not rated, an "a" rating is assumed.

Average yields are reported for only "aa", "a", and "baa" preferred stocks issued by utilities. However, these figures should be used for non-utilities as well. If the stock has a rating of "baa" or lower, use the "baa" average yield. Preferred rated "aa" or higher should use the "aa" yield.

The latest monthly average is used and entered exactly as shown in the averages. Attachment III contains an example of the Bond Record preferred averages.

The Fertilizer Company's preferred stock is not rated so the yield entered for the penalty calculation is 8.88 percent, the rate found by using the return on "a" rated preferred stock.

12. Preferred stock share of investment. This is the percentage amount of preferred equity in the firm's capital structure. The capital structure of the firm is the dollar amount invested in the firm for periods over one year. Thus it does not include current liabilities or deferred federal income tax.

The preferred share of the investment is calculated using data contained in the firm's five most recent annual reports.[1] The procedure involves the following steps:

[1]This is available either directly from the firm or, for large corporations, in Moody's Industrial Manual. An advantage to using Moody's is that the percent equity is reported and can be used as a check on the calculation.

- The sum of all the firm's equity accounts on each year's balance sheet is added to the total of its long term debt. This total represents the firm's long term financing or its capital structure for that year. It will include paid-in capital, retained earnings, capital surplus, preferred stock and long term debt. If Treasury stock is shown as an asset on the balance sheet, it should be subtracted from the total capital.
- The dollar amount of all preferred stock shown in the equity section of the balance sheet for the year is divided by the total capital found in the previous step. This is the preferred share of the investment for the year.
- The preferred shares for each of the five most recent years are averaged to yield a preferred share for input to the penalty calculation.

13. Equity share of the investment. The sum of all equity accounts not used in the numerator of the preferred stock calculation is the amount of common equity in the capital structure each year. This sum is also divided by the yearly total capital found in step one yielding the equity share of the investment for the year. These figures are then averaged to yield an equity share for input to the penalty calculation.

The sum of the equity share of the investment and the preferred share of the investment cannot be greater than one hundred percent.

The hypothetical Fertilizer Company has the following balance sheet.

Table II-1

Fertilizer Company
Balance Sheet
December 31, 1978
(000's)

Assets	1976	Liabilities	
Cash	$18,881	Notes payable to bank	$122
Marketable Securities	60,552	Accounts payable & accruals	54,109
Notes & accts. rec.(net)	79,156	Preferred dividends payable	23
Income tax refunds		Income tax	28,335
Inventories	116,940	Current maturities long term debt	8,929
Prepaid expenses	4,290	TOTAL CURRENT LIABILITIES	$91,518
TOTAL CURRENT ASSETS	$279,819		
		Deferred fed. income taxes	57,663
Property-plant & equip.	828,703	4.5% debentures	21,531
Less: reserve for		9.75% notes	60,000
depreciation	423,554	Long term lease obligation	43,932
NET PROPERTY ACCOUNT	$405,149	Pollution control facil.rev.bds.	46,000
		Other long term debt	9,230
Const. funds held by			
trustee	3,913	4 1/2% preferredstock ($100 par)	22,044
Other assets	83,495	Common stock ($5 par)	100,000
		Capital surplus	58,236
		Retained earnings	262,799
		TOTAL STOCKHOLDERS' EQUITY	$423,079
		Less: Treasury Stock	477
		NET STOCKHOLDER'S EQUITY	$422,602
TOTAL	$772,376	TOTAL	$772,376

Exhibit II-6 illustrates the calculation of the equity and preferred share of the investment for a single year.

EXHIBIT II-6

CALCULATION OF THE EQUITY AND PREFERRED SHARE OF THE INVESTMENT[1]
FERTILIZER COMPANY
(000's)

The first step in obtaining the equity and preferred share of the investment is to sum the equity and long term debt.[2]

4.5% debentures	$ 21,531
9.75% notes	60,000
Long term lease	43,932
Pollution control rev bonds	46,000
Other long term debt	9,230
4.5% preferred stock	22,044
Common stock	100,000
Capital surplus	58,236
Retained earnings	262,799
	$623,772
Less: Treasury Stock	(477)
Total long term capital	$623,295

[1] For the purposes of this example, preferred and equity share are calculated for one year only.

[2] Deferred taxes are not included in the calculation of the equity and preferred share of the investment.

EXHIBIT II-6
(CONTINUED)

The second step is to divide the preferred stock by the total long term capital.

$$\frac{\text{Preferred stock}}{\text{Total Long Term Capital}} = \frac{22,044}{623,295} = .035 \text{ or } 3.5\%$$

The third step is to sum all common equity accounts. Do not include the preferred stock. Divide this number by the total long term capital.

Common Stock	$100,000
Capital Surplus	58,236
Retained Earnings	262,799
Total	421,035
Less Treasury Stock	(477)
Total Common Equity	$420,558

$$\frac{\text{Total Common Equity}}{\text{Total Long Term Capital}} = \frac{\$420,558}{623,295} = .675 \text{ or } 67.5\%$$

Thus, 67.5 percent is the equity share of the investment and 3.5 percent is the preferred share of the investment.

14. Depreciation life in years. This is the number of years over which the firm's pollution control equipment will be depreciated for tax purposes. It is found by taking the lower limit on the asset depreciation range for the appropriate class of assets given in the Internal Revenue Service publication Revenue Procedure 77-10. If the lower limit is greater than ten years, the regulations require that ten years be used. If the lower limit contains a fractional part of a year, the program should be run with the year lower than the fraction. If the rounding reduces the investment tax credit, the depreciation life should be rounded up and the program run again. The calculation giving the lower penalty should be used.

15. The useful life in years. The useful life is used to determine the length of each replacement cycle in the penalty calculation. It is also provided by Revenue Procedure 77-10. Instead of using the lower limit, the asset guideline period is used. If this contains a fractional part of a year the number should be rounded up to the next integer. The useful life must always be greater than or equal to the depreciation life in years.

For the Fertilizer Company example, the "Asset Guideline Period" for chemicals and allied products is used. This is eleven years. Had it been 11.5 years, it would have been rounded up to twelve.

Attachment I

TABLE 4. ANNUAL RATES OF PROFIT ON STOCKHOLDERS' EQUITY, BY INDUSTRY

(Percent)

Industry	Before income taxes 2/					After taxes				
	4Q 1976 3/	1Q 1977 3/	2Q 1977	3Q 1977	4Q 1977	4Q 1976 3/	1Q 1977 3/	2Q 1977	3Q 1977	4Q 1977
All Manufacturing Corporations	21.0	21.3	26.3	21.8	23.4	13.1	13.9	16.0	13.3	14.4
Nondurable Manufacturing Corporations	20.5	20.9	24.3	22.1	21.8	12.9	13.0	15.0	13.7	13.7
Food and Kindred Products	21.7	19.8	24.1	21.9	21.7	13.1	11.4	15.0	13.	13.4
Tobacco Manufactures	27.0	29.5	36.3	30.3	31.5	15.4	16.5	19.0	17.4	16.9
Textile Mill Products	9.1	13.2	15.4	17.6	19.1	5.3	6.4	7.0	8.	11.1
Paper and Allied Products	17.9	17.4	21.6	19.9	18.3	10.9	11.2	14.1	12.7	12.4
Printing and Publishing	29.3	23.6	32.3	31.2	26.5	17.4	12.7	18.4	17.1	15.3
Chemicals and Allied Products	20.4	24.6	27.4	24.3	27.4	12.6	14.9	16.8	14.9	16.4
Industrial chemicals and synthetics 1/	17.3	22.3	26.5	19.8	17.7	11.0	13.7	16.0	12.	11.3
Drugs 1/	25.5	29.5	28.6	29.0	27.4	16.5	18.4	18.8	18.	17.4
Petroleum and Coal Products	19.5	19.6	21.0	19.4	19.5	13.8	13.9	15.4	13.7	13.8
Rubber and Miscellaneous Plastics Products	20.3	21.4	26.3	18.4	17.7	11.4	12.4	15.0	10.8	10.2
Other Nondurable Manufacturing Corporations	21.8	21.0	27.3	24.8	28.5	11.4	10.6	15.6	13.3	16.4
Durable Manufacturing Corporations	21.5	21.7	28.3	21.4	25.0	13.4	13.0	17.1	12.8	15.1
Stone, Clay and Glass Products	17.5	10.1	27.7	28.1	22.3	11.1	5.1	17.0	17.	13.7
Primary Metal Industries	8.7	7.2	13.9	-3.1	7.9	7.3	5.1	9.6	-0.5	5.5
Iron and steel 1/	10.0	6.6	12.4	-9.6	9.5	7.9	3.5	8.8	-4.5	6.2
Nonferrous metals 1/	6.3	12.0	16.8	8.0	5.3	6.1	8.1	11.1	3.7	3.2
Fabricated Metal Products	22.9	24.3	31.5	26.7	25.3	12.9	13.7	18.8	15.	15.2
Machinery, except Electrical	24.2	24.2	29.2	26.2	28.3	15.5	14.8	17.8	16.2	17.8
Electrical and Electronic Equipment	25.3	23.2	29.2	26.2	28.7	14.5	12.5	16.5	14.4	16.9
Transportation Equipment	25.3	30.9	36.9	30.5	29.2	15.4	18.6	22.1	17.2	16.3
Motor vehicles and equipment 1/	27.3	34.3	40.5	34.6	31.0	16.9	21.0	24.4	19.4	18.0
Aircraft, guided missiles and parts 1/	21.0	24.4	28.1	26.1	28.3	12.0	14.0	16.1	16.7	17.-
Instruments and Related Products	23.8	24.3	26.4	29.4	32.7	13.9	15.0	15.4	17.2	19.8
Other Durable Manufacturing Corporations	22.9	20.6	29.-	27.-	2-.-	13.8	12.8	17.8	16.2	15.8
All Mining Corporations	24.4	22.2	27.6	24.0	22.0	15.8	14.5	18.8	17.-	1 .-
All Retail Trade Corporations	35.2	20.7	28.7	29.4	34.5	23.0	13.7	20.5	20.7	27.0
All Wholesale Trade Corporations	23.5	23.7	28.9	28.9	20.8	14.9	15.7	19.5	19.	17.5

1/ Included in major industry above.
2/ Based on profit figure which includes net income (loss) of foreign branches and equity in earnings (losses) of non-consolidated subsidiaries, net of foreign taxes.
3/ Some of the rates in this column have been revised since their first appearance.
See footnotes to Tables A - E.

Attachment I
(Continued)

UTILITY AFTER-TAX RETURN ON EQUITY
(PERCENT)

	Electric Power and Gas	Telephone and Telegraph
1977	11.7	12.7
1976	11.5	11.5
1975	11.6	9.9
1974	10.°	9.8
1973	10.7	10.5

Source: Monthly Economic Letter. Citibank, New York, April 1978 and April issues of prior years.

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Attachment II

MOODY'S CORPORATE BOND YIELD AVERAGE

FOR FERTILIZER COMPANY 8.76

Moody's Corporate Bond Yield Averages

	Av. Corp.	Corporate by Ratings Aaa	Aa	A	Baa	Corporate by Groups P.U.	Ind.	R.R.	Public Utility Bonds Aaa	Aa	A	Baa	Industrial Bonds Aaa	Aa	A	Baa	Railroad Bonds Aaa	Aa	A
1972																			
June	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
July	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Aug.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Sept.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Oct.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Nov.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Dec.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
1973																			
Jan.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Feb.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Mar.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Apr.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
May	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
June	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
July	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Aug.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Sept.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Oct.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Nov.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Dec.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
1974																			
Jan.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Feb.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Mar.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Apr.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
May	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
June	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
July	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Aug.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Sept.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Oct.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Nov.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Dec.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
1975																			
Jan.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Feb.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Mar.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Apr.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
May	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
June	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
July	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Aug.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Sept.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Oct.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Nov.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Dec.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
1976																			
Jan.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Feb.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Mar.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Apr.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
May	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
June	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
July	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Aug.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Sept.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Oct.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Nov.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Dec.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
1977																			
Jan.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Feb.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Mar.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Apr.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
May	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
June	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
July	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Aug.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Sept.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Oct.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Nov.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Dec.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
1978																			
Jan.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Feb.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Mar.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Apr.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
May	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
June	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
July	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Aug.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Sept.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Oct.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Nov.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Dec.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
1979																			
Jan.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Feb.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Mar.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]
Apr.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	—	[illegible]	[illegible]

II-35

Attachment III

MOODY'S PUBLIC UTILITY PREFERRED STOCK YIELD AVERAGE

FOR FERTILIZER COMPANY 8.88

Moody's Public Utility Preferred Stock Yield Averages

"aa"

	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
1975	—	—	—	—	—	—	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
1976	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
1977	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
1978	[illegible]	[illegible]	[illegible]	[illegible]	—	—	—	—	—	—	—	—

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	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
1975	—	—	—	—	—	—	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
1976	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
1977	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
1978	[illegible]	[illegible]	[illegible]	[illegible]	—	—	—	—	—	—	—	—

"baa"

	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
1975	—	—	—	—	—	—	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
1976	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
1977	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
1978	[illegible]	[illegible]	[illegible]	[illegible]	—	—	—	—	—	—	—	—

NOTE: There is no "aaa" average because of the dearth of prime-quality preferred stocks. Yields are based on prices for the last Friday of each month.

Title	Moody's Rating	Dividend Dates	Par or Stated Value	Shares Outstanding (000's)	Current Call Price	Sinking Fund	New Money Preferred
Alabama Power Co.							
4.20% Cum. preferred	"baa"	J, A, J & O1	100	364	[illegible] (no change)	No	No
4.52% Cum. preferred	"baa"	J, A, J & O1	100	[illegible]	[illegible] (no change)	No	Yes
4.60% Cum. preferred	"baa"	J, A, J & O1	100	[illegible]	[illegible] (no change)	No	Yes
4.64% Cum. preferred	"baa"	J, A, J & O1	100	[illegible]	[illegible]	No	Yes
4.72% Cum. preferred	"baa"	J, A, J & O1	100	[illegible]	[illegible]	No	Yes
4.92% Cum. preferred	"baa"	J, A, J & O1	100	[illegible]	[illegible] (no change)	No	Yes
5.96% Cum. preferred	"baa"	J, A, J & O1	100	[illegible]	[illegible]	No	Yes
[illegible] Cum. preferred	"baa"	J, A, J & O1	100	[illegible]	[illegible]	No	Yes
[illegible] Cum. preferred	"baa"	J, A, J & O1	100	[illegible]	[illegible]	No	Yes
[illegible] Cum. preferred	"baa"	J, A, J & O1	100	[illegible]	[illegible]	No	No
[illegible] Cum. preferred	"baa"	J, A, J & O1	100	[illegible]	[illegible]	No	Yes
[illegible] Cum. preferred	"baa"	J, A, J & O1	100	[illegible]	[illegible]	No	Yes
[illegible] Cum. preferred, 1974 Series	"baa"	J, A, J & O1	100	[illegible]	[illegible]	No	Yes
11% Cum. preferred	"baa"	J, A, J & O1	100	[illegible]	[illegible]	Yes	Yes
9% Cum. preferred	"baa"	J, A, J & O1	100	[illegible]	[illegible]	No	Yes
[illegible] Cum. preferred	"baa"	J, A, J & O1	100	[illegible]	[illegible]	No	Yes
Depositary preferred	"baa"	J, A, J & O1	[illegible]	[illegible]	—	—	—
AMAX Inc.							
$3 Cv. preferred ser. B	"a"	M, J, S & D1	[illegible]	[illegible]	[illegible]	No	Yes
American Airlines Inc.							
$2.1875 Cum. preferred units	"baa"	J, A, J & O1	25	[illegible]	25.00 (Fr. 4-1-82)	Yes	Yes
American Telephone & Telegraph Co.							
$4.00 Cum. conv. preferred	"aaa"	F, M, A & N1	[illegible]	[illegible]	50.00 (no change)	No	Yes
$3.64 Cum. preferred	"aaa"	F, M, A & N1	[illegible]	[illegible]	[illegible]	Yes	Yes
$3.74 Cum. preferred	"aaa"	F, M, A & N1	[illegible]	[illegible]	[illegible]	Yes	Yes
Appalachian Power Company							
4½% Cum. preferred	"baa"	F, M, A & N1	100	[illegible]	[illegible] (no change)	No	No
4.50% Cum. Preferred	"baa"	F, M, A & N1	100	[illegible]	[illegible] (no change)	Yes	Yes
[illegible] Cum. preferred	"baa"	F, M, A & N1	100	[illegible]	[illegible]	No	Yes
[illegible] Cum. preferred	"baa"	F, M, A & N1	100	[illegible]	[illegible]	No	Yes
[illegible] Cum. preferred	"baa"	F, M, A & N1	100	[illegible]	[illegible]	No	Yes
Arizona Public Service Co.							
$1.10 Cum. preferred	"a"	M, J, S & D1	[illegible]	[illegible]	[illegible] (no change)	No	[illegible]
$2.50 Cum. preferred	"a"	M, J, S & D1	[illegible]	[illegible]	[illegible] (no change)	No	[illegible]
$2.36 Cum. preferred	"a"	M, J, S & D1	[illegible]	[illegible]	[illegible] (no change)	No	Yes
$2.40 Cum. preferred, ser. A	"a"	M, J, S & D1	[illegible]	[illegible]	[illegible] (no change)	No	Yes
[illegible] Cum. preferred, ser. E	"a"	M, J, S & D1	[illegible]	[illegible]	[illegible]	No	Yes
[illegible] Cum. preferred, ser. [illegible]	"a"	M, J, S & D1	100	[illegible]	[illegible]	Yes	Yes
$9.32 Cum. preferred Ser. J	"a"	M, J, S & D1	100	[illegible]	[illegible]	No	Yes

Note: Moody's ratings are subject to change. Because of the possible time lapse between Moody's assignment or change of a rating and your use of this monthly publication, we suggest you verify the current rating of any security or issuer in which you are interested.

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Attachment IV

This attachment is IRS Revenue Procedure 77-10.

Revenue Procedure 77-10
Administrative, Procedural, and Miscellaneous

Department of the Treasury

Reprinted from Internal Revenue Bulletin No. 12, dated March 21, 1977

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.

Rev. Proc. 77-10

SECTION 1. PURPOSE.

.01 The purpose of this Revenue Procedure is to restate, pursuant to sections 167(m) and 263(f) of the Internal Revenue Code of 1954, with certain substantive modifications as noted below, the asset guideline classes, asset guideline depreciation periods and ranges, and annual asset guideline repair allowance percentages for the Class Life Asset Depreciation Range (CLADR) System.

.02 This Revenue Procedure supersedes Rev. Proc. 72-10, 1972-1 C.B. 721, and the supplements and revisions of the asset guideline classes, periods, and repair allowance percentages published since the publication of Rev. Proc. 72-10. These Revenue Procedures are as follows:

73-2, 1973-1 C.B. 747
73-3, 1973-1 C.B. 749
73-23, 1973-2 C.B. 474
73-24, 1973-2 C.B. 475
73-25, 1973-2 C.B. 477
73-26, 1973-2 C.B. 479
73-27, 1973-2 C.B. 480
73-28, 1973-2 C.B. 482
73-30, 1973-2 C.B. 484
74-27, 1974-2 C.B. 480
74-28, 1974-2 C.B. 481
74-29, 1974-2 C.B. 482
74-30, 1974-2 C.B. 483
74-31, 1974-2 C.B. 487
74-32, 1974-2 C.B. 487
74-37, 1974-2 C.B. 491
74-50, 1974-2 C.B. 506
76-16, 1976-1 C.B. 556
76-17, 1976-1 C.B. 557
76-18, 1976-1 C.B. 559
76-27, 1976-2 C.B. 644
76-37, 1976-2 C.B. 659
77-2, 1977-3 I.R.B. 24
77-3, 1977-3 I.R.B. 24
77-8, 1977-10 I.R.B. 12

.03 In addition, certain changes are made in the numbering system of asset guideline classes to facilitate the understanding and use of the CLADR system.

Broad title headings and asset guideline class number designations for several related guideline classes have been deleted wherever feasible to eliminate confusion over the appropriate asset guideline class number designations.

The asset guideline classes for "Office Furniture, Fixtures, and Equipment," "Information System," and "Data Handling Equipment, except Computers," were established in Rev. Proc. 73-2 as asset guideline classes 70.11, 70.12, and 70.13, respectively. These classes have been redesignated asset guideline classes 00.11, 00.12, and 00.13, respectively. In addition, the asset guideline class for Industrial Steam and Electric Generation and Distribution Systems, designated asset guideline class 49.5, has been redesignated asset guideline class 00.4. The redesignations group these asset guideline classes with certain other asset guideline classes by types of depreciable assets rather than by the activity or the product of an activity.

.04 Numerous changes and modifications have been made to the language of the asset guideline class descriptions. These changes are not intended to modify the composition of the existing classes of Rev. Proc. 72-10.

.05 The following substantive modifications of the classes of Rev. Proc. 72-10 have been made:

(i) Assets used in the ginning of cotton have been reclassified from class 39.0 to class 01.1.

(ii) Assets used by plumbing contractors have been reclassified from class 70.2 to class 15.1.

(iii) The description of assets included in class 15.2, "Marine Contract Construction," has been modified to be consistent with Rev. Proc. 66-18, 1966-1 C.B. 646.

(iv) Subclass 49.121, "Electric Utility Nuclear Fuel Assemblies," is part of class 49.12, "Electric Utility Nuclear Production Plant," to which it is related. Assets included in subclass 49.121 are not separately subject to possible exclusion from an election to apply section 1.167(a)-11(b)(5)(v) of the regulations. See Section 2.02(i) of this Revenue Procedure.

SEC. 2. RULE OF APPLICATION

.01 The asset guideline classes, asset guideline periods and ranges, and annual asset guideline repair allowances percentages set forth are for use under the rules set forth in section 1.167(a)-11 of the Income Tax Regulations.

.02 It should be noted that the following special rules apply as specified:

(i) It is expressly provided that asset guideline classes and subclasses 00.4, 20.5, 30.11, 30.21, 32.11, 33.11, 33.21, 34.01, 35.11, 35.21, 36.11, 37.12, 37.32, 37.33, and 49.121 are part of existing activity classes to which the assets included in them relate as stated in the Revenue Procedures establishing these subclasses; therefore, assets included in these classes and subclasses are not separately subject to possible exclusion from an election to apply section 1.167(a)-11(b)(5)(v) of the regulations.

(ii) "Service assets," as defined in classes 50.1 and 70.21, the cost of which is properly deductible under section 162 of the Code, are not eligible property under the CLADR system. Further, service assets may be treated as mass assets as defined in section 1.47-1(e)(4) of the regulations. Service assets may be depreciated under a method not described in section 167(b)(1), (2), or (3), if the requirements of section 1.167(a)-11(b)(5)(v) are met.

(iii) If the asset guideline class repair allowance for class 32.1 is elected in accordance with section 1.167(a)-11(d)(2)(ii) of the regulations, "cold tank repairs," including refractory relining expenditures to glass furnaces, shall be treated as deductible repairs within the provisions and limitations of section 1.167(a)-11(d)(2)(iv)(a) dealing with the application of the asset guideline class repair allowance.

(iv) General rebuilding or rehabilitation costs for the special tools defined in class 30.11 that have been traditionally capitalized as the cost of a new asset are included in class 30.11.

(v) Asset guideline class 00.3, "Land Improvements," includes "other tangible property" that qualifies under section 1.48-1(d) of the regulations. However, a structure that is essentially an item of machinery or equip-

ment or a structure that houses property used as an integral part of an activity specified in section 48(a)(1)(B)(i) of the Code, if the use of the structure is so closely related to the use of the property that the structure clearly can be expected to be replaced when the property it initially houses is replaced, is included in the asset guideline class appropriate to the equipment to which it is related.

.03 Property that is used predominantly outside the United States may be eligible property if the requirements of section 1.167(a)-11(b)(2) of the regulations are met. In the case of property first placed in service and used predominantly outside the United States during the taxable year of election, an asset guideline period, but no asset depreciation range is in effect. Accordingly, such property shall not be treated as included in the same asset guideline class as property used predominantly inside the United States, for purposes of determining the asset depreciation period under section 1.167(a)-11(b)(4). Thus, for this purpose each asset guideline class described in this Revenue Procedure has an exact counterpart that consists of property otherwise includable within the class, but used predominantly outside the United States during the taxable year of election. Generally, for this purpose property is used predominantly outside the United States if such property is physically located outside the United States during more than 50 percent of days of the taxable year of election, beginning with the date the property is first placed in service. However, there are ten exceptions to this general rule and these are contained in section 48(a)(2) of the Code. The asset depreciation period for property, which is determined in the taxable year of election, will not be changed because of a change in predominant use after the close of such taxable year. Although treated as in a separate class for purposes of determining the asset depreciation period, property predominantly used outside the United States shall be included in the same asset guideline class as property predominantly used inside the United States for purposes of applying the asset guideline class repair allowance under section 1.167(a)-11(d)(2).

SEC. 3. ASSET GUIDELINE CLASSES AND PERIODS, ASSET DEPRECIATION RANGES, AND ANNUAL ASSET GUIDELINE REPAIR ALLOWANCE PERCENTAGES.

The asset guideline classes, asset guideline periods, asset depreciation ranges, and annual asset guideline repair allowance percentages are prescribed as set forth below:

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
SPECIFIC DEPRECIABLE ASSETS USED IN ALL BUSINESS ACTIVITIES, EXCEPT AS NOTED:					
00.11	**Office Furniture, Fixtures, and Equipment:** Includes furniture and fixtures which are not a structural component of a building. Includes such assets as desks, files, safes, and communications equipment. Does not include communications equipment that is included in other CLADR classes	8	10	12	2
00.12	**Information Systems:** Includes computers and their peripheral equipment used in administering normal business transactions and the maintenance of business records, their retrieval and analysis. Information systems are defined as: 1) Computers: A computer is an electronically activated device capable of accepting information, applying prescribed processes to the information, and supplying the results of these processes with or without human intervention. It usually consists of a central processing unit containing extensive storage, logic, arithmetic, and control capabilities. Excluded from this category are adding machines, electronic desk calculators, etc. 2) Peripheral equipment consists of the auxiliary machines which may be placed under control of the central processing unit. Non limiting examples are: Card readers, card punches, magnetic tape feeds, high speed printers, optical character readers, tape cassettes, mass storage units, paper tape equipment, keypunches, data entry devices, teleprinters, terminals, tape drives, disc drives, disc files, disc packs, visual image projector tubes, card sorters, plotters, and collators. Peripheral equipment may be used on-line or off-line.				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	Does not include equipment that is an integral part of other capital equipment and which is included in other CLADR classes of economic activity, i.e., computers used primarily for process or production control, switching and channeling	5	6	7	7.5
00.13	**Data Handling Equipment, except Computers:** Includes only typewriters, calculators, adding and accounting machines, copiers, and duplicating equipment	5	6	7	15
00.21	**Airplanes (airframes and engines),** except those used in commercial or contract carrying of passengers or freight, and all helicopters (airframes and engines)	5	6	7	14
00.22	**Automobiles, Taxis**	2.5	3	3.5	16.5
00.23	**Buses**	7	9	11	11.5
00.241	**Light General Purpose Trucks:** Includes trucks for use over the road (actual unloaded weight less than 13,000 pounds)	3	4	5	16.5
00.242	**Heavy General Purpose Trucks:** Includes heavy general purpose trucks, concrete ready-mix truckers, and ore trucks, for use over the road (actual unloaded weight 13,000 pounds or more)	5	6	7	10
00.25	**Railroad Cars and Locomotives,** except those owned by railroad transportation companies	12	15	18	8
00.26	**Tractor Units For Use Over-The-Road**	3	4	5	16.5
00.27	**Trailers and Trailer-Mounted Containers**	5	6	7	10
00.28	**Vessels, Barges, Tugs, and Similar Water Transportation Equipment,** except those used in marine contract construction	14.5	18	21.5	6
00.3	**Land Improvements:** Includes improvements directly to or added to land, whether such improvements are section 1245 property or section 1250 property, provided such improvements are depreciable. Examples of such assets might include sidewalks, roads, canals, waterways, drainage facilities, sewers, wharves and docks, bridges, fences, landscaping, shrubbery, or radio and television transmitting towers. Does not include land improvements that are explicitly included in any other class, and buildings and structural components as defined in section 1.48-1(e) of the regulations. Excludes public utility initial clearing and grading land improvements as specified in Rev. Rul. 72-403, 1972-2 C.B. 102.		20		
00.4	**Industrial Steam and Electric Generation and/or Distribution Systems:** Includes assets, whether such assets are section 1245 property or 1250 property, providing such assets are depreciable, used in the production and/or distribution of electricity with rated total capacity in excess of 500 Kilowatts and/or assets used in the production and/or distribution of steam with rated total capacity in excess of 12,500 pounds per hour, for use by the taxpayer in his industrial manufacturing process or plant activity and not ordinarily available for sale to others. Does not include buildings and structural components as defined in section 1.48-1(e) of the regulations. Assets used to generate and/or distribute electricity or steam of the type described above of lesser rated capacity are not included, but are included in the appropriate manufacturing equipment classes elsewhere specified.				

Asset guideline class	Description of assets included	Asset depreciation range (in years) Lower limit	Asset guideline period	Upper limit	Annual asset guideline repair allowance percentage
	Steam and chemical recovery boiler systems used for the recovery and regeneration of chemicals used in manufacturing, with rated capacity in excess of that described above, with specifically related distribution and return systems are not included but are included in appropriate manufacturing equipment classes elsewhere specified. An example of an excluded steam and recovery boiler system is that used in the pulp and paper manufacturing industry	22.5	28	33.5	2.5
	DEPRECIABLE ASSETS USED IN THE FOLLOWING ACTIVITIES:				
01.1	**Agriculture:** Includes machinery and equipment, grain bins, and fences but no other land improvements, that are used in the production of crops or plants, vines, and trees; livestock; the operation of farm dairies, nurseries, greenhouses, sod farms, mushroom cellars, cranberry bogs, apiaries, and fur farms; the performance of agricultural, animal husbandry, and horticultural services	8	10	12	11
01.11	**Cotton Ginning Assets**	9.5	12	14.5	5.5
01.21	**Cattle, Breeding or Dairy**	5.5	7	8.5	
01.22	**Horses, Breeding or Work**	8	10	12	
01.23	**Hogs, Breeding**	2.5	3	3.5	
01.24	**Sheep and Goats, Breeding**	4	5	6	
01.3	**Farm Buildings**	20	25	30	5
10.0	**Mining:** Includes assets used in the mining and quarrying of metallic and nonmetallic minerals (including sand, gravel, stone, and clay) and the milling, beneficiation and other primary preparation of such materials	8	10	12	6.5
13.1	**Drilling of Oil and Gas Wells:** Includes assets used in the drilling of onshore oil and gas wells and the provisions of geophysical and other exploration services; and the provision of such oil and gas field services as chemical treatment, plugging and abandoning of wells and cementing or perforating well casings. Does not include assets used in the performance of any of these activities and services by integrated petroleum and natural gas producers for their own account	5	6	7	10
13.2	**Exploration for and Production of Petroleum and Natural Gas Deposits:** Includes assets used by petroleum and natural gas producers for drilling of wells and production of petroleum and natural gas, including gathering pipelines and related storage facilities	11	14	17	4.5
13.3	**Petroleum Refining:** Includes assets used for the distillation, fractionation, and catalytic cracking of crude petroleum into gasoline and its other components	13	16	19	7
13.4	**Marketing of Petroleum and Petroleum Products:** Includes assets used in marketing petroleum and petroleum products, such as related storage facilities and complete service stations, but not including any of these facilities related to petroleum and natural gas trunk pipelines	13	16	19	4

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
15.1	**Contract Construction Other than Marine:** Includes assets used by general building, special trade, and heavy construction contractors. Does not include assets used by companies in performing construction services for their own account	4	5	6	12.5
15.2	**Marine Contract Construction:** Includes assets used by general building, special trade, and heavy construction contractors predominantly in marine construction work. Does not include assets used by companies in performing marine construction services for their own account except for floating, self-propelled, and other drilling platforms and support vessels used in offshore drilling for oil and gas which are included whether used for their own account or others	9.5	12	14.5	5
20.1	**Manufacture of Grain and Grain Mill Products:** Includes assets used in the production of flours, cereals, livestock feeds, and other grain and grain mill products	13.5	17	20.5	6
20.2	**Manufacture of Sugar and Sugar Products:** Includes assets used in the production of raw sugar, syrup, or finished sugar from sugar cane or sugar beets	14.5	18	21.5	4.5
20.3	**Manufacture of Vegetable Oils and Vegetable Oil Products:** Includes assets used in the production of oil from vegetable materials and the manufacture of related vegetable oil products	14.5	18	21.5	3.5
20.4	**Manufacture of Other Food and Kindred Products:** Includes assets used in the production of foods and beverages not included in classes 20.1, 20.2 and 20.3	9.5	12	14.5	5.5
20.5	**Manufacture of Food and Beverages-Special Handling Devices:** Includes assets defined as specialized materials handling devices such as returnable pallets, palletized containers, and fish processing equipment including boxes, baskets, carts, and flaking trays used in activities as defined in classes 20.1, 20.2, 20.3, 20.4. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	3	4	5	20
21.0	**Manufacture of Tobacco and Tobacco Products:** Includes assets used in the production of cigarettes, cigars, smoking and chewing tobacco, snuff, and other tobacco products	12	15	18	5
22.1	**Manufacture of Knitted Goods:** Includes assets used in the production of knitted and netted fabrics and lace. Assets used in yarn preparation, bleaching, dyeing, printing, and other similar finishing processes, texturing, and packaging, are elsewhere classified	6	7.5	9	7
22.2	**Manufacture of Yarn, Thread, and Woven Fabric:** Includes assets used in the production of spun yarns including the preparing, blending, spinning, and twisting of fibers into yarns and threads, the preparation of yarns such as twisting, warping, and winding, the production of covered elastic yarn and thread, cordage, woven fabric, tire fabric, braided fabric, twisted jute for packing, mattresses, pads, sheets, and industrial belts, and the processing of textile mill waste to recover fibers, flocks, and shoddies. Assets used to manufacture carpets, man-made fibers, and nonwovens, and assets used in texturing, bleach-				

Asset guideline class	Description of assets included	Asset depreciation range (in years) Lower limit	Asset guideline period	Upper limit	Annual asset guideline repair allowance percentage
	ing, dyeing, printing, and other similar finishing processes, are elsewhere classified	9	11	13	16
22.3	**Manufacture of Carpets, and Dyeing, Finishing, and Packaging of Textile Products:** Includes assets used in the production of carpets, rugs, mats, woven carpet backing, chenille, and other tufted products, and assets used in the joining together of backing with carpet yarn or fabric. Includes assets used in washing, scouring, bleaching, dyeing, printing, drying, and similar finishing processes applied to textile fabrics, yarns, threads, and other textile goods. Includes assets used in the production and packaging of textile products, other than apparel, by creasing, forming, trimming, cutting, and sewing, such as the preparation of carpet and fabric samples, or similar joining together processes (other than the production of scrim reinforced paper products and laminated paper products) such as the sewing and folding of hosiery and panty hose, the creasing, folding, trimming, and cutting of fabrics to produce nonwoven products, such as disposable diapers and sanitary products. Assets used in the manufacture of nonwoven carpet backing, and hard surface floor covering such as tile, rubber, and cork, are elsewhere classified	7	9	11	15
22.4	**Manufacture of Textured Yarns:** Includes assets used in the processing of yarns to impart bulk and/or stretch properties to the yarn. The principal machines involved are falsetwist, draw, beam-to-beam, and stuffer box texturing equipment and related high-speed twisters and winders. Assets, as described above, which are used to further process man-made fibers are elsewhere classified when located in the same plant in an integrated operation with man-made fiber producing assets. Assets used to manufacture man-made fibers and assets used in bleaching, dyeing, printing, and other similar finishing processes, are elsewhere classified	6.5	8	9.5	7
22.5	**Manufacture of Nonwoven Fabrics:** Includes assets used in the production of nonwoven fabrics, felt goods including felt hats, padding, batting, wadding, oakum, and fillings, from new materials and from textile mill waste. Nonwoven fabrics are defined as fabrics (other than reinforced and laminated composites consisting of nonwovens and other products) manufactured by bonding natural and/or synthetic fibers and/or filaments by means of induced mechanical interlocking, fluid entanglement, chemical adhesion, thermal or solvent reaction, or by combination thereof other than natural hydration bonding as occurs with natural cellulose fibers. Such means include resin bonding, web bonding, and melt bonding. Specifically includes assets used to make flocked and needle punched products other than carpets and rugs. Assets, as described above, which are used to manufacture nonwovens are elsewhere classified when located in the same plant in an integrated operation with man-made fiber producing assets. Assets used to manufacture man-made fibers and assets used in bleaching, dyeing, printing, and other similar finishing processes, are elsewhere classified	8	10	12	15
23.0	**Manufacture of Apparel and Other Finished Products:** Includes assets used in the production of clothing and fabricated textile products by the cutting and sewing of woven fabrics, other				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	textile products, and furs; but does not include assets used in the manufacture of apparel from rubber and leather	7	9	11	7
24.1	**Cutting of Timber:** Includes logging machinery and equipment and roadbuilding equipment used by logging and sawmill operators and pulp manufacturers for their own account	5	6	7	10
24.2	**Sawing of Dimensional Stock from Logs:** Includes machinery and equipment installed in permanent or well-established sawmills	8	10	12	6.5
24.3	**Sawing of Dimensional Stock from Logs:** Includes machinery and equipment installed in sawmills characterized by temporary foundations and a lack, or minimum amount, of lumber-handling, drying, and residue disposal equipment and facilities	5	6	7	10
24.4	**Manufacture of Wood Products, and Furniture:** Includes assets used in the production of plywood, hardboard, flooring, veneers, furniture, and other wood products, including the treatment of poles and timber	8	10	12	6.5
26.1	**Manufacture of Pulp and Paper:** Includes assets for pulp materials handling and storage, pulp mill processing, bleach processing, paper and paperboard manufacturing, and on-line finishing. Includes pollution control assets and all land improvements associated with the factory site or production process such as effluent ponds and canals, provided such improvements are depreciable but does not include buildings and structural components as defined in section 1 48-1(e)(1) of the regulations. Includes steam and chemical recovery boiler systems, with any rated capacity, used for the recovery and regeneration of chemicals used in manufacturing. Does not include assets used either in pulpwood logging, or in the manufacture of hardboard	10.5	13	15.5	10
26.2	**Manufacture of Converted Paper, Paperboard, and Pulp Products:** Includes assets used for modification, or remanufacture of paper and pulp into converted products, such as paper coated off the paper machine, paper bags, paper boxes, cartons and envelopes. Does not include assets used for manufacture of non-wovens that are elsewhere classified	8	10	12	15
27.0	**Printing, Publishing, and Allied Industries:** Includes assets used in printing by one or more processes, such as letterpress, lithography, gravure, or screen; the performance of services for the printing trade, such as book-binding, typesetting, engraving, photoengraving, and electrotyping; and the publication of newspapers, books, and periodicals	9	11	13	5.5
28.0	**Manufacture of Chemicals and Allied Products:** Includes assets used in the manufacture of basic chemicals such as acids, alkalies, salts, and organic and inorganic chemicals; chemical products to be used in further manufacture, such as synthetic fibers and plastics materials, including petrochemical processing beyond that which is ordinarily a part of petroleum refining; and finished chemical products, such as pharmaceuticals, cosmetics, soaps, fertilizers, paints and varnishes, explosives, and compressed and liquified gases. Does				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	not include assets used in the manufacture of finished rubber and plastic products or in the production of natural gas products, butane, propane, and byproducts of natural gas production plants	9	11	13	5.5
30.1	**Manufacture of Rubber Products:** Includes assets used for the production of products from natural, synthetic, or reclaimed rubber, gutta percha, balata, or gutta siak, such as tires, tubes, rubber footwear, mechanical rubber goods, heels and soles, flooring, and rubber sundries; and in the recapping, retreading, and rebuilding of tires	11	14	17	5
30.11	**Manufacture of Rubber Products—Special Tools and Devices:** Includes assets defined as special tools, such as jigs, dies, mandrels, molds, lasts, patterns, specialty containers, pallets, shells, and tire molds, and accessory parts such as rings and insert plates used in activities as defined in class 30.1. Does not include tire building drums and accessory parts and general purpose small tools such as wrenches and drills, both power and hand-driven, and other general purpose equipment such as conveyors and transfer equipment	3	4	5	
30.2	**Manufacture of Finished Plastic Products:** Includes assets used in the manufacture of plastics products and the molding of primary plastics for the trade. Does not include assets used in the manufacture of basic plastics materials nor the manufacture of phonograph records	9	11	13	5.5
30.21	**Manufacture of Finished Plastic Products—Special Tools:** Includes assets defined as special tools, such as jigs, dies, fixtures, molds, patterns, gauges, and specialty transfer and shipping devices, used in activities as defined in class 30.2. Special tools are specifically designed for the production or processing of particular parts and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools. such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	3	3.5	4	5.5
31.0	**Manufacture of Leather and Leather Products:** Includes assets used in the tanning, currying, and finishing of hides and skins; the processing of fur pelts; and the manufacture of finished leather products, such as footwear, belting, apparel, and luggage	9	11	13	5.5
32.1	**Manufacture of Glass Products:** Includes assets used in the production of flat, blown, or pressed products of glass, such as float and window glass, glass containers, glassware and fiberglass. Does not include assets used in the manufacture of lenses	11	14	17	12
32.11	**Manufacture of Glass Products—Special Tools:** Includes assets defined as special tools such as molds, patterns, pallets, and specialty transfer and shipping devices such as steel racks to transport automotive glass, used in activities as defined in class 32.1. Special tools are specifically designed for the production or processing of particular parts and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are				

Asset guideline class	Description of assets included	Asset depreciation range (in years) Lower limit	Asset guideline period	Upper limit	Annual asset guideline repair allowance percentage
	made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	2	2.5	3	10
32.2	**Manufacture of Cement:** Includes assets used in the production of cement, but does not include any assets used in the manufacture of concrete and concrete products nor in any mining or extraction process	16	20	24	3
32.3	**Manufacture of Other Stone and Clay Products:** Includes assets used in the manufacture of products from materials in the form of clay and stone, such as brick, tile, and pipe; pottery and related products, such as vitreous-china, plumbing fixtures, earthenware and ceramic insulating materials; and also includes assets used in manufacture of concrete and concrete products. Does not include assets used in any mining or extraction processes	12	15	18	4.5
33.1	**Manufacture of Primary Ferrous Metals:** Includes assets used in the smelting and refining of ferrous metals from ore, pig, or scrap, the rolling, drawing, and alloying of ferrous metals; the manufacture of castings, forgings, and other basic products of ferrous metals; and the manufacture of nails, spikes, structural shapes, tubing, wire, and cable	14.5	18	21.5	8
33.11	**Manufacture of Primary Ferrous Metals—Special Tools:** Includes assets defined as special tools such as dies, jigs, molds, patterns, fixtures, gauges, and drawings concerning such special tools used in the activities as defined in class 33.1, manufacture of Primary Ferrous Metals. Special tools are specifically designed for the production or processing of particular products or parts and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices. Rolls, mandrels, and refractories are not included in class 33.11 but are included in class 33.1	5	6.5	8	4
33.2	**Manufacture of Primary Nonferrous Metals:** Includes assets used in the smelting, refining, and electrolysis of nonferrous metals from ore, pig, or scrap, the rolling, drawing, and alloying of nonferrous metals; the manufacture of castings, forgings, and other basic products of nonferrous metals; and the manufacture of nails, spikes, structural shapes, tubing, wire, and cable	11	14	17	4.5
33.21	**Manufacture of Primary Nonferrous Metals—Special Tools:** Includes assets defined as special tools such as dies, jigs, molds, patterns, fixtures, gauges, and drawings concerning such special tools used in the activities as defined in class 33.2, Manufacture of Primary Nonferrous Metals. Special tools are specifically designed for the production or processing of particular products or parts and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particu-				

Asset guideline class	Description of assets included	Asset depreciation range (in years) Lower limit	Asset guideline period	Upper limit	Annual asset guideline repair allowance percentage
	lar part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices. Rolls, mandrels, and refractories are not included in class 33.21 but are included in class 33.2	5	6.5	8	4
34.0	**Manufacture of Fabricated Metal Products:** Includes assets used in the production of metal cans, tinware, nonelectric heating apparatus, fabricated structural metal products, metal stampings, and other ferrous and nonferrous metal and wire products not elsewhere classified	9.5	12	14.5	6
34.01	**Manufacture of Fabricated Metal Products—Special Tools:** Includes assets defined as special tools such as dies, jigs, molds, patterns, fixtures, gauges, and returnable containers and drawings concerning such special tools used in the activities as defined in class 34.0. Special tools are specifically designed for the production or processing of particular machine components, products, or parts, and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	2.5	3	3.5	3.5
35.1	**Manufacture of Metalworking Machinery:** Includes assets used in the production of metal cutting and forming machines, special dies, tools, jigs, and fixtures, and machine tool accessories	9.5	12	14.5	5.5
35.11	**Manufacture of Metalworking Machinery—Special Tools:** Includes assets defined as special tools, such as jigs, dies, fixtures, molds, patterns, gauges, and specialty transfer and shipping devices, used in activities as defined in class 35.1. Special tools are specifically designed for the production or processing of particular machine components and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	5	6	7	12.5
35.2	**Manufacture of Other Machines:** Includes assets used in the production of such machinery as engines and turbines; farm machinery, construction, and mining machinery; general and special industrial machines including office machines and nonelectronic computing equipment; miscellaneous machines except electrical equipment and transportation equipment	9.5	12	14.5	5.5
35.21	**Manufacture of Other Machines—Special Tools:** Includes assets defined as special tools, such as jigs, dies, fixtures, molds, patterns, gauges, and specialty transfer and shipping devices, used in activities as defined in class 35.2. Special tools are specifically designed for the production or processing of particular machine components and have no significant utilitarian value and cannot be adapted to further				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	5	6.5	8	12.5
36.1	**Manufacture of Electrical Equipment:** Includes assets used in the production of machinery, apparatus, and supplies for the generation, storage, transmission, transformation, and utilization of electrical energy such as; electric test and distributing equipment, electrical industrial apparatus, household appliances, electric lighting and wiring equipment; electronic components and accessories, phonograph records, storage batteries and ignition systems	9.5	12	14.5	5.5
36.11	**Manufacture of Electrical Equipment—Special Tools:** Includes assets defined as special tools such as jigs, dies, molds, patterns, fixtures, gauges, returnable containers, and specialty transfer devices used in activities as defined in class 36.1. Special tools are specifically designed for the production or processing of particular machine components, products or parts, and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	4	5	6	
36.2	**Manufacture of Electronic Products:** Includes assets used in the production of electronic detection, guidance, control, radiation, computation, test, and navigation equipment or the components thereof including airborne application. Also includes assets used in the manufacture of electronic airborne communication equipment or the components thereof. Does not include the assets of manufacturers engaged only in the purchase and assembly of components	6.5	8.0	9.5	7.5
37.11	**Manufacture of Motor Vehicles:** Includes assets used in the manufacture and assembly of finished automobiles, trucks, trailers, motor homes, and buses. Does not include assets used in mining, printing and publishing, production of primary metals, electricity, or steam, or the manufacture of glass, industrial chemicals, batteries, or rubber products, which are classified elsewhere. Includes assets used in manufacturing activities elsewhere classified other than those excluded above, where such activities are incidental to and an integral part of the manufacture and assembly of finished motor vehicles such as the manufacture of parts and subassemblies of fabricated metal products, electrical equipment, textiles, plastics, leather, and foundry and forging operations. Does not include any assets not classified in manufacturing activity classes, e.g., does not include assets classified in asset guideline classes 00.11 through 00.4. Activities will be considered incidental to the manufacture and assembly of finished motor vehicles only if 75 percent or more of the value of the products produced under one roof are used for the manufacture and assembly of finished motor vehicles. Parts that are produced as a normal replacement stock complement in connection with the manufacture and as-				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	sembly of finished motor vehicles are considered used for the manufacture and assembly of finished motor vehicles. Does not include assets used in the manufacture of component parts if these assets are used by taxpayer not engaged in the assembly of finished motor vehicles	9.5	12	14.5	9.5
37.12	**Manufacture of Motor Vehicles—Special Tools:** Includes assets defined as special tools, such as jigs, dies, fixtures, molds, patterns, gauges, and specialty transfer and shipping devices, owned by manufacturers of finished motor vehicles and used in qualified activities as defined in class 37.11. Special tools are specifically designed for the production or processing of particular motor vehicle components and have no significant utilitarian value, and cannot be adapted to further or different use, after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	2.5	3	3.5	12.5
37.2	**Manufacture of Aerospace Products:** Includes assets used in the manufacture and assembly of airborne vehicles and their component parts including hydraulic, pneumatic, electrical, and mechanical systems. Does not include assets used in the production of electronic airborne detection, guidance, control, radiation, computation, test, navigation, and communication equipment or the components thereof	8	10	12	7.5
37.31	**Ship and Boat Building Machinery and Equipment:** Includes assets used in the manufacture and repair of ships, boats, caissons, marine drilling rigs, and special fabrications not included in asset guideline classes 37.32 and 37.33. Specifically includes all manufacturing and repairing machinery and equipment, including machinery and equipment used in the operation of assets included in asset guideline class 37.32. Excludes buildings and their structural components	9.5	12	14.5	8.5
37.32	**Ship and Boat Building Dry Docks and Land Improvements:** Includes assets used in the manufacture and repair of ships, boats, caissons, marine drilling rigs, and special fabrications not included in asset guideline classes 37.31 and 37.33. Specifically includes floating and fixed dry docks, ship basins, graving docks, shipways, piers, and all other land improvements such as water, sewer, and electric systems. Excludes buildings and their structural components	13	16	19	2.5
37.33	**Ship and Boat Building—Special Tools:** Includes assets defined as special tools such as dies, jigs, molds, patterns, fixtures, gauges, and drawings concerning such special tools used in the activities defined in classes 37.31 and 37.32. Special tools are specifically designed for the production or processing of particular machine components, products, or parts, and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	5	6.5	8	0.5

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
37.41	**Manufacture of Locomotives:** Includes assets used in building or rebuilding railroad locomotives (including mining and industrial locomotives). Does not include assets of railroad transportation companies or assets of companies which manufacture components of locomotives but do not manufacture finished locomotives	9	11.5	14	7.5
37.42	**Manufacture of Railroad Cars:** Includes assets used in building or rebuilding railroad freight or passenger cars (including rail transit cars). Does not include assets of railroad transportation companies or assets of companies which manufacture components of railroad cars but do not manufacture finished railroad cars	9.5	12	14.5	5.5
38.0	**Manufacture of Professional, Scientific, and Controlling Instruments:** Includes assets used in the manufacture of mechanical measuring, engineering, laboratory and scientific research instruments, optical instruments and lenses; surgical, medical, and dental instruments, equipment and supplies; ophthalmic goods, photographic equipment and supplies; and watches and clocks	9.5	12	14.5	5.5
39.0	**Manufacture of Athletic, Jewelry and Other Goods:** Includes assets used in the production of jewelry; musical instruments; toys and sporting goods; motion picture and television films and tapes; and pens, pencils, office and art supplies, brooms, brushes, caskets, etc.	9.5	12	14.5	5.5
	Railroad Transportation: Classes with the prefix 40 include the assets identified below that are used in the commercial and contract carrying of passengers and freight by rail. Assets of electrified railroads will be classified in a manner corresponding to that set forth below for railroads not independently operated as electric lines. Excludes the assets included in classes with the prefix beginning 00.1 and 00.2 above, and also excludes any non-depreciable assets included in Interstate Commerce Commission accounts enumerated for this class.				
40.1	**Railroad Machinery and Equipment:** Includes assets classified in the following Interstate Commerce Commission accounts: Roadway Accounts: (16) Station and office buildings (freight handling machinery and equipment only) (25) TOFC/COFC terminals (freight handling machinery and equipment only) (26) Communication systems (27) Signals and interlockers (37) Roadway machines (44) Shop machinery Equipment Accounts: (52) Locomotives (53) Freight train cars (54) Passenger train cars (57) Work equipment	11	14	17	10.5

Asset guideline class	Description of assets included	Asset depreciation range (in years) Lower limit	Asset guideline period	Upper limit	Annual asset guideline repair allowance percentage
40.2	**Railroad Structures and Similar Improvements:** Includes assets classified in the following Interstate Commerce Commission road accounts: (6) Bridges, trestles, and culverts (7) Elevated structures (13) Fences, snowsheds, and signs (16) Station and office buildings (stations and other operating structures only) (17) Roadway buildings (18) Water stations (19) Fuel stations (20) Shops and enginehouses (25) TOFC/COFC terminals (operating structures only) (31) Power transmission systems (35) Miscellaneous structures (39) Public improvements construction	24	30	36	5
40.3	**Railroad Wharves and Docks** Includes assets classified in the following Interstate Commerce accounts: (23) Wharves and docks (24) Coal and ore wharves	16	20	24	5.5
40.51	**Railroad Hydraulic Electric Generating Equipment**	40	50	60	1.5
40.52	**Railroad Nuclear Electric Generating Equipment**	16	20	24	3
40.53	**Railroad Steam Electric Generating Equipment**	22.5	28	33.5	2.5
40.54	**Railroad Steam, Compressed Air, and Other Power Plant Equipment**	22.5	28	33.5	7.5
41.0	**Motor Transport-Passengers:** Includes assets used in the urban and interurban commercial and contract carrying of passengers by road, except the transportation assets included in classes with the prefix 00.2	6.5	8	9.5	11.5
42.0	**Motor Transport-Freight:** Includes assets used in the commercial and contract carrying of freight by road, except the transportation assets included in classes with the prefix 00.2	6.5	8	9.5	11
44.0	**Water Transportation:** Includes assets used in the commercial and contract carrying of freight and passengers by water except the transportation assets included in classes with the prefix 00.2. Includes all related land improvements	16	20	24	8
45.0	**Air Transport:** Includes assets (except helicopters) used in commercial and contract carrying of passengers and freight by air. For purposes of section 1.167 (a)-11(d)(2)(iv)(*a*) of the regulations, expenditures for "repair, maintenance, rehabilitation, or improvement" shall consist of direct maintenance expenses (irrespective of airworthiness provisions or charges) as defined by Civil Aeronautics Board uniform accounts 5200, maintenance burden (exclusive of expenses pertaining to maintenance buildings and improvements) as defined by Civil Aeronautics Board uniform accounts 5300, and expenditures which are not "excluded additions" as defined by section 1.167(a)-11(d)(2)(vi) of the regulations and which would be charged to property and equipment accounts in the Civil Aeronautics Board uniform system of accounts	9.5	12	14.5	.15

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
45.1	**Air Transport (restricted)** Includes each asset described in the description of class 45.0 which was held by the taxpayer on April 15, 1976, or is acquired by the taxpayer pursuant to a contract which was, on April 15, 1976, and at all times thereafter, binding on the taxpayer. This criterion of classification based on binding contract concept is to be applied in the same manner as under the general rules expressed in section 49(b)(1), (4), (5), and (8) of the Code	5	6	7	15
46.0	**Pipeline Transportation:** Includes assets used in the private, commercial, and contract carrying of petroleum, gas, and other products by means of pipes and conveyors. The trunk lines and related storage facilities of integrated petroleum and natural gas producers are included in this class. Excludes initial clearing and grading land improvements as specified in Rev. Rul. 72-403, 1972-2 C.B. 102, but includes all other related land improvements	17.5	22	26.5	3
	Telephone Communications: Includes the assets identified below and that are used in the provision of commercial and contract telephonic services such as:				
48.11	**Telephone Central Office Buildings:** Includes assets intended to house central office equipment, as defined in Federal Communications Commission Part 31 Account No. 212 whether section 1245 or section 1250 property	36	45	54	1.5
48.12	**Telephone Central Office Equipment:** Includes central office switching and related equipment as defined in Federal Communications Commission Part 31 Account No. 221	16	20	24	6
48.13	**Telephone Station Equipment:** Includes such station apparatus and connections as teletypewriters, telephones, booths, private exchanges, and comparable equipment as defined in Federal Communications Commission Part 31 Account Nos. 231, 232, and 234	8	10	12	10
48.14	**Telephone Distribution Plant:** Includes such assets as pole lines, cable, aerial wire, underground conduits, and comparable equipment, and related land improvements as defined in Federal Communications Commission Part 31 Account Nos. 241, 242.1, 242.2, 242.3, 242.4, 243, and 244	28	35	42	2
48.2	**Radio and Television Broadcastings:** Includes assets used in radio and television broadcasting, except transmitting towers	5	6	7	10
	Telegraph, Ocean Cable, and Satellite Communications (TOCSC) Includes communications-related assets used to provide domestic and international radio-telegraph, wire-telegraph, ocean-cable, and satellite communications services; also includes related land improvements.				
48.31	**TOCSC-Electric Power Generating and Distribution Systems:** Includes assets used in the provision of electric power by generation, modulation, rectification, channelization, control, and distribution. Does not include these assets when they are installed on customer's premises	15	19	23	

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
48.32	**TOCSC-High Frequency Radio and Microwave Systems:** Includes assets such as transmitters and receivers, antenna supporting structures, antennas, transmission lines from equipment to antenna, transmitter cooling systems, and control and amplification equipment. Does not include cable and long-line systems	10.5	13	15.5	
48.33	**TOCSC-Cable and Long-line Systems:** Includes assets such as transmission lines, pole lines, ocean cables, buried cable and conduit, repeaters, repeater stations, and other related assets. Does not include high frequency radio or microwave systems	21	26.5	32	
48.34	**TOCSC-Central Office Control Equipment:** Includes assets for general control, switching, and monitoring of communications signals including electromechanical switching and channeling apparatus, multiplexing equipment, patching and monitoring facilities, in-house cabling, teleprinter equipment, and associated site improvements	13	16.5	20	
48.35	**TOCSC-Computerized Switching, Channeling, and Associated Control Equipment:** Includes central office switching computers, interfacing computers, other associated specialized control equipment, and site improvements	8.5	10.5	12.5	
48.36	**TOCSC-Satellite Ground Segment Property:** Includes assets such as fixed earth station equipment, antennas, satellite communications equipment, and interface equipment used in satellite communications. Does not include general purpose equipment or equipment used in satellite space segment property	8	10	12	
48.37	**TOCSC-Satellite Space Segment Property:** Includes satellites and equipment used for telemetry, tracking, control, and monitoring when used in satellite communications	6.5	8	9.5	
48.38	**TOCSC-Equipment Installed on Customer's Premises:** Includes assets installed on customer's premises, such as computers, terminal equipment, power generation and distribution systems, private switching center, teleprinters, facsimile equipment, and other associated and related equipment	8	10	12	
48.39	**TOCSC-Support and Service Equipment:** Includes assets used to support but not engage in communications. Includes store, warehouse, and shop tools, and test and laboratory assets	11	13.5	16	
	Cable Television (CATV): Includes communications-related assets used to provide cable television (community antenna television services). Does not include assets used to provide subscribers with two-way communications services.				
48.41	**CATV-Headend:** Includes assets such as towers, antennas, preamplifiers, converters, modulation equipment, and program non-duplication systems. Does not include headend buildings and program origination assets	9	11	13	5
48.42	**CATV-Subscriber Connection and Distribution Systems:** Includes assets such as trunk and feeder cable, connecting hardware, amplifiers, power equipment, passive devices, directional taps, pedestals,				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	pressure taps, drop cables, matching transformers, multiple set connector equipment, and converters	8	10	12	5
48.43	**CATV-Program Origination:** Includes assets such as cameras, film chains, video tape recorders, lighting, and remote location equipment excluding vehicles. Does not include buildings and their structural components	7	9	11	9
48.44	**CATV-Service and Test:** Includes assets such as oscilloscopes, field strength meters, spectrum analyzers, and cable testing equipment, but does not include vehicles	7	8.5	10	2.5
48.45	**CATV-Microwave Systems:** Includes assets such as towers, antennas, transmitting and receiving equipment, and broad band microwave assets if used in the provision of cable television services. Does not include assets used in the provision of common carrier services	7.5	9.5	11.5	2
	Electric, Gas, Water and Steam, Utility Services: Includes assets used in the production, transmission and distribution of electricity, gas, steam, or water for sale, including related land improvements.				
49.11	**Electric Utility Hydraulic Production Plant:** Includes assets used in the hydraulic power production of electricity for sale, including related land improvements, such as dams, flumes, canals, and waterways	40	50	60	1.5
49.12	**Electric Utility Nuclear Production Plant:** Includes assets used in the nuclear power production of electricity for sale and related land improvements. Does not include nuclear fuel assemblies	16	20	24	3
49.121	**Electric Utility Nuclear Fuel Assemblies:** Includes initial core and replacement core nuclear fuel assemblies (i.e. the composite of fabricated nuclear fuel and container) when used in a boiling water, pressurized water, or high temperature gas reactor used in the production of electricity. Does not include nuclear fuel assemblies used in breeder reactors	4	5	6	
49.13	**Electric Utility Steam Production Plant:** Includes assets used in the steam power production of electricity for sale, combustion turbines operated in a combined cycle with a conventional steam unit and related land improvements	22.5	28	33.5	5
49.14	**Electric Utility Transmission and Distribution Plant:** Includes assets used in the transmission and distribution of electricity for sale and related land improvements. Excludes initial clearing and grading land improvements as specified in Rev. Rul. 72-403, 1972-2 C.B. 102	24	30	36	4.5
49.15	**Electric Utility Combustion Turbine Production Plant:** Includes assets used in the production of electricity for sale by the use of such prime movers as jet engines, combustion turbines, diesel engines, gasoline engines, and other internal combustion engines, their associated power turbines and/or generators, and related land improvements. Does not include combustion turbines operated in a combined cycle with a conventional steam unit	16	20	24	4

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
49.21	**Gas Utility Distribution Facilities:** Including gas water heaters and gas conversion equipment installed by utility on customers' premises on a rental basis	28	35	42	2
49.221	**Gas Utility Manufactured Gas Production Plants:** Includes assets used in the manufacture of gas having chemical and/or physical properties which do not permit complete interchangeability with domestic natural gas	24	30	36	2
49.222	**Gas Utility Substitute Natural Gas (SNG) Production Plant (naptha or lighter hydrocarbon feedstocks):** Includes assets used in the catalytic conversion of feedstocks of naphtha or lighter hydrocarbons to a gaseous fuel which is completely interchangeable with domestic natural gas	11	14	17	4.5
49.23	**Natural Gas Production Plant**	11	14	17	4.5
49.24	**Gas Utility Trunk Pipelines and Related Storage Facilities:** Excludes initial clearing and grading land improvements as specified in Rev. Rul. 72-403	17.5	22	26.5	3
49.25	**Liquefied Natural Gas Plant:** Includes assets used in the liquefaction, storage, and regasification of natural gas including loading and unloading connections, instrumentation equipment and controls, pumps, vaporizers and odorizers, tanks, and related land improvements. Also includes pipeline interconnections with gas transmission lines and distribution systems and marine terminal facilities	17.5	22	26.5	4.5
49.3	**Water Utilities:** Includes assets used in the gathering, treatment, and commercial distribution of water	40	50	60	1.5
49.4	**Central Steam Utility Production and Distribution:** Includes assets used in the production and distribution of steam for sale	22.5	28	33.5	2.5
50.0	**Wholesale and Retail Trade:** Includes assets used in carrying out the activities of purchasing, assembling, storing, sorting, grading, and selling of goods at both the wholesale and retail level. Also includes assets used in such activities as the operation of restaurants, cafes, coin-operated dispensing machines, and in brokerage of scrap metal	8	10	12	6.5
50.1	**Wholesale and Retail Trade Service Assets:** Includes assets such as glassware, silverware (including kitchen utensils), crockery (usually china) and linens (generally napkins, tablecloths and towels) used in qualified activities as defined in class 50.0	2	2.5	3	
70.2	**Personal and Professional Services:** Includes assets used in the provision of personal services such as those offered by hotels and motels, laundry and dry cleaning establishments, beauty and barber shops, photographic studios and mortuaries. Includes assets used in the provision of professional services such as those offered by doctors, dentists, lawyers, accountants, architects, engineers, and veterinarians. Includes assets used in the provision of repair and maintenance services and those assets used in providing fire and burglary protection services. Includes equipment or facilities used by cemetery organizations, news agencies, teletype wire services, frozen food lockers, and research laboratories	8	10	12	6.5

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
70.21	**Personal and Professional Services Service Assets:** Includes assets such as glassware, silverware, crockery, and linens (generally sheets, pilowcases and bath towels) used in qualified activities as defined in class 70.2	2	2.5	3	
79.0	**Recreation:** Includes assets used in the provision of entertainment services on payment of a fee or admission charge, as in the operation of bowling alleys, billiard and pool establishments, theaters, concert halls, and miniature golf courses. Does not include amusement and theme parks and assets which consist primarily of specialized land improvements or structures, such as golf courses, sports stadia, race tracks, ski slopes, and buildings which house the assets used in entertainment services	8	10	12	6.5
80.0	**Theme and Amusement Parks:** Includes assets used in the provision of rides, attractions, and amusements in activities defined as theme and amusement parks, and includes appurtenances associated with a ride, attraction, amusement or theme setting within the park such as ticket booths, facades, shop interiors, and props, special purpose structures, and buildings other than warehouses, administration buildings, hotels, and motels. Includes all land improvements for or in support of park activities, (e.g. parking lots, sidewalks, waterways, bridges, fences, landscaping, etc.) and support functions (e.g. food and beverage retailing, souvenir vending and other nonlodging accommodations) if owned by the park and provided exclusively for the benefit of park patrons. Theme and amusement parks are defined as combinations of amusements, rides, and attractions which are permanently situated on park land and open to the public for the price of admission. This guideline class is a composite of all assets used in this industry except transportation equipment (general purpose trucks, cars, airplanes, etc., which are included in asset guideline classes with the prefix 00.2), assets used in the provision of administrative services (asset guideline classes with the prefix 00.1), and warehouses, administration buildings, hotels and motels	10	12.5	15	12.5

SEC. 4. EFFECT ON OTHER DOCUMENTS.

Rev. Procs. 72-10, 73-2, 73-3, 73-23, 73-24, 73-25, 73-26, 73-27, 73-28, 73-30, 74-27, 74-28, 74-29, 74-30, 74-31, 74-32, 74-37, 74-50, 76-16 76-17, 76-18, 76-27, 76-37, 77-2, 77-3 and 77-8 are superseded for property placed in service in taxable years ending on or after March 21, 1977, the date of publication of this Revenue Procedure in the Internal Revenue Bulletin, in accordance with section 1.167(a)-11(b)(4) of the regulations. However, the taxpayer may at his option apply Rev. Proc. 72-10, as previously modified by the aforementioned documents, without regard to this Revenue Procedure for such property placed in service in a taxable year beginning before March 21, 1977, and ending on or after that date. Such option shall be exercised in making the election to apply section 1.167(a)-11 for such year and may not be revoked after the latest time for making such election.

The asset guideline classes, asset guideline depreciation periods and ranges, and asset guideline repair allowance percentages set forth in this Revenue Procedure will from time to time be supplemented and revised as provided by section 1.167(a)-11(b)(4) of the regulations. Taxpayers using this Revenue Procedure should apply it as supplemented and revised.

News Release

Department of the Treasury
Internal Revenue Service
Washington, DC 20224 4/27/77
Tel. (202)566-4021

For Release: Immediate

IR-1803

Washington, D.C.--A new procedure affecting the classification, depreciation periods, and repair allowance percentages for substitute natural gas-coal gasification assets of taxpayers electing the Class Life Asset Depreciation Range System was today announced by the Internal Revenue Service.

The procedure supplements and modifies related material published in Revenue Procedure 77-10.

Revenue Procedure 77-14 is attached and will also appear in Internal Revenue Bulletin No. 1977-?1, dated May 23, 1977.

PART III. ADMINSTRATIVE, PROCEDURAL, AND MISCELLANEOUS

26 CFR 601.105 Examination of returns and claims for refund, credit or abatement; determination of correct tax liability. (Also Part I, Section 167; 1.167(a)-11.)

REV. PROC. 77-14

SECTION 1. PURPOSE

The purpose of this Revenue Procedure is to prescribe under section 1.167(a)-11 of the Income Tax Regulations a new asset guideline class, asset depreciation period and range, and annual repair allowance percentage, designated class 49.223 Substitute Natural Gas - Coal Gasification.

SEC. 2. ASSET GUIDELINE CLASSES, PERIODS, ASSET DEPRECIATION RANGES, AND ANNUAL REPAIR ALLOWANCE PERCENTAGES FOR THE GAS INDUSTRY ACTIVITIES ENUMERATED BELOW.

The asset guideline classes and asset guideline depreciation periods, ranges, and annual repair allowance percentages for the following gas industry activities are established as set forth below.

Asset Guideline Class	Description of Assets Included	Asset Depreciation Range (In years) Lower Limit	Asset Guideline Period	Asset Depreciation Range (In years) Upper Limit	Annual Asset Guideline Repair Allowance Percentage
49.223	Substitute natural gas-coal gasification Includes assets used in the manufacture and production of pipeline quality gas from coal using the basic Lurgi process with advanced methanation. Includes all process plant equipment and structures used in this coal gasification process and all utility assets such as cooling systems, water supply and treatment facilities, and assets used in the production and distribution of electricity and steam for use by the taxpayer in a gasification plant and attendant coal mining site processes but not for assets used in the production and distribution of electricity and steam for sale to others. Also includes all other related land improvements.				

Asset Guideline Class	Description of Assets Included	Asset Depreciation Range (In years) Lower Limit	Asset Guideline Period	Asset Depreciation Range (In years) Upper Limit	Annual Asset Guideline Repair Allowance Percentage
	Does not include assets used in the direct mining and treatment of coal prior to the gasification process itself.	14.5	18	21.5	15.0

SEC. 3. EFFECT ON OTHER DOCUMENTS.

Rev. Proc. 77-10, 1977-12 I.R.B. 4, is modified by adding the guideline class set forth in section 2 above.

SEC. 4. EFFECTIVE DATE.

The asset guideline class, period, asset depreciation range, and annual repair allowance percentage for gas industry activities set forth in this Revenue Procedure are effective for property placed in service in taxable years beginning after December 31, 1976.

X X X

NOTE: This Appendix contains the most recent version of IRS Revenue Procedure 77-10. The IRS updates this publication periodically. Any source calculating a noncompliance penalty should make certain that it obtains the most recent revisions to this Revenue Procedure from the Department of the Treasury.

Attachment V

WORKSHEETS

This attachment contains worksheets which can be used to calculate input data. Each worksheet will also contain reminders for points which may be overlooked in calculations.

WORKSHEET A

Calculation Of The Capital Expenditure Input

1. List price or estimated price of the equipment = $
2. Less: Discount from manufacturer = _____
3. Equals net price of equipment =
4. Plus: Sales tax on equipment[1] =
5. Plus: Freight and delivery charge = _____
6. Equals estimated cost of equipment delivered =
7. Plus: Installation charge =
8. Plus: Value of lost production =
9. Plus: Cost of building construction or modifications = _____
10. Equals Total Capital Expenditure = $_____

Note: Line 6 divided by line 10 is the percentage of qualified investment for calculation of the investment tax credit.

QUALIFIED PERCENTAGE INVESTMENT TAX CREDIT

$\frac{\text{Line 6}}{\text{Line 10}}$ = _____ X 10 = _____%

If the depreciable life of the equipment is less than 7 years, this figure must be adjusted as described on page II-16.

[1]Some corporations subtract sales tax from revenue in the year of purchase. If this is the case, the sales tax is multiplied by (1 - Tax Rate) and subtracted from the cost of the equipment rather than added as in step four.

WORKSHEET B

Operating And Maintenance Expense

1. Annual Labor Expense
   _____ Hours X $_____ per hour = _____
2. Power Cost
   _____ Kwh X $_____ per Kwh = _____
3. Water Cost
   _____ Gallons X $_____ per gallon = _____
4. Raw Materials and Supplies
   _____ lbs X $_____ per lbs = _____
5. Yearly increase in property tax = _____
6. Cost of production lost due to maintenance or use of equipment = _____
7. Total Cost (1 + 2 + 3 + 4 + 5 + 6) = _____
8. Less: Value of by-products
   _____ lbs at $_____ per lbs = _____
9. Annual Operating and Maintenance (7-8) $_____

Note: Line 9 divided by 12 is the maximum amount of any monthly pre-compliance expenditure.

$\frac{\text{Line 9}}{12}$ = $_____ Maximum amount which may be entered as a pre-compliance monthly operating and maintenance expense.

WORKSHEET C

Calculation Of Income Tax Rate

1. Marginal Federal tax rate. _____
2. Marginal State tax rate. _____
3. Marginal Local tax rate. _____

Calculation of Adjusted Local Tax.

(1 - State Tax Rate) x Local Tax Rate
= (1 - _____) x _____
= _____ x _____
= _____ = Adjusted Local Tax Rate.

Calculation of Adjusted State and Local Tax.

(1 - Federal Tax Rate) x (State Tax Rate + Adjusted Local Rate)
= (1 - _____) x (_____ + _____)
= _____ x _____
= _____ = Adjusted Local and State Tax.

Calculation of Tax Rate.

100 x (Federal Tax Rate + Adjusted Local and State Tax)
= 100 x (_____ + _____)
= 100 x _____
= _____ = Tax Rate.

Section III

USING THE COMPUTER PROGRAM

Gaining Access To The System

The computer program used to calculate the non-compliance penalty is written in the language FORTRAN. It is designed to operate on a time sharing computer. The method used to access, or load, the program on a particular computer system will vary slightly from that on any other system. The following description of the accessing procedure applies to EPA's Washington Computer Center. The procedure at other installations will be somewhat different.

1. Switch on the terminal. The on/off switch is usually located on the keyboard, but some models have switches on the top or back of the terminal.

2. Contact the computer system. This usually involves dialing the computer's number on a telephone and then connecting the telephone to a coupler. When a connect signal is obtained, push the Return key once more. The computer will then respond with an indication that contact is established.

3. Account and code number. At this time, the computer will ask for a user number, a password and an account number. This number is specific to the computer system and must be known beforehand. These are entered by typing on the keyboard and pressing the "return" key.

4. Running the program. The command EXEC PENALTY:EPABOH,GREGION=200K will start the program.

   Additional questions will follow each data input (and "return"). Caution: When user demand is high, response time can be very slow. Be certain the computer has given you your complete prompt before answering input questions. A prompt is generally a two digit alpha-numeric job identifier and a question mark (e.g., 2B?)

Exhibit III - 1 illustrates the procedure used to access the computer.

Exhibit III-1

ACCESSING THE COMPUTER

```
ALPH
READY T* WCC

ALPHA System at COMNET

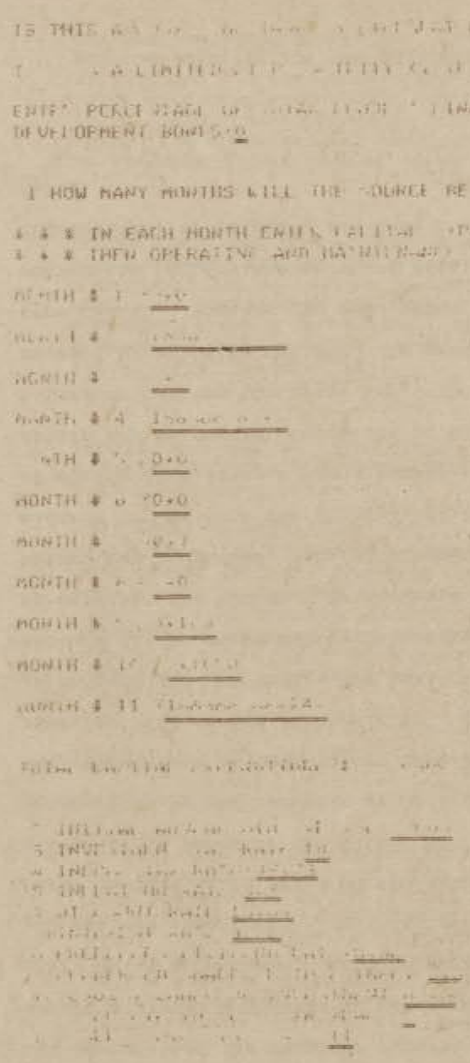
PLEASE ENTER: userid,password,account,term id
EPAAWS,[redacted]
EPAAWS/PMMC on line 23 at 17:49:1*, *3/*5/79
*3/*5/79: LAST CALL FOR NADPI PROJ MGMT COURSE
          MVS DOCUMENTATION AVAILABLE FOR ORDERING
          12** BPS ROTORS CANCELLED
CL.SLIB.EPAAWS: Space for 835 lines
?EXEC NCPP:EPABOH
199: M2 SUBMITTED
?
```

Entering The Data

It is important in using a computer to understand that the computer requires a specific form of data entry. For example, if the item in question has the value of ten percent and the computer program is designed to accept a figure expressed in percentage terms, only the entry 10 is acceptable. Entries such as 10%, TEN, and .10 are all incorrect. The first two will result in an error message being typed at the terminal, followed by a command to re-enter the data. The third entry will be interpreted by the computer as 0.10 percent and used in the computation as that value. The result will be an incorrect figure for that penalty. If a wrong number is entered and the Return key has not been pushed, the mistake can be corrected by detecting the error and re-entering the number. To delete a number before the Return key is pushed, simply backspace the typing element (by pushing the Control and H keys simultaneously). If during data entry a wrong number is entered and the Return key is pushed, operation of the program can be halted by pushing the Break key. The computer will respond by printing OPTION?. To stop the program, type CANCEL. However, in most cases it will be more convenient to continue entering data, allow the computations to be made, and then change the erroneous value.

The following paragraphs discuss general rules to be followed in entering data into the computer program. Exhibit III - 2 contains an example of the completed entry for the Fertilizer Company. Figures which are underlined have been entered by the program user. After each line is entered the carriage return should be pressed. It should also be noted that each question asked by the computer must be answered. Thus, for example, if a firm has no debt and the interest rate is inapplicable, a zero must be entered for the interest rate. Certain questions asked by the computer refer to special types of analysis such as post-compliance settlements, limited life facilities and industrial development bonds. These special cases are discussed in a later chapter.

Exhibit II-2
ENTERING DATA



- Post-Compliance Settlement. This number is entered only as a 0 or 1. For the Fertilizer Company this is an initial calculation and a 0 is entered.

- Limited Life Facility. This number is entered as 0 or 1. For the Fertilizer Company this is not a limited life facility and a 0 is entered.

- Percent Financed by Industrial Development Bonds. This is entered as a percent. For the Fertilizer Company, a 0 is entered.

- Number of Months out of Compliance. This number is entered only as an integer. Fractions or decimals are not allowed. For the Fertilizer Company, compliance will be achieved in eleven months. This is entered as 11.

- Schedule of Capital Investments and Pre-Compliance Operating and Maintenance Expense. The program will ask for an estimate of such expenditures for each month which the firm will be out of compliance. If the firm will not make a pre-compliance capital expenditure in a particular month, a zero is entered. If no pre-compliance expenditures are to be made, the entire capital expenditure is entered in the last month.

  For the Fertilizer Company, capital expenditures of $166,666.67 will be made in the second, fourth, and eleventh months. All other months will be entered as 0.

  After entering the capital expenditure in each month, the user types a comma and then enters the operating and maintenance expense in each month. These are expenses to be incurred during the period of noncompliance on a month-by-month basis. If in any month a pre-compliance operating and maintenance expense is not incurred, a zero must be entered.

For the Fertilizer Company, pre-compliance operating and maintenance expenses will not be incurred in the first eight months. In the ninth month, the estimated expense is $100. In the tenth month it is $1,050. In the eleventh month it is $740. These are entered without dollar signs.

- Initial Annual OM Expense. The initial annual operating and maintenance expense is the expense which would be incurred if the equipment were installed and operating. The program is designed to reject monthly pre-compliance expenditures larger than one-twelfth of the annual operating and maintenance expense. For the Fertilizer Company, operating and maintenance expenses are $15,000.

- Investment Tax Rate. This is entered as a percent and not as a decimal. Thus, for example, 7.5 percent would be entered as 7.5. The program is designed to test for data entered as a decimal and print an error message. In the Fertilizer Company example, the investment tax rate was 10 percent.

- Income Tax Rate. This is also entered as a percent. For the Fertilizer Company the tax rate is 49.73 percent.

- Inflation Rate. The inflation rate is entered as 8.3 percent.

- Discount Rate. This is entered as a percent. The lower bound for any discount rate used is the rate of inflation. The program will not accept discount rates lower than the rate of inflation and will print an error message.

  For the Fertilizer Company, the discount rate is the twenty quarter average after tax return on equity for the chemicals and allied products industry. This is calculated to be 15.84 percent.

- Interest Rate. The interest rate is entered as a percent. For the Fertilizer Company this is the average return on "A" rated industrial bonds. The latest reported average is 8.76 percent.

- Preferred Dividend Rates. This is entered as a percent. If the firm does not have preferred stock, both the dividend rate and the preferred share of the investment are entered as zero. For the Fertilizer Company this was the latest monthly average yield on "a" rated utility preferred stocks. It is entered as 8.88 percent.

- Preferred Share of Investment. The preferred share of the investment is entered as a percent. For the Fertilizer Company this was computed at 3.5 percent.

- Equity Share of Investment. This is entered as a percent. It was computed to be 67.5 percent for the Fertilizer Company. If the sum of the preferred share of the investment and the equity share of the investment is greater than 100 percent, an error message is printed.

- Depreciation Life in Years. This number must be entered as an integer. Decimals or fractions cannot be used. For the Fertilizer Company the depreciation life was nine years.

- Useful Life in Years. The useful life in years must also be entered as an integer. For the Fertilizer Company, the useful life is eleven years.

Error Messages For Data Entry

The program for computing the noncompliance penalty was designed to test for errors in the data as it is entered into the computer. If the program detects an error, a message is printed informing the user and requesting that the mistake be corrected. Examples of such error messages follow.

1. Pre-Compliance Expenditure. As discussed in Section II, it is not possible to enter a pre-compliance monthly operating and maintenance expenditure which is larger than one-twelfth of the annual operating and maintenance expense. Exhibit III-3 shows an annual operating and maintenance expense of $15,000. The error message is printed because the user entered $2,000 for a pre-compliance expenditure.

Exhibit III-3

ERROR IN ENTERING PRE-COMPLIANCE O&M EXPENDITURES

```
2 INITIAL ANNUAL O&M EXPENSE [illegible]
     MONTHLY PRE COMPLIANCE O&M EXPENSE CANNOT
     BE LARGER THAN ONE TWELFTH ANNUAL O&M EXPENSE
     RE-ENTER DATA:
* * * IN EACH MONTH ENTER CAPITAL EXPENDITURES * * *
* * * THEN OPERATING AND MAINTENANCE EXPENSE   * * *

MONTH # 1 ?0,0

MONTH # 2 ?166666.67,0

MONTH # 3 ?0,0

MONTH # 4 ?166666.67,0

MONTH # 5 ?0,0

MONTH # 6 ?0,0

MONTH # 7 ?0,0

MONTH # 8 ?0,0

MONTH # 9 ?0,100

MONTH # 10 ?0,1050

MONTH # 11 ?166666.66,[illegible]40

TOTAL CAPITAL EXPENDITURE $ 500000

INITIAL ANNUAL O&M EXPENSE ?15000
```


2. Equity and Preferred Share. The program will print an error message if the sum of the equity share of the investment and the preferred share of the investment are greater than 100 percent. This is illustrated in Exhibit III-4.

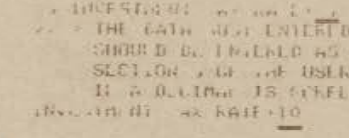
Exhibit III-4

EQUITY AND PREFERRED SHARE OF INVESTMENT GREATER THAN 100 PERCENT

```
[illegible] SHARE OF INVESTMENT?3.5
10 EQUITY SHARE OF INVESTMENT?97.5
   *SUM OF EQUITY SHARE OF INVESTMENT AND PREFERRED
     SHARE OF INVESTMENT CANNOT BE GREATER THAN 100%.
     ENTER EQUITY AND PREFERRED PERCENTAGES AGAIN.
PREFERRED SHARE OF INVESTMENT 3.5
EQUITY SHARE OF INVESTMENT [illegible]
```

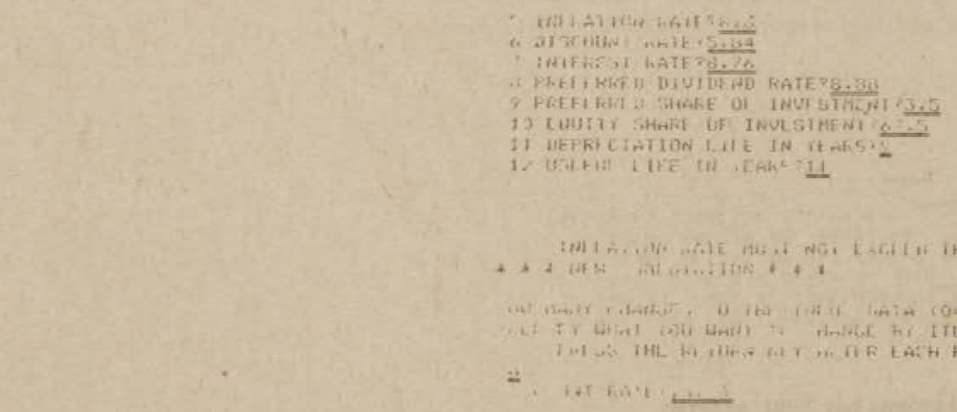
3. Entering Data As a Decimal. An error message will be printed if the investment tax rate is entered as a decimal. This is illustrated in Exhibit III-5.

Exhibit III-5
DATA ENTERED AS A DECIMAL AND THE CORRECTION



4. Inflation Rate Higher Than Discount Rate. The program will print an error message if the inflation rate is higher than the discount rate. For this type of error the program allows the user to continue to enter data. At the end of data entry an error message is printed and the user can change either the inflation rate or the discount rate. This is illustrated in Exhibit III-6 where the discount rate of 15.84 percent was erroneously entered as 5.84 percent.

Exhibit III-6
ENTERING INFLATION RATE
THAT IS HIGHER THAN DISCOUNT RATE



Output From The Program

The output from the computer program will also require several responses from the user. In general, the output is structured in the following way.

- The amortization and depreciation method used in calculating the penalty is printed. For example, for the Fertilizer Company, rapid amortization and straight line depreciation are used.
- The program asks the user how many months will elapse between the first day of violation and the date of the first penalty payment.
- The program prints the quarterly penalty payments the firm must make during the period of noncompliance.
- The option to compute a lump sum settlement is offered. The user can specify the date for that payment.
- The program asks if changes to the input data are desired.

An example of the output for the Fertilizer Company appears in Exhibit III-7. Once again, the presence of underlining indicates data entered by the user.

Exhibit III-7

CALCULATION OF NONCOMPLIANCE PENALTY

```
RAPID AMORTIZATION STRAIGHT LINE DEPRECIATION

HOW MANY MONTHS AFTER THE FIRST DAY OF NONCOMPLIANCE
    WILL THE FIRST PENALTY PAYMENT BE MADE?0

QUARTERLY PENALTY PAYMENT DUE AT BEGINNING OF MONTH

      MONTH          PENALTY
        1           $  5213.86
        4           $  5318.83
        7           $  5425.92
       10           $  5535.17

DO YOU WANT TO SEE A LUMP SUM SETTLEMENT (1=YES,0=NO)?1

* * * LUMP SUM SETTLEMENT * * *

HOW MANY MONTHS AFTER THE FIRST DAY OF NONCOMPLIANCE
    WILL THE LUMP SUM SETTLEMENT BE MADE?0

LUMP SUM SETTLEMENT AT END OF MONTH  0 = $ 20339.25


* * * NEW COMPUTATION * * *

HOW MANY CHANGES TO THE INPUT DATA (0=EXIT FROM PROGRAM)?0

 ???,  NORMAL EXIT FROM PROG.

CRUS:       83.56
RUN
TEN
```

The output printed in Exhibit III-6 illustrates only a few of the possible variations in penalty calculation possible with the computer program. The remainder of this section discusses in detail the output from the Fertilizer Company example and the program options available to alter that output.

1. Amortization and Depreciation Method. The computer program calculates the capital investment portion of the penalty using standard and rapid amortization. Under both types of amortization the program calculates the depreciation tax savings using straight line, sum-of-the-years-digits and double-declining balance depreciation methods. The formulae for these calculations are contained in the Technical Support Document. The program automatically chooses the method which will result in the lowest penalty. This method is then used to calculate the penalty shown.

2. Delay in the Penalty. The program asks the user how many months the first penalty payment will be delayed. The months of delay are calculated from the day a notice of noncompliance is issued until the first payment is made. Exhibit III-7 illustrated the payment made if the firm paid the first quarterly penalty on

the day that the notice of noncompliance was issued. The first quarterly payment was $5,213.86. The second payment would be made ninety days later and it would equal the penalty shown for month number four ($5,318.83).

A more realistic example might involve a six-month delay in the first payment. In this case, the output would appear as in Exhibit III-8. The first penalty payment includes the amount that should have been paid at the beginning of the first month, plus the penalties that should have been paid at the beginning of the fourth and seventh months. Because of the six-month grace period, no interest is charged for this period of delay. The next quarterly penalty payment is due three months later, putting the firm back on the original penalty schedule.

Exhibit III-8

SIX MONTH DELAY IN PAYMENT OF PENALTY

```
HOW MANY MONTHS AFTER THE FIRST DAY OF NONCOMPLIANCE
    WILL THE FIRST PENALTY PAYMENT BE MADE?6

QUARTERLY PENALTY PAYMENT DUE AT BEGINNING OF MONTH

MONTH          PENALTY
  7          $  15958.53
 10          $   5535.17
```

3. Lump Sum Settlement. A lump sum settlement is sometimes made instead of quarterly payments. For example, if the firm was going to be out of compliance for four quarters, it could either pay the four quarterly payments shown in the output or pay the lump sum settlement. In terms of present value, the amount eventually paid is the same in each case. The six-month grace period for delay in payment also applies to the lump sum settlement.

If the firm wishes to pay a lump sum settlement but will delay payment, the number of months of delay must be entered. Exhibit III-9 illustrates a seven month delay for the Fertilizer Company.

Exhibit III-9
SEVEN MONTH DELAY IN PAYMENT
OF LUMP SUM SETTLEMENT

```
DO YOU WANT TO SEE A LUMP SUM SETTLEMENT (1=YES,0=NO)?1

* * * LUMP SUM SETTLEMENT * * *

HOW MANY MONTHS AFTER THE FIRST DAY OF NONCOMPLIANCE
    WILL THE LUMP SUM SETTLEMENT BE MADE?7

LUMP SUM SETTLEMENT AT END OF MONTH  7 = $ 20590.01
```


Thus, for the Fertilizer Company, delaying the lump sum settlement seven months increased the settlement to $20,590.01 from the $20,339.25 shown in Exhibit III-7. The $250.76 difference between the lump sum settlement delayed seven months and the settlement paid on the date of noncompliance is equal to one month's interest on $20,339.25.[1]

The use of the lump sum settlement is required if the first penalty payment is delayed longer than the firm is out of compliance. In this event, the firm will not make quarterly payments but will make one lump sum settlement. Exhibit III-10 shows the output from the program if a twelve-month delay in penalty payment occurs. The Fertilizer Company was out of compliance eleven months.

5. New Computation. The user has several options here. By typing in 0 (zero) and pushing the carriage return, the program can be terminated. Typing 999 will result in all of the data that is currently in the program being printed; the program will then once again ask if any changes are to be made. An example of typing 999 is shown in Exhibit III-11.

[1] The lump sum settlement was paid after a seven month delay. However, the six-month grace period eliminates the interest charge for all months except one.

Exhibit III-10

PENALTY PAYMENT WHEN DELAY
IS LONGER THAN NONCOMPLIANCE PERIOD

```
HOW MANY MONTHS AFTER THE FIRST DAY OF NONCOMPLIANCE
    WILL THE FIRST PENALTY PAYMENT BE MADE?12

DATE OF FIRST PAYMENT EXTENDS PAST COMPLIANCE DATE
USE LUMP SUM SETTLEMENT TO DETERMINE PENALTY

* * * LUMP SUM SETTLEMENT * * *

HOW MANY MONTHS AFTER THE FIRST DAY OF NONCOMPLIANCE
    WILL THE LUMP SUM SETTLEMENT BE MADE?12

LUMP SUM SETTLEMENT AT END OF MONTH  12 = $ 21890.93
```

Exhibit III-11

PRINTING DATA THAT HAS BEEN ENTERED IN PROGRAM

```
* * * NEW COMPUTATION * * *

HOW MANY CHANGES TO THE INPUT DATA (0=EXIT FROM PROGRAM)?999
NUMBER OF MONTHS OUT OF COMPLIANCE = 11

MONTH    CAPITAL EXPENDITURES     OPERATING  MAINTENANCE
                                        EXPENSE

  1                                       0
  2          166666.67                    0
  3          0                            0
  4          166666.67                    0
  5          0                            0
  6          0                            0
  7          0                            0
  8          0                            0
  9          0                            100
 10          0                            1050
 11          166666.66                    740
             ============
TOTAL CAPITAL  500000
ANNUAL OM EXPENSE 15000

* * * DATA REQUIRED FOR POST-COMPLIANCE SETTLEMENT * * *

INVESTMENT TAX RATE= 10
INCOME TAX RATE = 49.73
INFLATION RATE = 8.3
DISCOUNT RATE = 15.84
INTEREST RATE = 8.76
EXPERRED DIVIDEND RATE= 8.88
EXPERRED SHARE OF INVESTMENT = 3.5
EQUITY SHARE OF INVESTMENT= 67.5
DEPRECIATION LIFE IN YEARS = 5
USEFUL LIFE IN YEARS   11
```

If changes are desired in the input, the following steps must be taken.

- The number of changes desired must be entered.
- For each change, the computer will respond with a question mark. When the question mark is printed, type in the number of the item that you wish to change. (For example, 4 for the marginal income tax rate).
- The computer will print the name of the item. Enter the new data desired and push the carriage return.

The following is an example using the Fertilizer Company. Suppose that the interest rate, which has been entered as 8.76 percent, should be 9.76 percent and that the preferred share of the investment, which was entered as 3.5 percent, should be 10 percent.[1] Two changes are thus necessary.

[1] The equity share will remain at 67.5 percent. The program sums the equity and preferred shares and calculates automatically the debt share. Thus, the increase in preferred share from 3.5 to 10 percent while the equity share is held constant, will result in a decrease in debt share.

Exhibit III-11
ALTERING DATA IN THE PROGRAM

```
* * * NEW COMPUTATION * * *

HOW MANY CHANGES TO THE INPUT DATA (0=EXIT FROM PROGRAM)?2
SPECIFY WHAT YOU WANT TO CHANGE BY ITEM NUMBER.
    PRESS THE RETURN KEY AFTER EACH REQUEST.
?7
INTEREST RATE?9.76
?9
PREFERRED SHARE OF INVESTMENT?10
```

When the return key is pressed after entering the 10, the computation will be made using these new values. It should be noted that these new values permanently replace the previous values in the program.

SECTION IV

CALCULATION OF THE POST-COMPLIANCE SETTLEMENT

The post-compliance settlement adjusts the penalty payment to reflect the firm's actual capital and operating expenditures rather than the estimates used in the original penalty calculation. For this purpose, six types of data are needed:

- A schedule of actual capital expenditures made by the firm in reaching compliance.
- A schedule of actual operating and maintenance expenditures made by the firm prior to compliance.
- A new estimate of post-compliance annual operating and maintenance expense based on the firm's experience prior to the post-compliance settlement.
- The number of months between the day of compliance and date of post-compliance settlement.
- A post-compliance settlement interest rate chosen by the Department of the Treasury.
- A listing of the actual penalty payments made by the firm and the months in which they were made.

In addition to these new data, it will be necessary to have available the financial parameters originally used to calculate the noncompliance penalty for the firm. To continue the example of the hypothetical Fertilizer Company, Exhibit IV-1 contains the data originally used to calculate the noncompliance penalty.

Exhibit IV-1

FERTILIZER COMPANY
July 1979

DATA USED FOR ORIGINAL NONCOMPLIANCE PENALTY CALCULATIONS[1]

* * * DATA REQUIRED FOR POST-COMPLIANCE SETTLEMENT * * *

INVESTMENT TAX RATE= 10
INCOME TAX RATE = 49.73
INFLATION RATE = 8.3
DISCOUNT RATE = 15.84
INTEREST RATE = 8.76
PREFERRED DIVIDEND RATE= 8.88
PREFERRED SHARE OF INVESTMENT = 3.5
EQUITY SHARE OF INVESTMENT= 67.5
DEPRECIATION LIFE IN YEARS = 9
USEFUL LIFE IN YEARS = 11

[1] Listed during original penalty calculation by typing 999 when changes in input data were requested.

Preparing New Data For Entry Into The Program

In order to calculate the post-compliance settlement, the computer program should be accessed in the manner described on pages III-1 to III-3. After the RUN command has been typed, the terminal will ask if the penalty calculation is for a post-compliance settlement. This is illustrated in Exhibit IV-2.

Exhibit IV-2
CALCULATING A POST-COMPLIANCE SETTLEMENT

```
03/02/79      EPA NON-COMPLIANCE PENALTY PROGRAM  VERSION 1.0    12:01

IS THIS A POST-COMPLIANCE SETTLEMENT CALCULATION (1=YES,0=NO)?1
```

The computer program will then ask for data on the actual penalty payments made by the firm and the month in which each payment was made. The data are entered in the following order.

1. Number of penalty payments made by the firm. This is the actual number of payments made by the firm. If more than one payment is made in a month, they should be totalled and counted as one payment.

2. Month of the penalty payment. This is the number of the month in which the penalty payment is received by EPA, beginning with the month the firm is out of compliance. For example, a firm making a payment at the time notice of noncompliance is issued would enter a one. If a six-month delay in payment occurred, a seven would be entered.

3. Actual penalty payment. This is the dollar amount of the penalty actually received from the firm in each month. The payment entered should not include the 20 percent penalty for late payment. The data entered in the Fertilizer Company example is shown in Exhibit IV-3. As can be seen in the exhibit, these payments are identical to the penalties calculated in the last section and shown in Exhibit III-7.

Exhibit IV-3
ENTRY OF DATA ON ACTUAL PENALTY PAYMENTS

```
ENTER NUMBER OF PENALTY PAYMENTS MADE BY FIRM?4

ENTER FIRST MONTH OF PAYMENT, THEN DOLLAR AMOUNT
PAYMENT MONTH?1
PAYMENT AMOUNT?5213.86

PAYMENT MONTH?4
PAYMENT AMOUNT?5318.83

PAYMENT MONTH?7
PAYMENT AMOUNT?5425.92

PAYMENT MONTH?10
PAYMENT AMOUNT?5535.17
```

The terminal now asks for data on the Treasury interest rate, months out of compliance, limited life facilities, and financing with industrial development bonds. These data are entered in the following order.

1. Treasury interest rate. This is an annual interest rate set by the Secretary of the Treasury for the post-compliance settlement. It is entered as a percent. For the Fertilizer Company, the rate was chosen as 15.84 percent, which is the firm's return on equity.

2. Months out of compliance. This is the actual number of months the firm was out of compliance beginning on the date notice of noncompliance was issued and continuing until the firm demonstrates compliance was achieved.

3. Limited life facility. The limited life facility requires a slightly different method of calculation for the post-compliance settlement. This method is discussed in detail in the next section. For the Fertilizer Company, a zero is entered.

4. Industrial Development Bonds. This is an option explained in detail in the next section. For the Fertilizer Company, industrial development bonds were not sold. A zero is entered at the terminal. All four of the above data entries are shown in Exhibit IV-4.

Exhibit IV-4
ADDITIONAL QUESTIONS ASKED BY TERMINAL
DURING POST-COMPLIANCE SETTLEMENT CALCULATION

```
TREASURY INTEREST RATE?15.84
IS THIS A LIMITED LIFE FACILITY (1=YES,0=NO)?0

ENTER PERCENTAGE OF TOTAL PROJECT FINANCED BY INDUSTRIAL
DEVELOPMENT BONDS?0

 HOW MANY MONTHS WAS THE SOURCE OUT OF COMPLIANCE?11
```

The computer program now requests data on the actual expenditures the firm made in order to reach compliance. These new data are entered in the following order.

1. Schedule of Actual Capital Expenditures. These are the payments the firm made, or capital costs the firm incurred, in each month during the period of noncompliance. They are entered in actual dollars as of the period the expenditure was made. No adjustment for inflation during the period of noncompliance should be made, since the program will automatically convert the actual dollars to real dollars as of the first day of noncompliance.

The sources for data on the actual monthly expenditures for noncompliance include cancelled checks to manufacturers and shippers, accounting entries in the firm's fixed asset accounts, or manufacturers invoices. The Fertilizer Company submitted the data in Exhibit IV-5 to show capital expenditures made during the period of noncompliance.

2. Schedule of Actual Operating and Maintenance Expense. This schedule indicates the actual pre-compliance expenditures made by the firm in each month. This data will be calculated by the firm from accounting information and will include labor, utilities, supplies, property taxes and the value of any by-

Exhibit IV-5

FERTILIZER COMPANY

CALCULATION OF ACTUAL CAPITAL EXPENDITURE

1.	List price or estimated price of the equipment =	$536,588.92
2.	Less: Discount from manufacturer =	(10,731.78)
3.	Equals net price of equipment =	525,857.14
4.	Plus: Sales tax on equipment[1] =	26,292.86
5.	Plus: Freight and delivery charge =	0
6.	Equals estimated cost of equipment delivered =	$552,150.00
7.	Plus: Installation charge =	0
8.	Plus: Value of lost production =	0
9.	Plus: Cost of building construction or modifications =	0
10.	Equals Total Capital Expenditure =	$552,150.00

The capital expenditures were made in three equal payments of $184,050.00 starting in the ninth month of noncompliance.

[1] Sales tax in this case was not subtracted from revenue in the year of purchase.

products. The Fertilizer Company submitted the data in Exhibit IV-6 for pre-compliance expenditures. These values are adjusted for inflation by the program.

The program is designed to print an error message if any monthly precompliance operating and maintenance expenditure is larger than one-twelfth of the new post-compliance operating and maintenance cost.[1] When this occurs, it is likely that equipment start up costs which should have been included in capital expenditures have been incorrectly charged to precompliance operating and maintenance expense. In such a case, precompliance capital expenditures and operating and maintenance expenses should be adjusted accordingly.

3. Estimate of Annual Operating and Maintenance Expenditures. Because the post-compliance settlement will occur before the new equipment has operated for a full year, it will be necessary to estimate post-compliance annual operating and maintenance expenses based on the firm's experience from compliance to the time of the post-compliance settlement. These estimates should be in the actual dollars as of compliance. Thus, for the

[1] Precompliance operating and maintenance expenditures are used to adjust the operating and maintenance component of the penalty. Quarterly precompliance expenditures larger than one-twelfth of the annual would result in negative penalties.

Exhibit IV-6

ACTUAL MONTHLY PRE-COMPLIANCE OPERATING AND MAINTENANCE EXPENSE

FERTILIZER COMPANY
August 1, 1980

Pre-compliance Operating Expense

Months 1-9		$ 0
Month 10		
Labor (84 hrs @ $10)	$840.00	
Power (1200 Kwh @ .0333 Kwh)	39.96	
Total		$ 879.96
Month 11		
Labor (110 hrs @ $10)	$1100.00	
Power (6739 Kwh @ .0333 Kwh)	224.40	
Total		$1,324.40

Fertilizer Company, which will come into compliance in 1980, the estimate for post-compliance annual operating and maintenance expenses should be in 1980 dollars. The program will automatically deflate this number to real terms as of the date of noncompliance. The Fertilizer Company submitted the data in Exhibit IV-7 as an estimate of post-compliance annual operating and maintenance expenditures.

Entry of the actual expenditures by the Fertilizer Company is shown in Exhibit IV-8. In addition, the data used to calculate the original penalty, such as the investment tax rate, income tax rate, etc., are entered in exactly the same manner as entered for the original penalty calculation. This is also shown in Exhibit IV-8. Note that the entry for all data after the annual operating and maintenance expense is identical to Exhibit II, the initial penalty calculation.

Exhibit IV-7

Fertilizer Company

OPERATING AND MAINTENANCE EXPENSE
August 1, 1980

1.	Annual Labor Expense 1072 Hours X $10.81 per hour =	$11,588.32
2.	Power Cost 89991.5 Kwh X $.038 per Kwh =	3,419.68
3.	Water Cost _____ Gallons X $ _____ per gallon =	0
4.	Raw Materials and Supplies 1200 Lbs X $1.20 per lb. =	1,440.00
5.	Yearly increase in property tax =	0
6.	Cost of production lost due to maintenance or use of equipment =	0
7.	Total Cost (1 + 2 + 3 + 4 + 5 + 6) =	16,448.00
8.	Less: Value of by-products 800 Lbs. at $.56 per Lbs. =	(448.00)
9.	Annual Operating and Maintenance (7-8)	$16,000.00

Exhibit IV-8

DATA ENTRY FOR POSTCOMPLIANCE SETTLEMENT

```
THE FOLLOWING QUESTIONS ON CAPITAL EXPENDITURES AND
     OPERATING AND MAINTAINCE EXPENSE REFER TO THE
       ACTUAL CAPITAL EXPENDITURE AND O+M EXPENSE

* * * IN EACH MONTH ENTER CAPITAL EXPENDITURES * * *
* * * THEN OPERATING AND MAINTENANCE EXPENSE   * * *

MONTH # 1 ?0.0

MONTH # 2 ?0.0

MONTH # 3 ?0.0

MONTH # 4 ?0.0

MONTH # 5 ?0.0

MONTH # 6 ?0.0

MONTH # 7 ?0.0

MONTH # 8 ?0.0

MONTH # 9 ?184050.0

MONTH # 10 ?184050.879.96

MONTH # 11 ?184050.1324.40

TOTAL CAPITAL EXPENDITURE $  552150

 2 INITIAL ANNUAL O+M EXPENSE?16000
 3 INVESTMENT TAX RATE?10
 4 INCOME TAX RATE?49.73
 5 INFLATION RATE?8.3
 6 DISCOUNT RATE?15.84
 7 INTEREST RATE?8.76
 8 PREFERRED DIVIDEND RATE?8.88
 9 PREFERRED SHARE OF INVESTMENT?3.5
10 EQUITY SHARE OF INVESTMENT?67.5
11 DEPRECIATION LIFE IN YEARS?9
12 USEFUL LIFE IN YEARS?11
```

Output From The Post-Compliance Settlement Calculation

The output from the post-compliance settlement calculation incorporates the data on penalty payments made by the firm and compares these payments to a penalty schedule based on actual expenditures made to achieve compliance. The output consists of two parts:

- Printing of the penalty paid in each month and the penalty determined from actual expenditures. The difference between the actual penalty and the payment made by the firm is calculated in each month.

- The program allows the option of delaying the post-compliance settlement.

The output from the post-compliance settlement for the Fertilizer Company is shown in Exhibit IV-10. The first column prints the month in which a penalty payment was made or a penalty payment was required based on the post-compliance penalty calculation. The second column contains the actual payment made by the firm. The third column is the penalty based on actual expenditures made coming into compliance.

The program next calculates the difference between the penalty payment in each month and the new penalty calculation based on actual expenditures. The difference between the payment made and the actual penalty is then charged interest at the rate specified by the Treasury for the number of months after payment that the firm remained out of compliance.

Exhibit IV-10
THE POST-COMPLIANCE SETTLEMENT

RAPID AMORTIZATION STRAIGHT LINE DEPRECIATION

MONTH	PENALTY PAID	ACTUAL PENALTY	AMOUNT DUE EPA	AMOUNT DUE FIRM
1	5213.86	8250.99	3037.13	0
4	5318.83	8417.11	3098.28	0
7	5425.92	8586.58	3160.66	0
10	5535.17	8759.46	3224.29	0

HOW MANY MONTHS ARE THERE BETWEEN COMPLIANCE
AND PAYMENT OF POST-COMPLIANCE SETTLEMENT?2
AMOUNT DUE EPA = $ 13514.88

The post-compliance settlement was calculated and paid two months after the Fertilizer Company came into compliance. For this reason, a 2 was entered when the program asked for the number of months between compliance and payment of the post-compliance settlement. Thus, the total post-compliance settlement paid by the firm to EPA is $13,514.88.

SPECIAL CONDITIONS

The preceding four sections enable the user to calculate the noncompliance penalty and post-compliance settlement when the source is privately owned and when compliance is achieved by modification of existing plant and equipment. In addition, it is assumed that financing would not involve industrial development bonds. Section V will expand the number of cases in which the penalty program is applicable and enable the user to compute the noncompliance penalty in the following situations.

- Plant and equipment necessary for compliance are financed through the sale of tax-exempt industrial development bonds.
- The source is operated by a local, state or federal government.
- The source has a limited useful life.

The noncompliance penalty in all three cases is calculated using the program PENALTY. However, it is necessary to modify some of the data entered into the program to reflect the unique characteristics of each of these situations. The following section describes special data requirements and modifications in data entry. It should

be stressed that all data and data entry procedures discussed in the four previous sections are applicable to these special conditions except where specific changes are required.

Industrial Development Bonds

Industrial development bonds for pollution control equipment are used by firms in order to secure debt financing at an interest cost lower than the current rate on industrial bonds. This lower interest rate is possible because the development bonds are issued by a local or state government for the corporation and the interest payments received by the bond holder are exempt from federal income tax. The corporation pays the principal and interest payments, but because of the tax-exempt status of the interest, the interest charges are often several percentage points below corporate debt of similar quality.

The Revenue Act of 1978 requires that firms financing with industrial development bonds receive only one-half of the investment tax credit when rapid amortization is used. For firms financing in part with development bonds, a pro-rata portion of this financing should be applied to the facility for determining the investment tax

credit. The computer program will automatically pro-rate the investment tax credit. The user must provide two types of data.

- The percentage of the investment financed by industrial development bonds.
- Interest rate on development bonds.

Data are gathered for the calculation of the penalty in the same manner as described in Section II. In addition, the user must perform the following calculations.

1. Percent financed with industrial development bonds. This percentage is obtained by dividing the total issue of tax-exempt pollution control industrial development bonds by the capital investment.[1] In the Fertilizer Company example, the estimated capital investment was $500,000. If the firm sold $200,000 in industrial development bonds, the percentage entered would be forty. This would be entered as 40.

2. Interest rate on industrial development bonds. The interest rate used for pollution control industrial development bonds is published by Smith, Barney, Harris Upham & Co. in the Bond Markets Review. The review is published weekly and the current yield on bonds is printed on the last page.

[1] The firm may issue bonds in a volume much higher than the capital investment. In this case financing is entered as 100 percent. The program will not accept data higher than 100 percent.

For the Fertilizer Company example, the latest reported yield on pollution control industrial development bonds is 6.85 percent. This yield is entered as the interest rate in the penalty program.

There are thus only two changes in the data entered for industrial development bonds as opposed to the example described in Section III. A percentage of the project financed with tax-exempt bonds is entered, and the interest rate used is for pollution control industrial development bonds. All other data entry remains the same.

Government-Owned Facilities

The use of the noncompliance penalty program for government facilities requires that all cash flows related to taxes be eliminated. In addition, no debt financing is considered and the discount rate is entered at ten percent. Exhibit V-1 shows the data entry procedure for non-complying sources owned by governments. Data labelled "no change" are calculated using the methods described in Section II.

Exhibit V-1

DATA ENTRY FOR GOVERNMENT FACILITIES

DATA CATEGORY	PROGRAM ENTRY
Pre-compliance Capital Expenditures	No Change
Pre-compliance Operating and Maintenance	No Change
Annual Operating and Maintenance	No Change
Investment Tax Credit	0
Income Tax Rate	0
Inflation Rate	No Change
Discount Rate	10.0
Interest Rate	0
Preferred Dividend Rate	0
Preferred Share of Investment	0
Equity Share of Investment	100.0
Depreciation Life in Years	No Change
Useful Life in Years	No Change

Facilities with Limited Useful Lives

The noncompliance penalty computer program will calculate penalties for facilities with limited useful lives. In cases where a noncomplying facility is to be operated for a period of time and then retired, the current program may be used. Capital and operating and maintenance cost estimates are made based on what it would cost to bring the source into compliance and the calculation proceeds in the normal manner. In such cases there are no precompliance operating and maintenance expenditures and the total capital expenditure is entered in the last month. There is no post-compliance settlement.

In cases where the noncomplying source is to be replaced by a new, complying facility after some period of noncompliance, program inputs and operation will be slightly different than at present. In such cases, the program will

- ask if the calculation is for a limited life facility that is being replaced,
- request an estimate of the capital and annual operating expenses required to bring the old source into compliance,
- request a schedule of precompliance total capital expenditures (for productive capability plus pollution control equipment) required to build the new source,
- request a schedule of precompliance O&M expenditures (for productive capability and pollution control equipment) associated with the new source, and
- request an estimate of annual production costs including pollution control operating and maintenance expenses at the new source.

The program will then calculate the penalty based on the costs of compliance at the old source but will be adjusted for precompliance expenditures on the new source. Once the new source is in operation and the old source is retired (and, thus, full compliance is achieved), a postcompliance settlement can be made. Such a settlement will consider only changes in the precompliance expenditures associated with the new source relative to the estimates made when the initial penalty calculation was carried out.

APPENDIX C

CLEAN AIR ACT

SECTION 120

NONCOMPLIANCE PENALTIES

COMPUTER PROGRAM

```
C                                                                       00000100
C       THIS PROGRAM COMPUTES THE NONCOMPLIANCE PENALTY                 00000200
C       PRESCRIBED IN SECTION 120 OF THE CLEAN AIR ACT.                 00000300
C                                                                       00000400
C       IT WAS WRITTEN BY ROBERT L HAYES OF TCS FINANCIAL               00000500
C       CONSULTANTS, NASHVILLE, TENNESSEE, UNDER CONTRACT               00000600
C       WITH THE UNITED STATES ENVIRONMENTAL PROTECTION                 00000700
C       AGENCY.                                                         00000800
C                                                                       00000900
C       THE PROGRAM FOLLOWS CLOSELY THE FEBRUARY 1979                   00001000
C       TECHNICAL SUPPORT DOCUMENT.                                     00001100
C                                                                       00001200
C                                                                       00001300
C                                                                       00001400
C VARIABLE DICTIONARY                                                   00001500
C                                                                       00001600
C   VECTORS                                                             00001700
C       AC(J)           ADJUSTED CAPITAL COMPONENT IN MONTH J           00001800
C       AO(J)           ADJUSTED O & M COMPONENT IN MONTH J             00001900
C       D(K,J)          DEPRECIATION FRACTION IN YEAR J, TYPE K         00002000
C       DEP(J)          DEPRECIATION TAX SAVINGS IN YEAR J              00002100
C       CSHFLO(J)       NET CASH FLOW IN YEAR J                         00002200
C       CSHOUT(J)       TOTAL CASH OUTFLOW IN YEAR J                    00002300
C       DEDUCT(J)       TOTAL DEDUCTIONS FOR TAX PURPOSES               00002400
C       DELTA(J)        RECOMPUTED PENALTY LESS AMOUNT PAID             00002500
C       DIV(J)          PREFERRED STOCK DIVIDENDS PAID                  00002600
C                         AT END OF YEAR J                              00002700
C       INT(J)          INTEREST PAID AT END OF YEAR J                  00002800
C       M(J)            O & M EXPENSE AT END OF YEAR J                  00002900
C       P(J)            PENALTY PAYMENT DUE IN MONTH J                  00003000
C       PAID(J)         PENALTY ACTUALLY PAID IN MONTH J                00003100
C       PRIN(J)         PRINCIPAL REPAYMENT AT END OF                   00003200
C                         YEAR J                                        00003300
C       PRNOUT(J)       PRINCIPAL OUTSTANDING AT THE BEGINNING          00003400
C                         OF YEAR J                                     00003500
C       PRECAP(J)       PRE-COMPLIANCE CAP EXP IN MONTH J               00003600
C       PREF(J)         PREFERRED STOCK REDEEMED AT END OF              00003700
C                         YEAR J                                        00003800
C       PRFOUT(J)       PREFERRED STOCK OUTSTANDING AT BEGINNING        00003900
C                         OF YEAR J                                     00004000
C       PROM(J)         PRE-COMPLIANCE O & M EXP IN MONTH J             00004100
C       QUART(J)        QUARTERLY PENALTY DUE IN MONTH J                00004200
C       SC(J)           EQUIVALENT CAPITAL COMPONENT IN MONTH J         00004300
C       SO(J)           EQUIVALENT O & M COMPONENT IN MONTH J           00004400
C       TAXSAV(J)       TAX SAVINGS ON TAX DEDUCTIBLE EXPENSE           00004500
C       X(J)            FRACTION OF CAPITAL SPENT PRIOR TO MONTH J      00004600
C       Y(J)            FRACTION OF O & M SPENT IN MONTH J              00004700
C       Z(J)            DELTA(J) ADJUSTED TO COMPLIANCE DATE            00004800
C                                                                       00004900
C   VARIABLES                                                           00005000
C       B       DEBT FRACTION OF CAPITAL STRUCTURE                      00005100
C       CUMDEP  FRACTION OF ASSET ALREADY DEPRECIATED                   00005200
C       DBTSHR  DEBT SHARE OF CAPITAL INVESTMENT ($)                    00005300
C       DD      MONTHS FROM COMPLIANCE DATE TO SETTLEMENT               00005400
C       DDIV    DUMMY INDICATING COSTS DIVIDED BY 1000                  00005500
C       DLIM    DUMMY INDICATING LIMITED LIFE FACILITY                  00005600
C       DLOOP   DUMMY INDICATING VARIABLES BEING CHANGED                00005700
C       DLUMP   DUMMY INDICATING A LUMP SUM SETTLEMENT                  00005800
C       DPOST   DUMMY INDICATING POST-COMPLIANCE SETTLEMENT             00005900
C       E       DISCOUNT RATE                                           00006000
C       E1      DISCOUNT RATE ON MONTHLY BASIS                          00006100
```

```
C       EQ      DISCOUNT RATE ON A QUARTERLY BASIS                              00006200
C       EI      EQUITY SHARE OF CAPITAL INVESTMENT ($)                          00006300
C       F       PREFERRED STOCK FRACTION OF CAPITAL STRUCTURE                   00006400
C       FIDB    FRACTION FINANCED BY INDUSTRIAL DEVELOPMENT BONDS               00006500
C       FRAPID  FRACTION OF DEPRECIATION SUBJECT TO RAPID                       00006600
C                 AMORTIZATION                                                  00006700
C       I       FORECAST INFLATION RATE                                         00006800
C       II      INFLATION RATE ON MONTHLY BASIS                                 00006900
C       IQ      INFLATION RATE ON A QUARTERLY BASIS                             00007000
C       II      CAPITAL COST IN DOLLARS (INITIAL INVESTMENT)                    00007100
C       IIDLD   CAPITAL COST FOR OLD FACILITY                                   00007200
C       J       INDEX INDICATING THE YEAR                                       00007300
C       K       INDEX INDICATING THE YEAR                                       00007400
C       L       PERIOD OF DELAYED COMPLIANCE(MONTHS)                            00007500
C       LDPP    DELAY BEFORE INITIAL PENALTY PAYMENT (MONTHS)                   00007600
C       LDTS    DUMMY INDICATING DEPRECIATION METHOD                            00007700
C       MDS     MONTHS DELAY IN SETTLEMENT                                      00007800
C       M0      INITIAL ANNUAL O & M EXPENSE ($)                                00007900
C       M0OLD   O & M COST FOR OLD FACILITY                                     00008000
C       M12     INITIAL MONTHLY O & M EXPENSE ($)                               00008100
C       NDEP    DEPRECIATION LIFE (YEARS)                                       00008200
C       NLOOP   NUMBER OF VARIABLES TO BE CHANGED                               00008300
C       NPP     NUMBER OF PENALTY PAYMENTS ACTUALLY MADE                        00008400
C       NUSE    USEFUL LIFE (YEARS)                                             00008500
C       NVAR    VARIABLE NUMBER BEING CHANGED                                   00008600
C       PVACR   PRESENT VALUE OF ANNUAL CAPITAL RELATED FLOWS                   00008700
C       PVADJ   PRESENT VALUE OF CASH FLOWS ADJ FOR PRE-COMPL EXP               00008800
C       PVDLA   PRESENT VALUE OF DELAYED CASH FLOWS                             00008900
C       PVIN    PRESENT VALUE OF INITIAL CASH FLOWS                             00009000
C       PVOM    PRESENT VALUE OF O & M CASH FLOWS                               00009100
C       PVPCE   PRESENT VALUE OF CASH FLOWS IN ALL CYCLES                       00009200
C       PVPEN   PRESENT VALUE OF PENALTY                                        00009300
C       PVIPCE  PRESENT VALUE OF CASH FLOWS IN FIRST CYCLE                      00009400
C       Q       EQUITY FRACTION OF CAPITAL STRUCTURE                            00009500
C       R       INTEREST RATE FOR POST-COMPL SETTLEMENT                         00009600
C       RDIV    PREFERRED STOCK DIVIDEND RATE                                   00009700
C       RINT    INTEREST RATE ON DEBT                                           00009800
C       SAVING  PRESENT VALUE OF ECONOMIC SAVINGS OF DELAY                      00009900
C       SETTLE  POST-COMPLIANCE SETTLEMENT AMOUNT                               00010000
C       TITC    INVESTMENT TAX CREDIT RATE(%)                                   00010100
C       TTR     MARGINAL INCOME TAX RATE (%)                                    00010200
C       ZDELAY  ZTOTAL ADJUSTED TO SETTLEMENT DATE                              00010300
C       ZTOTAL  SUM OF Z(J) ADJUSTED TO COMPLIANCE DATE                         00010400
C                                                                               00010500
C       OTHER VARIABLES BEGINNING WITH Z ARE USED TO CONVERT                    00010600
C         FROM INTEGER TO REAL                                                  00010700
C                                                                               00010800
C                                                                               00010900
C                                                                               00011000
C MAIN PROGRAM                                                                  00011100
C                                                                               00011200
C                                                                               00011300
C                                                                               00011400
      DIMENSION D(6,50),DEP(100),CSHOLD(100),DEDUCT(100)                        00011500
      DIMENSION M(100),PRIN(100),PRNOUT(100),PREF(100)                          00011600
      DIMENSION PRFOUT(100),INT(100),TAXSAV(100)                                00011700
      DIMENSION CSHOUT(100),DELTA(100),Z(100)                                   00011800
      DIMENSION DIV(100),DF(100),PV(100)                                        00011900
      DIMENSION X(100),PRECAP(100),PROM(100),P(100)                             00012000
      DIMENSION SC(100),SO(100),AC(100),AO(100),PAID(100)                       00012100
      DIMENSION PVDTS(6),QUART(100),Y(100)                                      00012200
C                                                                               00012300
C                                                                               00012400
C                                                                               00012500
      INTEGER DEPMET,ORAPID,DLOOP,DDIV,DLIM                                     00012600
      INTEGER OPRCAP,OPROM,DPOST,DD,DATA                                        00012700
      REAL II,I,ITC,I1,M0,M12,M9                                                00012800
      REAL INT,M,I4,LUMP                                                        00012900
      REAL E1,E4,M4,IACT,IACT1                                                  00013000
C                                                                               00013100
C                                                                               00013200
C   DATA INPUT                                                                  00013300
C                                                                               00013400
C                                                                               00013500
      KW=6                                                                      00013600
      KR=5                                                                      00013700
   90 WRITE(KW,7400)                                                            00013800
      WRITE(KW,7401)                                                            00013900
      WRITE(KW,7402)                                                            00014000
 7400 FORMAT(5X,'IS THIS AN INITIAL PENALTY CALCULATION')                       00014100
 7401 FORMAT(5X, 'OR A POST-COMPLIANCE SETTLEMENT CALCULATION?')                00014200
 7402 FORMAT(5X,'0=INITIAL, 1=POST-COMPLIANCE:')                                00014300
      READ(KR,*)DPOST                                                           00014400
      IF(DPOST)93,93,80                                                         00014500
   80 WRITE(KW,7410)                                                            00014600
      WRITE(KW,7411)                                                            00014700
 7410 FORMAT(5X,'ITEMS 1 AND 2 SHOULD SHOW AMOUNTS ACTUALLY')                   00014800
 7411 FORMAT(5X, 'EXPENDED')                                                    00014900
C                                                                               00015000
   93 WRITE(KW,7422)                                                            00015100
 7422 FORMAT(5X,'IS THIS A LIMITED LIFE FACILITY? 1=YES, 0=NO')                 00015200
      READ(KR,*)DLIM                                                            00015300
      IF(DLIM)97,97,95                                                          00015400
   95 WRITE(KW,7425)                                                            00015500
      WRITE(KW,7426)                                                            00015600
 7425 FORMAT(5X,'ITEMS 1 AND 2 SHOULD SHOW COSTS FOR THE')                      00015700
 7426 FORMAT(5X,'REPLACEMENT FACILITY')                                         00015800
C                                                                               00015900
   97 WRITE(KW,7535)                                                            00016000
 7535 FORMAT(5X,'PERCENTAGE FINANCED BY INDUSTRIAL DEVELOP',                    00016100
     C  'MENT BONDS=')                                                          00016200
      READ(KR,*)FIDB                                                            00016300
      FIDB=FIDB/100.                                                            00016400
C                                                                               00016500
  100 DLOOP=1                                                                   00016600
      DDIV=1                                                                    00016700
      DATA=0                                                                    00016800
 4000 FORMAT(F20.5)                                                             00016900
 4001 FORMAT(I20)                                                               00017000
 4002 FORMAT(I5,5F10.2)                                                         00017100
 6000 FORMAT(10X)                                                               00017200
  110 WRITE(KW,4005)                                                            00017300
 4005 FORMAT(5X,29H 1, MONTHS OUT OF COMPLIANCE=)                               00017400
      READ(KR,*)L                                                               00017500
      WRITE(KW,4010)                                                            00017600
      WRITE(KW,4011)                                                            00017700
 4010 FORMAT(5X,'FOR EACH MONTH ENTER CAPITAL EXPENDITURE')                     00017800
 4011 FORMAT(5X,'THEN OPERATING AND MAINTENANCE EXPENSE')                       00017900
      WRITE(KW,6000)                                                            00018000
      II=0.                                                                     00018100
      DO 133 J=1,L                                                              00018200
      WRITE(KW,4015)J                                                           00018300
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4015  FORMAT(5X,'MONTH',I3,' ENTER CAPITAL, O & M')                    00018400
 133  READ(KR,*)PRECAP(J),PROM(J)                                      00018500
 200  GO TO (210,3000),DLOOP                                           00018600
 210  WRITE(KW,4020)                                                   00018700
4020  FORMAT(5X,33H 2. INITIAL ANNUAL O & M EXPENSE=,F10.2)            00018800
      READ (KR,*)MONEW                                                 00018900
      IF(DPOST)208,208,203                                             00019000
 203  MONMO/(1.+II)**L                                                 00019100
 208  CONTINUE                                                         00019200
      DO 212 J=1,L                                                     00019300
 217  IF(PROM(J)-MONEW/12.)212,212,213                                 00019400
 212  CONTINUE                                                         00019500
      GO TO (220,3000),DLOOP                                           00019600
 213  WRITE(KW,4025)                                                   00019700
      WRITE(KW,4026)                                                   00019800
4025  FORMAT(5X,'PRE-COMPLIANCE O & M LARGER THAN ONE=')               00019900
4026  FORMAT(5X,'TWELFTH OF ANNUAL O & M EXPENSE')                     00020000
      GO TO 100                                                        00020100
 220  WRITE(KW,4030)                                                   00020200
4030  FORMAT(5X,31H 3. INVESTMENT TAX CREDIT RATE=,F6.2)               00020300
      READ(KR,*)TITC                                                   00020400
      IF(TITC+1.)223,227,227                                           00020500
 223  IF(TITC)227,227,224                                              00020600
 224  DATA=1                                                           00020700
 227  TITC=TITC/100.                                                   00020800
      GO TO (230,3000),DLOOP                                           00020900
 230  WRITE(KW,4040)                                                   00021000
4040  FORMAT(5X,20H 4. INCOME TAX RATE=,F6.2)                          00021100
      READ(KR,*)TTR                                                    00021200
      IF(TTR+1.)233,237,237                                            00021300
 233  IF(TTR)237,237,234                                               00021400
 234  DATA=1                                                           00021500
 237  TTR=TTR/100.                                                     00021600
      GO TO (240,3000),DLOOP                                           00021700
 240  WRITE(KW,4050)                                                   00021800
4050  FORMAT(5X,28H 5. FORECAST INFLATION RATE=,F6.2)                  00021900
      READ(KR,*)I                                                      00022000
      IF(I+1.)243,247,247                                              00022100
 243  IF(I)247,247,244                                                 00022200
 244  DATA=1                                                           00022300
 247  I=I/100.                                                         00022400
      II=(1.+I)**(1./12.)-1.                                           00022500
      GO TO (250,3000),DLOOP                                           00022600
 250  WRITE(KW,4060)                                                   00022700
4060  FORMAT(5X,18H 6. DISCOUNT RATE=,F6.2)                            00022800
      READ(KR,*)E                                                      00022900
      IF(E+1.)253,255,255                                              00023000
 253  IF(E)255,255,254                                                 00023100
 254  DATA=1                                                           00023200
 255  E=E/100.                                                         00023300
      GO TO (256,3000),DLOOP                                           00023400
 256  IF(E-I)258,258,260                                               00023500
 258  WRITE(KW,4065)                                                   00023600
4065  FORMAT(5X,'DISCOUNT RATE NOT GREATER THAN INFLATION RATE')       00023700
      GO TO 240                                                        00023800
 260  WRITE(KW,4070)                                                   00023900
4070  FORMAT(5X,18H 7. INTEREST RATE=,F6.2)                            00024000
      READ(KR,*)RINT                                                   00024100
      IF(RINT+1.)263,267,267                                           00024200
 263  IF(RINT)267,267,264                                              00024300
 264  DATA=1                                                           00024400

 267  RINT=RINT/100.                                                   00024500
      GO TO (270,3000),DLOOP                                           00024600
 270  WRITE(KW,4080)                                                   00024700
4080  FORMAT(5X,34H 8. PREFERRED STOCK DIVIDEND RATE=,F6.2)            00024800
      READ(KR,*)RDIV                                                   00024900
      IF(RDIV+1.)273,277,277                                           00025000
 273  IF(RDIV)277,277,274                                              00025100
 274  DATA=1                                                           00025200
 277  RDIV=RDIV/100.                                                   00025300
      GO TO (300,3000),DLOOP                                           00025400
 300  WRITE(KW,4090)                                                   00025500
4090  FORMAT(5X,31H 9. EQUITY SHARE OF INVESTMENT=,F6.2)               00025600
      READ(KR,*)Q                                                      00025700
      IF(Q+1.)303,307,307                                              00025800
 303  IF(Q)307,307,304                                                 00025900
 304  DATA=1                                                           00026000
 307  Q=Q/100                                                          00026100
      GO TO (280,3000),DLOOP                                           00026200
 280  WRITE(KW,4100)                                                   00026300
4100  FORMAT(5X,26H10. PREFERRED STOCK SHARE=,F6.2)                    00026400
      READ(KR,*)F                                                      00026500
      IF(F+1.)283,287,287                                              00026600
 283  IF(F)287,287,284                                                 00026700
 284  DATA=1                                                           00026800
 287  F=F/100.                                                         00026900
      GO TO (290,3000),DLOOP                                           00027000
 290  WRITE(KW,4110)                                                   00027100
4110  FORMAT(5X,29H11. DEBT SHARE OF INVESTMENT=,F6.2)                 00027200
      READ(KR,*)B                                                      00027300
      IF(B+1.)313,317,317                                              00027400
 313  IF(B)317,317,314                                                 00027500
 314  DATA=1                                                           00027600
 317  B=B/100.                                                         00027700
      GO TO (320,3000),DLOOP                                           00027800
 324  IF(ABS(Q+F+B-1.)-.005)350,325,325                                00027900
 325  WRITE(KW,6000)                                                   00028000
      WRITE(KW,4500)                                                   00028100
4500  FORMAT(5X,'EQUITY+PREFERRED+DEBT NOT = 100, TRY AGAIN')          00028200
      GO TO 300                                                        00028300
 350  WRITE(KW,4130)                                                   00028400
4130  FORMAT(5X,22H12. DEPRECIATION LIFE=,I4)                          00028500
      READ(KR,*)NDEP                                                   00028600
      GO TO (320,3000),DLOOP                                           00028700
 320  WRITE(KW,4140)                                                   00028800
4140  FORMAT(5X,16H13. USEFUL LIFE=,I4)                                00028900
      READ(KW,*)NUSE                                                   00029000
      GO TO (321,3000),DLOOP                                           00029100
 321  IF(DPOST)360,360,322                                             00029200
 322  WRITE(KW,4190)                                                   00029300
4190  FORMAT(5X,'14. HOW MANY PENALTY PAYMENTS WERE MADE?')            00029400
      READ(KR,*)NPP                                                    00029500
      DO 412 J=1,50                                                    00029600
 412  PAID(J)=0.                                                       00029700
      DO 415 J=1,NPP                                                   00029800
      WRITE(KW,7420)J                                                  00029900
7420  FORMAT(9X,'14. PAYMENT NUMBER',I3,'I ENTER MONTH,AMOUNT')        00030000
      READ(KR,*)N9,PYMT                                                00030100
      IF(J-1)413,413,415                                               00030200
 413  LOPP=N9-1                                                        00030300
 415  PAID(N9)=PYMT                                                    00030400
      GO TO (417,3000),DLOOP                                           00030500
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  417   WRITE(KW,7415)                                                  00030600
 7415   FORMAT(5X,'15. TREASURY INTEREST RATE=',F6.2)                   00030700
        READ(KR,*)R                                                     00030800
        IF(R-1.)403,407,407                                             00030900
  403   IF(R)407,407,404                                                00031000
  404   DATA=1                                                          00031100
  407   R=R/100.                                                        00031200
        GO TO (360,3000),DLOOP                                          00031300
  360   IF(DLIM)420,420,365                                             00031400
  365   WRITE(KW,7440)                                                  00031500
        WRITE(KW,7441)                                                  00031600
 7440   FORMAT(5X,'16. CAPITAL COST WHICH WOULD HAVE ',                 00031700
     C  'BEEN INCURRED')                                                00031800
 7441   FORMAT(5X,'    TO BRING EXISTING FACILITY INTO',                00031900
     C  ' COMPLIANCE')                                                  00032000
        READ(KR,*)IIOLD                                                 00032100
        IF(DPOST)375,375,370                                            00032200
  370   IIOLD=IIOLD*(1.+I1)**L                                          00032300
  375   GO TO (385,3000),DLOOP                                          00032400
  385   WRITE(KW,7447)                                                  00032500
        WRITE(KW,7448)                                                  00032600
 7447   FORMAT(5X,'17. O & M COST TO KEEP EXISTING FACILITY')           00032700
 7448   FORMAT(5X,'    IN COMPLIANCE=')                                 00032800
        READ(KR,*)MOOLD                                                 00032900
        IF(DPOST)389,389,387                                            00033000
  387   MOOLD=MOOLD*(1.+I1)**L                                          00033100
  389   GO TO (420,3000),DLOOP                                          00033200
C                                                                       00033300
C                                                                       00033400
C                                                                       00033500
C       DATA CHECKS AND INITIALIZATIONS                                 00033600
C                                                                       00033700
C                                                                       00033800
C                                                                       00033900
C       COMPUTE MONTHLY AND QUARTERLY EQUIVALENT VALUES OF              00034000
C       E AND I FOR USE LATER IN THE PROGRAM.                           00034100
  420   E1=(1.+E)**(1./12.)-1.                                          00034200
        E4=(1.+E)**(.25)-1.                                             00034300
        I4=(1.+I)**(.25)-1.                                             00034400
        R1=(1.+R)**(1./12.)-1.                                          00034500
C                                                                       00034600
        MO=MONEY                                                        00034700
        IF(ABS(Q+F+B-1.)-.005)422,421,421                               00034800
  421   WRITE(KW,4500)                                                  00034900
        GO TO 100                                                       00035000
  422   DO 423 J=1,L                                                    00035100
        IF(PROM(J)-MO/12.)423,423,213                                   00035200
  423   CONTINUE                                                        00035300
C                                                                       00035400
        IF(MO)428,428,426                                               00035500
  426   IF(DPOST)140,140,145                                            00035600
  140   DO 427 J=1,L                                                    00035700
  427   Y(J)=12.*PROM(J)/MO                                             00035800
        GO TO 431                                                       00035900
  145   DO 146 J=1,L                                                    00036000
  146   Y(J)=(12.*PROM(J)*(1.+I1)**L)/(MO*(1.+I1)**(J-1))               00036100
        GO TO 431                                                       00036200
  428   DO 429 J=1,L                                                    00036300
  429   Y(J)=0.                                                         00036400
  431   CONTINUE                                                        00036500
        II=0                                                            00036600
        DO 153 J=1,L                                                    00036700
        IF(DPOST)125,125,130                                            00036800
  125   II=II+PRECAP(J)                                                 00036900
        GO TO 153                                                       00037000
  130   II=II+PRECAP(J)/(1.+I1)**J                                      00037100
  153   CONTINUE                                                        00037200
 6059   X(1)=0.                                                         00037300
        IF(II)6060,6060,6070                                            00037400
 6060   DO 6065 K=1,L                                                   00037500
 6065   X(K)=1.                                                         00037600
        GO TO 154                                                       00037700
 6070   DO 6077 K=2,L                                                   00037800
        IF(DPOST)6075,6075,6076                                         00037900
 6075   X(K)=X(K-1)+PRECAP(K-1)                                         00038000
        GO TO 6077                                                      00038100
 6076   X(K)=X(K-1)+PRECAP(K-1)/(1.+I1)**(K-1)                          00038200
 6077   CONTINUE                                                        00038300
        DO 6078 K=1,L                                                   00038400
 6078   X(K)=X(K)/II                                                    00038500
C                                                                       00038600
C                                                                       00038700
  154   IF(DLIM)432,432,430                                             00038800
  430   II=IIOLD                                                        00038900
        MO=MOOLD                                                        00039000
  432   CONTINUE                                                        00039100
  440   IF(II-1000000.)445,450,450                                      00039200
  445   IF(MO-100000.)475,450,450                                       00039300
  450   II=II/1000.                                                     00039400
        DDIV=2                                                          00039500
        MO=MO/1000.                                                     00039600
        DO 460 J=1,L                                                    00039700
        PAID(J)=PAID(J)/1000.                                           00039800
        PRECAP(J)=PRECAP(J)/1000.                                       00039900
  460   PROM(J)=PROM(J)/1000.                                           00040000
        WRITE(KW,6000)                                                  00040100
        WRITE(KW,6000)                                                  00040200
        WRITE(KW,4600)                                                  00040300
 4600   FORMAT(5X,'NOTE THAT FIGURES BELOW ARE IN THOUSANDS')           00040400
  475   CONTINUE                                                        00040500
        IF(DATA)457,457,453                                             00040600
  453   WRITE(KW,4570)                                                  00040700
        WRITE(KW,4571)                                                  00040800
 4570   FORMAT(5X,'NOTE THAT AT LEAST ONE OF YOUR DATA ENTRIES')        00040900
 4571   FORMAT(5X,'HAS A PERCENTAGE VALUE OF LESS THAN ONE')            00041000
        DATA=0                                                          00041100
  457   CONTINUE                                                        00041200
        IF(E-I)480,480,483                                              00041300
  480   WRITE(KW,4065)                                                  00041400
        GO TO 100                                                       00041500
  483   CONTINUE                                                        00041600
        ZNDEP=NDEP                                                      00041700
        DO 490 J=1,100                                                  00041800
        DEP(J)=0.                                                       00041900
        Z(J)=0.                                                         00042000
        DELTA(J)=0.                                                     00042100
        CSHFLO(J)=0.                                                    00042200
        DEDUCT(J)=0.                                                    00042300
        M(J)=0.                                                         00042400
        PRIN(J)=0.                                                      00042500
        PRNOUT(J)=0.                                                    00042600
        PREF(J)=0.                                                      00042700
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      PRFOUT(J)=0.                                                    00042800
      INT(J)=0.                                                       00042900
      TAXSAV(J)=0.                                                    00043000
      CSHOUT(J)=0.                                                    00043100
      DIV(J)=0.                                                       00043200
      DF(J)=0.                                                        00043300
      P(J)=0.                                                         00043400
      QUART(J)=0.                                                     00043500
  490 PV(J)=0.                                                        00043600
      DO 491 K=1,6                                                    00043700
      PVDTS(K)=0.                                                     00043800
      DO 491 J=1,50                                                   00043900
  491 D(K,J)=0.                                                       00044000
C                                                                     00044100
C                                                                     00044200
C     IF THIS IS A POST-COMPLIANCE CALCULATION,                       00044300
C     ADJUST CAPITAL AND O & M VALUES TO REFLECT                      00044400
C     INFLATION DURING THE NONCOMPLIANCE PERIOD                       00044500
C                                                                     00044600
      IF(DPOST)499,499,492                                            00044700
  492 DO 495 J=1,L                                                    00044800
      PRECAP(J)=PRECAP(J)/(1.+I1)**L                                  00044900
  495 PROM(J)=PROM(J)/(1.+I1)**L                                      00045000
      II=II/(1.+I1)**L                                                00045100
      MO=MO/(1.+I1)**L                                                00045200
C                                                                     00045300
C     BEGIN COMPUTING PENALTY                                         00045400
C                                                                     00045500
C                                                                     00045600
C     EQUATION (1) = EQUITY INVESTMENT                                00045700
  499 EI=II*Q                                                         00045800
C                                                                     00045900
C     EQUATION (2) = INVESTMENT TAX CREDIT                            00046000
      ITC=II*TITC*(1.-FIDB/2.)                                        00046100
C                                                                     00046200
C     DEPRECIATION CALCULATIONS FROM APPENDIX C                       00046300
C                                                                     00046400
      DTSMAX=0.                                                       00046500
      LDTS=99                                                         00046600
C                                                                     00046700
C     STRAIGHT LINE DEPRECIATION                                      00046800
  500 DO 550 J=1,NDEP                                                 00046900
      D(1,J)=1/ZNDEP                                                  00047000
  550 PVDTS(1)=PVDTS(1)+D(1,J)/(1.+E)**J                              00047100
      IF(PVDTS(1)-DTSMAX)600,600,560                                  00047200
  560 DTSMAX=PVDTS(1)                                                 00047300
      LDTS=1                                                          00047400
C                                                                     00047500
C     SUM OF YEARS DIGITS                                             00047600
  600 ZN8=ZNDEP*(ZNDEP+1)/2                                           00047700
      DO 650 J=1,NDEP                                                 00047800
      D(2,J)=(ZNDEP+1-J)/ZN8                                          00047900
  650 PVDTS(2)=PVDTS(2)+D(2,J)/(1.+E)**J                              00048000
      IF(PVDTS(2)-DTSMAX)700,700,660                                  00048100
  660 DTSMAX=PVDTS(2)                                                 00048200
      LDTS=2                                                          00048300
C                                                                     00048400
C     DOUBLE DECLINING BALANCE                                        00048500
  700 IF(NDEP-1)800,800,705                                           00048600
  705 CUMDEP=0                                                        00048700
      DO 750 J=1,NDEP                                                 00048800
      IF (NDEP-2*J+2) 725,710,710                                     00048900
  710 D(3,J)=(1-CUMDEP)*2/ZNDEP                                       00049000
      PVDTS(3)=PVDTS(3)+D(3,J)/(1.+E)**J                              00049100
      GO TO 750                                                       00049200
  725 D(3,J)=(1-CUMDEP)/(ZNDEP-J+1)                                   00049300
      PVDTS(3)=PVDTS(3)+D(3,J)/(1.+E)**J                              00049400
  750 CUMDEP=CUMDEP+D(3,J)                                            00049500
      IF(PVDTS(3)-DTSMAX)800,800,760                                  00049600
  760 DTSMAX=PVDTS(3)                                                 00049700
      LDTS=3                                                          00049800
C                                                                     00049900
C     RAPID AMORTIZATION                                              00050000
  800 IF(NDEP-15)790,795,795                                          00050100
  790 FRAPID=1.                                                       00050200
      GO TO 799                                                       00050300
  795 FRAPID=15./ZNDEP                                                00050400
  799 DO 810 K=4,6                                                    00050500
      DO 801 J=1,NDEP                                                 00050600
      D(K,J)=D(K-3,J)*(1.-FRAPID)                                     00050700
  801 PVDTS(K)=PVDTS(K)+D(K,J)/(1.+E)**J                              00050800
      DO 805 J=1,5                                                    00050900
      D(K,J)=D(K,J)+FRAPID/5.                                         00051000
  805 PVDTS(K)=PVDTS(K)+(FRAPID/5.)/(1.+E)**J                         00051100
      PVDTS(K)=PVDTS(K)-TITC*FIDB/2.                                  00051200
      IF(PVDTS(K)-DTSMAX)810,810,808                                  00051300
  808 DTSMAX=PVDTS(K)                                                 00051400
      LDTS=K                                                          00051500
  810 CONTINUE                                                        00051600
C                                                                     00051700
C                                                                     00051800
C     EQUATION (3) = DEPRECIATION TAX SAVINGS                         00051900
  900 DO 950 J=1,NDEP                                                 00052000
  950 DEP(J)=II*D(LDTS,J)*TTR                                         00052100
C                                                                     00052200
C     EQUATION (4) = DEBT SHARE OF INVESTMENT                         00052300
      DBTSHR=II*B                                                     00052400
C                                                                     00052500
C     INITIAL PRIN OUTSTANDING EQUALS DEBT SHARE                      00052600
      PRNOUT(1)=DBTSHR                                                00052700
C                                                                     00052800
C     EQUATION(11) = PREFERRED STOCK SHARE OF INVESTMENT              00052900
      PRFSHR=II*F                                                     00053000
C                                                                     00053100
C     INITIAL PREFERRED OUTSTANDING IS PREFERRED SHARE                00053200
      PRFOUT(1)=PRFSHR                                                00053300
C                                                                     00053400
C                                                                     00053500
C     THE FOLLOWING SECTION CALCUALATES THE ANNUAL CAPITAL-           00053600
C     RELATED CASH FLOWS                                              00053700
C                                                                     00053800
      DO 1100 J=1,NDEP                                                00053900
C                                                                     00054000
C     EQUATION (5) = PRINCIPAL PAYMENT                                00054100
      PRIN(J)=D(LDTS,J)*II*B                                          00054200
C                                                                     00054300
C     COMBINING EQUATIONS (8) AND (9)                                 00054400
      PRNOUT(J+1)=PRNOUT(J)-PRIN(J)                                   00054500
C                                                                     00054600
C     EQUATION (7) = INTEREST CASH FLOW                               00054700
      INT(J)=RINT*PRNOUT(J)*(1-TTR)                                   00054800
C                                                                     00054900
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C       EQUATION (12) = PREFERRED STOCK REDEMPTION
        PREF(J)=D(LDTS,J)*II*F
C
C       COMBINING EQUATIONS (14) AND (15)
        PRFOUT(J+1)=PRFOUT(J)-PREF(J)
C
C       EQUATION (13) = PREFERRED STOCK DIVIDEND PAYMENT
        DIV(J)=RDIV*PRFOUT(J)
C
 1100   CONTINUE
C
C       NOTE: EQUATION (17), O & M, IS COMBINED BELOW WITH
C       EQUATIONS (21) AND (22)
C
C       DISCOUNTING CASH FLOWS
C
C       EQUATION (18) = INITIAL CASH FLOW
        PVIN=II*Q-ITC
C
C       COMBINING EQUATIONS (19) AND (20) = ANNUAL CAPITAL
C       RELATED
        PVACR=0
        DO 1200 J=1,NDEP
 1200   PVACR=PVACR+(-DEP(J)+PRIN(J)+INT(J)+PREF(J)+DIV(J))/
     C  (1+E)**J
C
C       EQUATIONS (17),(21)AND (22) COMBINED = O AND M
        PVOM=0
        DO 1300 J=1,NUSE
        M(J)=M0*(1.+I)**J
 1300   PVOM=PVOM+M(J)*(1.-TTR)/(1.+E)**J
C
C       EQUATION (23) = PRESENT VALUE OF FIRST CYCLE FLOWS
        PVIPCE=PVIN+PVACR+PVOM
C
C
C       EQUATION (24) = PRESENT VALUE OF FLOWS FOR ALL CYCLES
        PVPCE=PVIPCE*(1./(1.-((1.+I)/(1.+E))**NUSE))
C
C       EQUATION (26) = PRESENT VALUE OF DELAYED FLOWS
        PVDLA=PVPCE*((1.+I1)/(1.+E1))**L
C
C       EQUATION (27) = ECONOMIC SAVINGS CALCULATION
        SAVING=PVPCE-PVDLA
C
C
C
C
C       CONVERT SAVINGS INTO A MONTHLY PENALTY
C
C
C       EQUATION (33) AND (34) = MONTHLY SAVINGS EQUIVALENTS
 6025   SC(1)=((E1-I1)/(1.+E1))*(PVIN+PVACR)*
     C    (1./(1.-((1.+I)/(1.+E))**NUSE))
        SO(1)=((E1-I1)/(1.+E1))*PVOM*(1./(1.-((1.+I)/(1.+E))
     C  **NUSE))
 6040   DO 6050 K=1,L
        SC(K)=SC(1)*(1.+I1)**(K-1)
 6050   SO(K)=SO(1)*(1.+I1)**(K-1)
C
C       EQUATION (35) = ADJUSTED SAVINGS EQUIVALENT
 6080   DO 6100 K=1,L
        AC(K)=(1.-X(K))*SC(K)                                          00061100
        AO(K)=(1.-Y(K))*SO(K)                                          00061200
        IF(AO(K))6090,6100,6100                                        00061300
 6090   AO(K)=0                                                        00061400
 6100   CONTINUE                                                       00061500
C                                                                      00061600
C       EQUATION (36) = PRESENT VALUE OF ADJUSTED SERIES               00061700
        PVADJ=0.                                                       00061800
        DO 6150 K=1,L                                                  00061900
 6150   PVADJ=PVADJ+(AC(K)+AO(K))/((1.+E1)**(K-1))                    00062000
C                                                                      00062100
C       EQUATIONS (38) & (39) = PENALTY PAYMENT SERIES                 00062200
        DENOM=0.                                                       00062300
        DO 6175 K=1,L                                                  00062400
 6175   DENOM=DENOM+((1.+I1)/(1.+E1))**(K-1)                          00062500
        P(1)=PVADJ/DENOM                                               00062600
        DO 6200 K=1,L                                                  00062700
 6200   P(K)=P(1)*(1.+I1)**(K-1)                                       00062800
C                                                                      00062900
C                                                                      00063000
C       PRINT OUT THE DEPRECIATION METHOD                              00063100
        WRITE(KW,6000)                                                 00063200
        WRITE(KW,6000)                                                 00063300
        GO TO (6210,6215,6220,6225,6230,6235),LDTS                     00063400
 6210   WRITE(KW,6211)                                                 00063500
 6211   FORMAT(5X,'STRAIGHT LINE, STANDARD AMORTIZATION')              00063600
        GO TO 6240                                                     00063700
 6215   WRITE(KW,6216)                                                 00063800
 6216   FORMAT(5X,'SUM OF YEARS DIGITS, STANDARD AMORTIZATION')        00063900
        GO TO 6240                                                     00064000
 6220   WRITE(KW,6221)                                                 00064100
 6221   FORMAT(5X,'DOUBLE DECLINING BALANCE, STANDARD AMORTIZATION')   00064200
        GO TO 6240                                                     00064300
 6225   WRITE(KW,6226)                                                 00064400
 6226   FORMAT(5X,'STRAIGHT LINE, RAPID AMORTIZATION')                 00064500
        GO TO 6240                                                     00064600
 6230   WRITE(KW,6231)                                                 00064700
 6231   FORMAT(5X,'SUM OF YEARS DIGITS, RAPID AMORTIZATION')           00064800
        GO TO 6240                                                     00064900
 6235   WRITE(KW,6236)                                                 00065000
 6236   FORMAT(5X,'DOUBLE DECLINING BALANCE, RAPID AMORTIZATION')      00065100
 6240   CONTINUE                                                       00065200
C                                                                      00065300
C                                                                      00065400
        PVPEN=0.0                                                      00065500
        DO 6300 K=1,L                                                  00065600
 6300   PVPEN=PVPEN+P(K)/(1.+E1)**(K-1)                                00065700
        WRITE(KW,6000)                                                 00065800
C                                                                      00065900
C                                                                      00066000
C       COMPUTE QUARTERLY PENALTY AMOUNTS AND PRINT THEM               00066100
        IF(DPOST)7190,7190,6308                                        00066200
 7190   WRITE(KW,7601)                                                 00066300
        WRITE(KW,7602)                                                 00066400
        WRITE(KW,7603)                                                 00066500
 7601   FORMAT(5X,'HOW MANY MONTHS AFTER THE FIRST DAY OF')            00066600
 7602   FORMAT(5X,'NONCOMPLIANCE WILL THE INITIAL PENALTY')            00066700
 7603   FORMAT(5X,'PAYMENT BE MADE?')                                  00066800
        READ(KR,*)LDPP                                                 00066900
 6308   ZL=L                                                           00067000
        Z6=0                                                           00067100
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      NQ=AINT((ZL=.01)/3.)+1                                                    00067200
      DO 6310 J=1,NQ                                                            00067300
6310  Z6=Z6+((1.+I4)/(1.+E4))**(J=1)                                            00067400
      QUART(1)=PVPEN/Z6                                                         00067500
      IF(NQ=1)6315,6315,6312                                                    00067600
6312  DO 6314 J=2,NQ                                                            00067700
6314  QUART(3*J=2)=QUART(3*J=5)*(1.+I4)                                         00067800
6315  CONTINUE                                                                  00067900
      IF(LDPP)7150,7150,6317                                                    00068000
6317  IF(LDPP=6)6318,6318,6330                                                  00068100
6318  DO 6321 J=1,LDPP                                                          00068200
      QUART(LDPP+1)=QUART(LDPP+1)+QUART(J)                                      00068300
6321  QUART(J)=0.                                                               00068400
      GO TO 7150                                                                00068500
6330  DO 6335 J=7,LDPP                                                          00068600
      QUART(LDPP+1)=QUART(LDPP+1)+QUART(J)*(1.+E1)**(LDPP=J+1)                  00068700
6335  QUART(J)=0.                                                               00068800
      QUART(LDPP+1)=QUART(LDPP+1)+(QUART(1)+QUART(4))*                          00068900
     C  (1.+E1)**(LDPP=6)                                                       00069000
      QUART(1)=0.                                                               00069100
      QUART(4)=0.                                                               00069200
7150  IF(DPOST)7151,7151,6390                                                   00069300
7151  WRITE(KW,6000)                                                            00069400
      WRITE(KW,7550)                                                            00069500
7550  FORMAT(5X,'      MONTH       PAYMENT')                                    00069600
      DO 6343 J=1,50                                                            00069700
      IF(QUART(J))6343,6343,6340                                                00069800
6340  WRITE(KW, 7505)J,QUART(J)                                                 00069900
6343  CONTINUE                                                                  00070000
      WRITE(KW,6000)                                                            00070100
C                                                                               00070200
C                                                                               00070300
      WRITE(KW,7560)                                                            00070400
      WRITE(KW,7561)                                                            00070500
7560  FORMAT(5X,'DO YOU WISH TO SEE A LUMP SUM')                                00070600
7561  FORMAT(5X,'SETTLEMENT? 1=YES,0=NO:')                                      00070700
      READ(KR,*)DLUMP                                                           00070800
      IF(DLUMP)7299,7299,6380                                                   00070900
C                                                                               00071000
C     COMPUTE THE VALUE OF THE NONCOMPLIANCE PENALTY MOS                        00071100
C     MONTHS AFTER THE DATE OF NONCOMPLIANCE                                    00071200
6380  WRITE(KW,7575)                                                            00071300
      WRITE(KW,7576)                                                            00071400
      WRITE(KW,7577)                                                            00071500
7575  FORMAT(5X,'HOW MANY MONTHS AFTER THE FIRST DAY OF')                       00071600
7576  FORMAT(5X,'NONCOMPLIANCE WILL THE LUMP SUM')                              00071700
7577  FORMAT(5X,'SETTLEMENT BE MADE?')                                          00071800
      READ(KR,*)MOS                                                             00071900
C                                                                               00072000
      SETTLE=PVPEN*(1.+E1)**MOS                                                 00072100
      WRITE(KW,7200)                                                            00072200
7200  FORMAT(5X,'THE VALUE OF THE NONCOMPLIANCE PENALTY')                       00072300
      WRITE(KW,7201)MOS                                                         00072400
7201  FORMAT(5X,'COMPUTED AS OF',I4,' MONTHS AFTER THE DATE')                   00072500
      WRITE(KW,7203)SETTLE                                                      00072600
7203  FORMAT(5X,'OF NONCOMPLIANCE IS',28X,F13.2)                                00072700
      WRITE(KW,7205)                                                            00072800
7205  FORMAT(57X,8H========)                                                    00072900
      GO TO 7299                                                                00073000
C                                                                               00073100
C                                                                               00073200
C     COMPUTE POST=COMPLIANCE SETTLEMENT                                        00073300
C                                                                               00073400
C                                                                               00073500
 6390 ZTOTAL=0.0                                                                00073600
      IF(L=6)6381,6381,6385                                                     00073700
 6381 DO 6383 J=1,L                                                             00073800
      DELTA(J)=PAID(J)=QUART(J)                                                 00073900
      Z(J)=DELTA(J)                                                             00074000
 6383 ZTOTAL=ZTOTAL+Z(J)                                                        00074100
      GO TO 6359                                                                00074200
 6385 DO 6350 J=1,L                                                             00074300
      DELTA(J)= PAID(J)=QUART(J)                                                00074400
      IF(J=6)6351,6351,6355                                                     00074500
 6351 Z(J)=DELTA(J)*(1.+R1)**(L=6)                                              00074600
      GO TO 6350                                                                00074700
 6355 Z(J)=DELTA(J)*(1.+R1)**(L=J+1)                                            00074800
 6350 ZTOTAL=ZTOTAL+Z(J)                                                        00074900
 6359 CONTINUE                                                                  00075000
C                                                                               00075100
      WRITE(KW,7580)                                                            00075200
 7580 FORMAT(1X,'MONTH     PAID   PENALTY   DUE EPA   DUE FIRM')                00075300
      DO 6440 J=1,100                                                           00075400
      ZE=0                                                                      00075500
      ZF=0                                                                      00075600
      IF(QUART(J))6410,6410,6420                                                00075700
 6410 IF(PAID(J))6440,6440,6420                                                 00075800
 6420 IF(DELTA(J))6450,6450,6460                                                00075900
 6450 ZE=-DELTA(J)                                                              00076000
      GO TO 6430                                                                00076100
 6460 ZF=DELTA(J)                                                               00076200
 6430 WRITE(KW,4002)J,PAID(J),QUART(J),ZE,ZF                                    00076300
 6440 CONTINUE                                                                  00076400
      WRITE(KW,6000)                                                            00076500
      WRITE(KW,7755)                                                            00076600
 7755 FORMAT(5X,'MONTHS FROM COMPLIANCE UNTIL SETTLEMENT=')                     00076700
      READ(KR,*)DD                                                              00076800
      ZDELAY=ZTOTAL*(1.+R1)**DD                                                 00076900
      WRITE(KW,6000)                                                            00077000
      IF(ZDELAY)6461,6461,6465                                                  00077100
 6461 ZDELAY=-ZDELAY                                                            00077200
      WRITE(KW,7756)ZDELAY                                                      00077300
 7756 FORMAT(5X,'SETTLEMENT DUE EPA=',F10.2)                                    00077400
      GO TO 6475                                                                00077500
 6465 WRITE(KW,7757)ZDELAY                                                      00077600
 7757 FORMAT(5X,'SETTLEMENT DUE FIRM=',F10.2)                                   00077700
 6475 CONTINUE                                                                  00077800
C                                                                               00077900
C                                                                               00078000
C                                                                               00078100
C                                                                               00078200
C     CREATE THE OPTION TO CHANGE SOME OF THE VARIABLES                         00078300
C                                                                               00078400
      WRITE(KW,6000)                                                            00078500
      WRITE(KW,6000)                                                            00078600
      WRITE(KW,6000)                                                            00078700
 7299 CONTINUE                                                                  00078800
      WRITE(KW,7300)                                                            00078900
 7300 FORMAT(5X,'HOW MANY VARIABLES DO YOU WISH TO CHANGE ',                    00079000
     C '?')                                                                     00079100
      READ(KR,*)NLOOP                                                           00079200
      IF(NLOOP)99999,99999,2700                                                 00079300
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2700    IF(NLOOP-999)2800,2710,2710                                    00079400
2710    WRITE(KW,7501)                                                 00079500
7501    FORMAT(5X,'1, PRECOMPLIANCE EXPENDITURES')                     00079600
        WRITE(KW,7502)                                                 00079700
7502    FORMAT(5X,'     MONTH       CAPITAL          O & M')           00079800
        DO 2715 J=1,L                                                  00079900
        IF(DPOST)2712,2712,2714                                        00080000
2712    ZC=PRECAP(J)                                                   00080100
        ZM=PROM(J)                                                     00080200
        GO TO 2715                                                     00080300
2714    ZC=PRECAP(J)*(1.+I1)**L                                        00080400
        ZM=PROM(J)*(1.+I1)**L                                          00080500
2715    WRITE(KW,7505)J,ZC,ZM                                          00080600
7505    FORMAT(12X,I2,F15.2,F15.2)                                     00080700
2720    ZMO=MO                                                         00080800
2724    WRITE(KW,4020)ZMO                                              00080900
        ZTITC=100.*TITC                                                00081000
        WRITE(KW,4030)ZTITC                                            00081100
        ZTTR=100.*TTR                                                  00081200
        WRITE(KW,4040)ZTTR                                             00081300
        ZI=100.*I                                                      00081400
        WRITE(KW,4050)ZI                                               00081500
        ZE=100.*E                                                      00081600
        WRITE(KW,4060)ZE                                               00081700
        ZRINT=100.*RINT                                                00081800
        WRITE(KW,4070)ZRINT                                            00081900
        ZRDIV=100.*RDIV                                                00082000
        WRITE(KW,4080)ZRDIV                                            00082100
        ZQ=100.*Q                                                      00082200
        WRITE(KW,4090)ZQ                                               00082300
        ZF=100.*F                                                      00082400
        WRITE(KW,4100)ZF                                               00082500
        ZB=100.*B                                                      00082600
        WRITE(KW,4110)ZB                                               00082700
        WRITE(KW,4130)NDEP                                             00082800
        WRITE(KW,4140)NUSE                                             00082900
        IF(DPOST)2735,2735,2725                                        00083000
2725    WRITE(KW,7524)                                                 00083100
7524    FORMAT(5X,'14, PENALTY PAYMENTS')                              00083200
        WRITE(KW,7525)                                                 00083300
7525    FORMAT(5X,'     MONTH        PAYMENT')                         00083400
        DO 2733  J=1,100                                               00083500
        IF(PAID(J))2733,2733,2730                                      00083600
2730    WRITE(KW,7505)J,PAID(J)                                        00083700
2733    CONTINUE                                                       00083800
        ZR=R*100.                                                      00083900
        WRITE(KW,7415)ZR                                               00084000
        WRITE(KW,6000)                                                 00084100
2735    GO TO 7299                                                     00084200
2800    DLOOP=2                                                        00084300
        IF(DPOST)2811,2811,2805                                        00084400
2805    DO 2809 J=1,L                                                  00084500
        PRECAP(J)=PRECAP(J)*(1.+I1)**L                                 00084600
2809    PROM(J)=PROM(J)*(1.+I1)**L                                     00084700
        II=II*(1.+I1)**L                                               00084800
        MO=MO*(1.+I1)**L                                               00084900
2811    IF(DDIV-1)2820,2820,2812                                       00085000
2812    II=II*1000.                                                    00085100
        MO=MO*1000.                                                    00085200
        DO 2815 J=1,L                                                  00085300
        PAID(J)=PAID(J)*1000.                                          00085400
        PRECAP(J)=PRECAP(J)*1000.                                      00085500
2815    PROM(J)=PROM(J)*1000.                                          00085600
        DDIV=1                                                         00085700
2820    WRITE(KW,7310)                                                 00085800
7310    FORMAT(5X,'TYPE NUMBER OF VARIABLES')                          00085900
        READ(KR,*)NVAR                                                 00086000
        GO TO (110,210,220,230,240,250,260,270,                        00086100
     C   300,280,290,350,320,322,417,365,385),NVAR                     00086200
3000    NLOOP=NLOOP-1                                                  00086300
        IF(NLOOP)420,420,2820                                          00086400
99999   STOP                                                           00086500
        END                                                            00086600
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federal register

WEDNESDAY, MARCH 21, 1979

PART IV



DEPARTMENT OF ENERGY

Economic Regulatory Administration

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FINAL LIST OF 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

[6450-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-78-25]

FINAL LIST OF 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, Department of Energy.

ACTION: Notice.

SUMMARY: This Notice revises the list of covered gas and electric utilities published in the December 22, 1978 FEDERAL REGISTER (43 FR 59883), "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 (PURPA) of 1978 and Title II of the National Energy Conservation Policy Act (NECPA) of 1978." In addition to the revised list, this Notice contains a State list identifying each State regulatory authority and the covered utilities it regulates, and other covered utilities in the State not regulated by the State regulatory authority.

FOR FURTHER INFORMATION CONTACT:

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NOTICE: The United States Department of Energy (DOE) is publishing a revised list of gas and electric utilities covered by Titles I and III of the Public Utility Regulatory Policies Act of 1978 (PURPA) and Title II of the National Energy Conservation Policy Act of 1978 (NECPA). This revised list is based on comments received on or before February 28, 1979, in response to the earlier notice identifying covered gas and electric utilities, published in the FEDERAL REGISTER, Friday, December 22, 1978, (43 FR 59883).

As required by PURPA Sections 102(c) and 301(d), and NECPA Section 211(b), the December 22, 1978 Notice required each State regulatory 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. The December 22, 1978 Notice also requested public comment on the accuracy of the list of gas and electric utilities.

The revised list reflects the following types of changes: the addition and deletion of gas and electric utilities based on the sales criteria contained in PURPA and NECPA; the addition and deletion of asterisks based on the sales criteria contained in PURPA and NECPA and the existence of residential sales and correction of type of ownership. DOE has also deleted all interstate natural gas pipelines which are not "engaged in the local distribution of natural gas" and do not have residential customers. In addition, Citizen Utilities Company has been deleted even though its company-wide sales exceed the statutory criteria. Citizen Utilities Company is essentially four separate operating companies in widely dispersed geographic areas from Vermont to Hawaii, none of which exceed the thresholds. For all other utilities on the list, the statutory criteria of company-wide sales apply, rather than sales within a State.

The attached revised list is arranged alphabetically, but subdivided into electric utilities and gas utilities and further subdivided by type of ownership: privately-owned, publicly-owned, and rural cooperatives.

In addition, DOE is publishing a second list which separately identifies each State regulatory authority, the covered utilities it regulates, and other covered utilities in the State not regulated by the State regulatory authority. The covered utilities identified in each State exceed the statutory criteria for company-wide, not State, sales. It should be noted that although the following rural electric cooperatives are listed under the ratemaking authority of the Tennessee Valley Authority, the Kentucky Public Service Commission also claims ratemaking authority over them:

*Pennyrile Rural Electric Cooperative Corporation
*Tri-County Electric Membership Corporation
*Warren Rural Electric Cooperative
*West Kentucky Rural Electric Cooperative Corporation

DOE listed the above rural electric cooperatives under the Tennessee Valley Authority pending resolution of the jurisdictional matter resulting from the current litigation.

The inclusion or exclusion of any utility does not affect the legal obligations of such utility or the responsible State regulatory authority under PURPA and NECPA.

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
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
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
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Commonwealth Edison Company
Community Public Service Company
Connecticut Light & Power Company
Consolidated Edison Company of New York
Consumers Power Company
CP National Corporation
Dallas Power & Light Company
Dayton Power & Light Company
Delmarva Power & Light Company
Delmarva Power & Light Company of Maryland
Delmarva Power & Light Company of Virginia
Detroit Edison Company
Duke Power Company
Duquesne Light Company
El Paso Electric Company
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, Inc.
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, Inc.
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
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 and 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—Luzerne Electric Division
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 Power & Light Company
Wisconsin Public Service Corporation

PUBLICLY-OWNED

*Albany Water, Gas & Light Commission
Anaheim—Electrical Division
Austin Electric Department
*Bristol Electric System (TN)
*Burbank Public Service Department
Central Lincoln People's Utility District (OR)
Chattanooga Electric Power Board
*Clarksville Department of Electricity (TN)
*Clatskanie People's Utility District (OR)
*Cleveland Division of Light & Power (OH)
*Cleveland Utilities (TN)
Colorado Springs Department of Public Utilities
Decatur Electric Department (AL)
*Detroit Public Lighting Department
Eugene Water & Electric Board (OR)
Fayetteville Public Works Commission (NC)
*Florence Electricity Department (AL)
*Gainesville-Alachua County Regional Electric, Water, and Sewer Utilities Board (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 of Franklin 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
*Richmond Power & Light (IN)
Riverside Public Utilities (CA)
*Rocky Mount 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 City Light Department (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)
Tallahassee, City of (FL)
*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 Corportation
*Flint Electrical Membership 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
North Georgia Electric Membership Corporation
*Pedernales Electric Cooperative
*Pennyrile Rural Electric Cooperative Corporation
*Singing River Electric Power Association
*South Central Power Company
Southern Maryland Electric Cooperative, Inc.
*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 Electric 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 and are covered by PURPA Title III and NECPA Title II.

INVESTOR-OWNED

Alabama Gas Corporation
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
Carnegie Natural Gas Company
Carolina Pipeline Company
Cascade Natural Gas Corporation
Central Illinois Light Company
Central Illinois Public Service Company
Chattanooga Gas Company
Cheyenne Light, Fuel and Power Company
Cincinnati Gas and Electric Company
Cities Service Gas Company (covered by NECPA only)
City Gas Company of Florida
Columbia Gas of Kentucky, Inc.
Columbia Gas of New York, Inc.
Columbia Gas of Ohio, Inc.
Columbia Gas of Pennsylvania, Inc.
Columbia Gas of Virginia, Inc.
Columbia Gas of West Virginia, Inc.
Connecticut Light & Power Company
Connecticut Natural Gas Corporation
Consolidated Edison Company of New York, Inc.
Consolidated Gas Supply Corporation
Consumers Power Company
CP National Corporation
Dayton Power & Light Company
Delmarva Power & Light Company
East Ohio Gas Company
Elizabethtown Gas Company
Entex, Inc.
Equitable Gas Company
Florida Gas Company
Gas Company of New Mexico
Gas Light Company of Columbus
Gas Service Company
Greeley Gas Company
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 Service Company
Louisville Gas & Electric Company
Lowell Gas Company
Madison Gas & Electric Company
Michigan Consolidated Gas Company
Michigan Gas Utilities Company
Michigan Power Company
Minnesota Gas Company
Mississippi Valley Gas Company
Missouri Public Service Company
Mobile Gas Service Corporation
Montana-Dakota Utilities Company
Montana Power Company
Mountain Fuel Supply Company
Nashville Gas Company
National Fuel Gas Distribution Corporation
National Gas and Oil Company
New Jersey Natural Gas Company
New Orleans Public Service, Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Corporation
North Carolina Natural Gas Corporation
North Central Public Service Company
North Shore Gas Company
Northern Illinois Gas Company
Northern Indiana Public Service Company
Northern Natural Gas Company
Northern States Power Company
North Penn Gas Company
Northwest Natural Gas Company
Northwestern Public Service Company
Oklahoma Natural Gas Company
Orange & Rockland Utilities
Pacific Gas & Electric Company
Panhandle Eastern Pipeline Company
Pennsylvania Gas & Water Company
Peoples Gas, Light and Coke Company
Peoples Gas System
Peoples Natural Gas Company
Peoples Natural Gas Division of Northern Natural Gas Company
Penn Fuel Gas, Inc.
Philadelphia Electric Company
Piedmont Natural Gas Company
Pioneer Natural Gas Company
Providence Gas Company
Public Service Company of Colorado
Public Service Company, Inc. of North Carolina
Public Service Electric and Gas Company
Rochester Gas & Electric Corporation
San Diego Gas & Electric Company
Sierra Pacific Power Company
South Carolina Electric & Gas Company
South Jersey Gas Company
Southeastern Michigan Gas Company
Southern California Gas Company
Southern Connecticut Gas Company
Southern Indiana Gas & Electric Company
Southern Union Gas Company
Southwest Gas Corporation
Terre Haute Gas Corporation
Tucson Gas & Electric Company
T. W. Phillips Gas and Oil Company
UGI Corporation
Union Gas System
Union Light, Heat & Power Company
United Cities Gas Company
Virginia Electric & Power Company
Washington Gas Light Company
Washington Natural Gas Company
Washington Water Power Company
West Ohio Gas Company
Western Kentucky Gas Company
Wisconsin Fuel & Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power & Light Company
Wisconsin Public Service Corporation

PUBLICLY-OWNED

Citizens Gas & Coke Utility (IN)
City of Richmond, Virginia, Department of Public Utilities
City Public Service Board (San Antonio)
Colorado Springs Deopartment of Public Utilities
Long Beach Gas Department
Memphis Light, Gas & Water Division
Metropolitan Utilities District of Omaha
Philadelphia Gas Works
Springfield City Utilities (MO)

STATE: Alabama
REGULATORY AUTHORITY: Alabama Public Service Commission
Gas Utilities
Investor-Owned:
Alabama Gas Corporation
Mobile Gas Service Corporation
Electric Utilities
Investor-Owned:
Alabama Power Company

The following covered utilities within the State of Alabama are not regulated by the Alabama Public Service Commission:

Electric Utilities
Publicly-Owned:
Decatur Electric Department
*Florence Electricity Department
Huntsville Utilities

STATE: Alaska
REGULATORY AUTHORITY: Alaska Public Utilities Commission
Gas Utilities
Investor-Owned:
Alaska Gas and Service Company
Electric Utilities
Rural Electric Cooperatives:
Chugach Electric Association

STATE: Arizona
REGULATORY AUTHORITY: Arizona Corporation Commission
Gas Utilities
Investor-Owned:
Arizona Public Service Company
Southern Union Gas Company
Southwest Gas Corporation
Tucson Gas and Electric Company
Electric Utilities
Investor-Owned:
Arizona Public Service Company
CP National Corporation
Tucson Gas and Electric Company

The following covered utility within the State of Arizona is not regulated by the Arizona Corporation Commission:

Electric Utilities
Publicly-Owned:
Salt River Project Agricultural Improvement and Power District

STATE: Arkansas
REGULATORY AUTHORITY: Arkansas Public Service Commission
Gas Utilities
Investor-Owned:
Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Company
Arkansas Western Gas Company
Electric Utilities
Investor-Owned:
Arkansas-Missouri Power Company
Arkansas Power and Light Company
Empire District Electric Company
Southwestern Electric Power Company
Rural Electric Cooperatives:
*First Electric Cooperative Corporation

STATE: California
REGULATORY AUTHORITY: California Public Utilities Commission
Gas Utilities
Investor-Owned:
Pacific Gas and Electric Company
San Diego Gas and Electric Company
Southern California Gas Company
Southwest Gas Corporation

Electric Utilities
Investor-Owned:
CP National Corporation
Pacific Gas and Electric Company
Pacific Power and Light Company
San Diego Gas and Electric Company
Sierra Pacific Power Company
Southern California Edison Company

The following covered utilities within the State of California are not regulated by the California Public Utilities Commission:

Electric Utilities
Publicly-Owned:
Anaheim Electric Division
*Burbank Public Service Department
*Glendale Public Service Department
Imperial Irrigation District
Los Angeles Department of water and power
Modesto Irrigation District
*Palo Alto Electric Utility
*Pasadena Water and Power Department
Riverside Public Utilities
Sacramento Municipal Utility District
*San Francisco Public Utilities Commission
Santa Clara Electric Department
*Turlock Irrigation District
Vernon Municipal Light Department

Gas Utilities
Publicly-Owned:
Long Beach Gas Department

STATE: Colorado
REGULATORY AUTHORITY: Colorado Public Utilities Commission
Gas Utilities
Investor-Owned:
Greeley Gas Company
Iowa Electric Light and Power Company
Kansas-Nebraska Natural Gas Company
Northern Natural Gas Company
Public Service Company of Colorado
Publicly-Owned:
Colorado Springs Department of Public Utilities (jurisdiction only outside city limits)
Electric Utilities
Investor-Owned:
Central Telephone and Utilities Corporation
Public Service Company of Colorado
Publicly-Owned:
Colorado Springs Department of Public Utilities (jurisdiction only outside city limits)

The following covered utilities within the State of Colorado are not regulated by the Colorado Public Utilities Commission:

Gas Utilities
Publicly-Owned:
Colorado Springs Department of Public Utilities (within city limits)
Electric Utilities
Publicly-Owned:
Colorado Springs Department of Public Utilities (within city limits)

STATE: Connecticut
REGULATORY AUTHORITY: Connecticut Public Utilities Control Authority
Gas Utilities
Investor-Owned:
Connecticut Light and Power Company
Connecticut Natural Gas Corporation
Southern Connecticut Gas Company
Electric Utilities
Investor-Owned:
Connecticut Light and Power Company
Hartford Electric Light Company
United Illuminating Company

STATE: Delaware
REGULATORY AUTHORITY: Delaware Public Service Commission
Gas Utilities
Investor-Owned:
Delmarva Power and Light Company
Electric Utilities
Investor-Owned:
Delmarva Power and Light Company

STATE: District of Columbia
REGULATORY AUTHORITY: Public Service Commission of the District of Columbia
Gas Utilities
Investor-Owned:
Washington Gas Light Company
Electric Utilities
Investor-Owned:
Potomac Electric Power Company

STATE: Florida
REGULATORY AUTHORITY: Florida Public Service Commission
Gas Utilities
Investor-Owned:
City Gas Company of Florida
Florida Gas Company
Peoples Gas System
Electric Utilities
Investor-Owned:
Florida Power Corporation
Florida Power and Light Company
Gulf Power Company
Tampa Electric Company
Publicly-Owned: The Florida Public Service Commission has rate structure jurisdiction over the following utilities—
*Gainesville-Aluchua County Regional Electric, Water and Sewer Utilities Board
Jacksonville Electric Authority
Lakeland Department of Electricity and Water
Orlando Utilities Commission
Tallahassee, City of

Rural Electric Cooperatives: The Florida Public Service Commission has rate structure jurisdiction over the following utilities—
*Clay Electric Cooperative
*Lee County Electric Cooperative

STATE: Georgia
REGULATORY AUTHORITY: Georgia Public Service Commission
Gas Utilities
Investor-Owned:
Atlanta Gas Light Company
Chattanooga Gas Company
Gas Light Company of Columbus
United Cities Gas Company
Electric Utilities
Investor-Owned:
Georgia Power Company
Savannah Electric and Power Company

The following utilities within the State of Georgia are not regulated by the Georgia Public Service Commission:

Electric Utilities
Rural Electric Cooperatives:
*Flint Electrical Membership Corporation
*Jackson Electric Membership Corporation
North Georgia Electric Membership Corporation

STATE: Hawaii
REGULATORY AUTHORITY: Hawaii Public Utilities Commission
Gas Utilities
None
Electric Utilities
Investor-Owned:
Hawaiian Electric Company, Inc.

STATE: Idaho
REGULATORY AUTHORITY: Idaho Public Utilities Commission
Gas Utilities
Investor-Owned:
Intermountain Gas Company
Washington Water Power Company
Electric Utilities
Investor-Owned:
Idaho Power Company
Pacific Power and Light Company
Utah Power and Light Company
Washington Water Power Company

STATE: Illinios
REGULATORY AUTHORITY: Illinois Commerce Commission
Gas Utilities
Investor-Owned:
Central Illinois Light Company
Central Illinois Public Service Company
Illinois Power Company
Interstate Power Company
Iowa-Illinois Gas and Electric Company
North Shore Gas Company
Northern Illinois Gas Company
Peoples Gas, Light and Coke Company
United Cities Gas Company

Electric Utilities
Investor-Owned:
Central Illinois Light Company
Central Illinois Public Service Company
Commonwealth Edison Company
Illinois Power Company
Interstate Power Company
Iowa-Illinois Gas and Electric Company
Union Electric Company
The following covered utility within the State of Illinois is not regulated by the Illinois Commerce Commission:
Electric Utilities
Publicly-Owned:
Springfield Water, Light and Power Department
STATE: Indiana
REGULATORY AUTHORITY: Indiana Public Service Commission
Gas Utilities
Investor-Owned:
Indiana Gas Company
Kokomo Gas and Fuel Company
Northern Indiana Public Service Company
Southern Indiana Gas and Electric Company
Terre Haute Gas Corporation
Publicly-Owned:
Citizens Gas and Coke Utility
Electric Utilities
Investor-Owned:
Indiana and Michigan Electric Company
Indianapolis Power and Light Company
Northern Indiana Public Service Company
Public Service Company of Indiana
Southern Indiana Gas and Electric Company
Publicly-Owned:
*Richmond Power and Light
STATE: Iowa
REGULATORY AUTHORITY: Iowa Commerce Commission
Gas Utilities
Investor-Owned:
Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
Iowa Public Service Company
Iowa Southern Utilities Company
Minnesota Gas Company
North Central Public Service Company
Peoples Natural Gas Division of Northern Natural Gas Company
Electric Utilities
Investor-Owned:
Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
Iowa Public Service Company
Iowa Southern Utilities Company
Union Electric Company
Publicly-Owned: The Iowa Commerce Commission has service and safety regulation over the following utilities—
*Muscatine Power and Light
Omaha Public Power District
STATE: Kansas
REGULATORY AUTHORITY: Kansas State Corporation Commission
Gas Utilities
Investor-Owned:
Anadarko Production Company
Arkansas-Louisiana Gas Company
Gas Service Company
Greeley Gas Company
Kansas-Nebraska Natural Gas Company
Kansas Power and Light Company
Northern Natural Gas Company
Panhandle Eastern Pipeline Company
Union Gas Systems
Electric Utilities
Investor-Owned:
Central Telephone and Utilities Corporation
Empire District Electric Company
Kansas City Power and Light Company
Kansas Gas and Electric Company
Kansas Power and Light Company
Southwestern Public Service Company
The following covered utility within the State of Kansas is not regulated by the Kansas State Corporation Commission:
Electric Utilities
Publicly-Owned:
Kansas City Board of Public Utilities
STATE: Kentucky
REGULATORY AUTHORITY: Kentucky Public Service Commission
Gas Utilities
Investor-Owned:
Columbia Gas of Kentucky, Inc.
Equitable Gas Company
Inland Gas Company
Louisville Gas and Electric Company
Union, Light, Heat and Power Company
Western Kentucky Gas Company
Electric Utilities
Investor-Owned:
Kentucky Power Company
Kentucky Utilities Company
Louisville Gas and Electric Company
Union, Light, Heat and Power Company
Rural Electric Cooperatives:
Green River Electric Corporation
Henderson-Union Rural Electric Cooperative Corporation
STATE: Louisiana
REGULATORY AUTHORITY: Louisiana Public Service Commission
Gas Utilities
Investor-Owned:
Arkansas-Louisiana Gas Company
Louisiana Gas Service Company
Electric Utilities
Investor-Owned:
Arkansas Power and Light
Central Louisiana Electric Company
Gulf States Utilities Company
Louisiana Power and Light Company (jurisdiction only outside of the Parish of Orleans)
Southwestern Electric Power Company
The following covered utilities within the State of Louisiana are not regulated by the Louisiana Public Service Commission:
Gas Utilities
Investor-Owned:
New Orleans Public Service, Inc.
Electric Utilities
Investor-Owned:
New Orleans Public Service, Inc.
Louisiana Power and Light Company (within the Parish of Orleans)
Publicly-Owned:
*Lafayette Utilities System
Rural Electric Cooperatives:
Southwest Louisiana Electric Membership Corporation
STATE: Maine
REGULATORY AUTHORITY: Maine Public Utilities Commission
Gas Utilities
None
Electric Utilities
Investor-Owned:
Bangor Hydro-Electric Company
Central Maine Power Company
STATE: Maryland
REGULATORY AUTHORITY: Maryland Public Service Commission
Gas Utilities
Investor-Owned:
Baltimore Gas and Electric Company
Washington Gas Light Company
Electric Utilities
Investor-Owned:
Baltimore Gas and Electric Company
Delmarva Power and Light Company of Maryland
Potomac Edison Company
Potomac Electric Power Company
Rural Electric Cooperatives:
Southern Maryland Electric Cooperative, Inc.
STATE: Massachusetts
REGULATORY AUTHORITY: Massachusetts Department of Public Utilities
Gas Utilities
Investor-Owned:
Bay State Gas Company
Boston Gas Company
Lowell Gas Company
Electric Utilities
Investor-Owned:
Boston Edison Company

Brockton Edison Company
Cambridge Electric Light Company
*Fall River Electric Light Company
Massachusetts Electric Company
New Bedford Gas and Edison Light Company
Western Massachusetts Electric Company

The following covered utility within the State of Massachusetts is not regulated by the Massachusetts Department of Public Utilities:

Electric Utilities
Publicly-Owned:
*Taunton Municipal Lighting Plant

STATE: Michigan

REGULATORY AUTHORITY: Michigan Public Service Commission

Gas Utilities
Investor-Owned:
Consumers Power Company
Michigan Consolidated Gas Company
Michigan Gas Utilities Company
Michigan Power Company
Southeastern Michigan Gas Company
Wisconsin Public Service Corporation

Electric Utilities
Investor-Owned:
Consumers Power Company
Detroit Edison Company
Indiana and Michigan Electric Company
*Lake Superior District Power Company
*Upper Peninsula Power Company
Wisconsin Electric Power Company
Wisconsin Public Service Corporation

The following covered utilities within the State of Michigan are not regulated by the Michigan Public Service Commission:

Electric Utilities
Publicly-Owned:
*Detroit Public Lighting Department
Lansing Board of Water and Light

STATE: Minnesota

REGULATORY AUTHORITY: Minnesota Department of Public Service

Gas Utilities
Investor-Owned:
Greeley Gas Company
Inter City Gas Limited
Interstate Power Company
Iowa Electric Light and Power Company
Minnesota Gas Company
Montana-Dakota Utilities Company
North Central Public Service Company
Northern States Power Company
Peoples Natural Gas Division of Northern Natural Gas Company

Electric Utilities
Investor-Owned:
Interstate Power Company
Minnesota Power and Light Company
Northern States Power Company
Otter Tail Power Company

STATE: Mississippi

REGULATORY AUTHORITY: Mississippi Public Service Commission

Gas Utilities
Investor-Owned:
Entex, Incorporated
Mississippi Valley Gas Company

Electric Utilities
Investor-Owned:
Mississippi Power and Light Company
Mississippi Power Company

The following covered utilities within the State of Mississippi are not regulated by the Mississippi Public Service Commission:

Electric Utilities
Rural Electric Cooperatives:
*Singing River Electric Power Association
*Southern Pine Electric Power Association

STATE: Missouri

REGULATORY AUTHORITY: Missouri Public Service Commission

Gas Utilities
Investor-Owned:
Gas Service Company
Laclede Gas Company Consolidated
Missouri Public Service Company
Peoples Natural Gas Division of Northern Natural Gas Company

Electric Utilities
Investor-Owned:
Arkansas-Missouri Power Company
Empire District Electric Company
Kansas City Power and Light Company
*Missouri Edison Company
Missouri Power and Light Company
Missouri Public Service Company
Missouri Utilities Company
St. Joseph Light and Power Company
Union Electric Company

The following covered utilities within the State of Missouri are not regulated by the Missouri Public Service Commission:

Gas Utilities
Investor-Owned:
Cities Service Gas Company
Publicly-Owned:
Springfield City Utilities

Electric Utilities
Publicly-Owned:
*Independence Power and Light Department
Springfield City Utilities

STATE: Montana

REGULATORY AUTHORITY: Montana Public Service Commission

Gas Utilities
Investor-Owned:
Montana-Dakota Utilities Company
Montana Power Company

Electric Utilities
Investor-Owned:
Black Hills Power and Light Company
Montana-Dakota Utilities Company
Montana Power Company
Pacific Power and Light Company
Washington Water Power Company

STATE: Nebraska

REGULATORY AUTHORITY: Nebraska Public Service Commission

The Commission does not regulate the rates and services of the gas and electric utilities of the State of Nebraska.

The following covered utilities within the State of Nebraska are not regulated by the Nebraska Public Service Commission:

Electric Utilities
Publicly-Owned:
Lincoln Electric System
Nebraska Public Power District
Omaha Public Power District

Gas Utilities
Investor-Owned:
Gas Service Company
Iowa Electric Light and Power Company
Iowa Public Service Company
Kansas-Nebraska Natural Gas Company
Minnesota Gas Company
Northern Natural Gas Company
Northwestern Public Service Company
Peoples Natural Gas Division of Northern Natural Gas Company
Publicly-Owned:
Metropolitan Utilities District of Omaha

STATE: Nevada

REGULATORY AUTHORITY: Nevada Public Service Commission

Gas Utilities
Investor Owned:
CP National Corporation
Southwest Gas Corporation

Electric Utilities
Investor-Owned:
CP National Corporation
Idaho Power Company
Nevada Power Company
Sierra Pacific Power Company

STATE: New Hampshire

REGULATORY AUTHORITY: New Hampshire Public Utilities Commission

Gas Utilities
None

Electric Utilities
Investor-Owned:
Public Service Company of New Hampshire

STATE: New Jersey

REGULATORY AUTHORITY: New Jersey Department of Energy, Board of Public Utilities

Gas Utilities
Investor-Owned:
Elizabethtown Gas Company
New Jersey Natural Gas Company
Public Service Electric and Gas Company
South Jersey Gas Company
Electric Utilities
Investor-Owned:
Atlantic City Electric Company
Jersey Central Power and Light Company
Public Service Electric and Gas Company
Rockland Electric Company
STATE: New Mexico
REGULATORY AUTHORITY: New Mexico Public Service Commission
Gas Utilities
Gas Company of New Mexico
Electric Utilities
Investor-Owned:
Community Public Service Company
El Paso Electric Company
*New Mexico Electric Service Company
Public Service Company of New Mexico
Southwestern Public Service Company
STATE: New York
REGULATORY AUTHORITY: New York Public Service Commission
Gas Utilities
Investor-Owned:
Brooklyn Union Gas Company
Columbia Gas of New York, Inc.
Consolidated Edison Company of New York, Inc.
Long Island Lighting Company
National Fuel Gas Distribution Corporation
New York State Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation
Electric Utilities
Investor-Owned:
Central Hudson Gas and Electric Corporation
Consolidated Edision Company of New York
Long Island Lighting Company
New York State Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilites
Rochester Gas and Electric Corporation

The following covered utilities within the State of New York are not regulated by the New York Public Service Commission:

Electric Utilities
Publicly-Owned:
*Albany Water, Gas and Light Commission
*Power Authority of New York

STATE: North Carolina
REGULATORY AUTHORITY: North Carolina Utilities Commission
Gas Utilities:
Investor-Owned:
North Carolina Natural Gas Corporation
Piedmont Natural Gas Company
Public Service Company, Inc. of North Carolina
United Cities Gas Company
Electric Utilities
Investor-Owned:
Carolina Power and Light Company
Duke Power Company
Virginia Electric and Power Company

The following covered utilities within the State of North Carolina are not regulated by the North Carolina Utilities Commission:

Electric Utilities
Publicly-Owned:
Fayetteville Public Works Commission
*Greenville Utilities Commission
*Rocky Mount Public Utilities
*Wilson Utilities Department
STATE: North Dakota
REGULATORY AUTHORITY: North Dakota Public Service Commission
Gas Utilities
Investor-Owned:
Montana-Dakota Utilities Company
Northern States Power Company
Electric Utilities
Investor-Owned:
Montana-Dakota Utilities Company
Northern States Power Company
Otter Tail Power Company
STATE: Ohio
REGULATORY AUTHORITY: Ohio Public Utilities Commission
Gas utilities
Investor-Owned:
Cincinnati Gas and Electric Company
Columbia Gas of Ohio, Inc.
Dayton Power and Light Company
East Ohio Gas Company
National Fuel Gas Distribution Corporation
National Gas and Oil Company
West Ohio Gas Company
Electric Utilities
Investor-Owned:
Cincinnati Gas and Electric Company
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Dayton Power and Light Company
Monongahela Power Company
Ohio Edison Company
Ohio Power Company
Toledo Edison Company

The following covered utilities within the State of Ohio are not regulated by the Ohio Public Utilities Commission:

Electric Utilities
Publicly-Owned:
*Cleveland Division of Light and Power
Rural Electric Cooperatives:
*South Central Power Company

STATE: Oklahoma
REGULATORY AUTHORITY: Oklahoma Corporation Commission
Gas Utilities
Investor-Owned:
Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Company
Gas Service Company
Lone Star Gas Company
Oklahoma Natural Gas Company
Southern Union Gas Company
Union Gas System
Electric Utilities
Investor-Owned:
Empire District Electric Company
Oklahoma Gas and Electric Company
Public Service Company of Oklahoma
Southwestern Public Service Company

The following covered utility within the State of Oklahoma is not regulated by the Oklahoma Corporation Commission.

Gas Utilities
Investor-Owned:
Cities Service Gas Company

STATE: Oregon
REGULATORY AUTHORITY: Public Utility Commissioner of Oregon
Gas Utilities
Investor-Owned:
CP National Corporation
Cascade Natural Gas Corporation
Northwest Natural Gas Company
Electric Utilities
Investor-Owned:
CP National Corporation
Idaho Power Company
Pacific Power and Light Company
Portland General Electric Company

The following covered utilities within the State of Oregon are not regulated by the Public Utility Commissioner of Oregon:

Electric Utilities
Publicly-Owned:
Central Lincoln People's Utility District
*Clatskanie People's Utility District
Eugene Water and Electric Board
*Springfield Utilities Board
Rural Electric Cooperatives:
*Umatilla Electric Cooperative Association

STATE: Pennsylvania
REGULATORY AUTHORITY: Pennsylvania Public Utility Commission
Gas Utilities
Investor-Owned:
Carnegie Natural Gas Company
Columbia Gas of Pennsylvania, Inc.
Equitable Gas Company

National Fuel Gas Distribution Corporation
North Penn Gas Company
Penn Fuel Gas, Inc.
Pennsylvania Gas and Water Company
Peoples Natural Gas Company
Philadelphia Electric Company
T. W. Phillips Gas and Oil Company
UGI Corporation
Electric Utilities
Investor-Owned:
Duquesne Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
Pennsylvania Power Company
Pennsylvania Power and Light Company
Philadelphia Electric Company
*UGI—Luzerne Electric Division
West Penn Power Company

The following covered utility within the State of Pennsylvania is not regulated by the Pennsylvania Public Utility Commission:
Gas Utilities
Publicly-Owned:
Philadelphia Gas Works

STATE: Puerto Rico
REGULATORY AUTHORITY: Puerto Rico Public Service Commission
Gas Utilities
None
Electric Utilities
None

The following covered utility within Puerto Rico is not regulated by the Puerto Rico Public Service Commission:
Electric Utilities
Publicly-Owned:
Puerto Rico Water Resources Authority

STATE: Rhode Island
REGULATORY AUTHORITY: Rhode Island Public Utilities Commission
Gas Utilities
Investor-Owned:
Providence Gas Company
Electric Utilities
Investor-Owned:
Blackstone Valley Electric Company
Narragansett Electric Company

STATE: South Carolina
REGULATORY AUTHORITY: South Carolina Public Service Commission
Gas Utilities
Investor-owned:
Carolina Pipeline Company
Piedmont Natural Gas Company
South Carolina Electric and Gas Company
United Cities Gas Company
Electric Utilities
Investor-owned:
Carolina Power and Light Company
Duke Power Company
South Carolina Electric and Gas Company

The following covered utility within the State of South Carolina is not regulated by the South Carolina Public service Commission:
Electric Utilities
Publicly-Owned:
South Carolina Public service Authority

STATE: South Dakota
REGULATORY AUTHORITY: South Dakota Public utilities Commission
Gas Utilities
Investor-owned:
Iowa Public Service Company
Minnesota Gas Company
Montana-Dakota Utilities Company
Northwestern Public Service Company
Electric Utilities
Investor-owned:
Black Hills Power and Light Company
Iowa Public Service Company
Montana-Dakota Utilities Company
Northern States Power Company
*Northwestern Public Service Company
Otter Tail Power Company

STATE: Tennessee
REGULATORY AUTHORITY: Tennessee Public Service Commission
REGULATORY AUTHORITY: Tennessee Public Service Commission
Gas Utilities
Investor-owned:
Chattanooga Gas Company
Nashville Gas Company
United Cities Gas Company
Electric Utilities
Investor-owned:
Arkansas Power and Light Company
Kentucky Utilities Company
Kingsport Power Company

The following covered utilities within the State of Tennessee are not regulated by the Tennessee Public Service Commission:
Electric Utilities
Publicly-Owned:
*Bristol Electric System
Chattanooga Electric Power Board
*Clarksville Department of Electricity
*Cleveland Utilities
*Greenville Light and Power System
*Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utility Board
Memphis Light, Gas and water Division
Nashville Electric Service
Rural Electric Cooperatives:
Cumberland Electric Membership Corporation
*Duck River Electric Membership Corporation
*Gibson County Electric Membership Corporation
*Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
*Southwest Tennessee Electric Membership Corporation
*Tri-County Electric Membership Corporation
*Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative
Gas Utilities
Publicly-Owned:
Memphis Light, Gas and Water Division

STATE: Tennessee
REGULATORY AUTHORITY: Tennessee Valley Authority
Gas UtilitiesNone
Electric Utilities
Publicly-Owned:
*Bristol Electric System
Chattanooga Electric Power Board
*Clarksville Department of Electricity
*Cleveland Utilities
Decatur Electric Department
*Florence Electricity Department
*Greenville Light and Power System
Huntsville Utilities
Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utilities Board
Memphis, Light, Gas and Water Division
Nashville Electric Service
Rural Electric Cooperatives:
*Appalachian Electric Cooperative
Cumberland Electric Membership Cooperative
*Duck River Electric Membership Cooperative
*Four-County Electric Power Association
*Gibson County Electric Membership Corporation
*Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
North Georgia Electric Membership Corporation
*Pennyrile Rural Electric Cooperative Corporation
*Southwest Tennessee Electric Membership Corporation
*Tri-County Electric Membership Corporation
*Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative
*Warren Rural Electric Cooperative Corporation
*West Kentucky Rural Electric Cooperative Corporation

STATE: Texas
REGULATORY AUTHORITY: Railroad Commission of Texas

Gas Utilities
Investor-Owned:
*Anadarko Production Company
Arkansas-Louisiana Gas Company
Entex, Inc.
Lone Star Gas Company
Peoples Natural Gas Division of Northern natural Gas Company
Pioneer Natural Gas Company
Southern Union Gas Company

(The Railroad Commission of Texas has *appellate* jurisdiction only over the activities of the above companies within incorporated cities.)

The following covered utilities within the State of Texas are not regulated by the Railroad Commission of Texas:

Gas Utilities
Investor-Owned:
Cities Service Gas Company
Publicly-Owned:
City Public Service Board (San Antonio)

STATE: Texas
REGULATORY AUTHORITY: Texas Public Utility Commission
Gas Utilities
Investor-Owned:
None
Electric utilities
Investor-Owned:
Central Power and Light Company
Community Public Service Company
Dallas Power and Light Company
El Paso Electric Company
Gulf States Utilities
Houston Lighting and Power Company
Southwestern Electric Power Company
*Southwestern Electric Service Company
Southwestern Public Service Company
Texas Electric Service Company
Texas Power and Light Company
West Texas Utilities Company
Publicly-Owned:
Lower Colorado River Authority

The Texas Public Utility Commission has special appellate jurisdiction over ratemaking decisions of the governing body of any municipality which affect the rates of a municipally-owned electric utility as provided by State statute. The governing body of each Texas municipality exercises exclusive original ratemaking jurisdiction over electric utility rates, operations, and services provided by an electric utility within its city or town limits.

The following municipally-owned electric utilities are *not* under the Commission's original ratemaking jurisdiction. The Commission's jurisdiction over these utilities is limited to appeal de novo.

Electric Utilities
Publicly-Owned:
Austin Electric Department
Garland Electric Department
*Lubbock Power and Light
San Antonio Public Service Board
Rural Electric Cooperatives:
*Pedernales Electric Cooperative

STATE: Utah
REGULATORY AUTHORITY: Utah Public Service Commission
Gas Utilities
Investor-Owned:
Mountain Fuel Supply Company
Electric Utilities
Investor-Owned:
CP National Corporation
Utah Power and Light Company
Rural Electric Cooperatives:
*Moon Lake Electric Association

STATE: Vermont
REGULATORY AUTHORITY: Vermont Public Service Board
Gas Utilities
None
Electric utilities
Investor-Owned:
Central Vermont Public Service Corporation
Green Mountain Power Corporation
Public Service Company of New Hampshire

STATE: Virgina
REGULATORY AUTHORITY: Virginia State Corporation Commission
Gas Utilities
Investor-Owned:
Columbia Gas of Virginia, Inc.
United Cities Gas Company
Virginia Electric and Power Company
Washington Gas Light Company
Electric Utilities
Investor-Owned:
Appalachian Power Company
Delmarva Power and light Company of Virginia
*Old Dominion Power Company
Potomac Edison Company
Potomac Electric Power Company
Virginia Electric and Power Company

The following covered utility within the State of Virginia in not regulated by the Virginia State Corporation Commission:

Electric Utilities
Publicly-Owned:
City of Richmond, Virginia, Department of Public Utilities

STATE: Washington
REGULATORY AUTHORITY: Washington Utilities and Transportation Corporation
Gas Utilities
Investor-Owned:
Cascade Natural Gas Corporation
Northwest Natural Gas Company
Washington Natural Gas Company
Washington Water Power Company
Electric Utilities
Investor-Owned:
Pacific Power and Light Company
Puget Sound power and Light Company
Washington Water Power Company

The following covered utilities within the State of Washington are not regulated by the Washington Utilities and Transportation Corporation:

Electric Utilities
Publicly-Owned:
*Port Angeles Light and Water Department
Public Utility District No. 1 of Benton County
Public Utility District No. 1 of Chelan County
Public Utility District No. 1 of Clark County
Public Utility District No. 1 of Cowlitz County
Public Utility District No. 1 of Franklin County
Public Utility District No. 1 of Grant County
Public Utility District No. 1 of Grays Harbor County
Public Utility District No. 1 of Lewis County
Public Utility District No. 1 of Snohomish County
Seattle City Light Department
Tacoma Public Utilities—Light Division

STATE: West Virginia
REGULATORY AUTHORITY: West Virginia Public Service Commission
Gas Utilities
Investor-Owned:
Cabot Corporation Utility Division
Columbia Gas of West Virginia, Inc.
Consolidated Gas Supply Corporation
Equitable Gas Company
Electric Utilities
Investor-Owned:
Appalachian Power Company
Monongahela Power Company
Potomac Edison Company
Virginia Electric and Power Company
Wheeling Electric Company

STATE: Wisconsin
REGULATORY AUTHORITY: Wisconsin Public Service Commission
Gas Utilities
Investor-Owned:
Madison Gas and Electric Company
Northern States Power Company
Wisconsin Fuel and Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation
Electric Utilities
Investor-Owned:
*Lake Superior District Power Company
Madison Gas and Electric Company
Northern States Power Company

Wisconsin Electric Power Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation
STATE: Wyoming
REGULATORY AUTHORITY: Wyoming Public Service Commission
Gas Utilities
Investor-Owned:
Cheyenne Light, Fuel and Power Company
Kansas-Nebraska Natural Gas Company
Montana-Dakota Utilities Company
Moutain Fuel Supply Company
Electric Utilities
Investor-Owned:
Black Hills Power and Light Company
Montana-Dakota Utilities Company
Pacific Power and Light Company
Utah Power and Light Company.

Issued in Washington, D.C. on March 14, 1979.

JERRY L. PFEFFER,
Acting Assistant Administrator, Office of Utility Systems, Economic Regulatory Administration.

[FR Doc. 79-8387 Filed 3-16-79; 2:18 pm]

federal register

WEDNESDAY, MARCH 21, 1979

PART V



ENVIRONMENTAL PROTECTION AGENCY

■

IRON AND STEEL PLANTS, BASIC OXYGEN FURNACES

Standards Review

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 60]

[FRL 1012-1]

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES: IRON AND STEEL PLANTS, BASIC OXYGEN FURNACES

Review of Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Review of standards.

SUMMARY: EPA has reviewed the standards of performance for basic oxygen process furnaces (BOPFs) used at iron and steel plants. The review is required under the Clean Air Act, as amended in August 1977. The purpose of this notice is to announce EPA's intent to propose amendments to the standards at a later date.

DATES: Comments must be received by May 21, 1979.

ADDRESS: Send comments to: Mr. Don Goodwin (MD-13), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Ajax, telephone: (919) 541-5271.

The document "A Review of Standards of Performance of New Stationary Sources—Iron and Steel Plants/Bassic Oxygen Furnaces" (report number EPA-450/3-78-116) is available upon request from Mr. Robert Ajax (MD-13), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711.

SUPPLEMENTARY INFORMATION:

Background

Particulate matter emissions from BOPFs fall in two categories, primary and secondary. Emissions associated with the oxygen blow portion of the BOPF are termed "primary" emissions. These emissions are generated at the rate of 25 to 28 kg/Mg (50 to 55 lb/ton) of raw steel. Emissions generated during ancillary operations, such as charging and tapping, are termed "secondary" or fugitive emissions. These emissions are generated at a lower rate in the range of 0.5 to 1 kg/Mg (1 to 2 lb/ton) of raw steel.

In June of 1973, EPA proposed a regulation under Section 111 of the Clean Air Act to control primary particulate emissions from basic oxygen process furnaces at iron and steel plants. The regulation, promulgated in March 1974, requires that no owner or operator of any furnace producing steel by charging scrap steel, hot metal, and flux materials into a vessel and introducing a high volume of an oxygen-rich gas shall discharge into the atmosphere any gases which contain particulate matter in excess of 50 mg/dscm (0.022 gr/dscf).

The Clean Air Act Amendments of 1977 require that the Administrator of the EPA review and, if appropriate, revise established standards of performance for new stationary sources at least every 4 years (Section 111(b)(1)(B)). This notice announces that EPA has completed a review of the standard of performance for basic oxygen process furnaces at iron and steel plants and invites comment on the results of this review.

Findings

Industry Growth Rate

The present economic conditions in the United States and worldwide steel industry have created a significant excess U.S. BOPF capacity and a tightening of the availablitly of capital for future expansion. Since the promulgation of the BOPF standard, new BOPF construction has declined significantly. For example, three of the four units scheduled for startup in 1978 were originally scheduled to begin production in 1974. This coupled with the lack of any additional industry announcements of new U.S. BOPF contruction, indicates that construction of new BOPFs which would be subject to a revised new source performance standard (NSPS) is not likely to commence before 1980, if then. Construction of new plants beyond 1980 will be dictated by domestic economic conditions and international competition, and is, therefore, uncertain.

Primary Emission Control

Review of the literature and performance test data indicates that the use of a closed hood in conjunction with a scrubber or an open hood in conjunction with either a scrubber or electrostatic precipitator currently represents the best demonstrated control technologies for controlling BOPF primary emissions. All BOPFs that have been installed since 1973 incorporate closed hood systems for particulate emission control. The closed hood control system in combination with a venturi scrubber has become the system of choice of the U.S. steel industry because this system saves energy and has generally lower maintenance requirements compared with the older open-hood electrostatic precipitator system. Use of the closed hood system requires that approximately 80 percent less air be cleaned than with the open hood system. The potential also exists with the closed hood system for using the carbon monoxide off-gas as a fuel source.

As of early 1978, no NSPS compliance tests had been carried out since the promulgation of the standard. Pertinent data are available, however, from emission tests on a limited number of new BOPFs. These tests, carried out using EPA Method 5, indicate that primary particulate emission levels of between 32 and 50 mg/dscf (0.014 and 0.022 gr/dscf) are being achieved using the same control technology as that existing at the time the standard for primary emissions was established for BOPFs. The rationale for the current NSPS level of 50 mg/dscm (0.022 gr/dscf) for primary stack emissions, as described in 1973, is therefore, still considered to be valid.

Secondary Emission Control Technology

Secondary or fugitive emissions not captured by the BOPF primary emissions control system during various BOPF ancillary operations currently amount to more than 100 tons annually. One of the principal sources of these emissions, the hot metal charging cycle, can generate amounts of fugitive emissions on the order of 0.25 kg/Mg (0.5 lb/ton) of charge. These emissions are presently uncontrolled in most of the older BOPFs and only partially controlled in most BOPFs that have come on stream during the past 5 years.

Control of secondary emissions involves a developing technology that requires in-depth study to determine the most effective methods of fume capture. Although potentially expensive to construct, the complete furnace enclosure equipped with several auxiliary hoods is currently the only demonstrated technology exhibiting the potential for effectively minimizing fugitive emissions from a new BOPF.

Seven new BOPFs installed in the U.S. in the past 7 years have incorporated partial or full furnace enclosures as part of the original particulate emission control system. Since these designs had deficiencies, these systems are operating with varying degrees of success. Six new furnace enclosure installations due to commence operations in 1978, including four on new BOPFs and two retrofit installations, will incorporate a secondary hood inside the furnace enclosure with sufficient volume for fugitive emission control.

Clarification of Wording of NSPS Standard

Review of the existing standard revealed possible ambiguity in the wording of the NSPS with regard to the

definitions of a BOPF. Also, the definition of the operating cycle during which sampling is performed requires clarification. Specifically, the stack emissions averaged over the oxygen blow part of the cycle could be significantly different from the emissions averaged over a period or periods that includes scrap preheating and turndown for vessel sampling. The current standard is unclear as to which averaging time should be used. Since no tests to date have come under the NSPS, averaging time has not been an issue; however, interpreting the standard will be a problem until this matter is resolved.

Conclusions

Based upon the above findings, the following conclusions have been reached by EPA:

(1) The best demonstrated systems of emissions control at the time the standard for primary emissions was established for BOPF have not changed in the past 5 years. (See APTD-1352c (EPA/2-74-003), Background Information for New Source Performance Standards, Volume 3, Promulgated Standards.) These technologies control emissions to a level consistent with the current standard; therefore, revision to the existing standard is not required, if only primary emissions are to be controlled.

(2) Secondary or fugitive emissions from BOPFs represent a major air pollution emission source. EPA, therefore, intends to initiate a project to revise the existing standard of performance to include fugitive emissions. This development project is planned to begin during 1979 and lead to a proposal 20 months after initiation. In addition, an assessment of foreign technology, which ahs been initiated by the Agency, will be included in the basis for the revised standard. The assessment may lead to further conclusions about the allowable emissions from the primary gas cleaning stack due to the interdependence of primary and secondary control technologies.

(3) The ambiguities in the present standard concerning definition of a BOPF and the operating cycle to be measured should be clarified, and a project to do so has been initiated.

Public Participation

All interested persons are invited to comment on this review, the conclusions, and EPA's planned action. Comments should be submitted to: Mr. Don Goodwin (MD-13), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711.

Dated: March 9, 1979.

Barbara Blum,
Acting Administrator.

[FR Doc. 79-8360 Filed 3-20-79; 8:45 am]

federal register

WEDNESDAY, MARCH 21, 1979

PART VI



DEPARTMENT OF ENERGY

Economic Regulatory Administration

■

TRANSITIONAL FACILITIES

Revised Interim Rule To Permit Classification of Certain Powerplants and Installations as Existing Facilities

[6450-01-M]

Title 10—Energy

CHAPTER II—DEPARTMENT OF ENERGY

SUBCHAPTER E—ALTERNATE FUEL

[Docket No. ERA-R-78-21]

PART 515—TRANSITIONAL FACILITIES

Revised Interim Rule To Permit Classification of Certain Powerplants and Installations as Existing Facilities

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Revised interim rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is issuing this Revised Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities for purposes of implementing provisions of Titles II and III of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or the "Act"). This rule automatically classifies powerplants and boilers which are major fuel-burning installations ("MFBIs" or "installations") as "existing" on the basis that they were operational on April 20, 1977. The rule additionally automatically classifies transitional facilities as "existing" on the basis that they have the design capability of consuming any fuel at a fuel heat input rate which does not equal or exceed 100 million Btu's per hour. Transitional powerplants and MFBI's, for which construction or acquisition began before November 9, 1978, may be classified as "existing" if they can demonstrate that they will incur a substantial financial penalty, an adverse effect on electric system reliability (if a powerplant), or significant operational detriment (if an installation).

DATES: Effective date: March 15, 1979. Comments due by: May 8, 1979.

ADDRESS: Comments to: Department of Energy, Public Hearing Management, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

William L. Webb, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room B-110, Washington, D.C. 20461 202/634-2170.

Stephen M. Stern, Regulations and Emergency Planning, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 2130, Washington, D.C. 20461, 202/254-9766.

Robert L. Davies, Fuels Regulation Program Office, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room 7202, Washington, D.C. 20461, 202/254-3910.

James H. Heffernan, Office of General Counsel, Department of Energy, 12th and Pennsylvania Ave., N.W., Room 7136, Washington, D.C. 20461, 202/633-8820.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Extended comment period.
III. Significant comments to date.
IV. Procedural matters.

I. Background

Title II of the Act prohibits "new" powerplants and installations from using oil and natural gas unless granted a specific exemption from this prohibition by ERA. It also prohibits "new" powerplants from constructing their facilities without an alternate fuel capability. The Act classifies all powerplants and installations for which construction or acquisition began after April 20, 1977, as "new" unless otherwise classified by ERA as "existing" pursuant to ERA regulations. If classified as "existing," a powerplant or installation is subject to the provisions of Title III rather than Title II of the Act.

II. Extended Comment Period

ERA issued, on November 16, 1978, a notice of its Interim Rule for Transitional Facilities (Interim Rule) (43 FR 54912, November 22, 1978). Under the provisions of this notice, the Interim Rule became effective immediately; however, ERA announced that final decisions on classifications under the Interim Rule would not be made until completion of the public hearings and comment period on the Interim Rule. The period for submission of written comments on the Interim Rule closed on January 15, 1979; public hearings were conducted by ERA on December 13, 1978, and January 15, 1979, in Washington, D.C. and Baltimore, Maryland. ERA received 70 written comments and heard 16 oral presentations at its hearings, all of which were incorporated into the record of the administrative proceedings on the Interim Rule. Based upon these comments and ERA analysis of the full record in this administrative proceeding, to date, ERA has decided to revise the Interim Rule and is now issuing this Revised Interim Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (Revised Interim Rule).

ERA has also decided to allow an additional period, commencing on the date this Revised Interim Rule is issued and ending on May 8, 1979, for submission of written comments on these revisions. ERA invites all interested persons to participate in these further proceedings relating to classification of transitional facilities by submitting any information, views or arguments to Department of Energy, Public Hearing Management, Room 2313, 2000 M Street, NW., Washington, D.C. 20461. All submissions should be identified on the outside envelope and on the documents contained therein with the designation, "Transitional Facilities," Docket No. ERA-R-78-21. You should submit fifteen copies. All comments received will be available for public inspection in the DOE Reading Room GS-152, James Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. We will consider all comments received by May 8, 1979.

ERA intends immediately, upon issuance of this Revised Interim Rule, to begin receiving requests for classification and to make determinations on these requests based upon the provisions set forth in this Revised Interim Rule. ERA's determinations on requests for classification that are filed on or before June 8, 1979, shall be made upon the basis of the provisions of this Revised Interim Rule, or upon the Final Rule, where the application of the Final Rule would result in a more favorable disposition of your request. Any requests filed after June 8, 1979, shall be made on the basis of the provisions of the rule that is in effect on the date the request for classification is received by ERA. ERA urges you to file your request expeditiously so that ERA may begin its decisional analysis early, may render a timely decision, and gain sound operational experience for the benefit of both the Government and those filing requests. Any information that you consider to be confidential must be separately identified and submitted in accordance with DOE's Freedom of Information regulations set forth at 10 CFR Part 1004.

III. Significant Comments to Date

In the Preamble to the Interim Rule published on November 22, 1978, ERA specifically solicited comments on the eligibility criteria for filing requests for classification, the criteria for determining "substantial financial penalty," the criteria for determining "significant operational detriment" and a proposal to treat smaller installations on an expedited basis if they met certain operational status and size criteria. ERA received a significant number of comments in all of these areas, as well as many comments on other provisions in the Interim Rule.

A. ELIGIBILITY

ERA has revised its criteria for your eligibility to request that ERA classify your facility as "existing" so as to broaden the class of eligible facilities. You are eligible under this Revised Interim Rule to request ERA to classify your powerplant or installation as "existing" if you can demonstrate to ERA's satisfaction that you signed a contract for the construction or acquisition of your transitional facility prior to the date of FUA's enactment, November 9, 1978. In order to clearly delineate the status of all eligible facilities, and to reduce the burden of requesting classification for some facilities, ERA has established standards for automatic classifications of facilities as "new" or "existing." For both powerplants and installations, your facility is automatically classified as "new," and you are ineligible to request classification under this Part, if you did not sign a legally-binding contract for construction or acquisition of your facility prior to November 9, 1978. Both powerplants and installations which were operational, as that term is defined in this Revised Interim Rule, on or before April 20, 1977, are automatically classified as "existing" and need not request classification under this Part. Further, any transitional facility with a design capability of consuming any fuel at a fuel heat input rate which does not equal or exceed 100 million BTU's per hour, is automatically classified as "existing," and you need not request classification for such a facility under this Part. Classification as "existing" of the foregoing facilities is self-executing, and no evidentiary submissions to ERA for such facilities are required under this Part. ERA will also automatically classify as "existing", upon receipt of appropriate certifications and, in the case of installations, minimal documentary evidence, eligible powerplants which were operational on or before May 8, 1979, and eligible installations which were either operational on or before May 8, 1979, or, in the case of prefabricated packaged boilers, were shipped by the manufacturer to the user by November 9, 1978, and, in the case of field-erected units, had their main steam drum in place by November 9, 1978. These latter eligible powerplants and installations, therefore, need only comply with appropriate certification and evidentiary requirements and need not submit formal requests for classification under this Part in order to be classified as "existing."

A substantial number of the comments received by ERA concerned its criteria under the Interim Rule for eligibility of "new" powerplants and installations to request classification as "existing" facilities. Many of these comments related to ERA's interpretation of the statutory phrase "construction or acquisition began," as used in sections 103(a)(8) and 103(a)(11) of FUA, as incorporating the concept of substantial construction. These comments expressed concern that this interpretation might result in an undue restriction of access to the classification procedure under this Part. In order to enhance the opportunities for powerplants and installations to demonstrate any applicable detriments, penalties or adverse effects resulting from classification as "new," ERA added a definition of the phrase "contract for construction or acquisition" and has fixed the signing of such a contract by November 9, 1978, as the operative factor for eligibility.

Several comments suggested that certain facilities which are classified as "new" by virtue of reconstruction, refurbishment, or addition, should be eligible to request classification as "existing." ERA believes that those facilities which are classified as "new" on these bases should be able to request classification under this Revised Interim Rule, where a contract for the reconstruction, refurbishment, or addition was signed prior to November 9, 1978, and where the facilities are not otherwise automatically classified as "existing." The eligibility of the foregoing facilities under this Part has accordingly been clarified by inclusion in the definition of "contract for construction or acquisition" of an agreement for reconstruction, and by the addition of a definition of "reconstruction" to include the pertinent concepts of refurbishment and addition to the facility.

ERA received a number of comments suggesting that its proposed transitional facility regulations were impermissibly retroactive. ERA believes that the Revised Interim Rule is consistent with the statutory mandate to consider as "new," facilities on which construction or acquisition began *before* the date of enactment of FUA, unless the Secretary finds that certain detriments, penalties or adverse effects would be sustained. ERA has interpreted this provision to allow any facility for which a contract for construction or acquisition had been signed before the enactment date of FUA to present (or, in some cases, to certify) to ERA its case for classification as "existing." ERA's revised eligibility criteria, therefore, embody the concept that the only new facilities which are ineligible to request classification as "existing" are those which had not signed any contracts for construction or acquisition prior to the enactment date of FUA (November 9, 1978).

Several comments suggested that issuance by ERA of a so-called "close-out letter" under the Energy Supply and Environmental Coordination Act (ESECA) should suffice to establish the "existing" status of the recipient under FUA. Section 762 of FUA amends portions of ESECA and addresses the effect of orders issued under section 2 of ESECA. This section of FUA limits the class of powerplants or installations which were considered for construction orders under ESECA and which are therefore not covered under Title II of FUA to those facilities which were recipients of *final* construction orders, and is silent as to the effect under FUA of letters and notices not culminating in issuance of a final order. ERA does not believe that the receipt of an ESECA "close-out letter" should control essential classifications of facilities under FUA. Further, ERA believes that it would contravene the intent of Congress as expressed in FUA to accord any special consideration to facilities to which ERA (or the Federal Energy Administration) had decided not to issue notices of intention to issue construction orders under ESECA.

B. SUBSTANTIAL FINANCIAL PENALTY

The revisions which ERA has made in sections 515.6(a) and 515.13(a) represent a considerable shift in the approach previously proposed.

As suggested by several utilities, ERA has established a standard, applicable to both the utility and MFBI sectors, which will be used by ERA to classify an eligible facility as "existing." The previous standard which applied solely to MFBIs has been changed in the Revised Interim Rule to provide that if a person requesting classification can satisfactorily demonstrate to ERA that at least 25 percent of the total projected project cost has been expended by November 9, 1978, then ERA will classify the facility as "existing." In computing the 25 percent expenditure, however, only nonrecoverable outlays are to be included.

ERA realizes that although this standard serves a useful purpose, that is, to provide guidance to certain facilities that they qualify as "existing," there may be instances where, despite the inability to qualify under the 25 percent test, a substantial financial penalty may have been incurred. Therefore, ERA has, in this Revised Interim Rule, provided the opportunity for all eligible facilities to demonstrate to ERA on a case-by-case basis that they would nevertheless incur a "substantial financial penalty."

Several comments have suggested that the definition of nonrecoverable outlays was too restrictive and that additional costs (such as land, labor, engineering and other costs excluded in the Interim Rule) should be allowed. ERA believes that these suggestions

have some merit and has included in this Revised Interim Rule a definition of nonrecoverable outlays [section 515.20(21)] which includes those expenditures made as of November 9, 1978, for equipment or appurtenances which could not be used in the construction or operation of a facility to burn an alternate fuel. Included would be any penalty expenses resulting from cancelling a contract or contracts signed prior to November 9, 1978. ERA rejects, as being contrary to the intent of the Act, the suggestion that all costs incurred should be included.

Other comments suggested that ERA should consider, in addition to the potential impact on the rate base and the status of construction, the effect on bond ratings and the ability to raise capital. The Revised Interim Rule provides the latitude for persons requesting classification to demonstrate that these and other pertinent impacts would constitute a "substantial financial penalty" on a case-by-case basis. ERA has listed certain factors which it believes would be useful in demonstrating a substantial financial penalty. Persons requesting classification under this Part are not limited, however, to addressing only these factors.

The Revised Interim Rule also makes it clear that, for a subsidiary, ERA intends to review the effect that cancelling, rescheduling, or modifying the proposed installation would have on the parent company. ERA believes that this interpretation is consistent with the Congressional intent found in the Conference Report accompanying the Act. That Report clearly states that ERA should consider the financial impact on the person, including a parent corporation, owning, controlling or operating the facility. ERA will allow you to present evidence, however, that to consider the effect on the parent company is unwarranted.

C. SIGNIFICANT OPERATIONAL DETRIMENT

Several comments criticized the proposed "load-shifting" test in the Interim Rule whereby ERA would have examined the feasibility of ceasing the operation of a transitional facility while maintaining 95 percent of the plant's historic steam production level by increasing the steam output of other, existing units at the site. The comments noted that this approach would have limited plant growth, caused difficulties in shifting steam output due to differences in pressure and steam quality between units, and constituted an unnecessary encroachment on the purchasing, design, and operational practices of MFBI's. Due to the complexity of analysis and the time resources required by both the person requesting classification and ERA to prepare and evaluate these data, we have decided to delete the "load shifting" test from the significant operational detriment determination.

Comments on the "substantial mitigating circumstances" portion of the "significant operational detriment" determination identified additional items ERA should consider under this test. Included in these recommendations were the impact on the local economy and whether the transitional facility would be replacing older, less efficient oil or natural gas units. ERA has retained the case-by-case approach proposed in the Interim Rule and will therefore consider the above factors as well as any other issues you may deem appropriate to present in regard to significant operational detriment.

D. OPERATIONAL STATUS

In its Preamble to the Interim Rule ERA specifically requested comments on lessening reporting requirements on small installations with heat input rates of 100 to 150 million Btu's per hour which were operational on or before April 20, 1978. ERA received comments supporting this proposal; however, ERA's revision of the Interim Rule to automatically classify as "existing," upon submission of appropriate certifications and minimal documentary evidence, all transitional facilities that were operational on or before May 8, 1979, does not require ERA to give this proposal further consideration.

E. ADVERSE EFFECT ON ELECTRIC SYSTEM RELIABILITY

Several persons commented that the single-step 20 percent reserve margin test presented in the Interim Rule was inflexible and ignored the dynamic factors of reliability analysis. The comments suggested that ERA should consider the impact on utility company reliability rather than on the entire electric region, that ERA evaluate the electric region's ability to provide "emergency support," and that other transitional facilities and "new" facilities be excluded from the reliability analysis because their future availability could be altered by ERA determinations. Additionally, it was suggested that we consider the normal reliability planning criteria employed by the utility company, as well as use a more definitive measure of reliability such as the "loss of load probability" technique. While we have decided to retain the 20 percent reserve margin test for the electric region in the Revised Interim Rule, we will evaluate each powerplant request claiming an adverse impact on reliability on a case-by-case basis and allow you to submit whatever evidence you deem most appropriate in presenting your position.

One person commented that ERA should perform an up-to-date analysis of load and capacity factors within an electric region before making a reliability determination. In detailing our evidentiary requirements, we have invited persons requesting classification to work with ERA in providing data on the electric region to be used in the reliability analyses.

A number of comments pointed out that the Interim Rule contained no provision for consultation with the Federal Energy Regulatory Commission (FERC) and the appropriate State authority. We have added a requirement for such consultations to this Revised Interim Rule, as required by the Act, but we reject as an overly restrictive interpretation of the Act the suggestion that we be bound by the recommendation of the State authority.

F. ADMINISTRATIVE

A large number of comments on the administrative provisions in the Interim Rule expressed the opinion that the time within which to file a request for classification was too short because they considered the information required to support the request too voluminous to be generated within 14 days of the issuance of final transitional facilities regulations. Other comments merely expressed the opinion that the amount of information required was too burdensome. In response to these comments, ERA has changed the date for filing a request for classification to June 8, 1979. While ERA urges your expeditious filing, the administrative provisions also allow for extensions of time to file if good cause is shown. Since classification of facilities as "new" or "existing" is essential to application of the appropriate ERA regulations implementing the prohibition and exemptions programs required by FUA, ERA feels that it is necessary and justifiable to require requests for classification to be filed as expeditiously as possible.

To facilitate the expeditious filing of requests for classification and to respond to the comments that the information required to support a request is too burdensome, ERA has reduced substantially the volume of paperwork which will normally be required as part of your request for classification. For powerplants, ERA will undertake to provide overall electric system reliability analysis. Other information requirements for powerplant and installations have been considerably reduced.

Other comments suggested that ERA be required to act on a request for classification within a certain period of time (e.g., 30 or 60 days); otherwise, the facility would be automatically classified as "existing." ERA

has rejected this suggestion since it is neither possible to anticipate the administrative burden this would impose, nor consistent with the Act which presumes all transitional facilities are "new" unless otherwise classified pursuant to these rules.

Finally, ERA has amended provisions in the Revised Interim Rule regarding requests for treatment of confidential information to require persons requesting classification to follow the requirements of DOE's Freedom of Information Regulations set forth at 10 CFR Part 1004.

G. DEFINITIONS

The Interim Rule incorporated by reference applicable definitions contained in ERA's Proposed Rules to Implement the Powerplant and Industrial Fuel Use Act published in the FEDERAL REGISTER on November 17, 1978, 43 FR 53974. These rules have not been made final as of the publication of this Revised Interim Rule, therefore, ERA has incorporated a separate and complete list of definitions in the Revised Interim Rule which are applicable to it alone. ERA believes these revisions and additions to the Revised Interim Rule effectively address the public comments submitted on the definitions contained in the Interim Rule.

Comments were received that ERA should exclude oil field heaters and refinery process heaters from the definition of "major fuel-burning installation." We have excluded steam generators used for crude oil recovery from the definition of MFBI, for purposes of this Revised Interim Rule, but are not convinced that refinery process heaters should be categorically removed from the definition at this time.

Comments also indicated that the definition of "site" in the Interim Rule was too broad. Because we have automatically classified individual units with a design capability of less than 100 million BTU's per hour as "existing," the "site" definition is no longer relevant for the purposes of this Revised Interim Rule and will be addressed at a later date in regulations governing "new" and "existing" facilities.

One comment noted that the term "fuel heat input rate" could have a variety of meanings. To clarify this issue, we have included a definition of this term in Section 515.20 (Definitions) of this Revised Interim Rule.

H. FORMS

Several comments were directed specifically to the content and format of forms ERA proposes to be used in conjunction with transitional facilities; these forms were published in the FEDERAL REGISTER on December 4, 1978, 43 FR 56703. The comments expressed the opinion that these forms required submittal of information not directly relevant to transitional facilities classifications and that the forms were too long and confusing. ERA has decided to revise and abbreviate the forms to accommodate these comments and to assure conformance of these forms with the revisions that have been made in the Revised Interim Rule.

IV. PROCEDURAL MATTERS

A regulatory analysis of this Revised Interim Rule set forth below, as contemplated by Executive Order No. 12044, is contained within the regulatory analysis of the regulation regarding new facilities proposed on November 9, 1978, 43 FR 53974. A Draft Environmental Impact Statement (DEIS) has been prepared pursuant to the National Environmental Policy Act (NEPA). Both the draft regulatory analysis and the DEIS may be obtained from ERA, 2000 M Street, NW., Room B110, Washington, D.C. 20461, (202) 634-2170 (Department of Energy Organization Act, Pub. L. 95-96; Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, E.O. 12009, 42 FR 4267).

In consideration of the foregoing, Part 515, Subchapter E, "Alternate Fuels" of Chapter II, Title 10 of the Code of Federal Regulations is hereby revised effective March 15, 1979.

Issued in Washington, D.C., March 15, 1979.

DAVID J. BARDIN,
Administrator, Economic Regulatory Administration.

SUBCHAPTER E—ALTERNATE FUELS

PART 515—TRANSITIONAL FACILITIES

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AUTHORITY: Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 et seq); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3289 (42 U.S.C. 8301 et seq); E.O. 12009, 42 FR 4267.

TRANSITIONAL FACILITIES

Subpart A—General Provisions

§ 515.1 Policy.

(a) The Economic Regulatory Administration (ERA) intends to immediately begin its administration of the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) relating to transitional facilities in a firm but fair and practical manner. A transitional facility is one which was not operational on April 20, 1977, but for which a contract for its construction or acquisition was signed prior to November 9, 1978, the date of FUA's enactment. ERA will not classify as "existing," transitional facilities which are in the early stages of planning and construction, and which would not incur a substantial financial penalty, an adverse effect upon reliability (for powerplants), or a significant operational detriment (for major fuel-burning installations). These facilities will therefore be considered to be "new." As new facilities, they will be subject to the statutory prohibitions of Title II of FUA, but will have the opportunity to petition ERA for an exemption from those prohibitions. Where a person requesting classification of a transitional facility as "existing" can demonstrate that the facility is in a more advanced stage of construction and would sustain any of the penalties, adverse effects, or detriments identified above, ERA will classify the facility as "existing" in order to avoid disruptive impacts on the facility as well on the economy at large.

(b) You are eligible to request that ERA classify your transitional facility as "existing" if you signed a contract for the facility's construction or acquisition prior to November 9, 1978. Moreover, you are also eligible to request that ERA classify your transitional facility as "existing" if you signed a contract prior to November 9,

1978, for the reconstruction of your facility (including refurbishment of or addition to the facility) to the extent that the reconstruction equals or exceeds 50 percent of the price of a replacement unit. We base these criteria for eligibility as a transitional facility on the principle that a legally-binding contract constitutes a commitment, after which time any cancellation, rescheduling, or modification may result in a substantial financial penalty, a significant operational detriment, or an adverse effect on electric system reliability.

(c) We have established milestones whereby facilities will automatically, and without contacting ERA, be considered "new" or "existing." Where no contract for construction or acquisition of a facility was signed by November 9, 1978, the facility is clearly "new." Facilities which were operational, as defined in these regulations, on or before April 20, 1977, are automatically deemed "existing." Individual transitional facilities with a design capability of consuming any fuel at a heat input rate which does not equal or exceed 100 million BTU's per hour, are automatically deemed "existing."

(d) To further facilitate the handling of transitional facilities and reduce the administrative burden on persons requesting classification and ERA alike, facilities which are operational or at a certain stage of construction by designated dates may be classified as "existing" upon certification to ERA and, in some cases, the submission of minimal documentation. Under this approach, powerplants and MFBIs which you can demonstrate are or will be operational on May 8, 1979 (the effective date of FUA) will be classified as "existing" by ERA. Moreover, MFBIs which had been shipped by the manufacturer (in the case of prefabricated packaged boilers) or which had their main steam drum in place (for field-erected boilers) by November 9, 1978, will similarly be classified as "existing." These latter structural tests for MFBIs are incorporated in recognition of the shorter construction time period generally encountered by the industrial sector.

(e) ERA believes that a powerplant or MFBI will incur a "substantial financial penalty" where 25 percent or more of the total projected project cost has been expended or committed as of November 9, 1978. In assessing the expenditures or committed costs, however, ERA will exclude outlays which can be used toward the construction of an alternate fuel-fired facility. The limitation to nonrecoverable outlays follows from the definitions of new powerplants and MFBIs in Section 103 of the Act. These definitions recognize the extra costs that are incurred in building an alternate fuel-fired plant by cancelling, rescheduling or modifying a partially completed oil or gas-fired plant.

(f) Where these nonrecoverable outlays do not reach 25 percent of the total projected project cost, ERA may consider other financially-related factors presented on a case-by-case basis. The purpose of these additional case-by-case evaluations, where facilities have not expended beyond 25 percent of their total projected project cost, is to permit persons requesting classification to present ERA with full explanations of the financial penalties they believe they may incur but which may not be given full consideration in the course of computing the percentage effect.

(g) If your transitional facility is a powerplant, one of the considerations ERA will employ in reaching a determination applicable to an adverse effect on electric system reliability is whether the cancellation, rescheduling or modification of your proposed powerplant results in your electric region's reserve margin falling below 20 percent during the 12-month period after you expect your proposed powerplant to begin operation. You may present whatever evidence you deem appropriate to ERA's reaching a determination on your claim of an adverse effect on electric system reliability.

(h) If your transitional facility is a major fuel-burning installation, your unit will be designated "existing" if you demonstrate to ERA that you would incur a "significant operational detriment as a result of cancelling, rescheduling or modifying your facility." In light of the complexity and variety of operational requirements in the MFBI sector, ERA will review these requests for classification on a case-by-case basis.

§ 515.2 Purpose and scope.

(a) *Purpose.* These rules govern requests for classification of transitional facilities by ERA as existing facilities subject to the provisions of Title III of FUA, rather than as "new" facilities subject to the provisions of Title II of FUA.

(b) *Application.* This Part applies to all transitional facilities. You are eligible to submit a request to have your transitional powerplant or major fuel-burning installation classified as an "existing" facility, pursuant to this Part, if a contract for the construction or acquisition of your facility was signed prior to November 9, 1978, the date of enactment of FUA.

(c) *ERA Determinations.* Based upon the criteria set forth below, and after thorough consideration of the entire administrative record of your formal request, ERA will publish in the FEDERAL REGISTER a formal decision either: (1) granting the request, having determined that your installation or powerplant is "existing," or (2) denying the request, having determined that your installation or powerplant is "new." ERA determinations on requests that are received by ERA on or before June 8, 1979, will be made on the basis of the provisions set forth in this Revised Interim Rule or upon the Final Rule where the application of the Final Rule would result in a more favorable disposition of your request. These determinations are final Departmental actions.

Subpart B—Electric Powerplants

§ 515.3 Eligibility.

You are eligible to submit a request to ERA to have your transitional facility classified as "existing" if you can demonstrate to the satisfaction of ERA that you signed a contract for the construction or acquisition of the powerplant prior to November 9, 1978.

§ 515.4 Powerplants automatically classified as "new."

If you did not sign a contract for the construction or acquisition of the powerplant prior to November 9, 1978, the powerplant is automatically classified as "new" and subject to the provisions of Title II of the Act.

§ 515.5 Powerplants automatically classified as "existing."

(a) Any powerplant which was operational on or before April 20, 1977, is automatically classified as "existing" and subject to the provisions of Title III of the Act.

(b) Any powerplant for which a contract for construction or acquisition was signed prior to November 9, 1978, and which does not have a design capability to consume any fuel at a fuel heat input rate of 100 million BTU's per hour or greater, is automatically classified as "existing" and subject to the provisions of title III of the Act.

(c) Any powerplant for which a contract for construction or acquisition was signed before November 9, 1978, and which was operational on or before May 8, 1979, is automatically classified as "existing" and subject to the provisions of Title III of the Act upon filing with ERA of a certification. This certification must be made by a duly authorized officer of the electric utility which owns, operates, or controls the powerplant. This filing will not be deemed by ERA to be a formal request for classification under this Part.

§ 515.6 Powerplants which ERA will classify as "existing."

ERA will classify an eligible powerplant as "existing" if you demonstrate to the satisfaction of ERA that the

cancellation, rescheduling or modification of the construction or acquisition of your powerplant would result in a substantial financial penalty or an adverse effect on the electric system reliability.

(a) *Substantial financial penalty.* ERA will take into consideration any financially-related factor which you consider appropriate in reaching a determination on substantial financial penalty. If you demonstrate to the satisfaction of ERA that, as of November 9, 1978, you have expended at least 25 percent of the total projected project cost, ERA will classify your facility as "existing." In computing the 25 percent expenditure, you must include only nonrecoverable outlays expended as of November 9, 1978.

Example: You are constructing a facility which can use either petroleum or coal, and the following outlays have been made and are projected:

	Outlays	
	As of 11/9/78	Total projected project cost
Oil handling equipment, including storage	$1,000,000	$2,000,000
Boiler	$4,000,000	$7,000,000

In general, ERA would define a maximum of $1,000,000 as a nonrecoverable outlay (oil handling equipment, oil storage) and could probably reduce this amount since certain items would be retained in an alternate fuel-firing system which used oil for startup and ignition. Outlays for the boiler are deemed recoverable, since they could be used in a coal facility, even though you would be required to spend an additional amount for pollution control and coal handling and storage facilities. (You may indicate your assessment of the impact of this additional amount by addressing item (3) below in your request.)

If you have expended at least 25 percent of the total projected project cost, ERA will classify your facility as "existing." If you have expended less than 25 percent under the test set forth above, you may still request classification from ERA. Your request for classification may address, among others, the following factors:

(1) The nonrecoverable outlays you would incur by cancelling, rescheduling, or modifying your current proposed powerplant in order to burn an alternate fuel or fuel mixture;

(2) The total projected project cost and percentage of completion of the project at November 9, 1978;

(3) The impact that cancelling, rescheduling, or modifying your present powerplant would have upon your rate base and your ability to continue in business as a sound and financially viable public utility;

(4) The site at which the facility is located; and

(5) An alternate use for the facility under construction.

(b) *Adversely affecting electric system reliability.* (1) ERA will make its determination applicable to electric system reliability on a case-by-case basis, after consultation with FERC and the appropriate state authority.

(2) One of the considerations ERA will employ is whether the reserve margin of the electric region in which you propose to locate your powerplant would be reduced to less than 20 percent during the 12-month period after you expect your proposed powerplant to begin operation, assuming your proposed powerplant is not completed. Firm purchases and sales to or from the electric region will be included in ERA's evaluation. The reserve margin percentage is computed by subtracting the normal peak load expected during the 12-month period from the system's total capacity, including the additional capacity that will be available through interconnection, and dividing the result by the projected normal peak load during the delay.

(3) Notwithstanding paragraph (2) above, if you wish to demonstrate that your own electric utility's ability to provide reliable service will be adversely affected during this period, regardless of circumstances pertaining to your electric region, you may present whatever evidence you deem appropriate.

§ 515.7 Evidence required in support of a request for classification.

(a)(1) You must submit a separate request for classification for each facility at a single site. Each request must be in writing, and must be signed by the duly authorized officer of the company that owns, operates or controls the powerplant.

Your request must include:

(i) A complete description of the transitional facility;

(ii) A statement of the date on which the contract for the construction or acquisition of the powerplant was signed and a description of the components or services contracted for; and

(iii) A statement of the date on which your powerplant became or is scheduled to become operational.

(2) ERA may request that you submit copies of any contracts concerned with the construction or acquisition of the powerplant.

(b)(1) If you wish to show that you will incur a substantial financial penalty, your request for classification must include the information listed below:

(i) A statement of the total projected project cost of your transitional facility projected as of November 9, 1978;

(ii) An itemized list of the project expenditures as of November 9, 1978;

(iii) An itemized list of any financial penalties you will incur by cancelling or terminating contracts signed as of November 9, 1978, for the project;

(iv) An itemized list of your recoverable expenditures for the project;

(v) An itemized list of the nonrecoverable outlays for the project; and/or

(vi) Any other relevant information you feel ERA should consider in reaching its determination, including information relating to the factors listed in § 515.6(a), above.

You should provide sufficient detail to enable ERA to evaluate your claim of substantial financial penalty. When providing itemized lists, you may aggregate costs of minor items in a reasonable manner, but ERA may require you to specify these costs if the cost categories are too vague or the costs are substantial.

(2) ERA may request that you submit copies of the sections of the engineering design plan and copies of environmental analyses or their summaries which describe in detail the design specifications, the construction schedule and the estimated engineering and contingency costs of the transitional facility.

(c)(1) If you wish to show an adverse effect on electric system reliability, your request for classification must include:

(i) A description of your own service area and its interconnection with other utilities;

(ii) Projections of peakload for your service area during the period of the delay that would be caused by the cancellation or redesign of the transitional facility;

(iii) The net dependable electrical capacity and peak loads for this service area for the 12 months following the expected operational date of the facility, including interconnections (if you are claiming an adverse impact on reliability during a period after the 12 months, you must provide this data for the period commensurate with the time of your anticipated reliability difficulties);

(iv) Your service area's reserve margin during the 1-year period after you expect your proposed powerplant to begin operation; and

(v) Any other relevant information you feel ERA should consider in reaching its determination.

You should provide sufficient detail to enable ERA to evaluate your claim of an adverse effect on electric system reliability.

(2) ERA will conduct the required regional reliability analysis for your electric region. You are invited to assist ERA by providing the additional

projected regional load and generation data needed to evaluate the reliability of your electric region. ERA will utilize its own generation and load projection data base if you do not produce the necessary data.

Subpart C—Major Fuel-Burning Installations

§ 515.10 Eligibility.

You are eligible to submit a request to ERA to have your transitional facility classified as "existing" if you can demonstrate to the satisfaction of ERA that you signed a contract for the construction or acquisition of the installation prior to November 9, 1978.

§ 515.11 Installations automatically considered to be "new."

If you did not sign a contract for the construction or acquisition of the installation prior to November 9, 1978, the installation is automatically classified as "new" and subject to the provisions of Title II of the Act.

§ 515.12 Installations automatically considered to be "existing."

(a) Any installation which was operational on or before April 20, 1977, is automatically classified as "existing" and subject to the provisions of Title III of the Act.

(b) Any installation for which a contract for construction or acquisition was signed prior to November 9, 1978, and which does not have a design capability to consume any fuel at a fuel heat input rate of 100 million BTU's per hour or greater, is automatically classified as "existing" and subject to the provisions of Title III of the Act.

(c) Any installation for which a contract for construction or acquisition was signed prior to November 9, 1978, and which is:

(1) A prefabricated packaged boiler that was shipped by the manufacturer to the user by November 9, 1978, or which was operational on or before May 8, 1979, is automatically classified as existing upon the submission of a certification to such effect by a duly authorized officer of the company that owns, operates or controls your installation, including the evidence required by § 515.15(a)(1)(v); or

(2) A field-erected unit, the main steam drum of which was in place by November 9, 1978, or which was operational on or before May 8, 1979, is automatically classified as existing upon the submission of a certification to such effect by a duly authorized officer of the company that owns, operates or controls your installation, including the documentation required by § 515.15(a)(1)(v).

§ 515.13 Installations which ERA will classify as "existing."

ERA will classify an eligible installation as "existing" if you demonstrate to the satisfaction of ERA that the cancellation, rescheduling, or modification of the construction or acquisition of your installation would result in a substantial financial penalty or a significant operational detriment.

(a) *Substantial financial penalty.* ERA will take into consideration any financially-related factor which you consider appropriate in reaching its determination on substantial financial penalty. If you demonstrate to the satisfaction of ERA that you have expended at least 25 percent of the total projected cost of project as of November 9, 1978, ERA will classify your installation as "existing." In computing the 25 percent expenditures, you must include only nonrecoverable outlays expended as of November 9, 1978.

EXAMPLE: You are constructing a facility which can use either petroleum or coal, and the following outlays have been made and are projected:

	Outlays	
	As of 11/9/78	Total projected project cost
Oil handling equipment, including storage	$1,000,000	$2,000,000
Boiler	$4,000,000	$7,000,000

In general, ERA would define a maximum of $1,000,000 as a non-recoverable outlay (oil handling equipment & oil storage) and would probably reduce this amount since certain items would be retained in an alternate fuel-firing system which used oil for startup and ignition. Outlays for the boiler are deemed recoverable, since they could be used in a coal fired facility, even though you would be required to spend an additional amount for pollution control and coal handling and storage facilities. [You may indicate your assessment of the impact of this additional amount by addressing item (3) below in your request.]

If you have expended less than 25 percent under the test set forth above, you may still request classification from ERA. Your request for classification may address, among others, the following factors:

(1) The nonrecoverable outlays you would incur by cancelling, rescheduling or modifying your current proposed installation in order to burn an alternate fuel or fuel mixture;

(2) The total projected project cost and percentage of completion of the project at November 9, 1978;

(3) The impact that cancelling, rescheduling, or modifying your proposed installation would have upon your ability to continue in business as a sound and financially viable entity. (In the case of a subsidiary company, ERA intends to review the financial effect on the parent company unless you can demonstrate to ERA why this would not be justified);

(b) *Significant operational detriment.* ERA will make its determination under this subsection on a case-by-case basis; however, you should indicate the operational detriment you would have incurred if you had cancelled, rescheduled, or modified your installation to burn an alternate fuel or fuel mixture at November 9, 1978. Your request for classification should address the following factors:

(1) The extent of construction and anticipated startup date;

(2) The potential impact of the loss of production which could not be rescheduled elsewhere;

(3) The potential impact on employment, including the number and type of jobs lost, excluding those that may be absorbed elsewhere within your parent company; and

(4) The anticipated annual capacity utilization factor of the unit, as well as seasonal or other variations in use.

§ 515.15 Evidence required in support of a request for classification.

(a)(1) You must submit a separate request for classification for each facility at a single site. Each request must be in writing and must be signed by the duly authorized officer of the company that owns, operates or controls the installation. Your request for classification must include:

(i) A complete description of the transitional facility;

(ii) A statement of the date on which a contract for the construction or acquisition of the installation was signed, and a description of the components or services contracted for;

(iii) A statement of the date on which a prefabricated packaged boiler was shipped by the manufacturer or a statement of the date on which the main steam drum of a field-erected boiler was in place;

(iv) A statement of the date on which your installation became or is scheduled to become operational;

(v) A copy of the bill of lading for the shipment of a prefabricated packaged boiler or the main steam drum of a field-erected boiler, and

(vi) A dated photograph of a prefabricated packaged boiler or the main steam drum of a field-erected boiler after it has been set in place.

(2) ERA may request that you submit copies of any contracts concerned with the construction or acquisition of the installation.

(b)(1) If you wish to show that you will incur a substantial financial pen-

alty, your request for classification must include:

(i) A statement of the total projected project cost of your transitional facility projected as of November 9, 1978;

(ii) An itemized list of the project expenditures as of November 9, 1978;

(iii) An itemized list of any financial penalities you will incur by cancelling or terminating contracts for the project signed as of November 9, 1978;

(iv) An itemized list of your recoverable expenditures for the project;

(v) An itemized list of the nonrecoverable outlays for the project; and/or

(vi) Any other relevant information you feel ERA should consider in reaching its determination, including information relating to the factors listed in § 515.13(a), above.

You should provide sufficient detail to enable ERA to evaluate your claim of substantial financial penalty. When providing itemized lists, you may aggregate costs of minor items in a reasonable manner, but ERA may require you to specify these costs if the cost categories are too vague or the costs are substantial.

(2) ERA may request that you submit copies of the sections of the engineering design plan and copies of environmental analyses or their summaries which describe in detail the design specifications, the construction schedule and the estimated engineering and contingency costs of the transitional facility.

(c) If you wish to show that you will incur a significant operational detriment, your request for classification should include any relevant information you feel ERA should consider in reaching its determination, including information relating to the factors listed in § 515.13(b), above. You should provide sufficient detail to enable ERA to evaluate your claim of significant operational detriment.

(d) ERA may request any additional evidence it deems necessary to adequately review your request for classification.

Subpart D—Definitions

§ 515.20 Definitions.

(a) All terms defined in this subpart shall apply only to Part 515, Transitional Facilities. These definitions are not applicable to and may differ from the definitions promulgated or to be promulgated by other regulations implementing FUA.

(b) Throughout this Part, the "Act" or "FUA" means the Powerplant and Industrial Fuel Use Act of 1978.

(c) Unless otherwise expressly provided, for purposes of this Part of these regulations, the term:

(1) "Alternate fuel" means electricity or any fuel, other than natural gas or petroleum. The term includes—

(i) Coal;

(ii) Solar energy;

(iii) Petroleum coke, shale oil, uranium, biomass, and municipal, industrial, or agricultural wastes, wood and renewable and geothermal energy sources;

(iv) Liquid, solid, or gaseous waste byproducts of refinery or industrial operations which are commercially unmarketable, either by reason of quality or quantity;

(v) Any fuel derived from an alternate fuel; and

(vi) Waste gases from industrial operations.

(2) "Btu" means British thermal unit.

(3) "Coal" means anthracite, bituminous and sub-bituminous coal, lignite, and any fuel derivative thereof.

(4) "Conference" means an informal meeting, incident to any proceeding, between ERA and any interested person.

(5) "Construction" means substantial construction in terms of an actual and meaningful commitment to building the powerplant or MFBI, and includes more than merely clearing a site or putting in foundation pilings for the unit.

(6) "Contract for construction or acquisition" means a legally-binding agreement or agreements for substantial onsite construction or reconstruction, or for the purchase or rental of significant equipment or appurtenances required for the construction or operation of a powerplant or MFBI, including, but not necessarily limited to, purchase of the boiler and its major components, fuel-handling equipment and pollution control equipment. This term shall not include contracts for the purchase of land, site clearances or preparation, or the installation of foundation pilings.

(7) "Duly authorized officer" means the Chief Executive Officer or his designee of a company that owns, operates or controls a facility.

(8) "Duly authorized representative" means a person who has been designated to appear before ERA in connection with a proceeding on behalf of a person interested in or aggrieved by that proceeding. The appearance may consist of the submission of applications, requests, statements, memoranda of law, other documents, or of a personal appearance, oral communication, or any other participation in the proceeding.

(9) "Electric powerplant" means any stationary electric generating unit, consisting of a boiler, a combustion turbine unit, a generator or a combined cycle unit, which produces electric power for purposes of sale or exchange, and—

(i) Has the design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or

(ii) Is in a combination of two or more electric generating units which are located at the same site and which in the aggregate have a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 250 million Btu's per hour or greater.

(iii) As used herein, the term "electric generating unit" does not include—

(A) any electric generating unit subject to the licensing jurisdiction of the Nuclear Regulatory Commission; and

(B) any cogeneration facility, less than half of the annual electric power generation of which is sold or exchanged for resale.

(10) "Electric region"—The following is a list of electric regions for use with regard to this Part. The regions are identified by FERC Power Supply areas as authorized by section 202(a) of the Federal Power Act except where noted.

(i) Each grouping meets one or more of the following criteria:

(A) Existing centrally-dispatched pools and hourly power brokers;

(B) Systems with joint planning and construction agreements;

(C) Systems with coordination agreements in the areas of—

(*1*) Generation reserve and system reliability criteria,

(*2*) Capacity and energy exchange policies,

(*3*) Maintenance scheduling,

(*4*) Emergency procedures for dealing with capacity or fuel shortages;

(D) Systems within the same National Electric Council (NERC) region with historical coordination policies.

(ii) The Power Supply Areas (PSA's), referred to in the definition of electric regions, were first defined by the Federal Power Commission in 1936. The most recent reference to them is given in the 1970 National Power Survey, Vol. I, Pg. I-3-16. In cases where you find an ambiguity in a regional assignment, you shall consult with ERA for an official determination.

(*iii*) *ELECTRIC REGION GROUPINGS.*

	DOE (FERC) power supply areas
(A). Allegheny Power System (APS)	7, except Duquesne Light Company
(B). American Electric Power System (AEP)	Entire AEP System
(C). New England Planning Pool (NEPOOL)	1, 2
(D). New York Planning Pool (NYPP)	3,4

(E). Pennsylvania-New Jersey-Maryland Interconnection (PJM)	5, 6
(F). Commonwealth Edison Company	14
(G). Florida Coordination Group (FCG)	24
(H). Middle South Utilities	25
(I). Southern Company	22, 23
(J). Gulf States Group	35
(K). Tennessee Valley Authority (TVA)	20
(L). Virginia-Carolina Group (VACAR)	18, 21
(M). Central Area Power Coordination Group (CAPCO)	Cleveland Electric Illuminating Company, Toledo Edison Company, Ohio Edison Company Duquesne Light Company
(N). Cincinnati, Columbus, Dayton Group (CCD)	Cincinnati Gas and Electric Company, Columbus and Southern Ohio Electric Company, Dayton Power and Light Company
(O). Kentucky Group	19
(P). Indiana Group	Indiana Utilities except AEP
(Q). Illinois-Missouri Group (ILLMO)	15, 40
(R). Michigan Electric Coordinated Systems (MECS)	11
(S). Wisconsin-Upper Michigan Group (WUMS)	13
(T). Mid-Continent Area Power Pool (MAPP)	16, 17, 26, 27, 28
(U). Missouri-Kansas Group (MOKAN)	29, 24
(V). Oklahoma Group	33, 36
(W). Texas Interconnected Systems (TIS)	37, 38
(X). Rocky Mountain Power Pool (RMPP)	31, 32
(Y). Northwest Power Pool (NWPP)	30, 41, 42, 43, 44, 45
(Z). Arizona-New Mexico Group	39, 48 within Arizona
(AA). Southern California-Nevada	47, 48 in Nevada and California
(BB). Northern California-Nevada	46
(CC). Alaska	49

(11) "Electric utility" means any person, including any affiliate, or Federal agency, who sells electric power.

(12) "ERA" means the Economic Regulatory Administration of the Department of Energy.

(13) "Facility" means an electric powerplant or major fuel-burning installation.

(14) "FERC" means the Federal Energy Regulatory Commission.

(15) "Installation" means "major fuel-burning installation."

(16) "Fuel heat input rate" means the hourly fuel feed rate multiplied by the gross heating value of the fuel at 60 degrees F. The rate, expressed in millions of Btu's per hour, measures the maximum capacity of the unit and is not related to the rate of actual use. The fuel input rate also reflects the highest rate which can be attained in the unit among the various rates associated with the different fuel capabilities of the unit.

(17) "Main steam drum" means the drum in the boiler where the process of steam separation occurs.

(18) "Main steam drum in place" means that the main steam drum has been lifted to and hung on the field-erected boiler, so that the main steam drum is blocked or braced in place.

(19) "Major fuel-burning installation," means a stationary unit consisting of a boiler, which—

(i) Has a design capability of consuming any fuel, or mixture thereof, at a fuel heat input rate of 100 million Btu's per hour or greater;

(ii) Is in a combination of two or more such units which are located at the same site and which in the aggregate have a design capability of consuming any fuel, or mixture thereof, at a fuel heat input rate of 250 million Btu's per hour or greater.

(iii) "Major fuel-burning installation" does not include—

(A) Any electric powerplant; or

(B) Any pump or compressor used solely in connection with the production, gathering, transmission, storage, or distribution of gases or liquids, but only if there is certification to ERA of such use.

(C) Steam generators for crude oil recovery.

(20) "MFBI" means "major fuel burning installation."

(21) "Mixture" when used in relation to fuels used in a unit means a mixture of petroleum or natural gas and an alternate fuel, or a combination of such fuels used simultaneously or alternately in such unit.

(22) "Nonrecoverable outlays" are those expenditures you have made for your transitional facility, as of November 9, 1978, which could not be used in the construction or operation of a facility to burn an alternate fuel, including any expenditures you would be required to make as a result of cancelling contracts signed prior to November 9, 1978. In determining nonrecoverable outlays, you must select the method which results in the least amount of nonrecoverable outlays. The following items are to be excluded from nonrecoverable outlays:

(i) Reimbursements from selling or salvaging equipment or appurtenances associated with the petroleum/gas boiler system; and

(ii) Expenditures for equipment or appurtenances which can be used elsewhere by the owner or operator of the powerplant or installation.

(23) "Operational" means that a unit is used and useful, has completed its testing phase and is producing a product or providing a service on a continuing basis.

(24) "Person" means—

(i) Any individual corporation, company, partnership, association, firm, institution, society, trust, joint venture, or joint stock company;

(ii) Any State, the District of Columbia, Puerto Rico, and any territory or possession of the United States;

(iii) Any agency or instrumentality (including any municipality) thereof; or

(iv) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls.

(25) "Powerplant" means "electric powerplant."

(26) "Reconstruction" means refurbishment or addition to a powerplant or major fuel-burning installation, since April 20, 1977, to the extent that the cost of such refurbishment or addition equals or exceeds 50 percent of the price of a replacement unit.

(27) "Recoverable outlays" are those expenditures you have made for your transitional facility, as of November 9, 1978, which could be used in the construction or operation of a facility to burn an alternate fuel. The following items are to be included as recoverable outlays:

(i) Reimbursements from selling or salvaging equipment or appurtenances associated with the petroleum/gas boiler system; and

(ii) Expenditures for equipment or appurtenances which can be used elsewhere by the owner or operator of the powerplant or installation.

(28) "Request for Classification" means the formal request for classification of a facility as "existing" made to ERA through submission of appropriate forms and other information pertaining to eligibility and evidentiary requirements as stated in these regulations under this Part.

(29) "Total projected project cost" means total expenditures, projected as of November 9, 1978, required to perform the feasibility study, engineering, and labor for the construction of your planned facility, as well as all expenditures required for the purchase of the boiler and/or nonboiler and all of its components, fuel-handling equipment, pollution control equipment, and other appurtenances necessary for the construction and operation of the facility. In calculating the total projected project cost, expenditures for marketing studies and land acquisition must be excluded.

(30) "Transitional facility" means a facility which was not operational on April 20, 1977, but for which a contract for the construction or acquisition was signed prior to November 9, 1978.

(31) "Turbine generator or combustion turbine generator" means an electric power-generating unit that is a combination of a rotary engine driven by a gas under pressure that is created by the combustion of any fuel, with an electric power generator driven by the engine.

Subpart E—Administrative Provisions

§ 515.25 Purpose and scope.

This subpart establishes the general procedures that are applicable to this Part.

§ 515.26 Notice and public comment.

When ERA receives your properly filed request for classification under this Part, it will publish a notice in the FEDERAL REGISTER. ERA will provide in the notice a period of no less than 21 days for interested persons to file written data, views or arguments. ERA will not provide an opportunity for a public hearing.

§ 515.27 Conferences.

(a) You may file a written request for a conference with ERA regarding your request for classification. The request must be filed at the address provided in § 515.35. ERA in its discretion will decide whether to hold a conference.

(b) Actual notice of the time, place, and nature of the conference will be provided to the person who requested the conference. ERA will determine who may attend a conference, but a conference will generally include only the representative of the person requesting the conference, government representatives, and other persons requested by the person requesting the conference.

(c) When ERA convenes a conference in accordance with this section, any person invited may present views as to the issue or issues involved. You may submit documentary evidence at the conference. ERA will not normally have a transcript of the conference prepared but may do so at its discretion. However, a summary of major points discussed will be prepared by ERA and placed in the public record with confidential material deleted.

(d) Because a conference is solely for the exchange of views incident to a request for classification, ERA will not prepare a transcript, issue a final report or finding unless ERA in its discretion determines that it would be advisable.

§ 515.28 Appearance before ERA.

(a) A person may participate in any proceeding described in this Part on his own behalf or by a duly authorized representative. Any request for classification filed by a duly authorized representative must contain a statement by such person certifying that he is a duly authorized representative. Falsification of the certification will subject the person to the sanctions stated in 18 U.S.C. 1001.

(b) ERA may deny, temporarily or permanently, the privilege of participating in conferences, including oral presentations, to any individual who is found by ERA:

(1) To have made false or misleading statements, either orally or in writing;

(2) To have filed false or materially altered documents, affidavits or writings;

(3) To lack the specific authority to represent the person seeking an ERA action; or

(4) To have disrupted or to be disrupting a proceeding.

§ 515.29 Computation of time.

(a) *Days.* (1) When ERA computes time in days under these regulations, ERA will not include the day of the act (or default) from which a period of time begins to run. ERA will include the last day of the period, unless it is a Saturday, Sunday or Federal legal holiday, in which case the period runs until the end of the next normal working day that is not a Federal legal holiday.

(2) ERA shall exclude Saturdays, Sundays or intervening Federal legal holidays from its computation of time when the period of time allowed or prescribed in the regulations is 7 days or less.

(b) *Additional time after service by mail.*

Whenever ERA serves by mail a decision, notice, interpretation or other document, which may specify a time period for you to perform an act, refrain from performing an act, or commence a proceeding, you may add 3 days to the period prescribed.

§ 515.30 Service.

(a) ERA will serve all decisions personally or by certified mail unless otherwise provided in these regulations. All other documents will be sent by ERA by first class mail.

(b) ERA will consider service upon your duly authorized representative to be service upon you.

(c) Service by mail is effective upon mailing. ERA will consider official United States postal receipts from certified mailing as *prima facie* evidence of service.

§ 515.31 General filing requirements.

(a) *Where to submit.* You must file your request for classification with ERA at the address provided in Section 515.35.

(b) *When to submit.* Submit your request for classification under the provisions of this Part on or before June 8, 1979.

(c) *Number of copies.* You should submit four copies of your request for classification.

(d) *Completed Filing.* (1) Your request for classification is considered to be filed when you have submitted four copies of your request and any required supporting documentation, and it has been accepted by ERA. If for any reason your request for classification is not acceptable, ERA will notify you within 42 days (6 weeks) from the date of receipt of any deficiencies or defects contained in your request.

(2) If ERA requests other documents or additional information from you, these will be considered to be filed upon receipt unless ERA advises you to the contrary within a reasonable time.

(e) *Signing and Attestation.* (1) If you file a request for classification under this Part on behalf of a company or corporation, a duly authorized official of that company or corporation must attest in writing as to the accuracy of all of the facts and statements contained in that request.

(2) If you file a request for classification under this Part on behalf of a subsidiary of a company or corporation, duly authorized official of both the controlling or parent company or corporation and its subordinate or subsidiary company or corporation must attest in writing as to the accuracy of all facts and statements contained in that request.

(3) If you file a request for classification under this Part on behalf of an entity other than a company or corporation, a duly authorized official of that entity must attest in writing as to the accuracy of all of the facts and statements contained in that request.

(4) All requests, comments, attestations or other documents filed under this Part by a duly authorized representative, as defined by § 515.20(c)(8), must contain the written attestation by that person that he is a duly authorized representative and state the basis for his authority.

(f) *Labeling.* You should clearly label any request for classification or other document that you file with ERA, as "Request for Classification as an Existing Facility" both on the document and on the outside of the envelope in which the document is transmitted.

(g) *Obligation to Supply Information When You File a Request for Classification, and Other Documents Rele-*

vant Thereto. You are under a continuing obligation during the proceeding to provide the ERA with any new or newly discovered information concerning significantly changed circumstances relevant to the facility.

(h) *Request for confidential treatment.* (1)(i) If you wish to file a document with ERA claiming that some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552 as amended) or is otherwise exempt by law from public disclosure, and if you wish to request ERA not to disclose such information, you must comply with the Department of Energy's Freedom of Information Regulations set forth in 10 CFR Part 1004 (44 FR 1908, January 8, 1979).

(2) ERA retains the right to make its own determination with regard to any claim of confidentiality. Notice of the decision by ERA to deny such claim, in whole or in part, and an opportunity to respond will be given to the person claiming confidentiality of information no less than 48 hours prior to the public disclosure of such information.

(3) This subsection does not apply where information is being submitted on an ERA form which contains its own instructions as to requests for confidential treatment of information provided.

(4) Each request for ERA action must be submitted as a separate document, even if the request deals with the same or a related issue, act or transaction, or is submitted in connection with the same proceeding.

§ 515.32 Extension of time.

ERA may, in its discretion, provide an extension of time to file a request for classification if you can show good cause for the extension. You should submit your request for an extension by June 8, 1979.

§ 515.33 Effective date of decision.

Any decision issued by ERA under this Part is effective on the date issued against all persons having actual notice of it. Such decision is deemed to be issued on the date it is signed by an authorized representative of ERA, unless the decision or other determination states otherwise.

§ 515.34 Order of precedence.

If there is any conflict or inconsistency between the provisions of this subpart and any other provision of this Part, the provisions of this subpart shall control as it relates to classifications of Transitional Facilities. ERA determinations on requests for classification that are received by ERA on or before June 8, 1979, shall be made on the basis of this Revised Rule, or upon the Final Rule where the application of the Final Rule would result in a more favorable disposition of your request.

§ 515.35 Addresses for filing documents with the ERA.

All requests, reports, ERA forms, written communications or other documents are to be filed with the Assistant Administrator for Fuels Regulation, Economic Regulatory Administration, Attention: Office of Public Hearing Management, 2000 M Street, N.W., Washington, D.C. 20461.

§ 515.36 Office of Public Information.

The Office of Public Information (2000 M Street, N.W., Washington, D.C., Room B-110) is available for public inspection of documents and copying of the following information:

(a) A list of all persons who have filed a request for classification for designation as existing facilities.

(b) Each decision on a request for classification which will contain a statement setting forth the relevant facts and legal basis of each decision, with confidential information deleted, as well as written comments received from interested persons in connection with a request.

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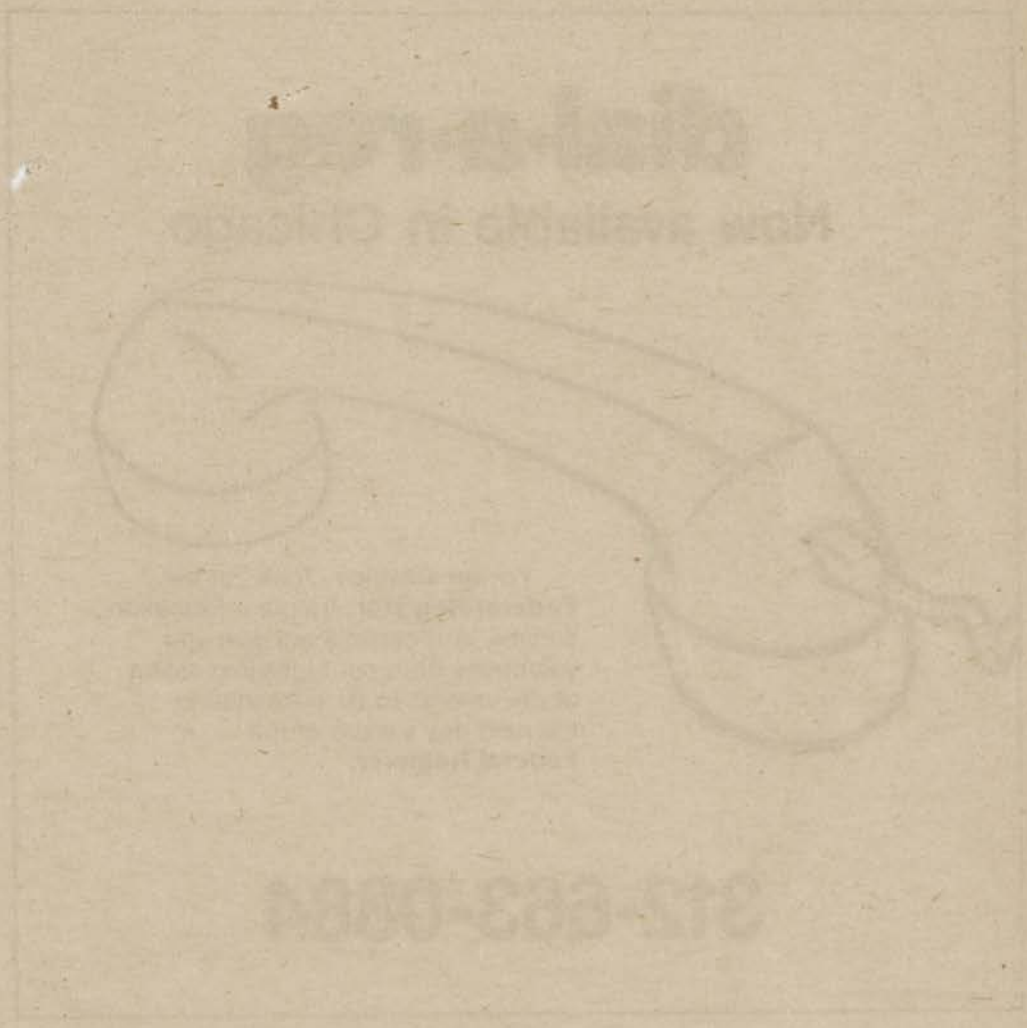

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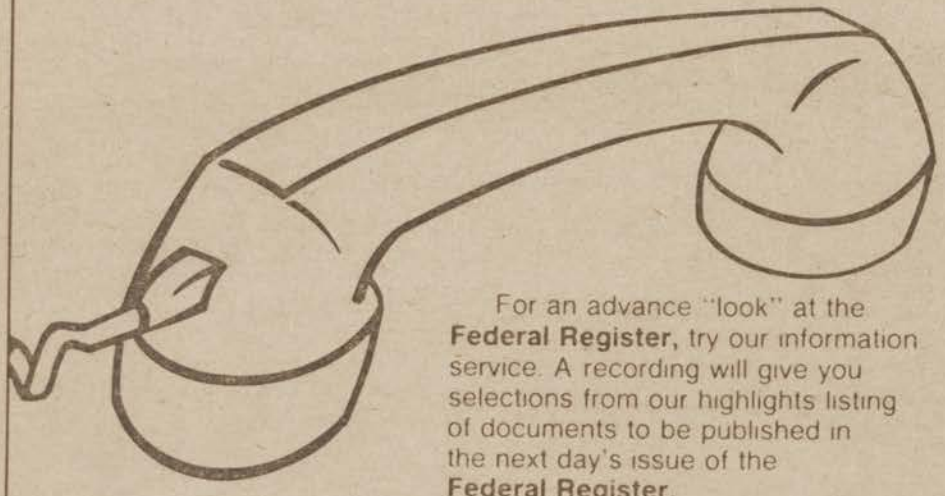

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