

Thursday
January 3, 1980



Federal Register

NOTE:

Due to a shortage of newsprint, today's Federal Register is printed on a higher quality paper. As supplies become available, the Federal Register will resume the use of newsprint.

Highlights

- 757 Earth Day, 1980** Presidential proclamation
- 759 Porcelain-On-Steel Imports** Presidential memorandum
- 767 Natural Gas Policy Act of 1978** DOE/FERC issues rules implementing the incremental pricing provisions; effective 12-27-79
- 956 Metropolitan Statistical Area Classification** Commerce/Office of Federal Statistical Policy and Standards introduces final standards for designation and definition of the 1980 census (Part VI of this issue)
- 952 Bicycle Grant Program** DOT/FHWA proposes a regulation which would provide for bikeway construction and for nonconstruction projects that can be expected to enhance safety; comments by 2-19-80 (Part V of this issue)
- 966 Pay-Rate Increases** CWPS adopts form and requests voluntary submission of data; effective 1-3-80; comments by 2-15-80 (Part VII of this issue)
- 976 Nondiscrimination on the Basis of Age in Programs and Activities Receiving Federal Financial Assistance** Interior/Sec'y proposes rules; comments by 1-31-80 (Part VIII of this issue)

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Highlights

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- 942, 943 Property Management** DOE establishes policy and procedures for the administration of Government property provided to off-site contractors under certain contracts; effective 1-3-80 (2 documents) (Part IV of this issue)
- 803 Veterans** VA proposes rules pertaining to standards of progress and conduct of educational benefits; comments by 2-4-80
- 785 Tanner Crab** Commerce/NOAA promulgates rules governing fishing for 1980; effective 1-1-80
- 845 New Mortgage Accounting System** HUD/FHC intends to require all approved mortgagees to centralize billing of all fees and premiums by 1-83; comments by 2-15-80
- 807 Uniform Tire Quality Grading Standards** DOT/NHTSA proposes to exclude from application tires manufactured in small quantities for vehicles no longer in production; comments by 2-4-80
- 812 Privacy** ACTION publishes a document affecting the systems of record
- 784 Odometer Disclosure** DOT/NHTSA allows States to use an abbreviated statement on all motor vehicle ownership documents; effective 1-3-80
- 765 Airport Operations** DOT/FAA establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs)
- 912, 928 Paint and Ink Formulating** EPA proposes rules to eliminate effluent discharges to waters of the U.S. and introductions of pollutants into publicly owned treatment works; comments by 3-3-80 (2 documents) (Parts II and III of this issue)
- 876 Sunshine Act Meetings**

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- 912 Part II, EPA**
- 928 Part III, EPA**
- 942 Part IV, DOE**
- 952 Part V, DOT/FHWA**
- 956 Part VI, Commerce/FSPS**
- 966 Part VII, CWPS**
- 976 Part VIII, Interior/Sec'y**
- 982 Part IX, DOT/FHWA**

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On April 22, 1970, not long after NEPA became law, the Nation celebrated one of the most remarkable "happenings" of recent times. Millions of people across America celebrated the first Earth Day by participating in cleanups, hill stamping, and scores of other activities. The day was a testament to the concern for the environment and to the growing awareness of the broad environmental concerns. Earth Day 1970 was a watershed in the understanding of environmental issues.

In marking the anniversary of the National Environmental Policy Act, Earth Day, let us rededicate ourselves to our great goal—keeping this earth from disaster, pollution, and the spread of toxic chemicals. Let us lack of basic necessities and from the destruction of our cultural heritage. Let us rededicate ourselves to the creation and maintenance of safe and healthy surroundings, to the wise management of our resources that are a pillar of our well-being, and to the protection of flowing streams, majestic mountains, forests, and deserts—our life with life.

We have now begun to make a serious investment in our environment at home and abroad. The earth is a fragile asset. The wise investments in our environment will be repaid by generations of our descendants. We must make environmental progress.

NOW, THEREFORE, I JIMMY CARTER, President of the United States of America, do hereby proclaim Tuesday, April 22, 1980, EARTH DAY. I urge all citizens and government officials to observe this day with appropriate ceremonies and activities. I ask that special attention be given to the activities and educational efforts directed to protecting and enhancing our life-giving environment. On this tenth anniversary of the first Earth Day, a decade of environmental progress, I further urge all of the people of the United

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Presidential Documents

Title 3—

Proclamation 4710 of January 1, 1980

The President

Earth Day, 1980

By the President of the United States of America

A Proclamation

Ten years ago, the United States turned over a new—and greener—leaf. On the first day of the new decade, the National Environmental Policy Act became the law of the land. This law is one of our Nation's fundamental charters: it is a pledge from each generation to the next to protect and enhance the quality of the environment.

Through the National Environmental Policy Act which created the Council on Environmental Quality, the Nation affirmed the fundamental importance of the environment to our well-being. Our environment shapes our lives in endless ways: it can be dangerous or it can be safe; it can produce a bounty to sustain us or it can be laid bare; it can frustrate our relationships with nature and with other people or it can provide opportunities for seeking peace and harmony.

As the United States enjoyed the advanced technology, mobility, and material prosperity of the postwar period, we seemed to take for granted the resources on which our prosperity was built. By the beginning of the last decade, the damage to our environment had become a clear threat to the Nation's general welfare. Citizens and legislators alike awakened to the challenge.

On April 22, 1970, not long after NEPA became law, the Nation experienced one of the most remarkable "happenings" of recent times. Millions of people across America celebrated the first Earth Day by participating in teach-ins, cleanups, bill signings, and scores of other activities to demonstrate their concern for the environment and to learn more about nature, ecology, and broader environmental concerns. Earth Day 1970 was a watershed in citizen understanding of environmental issues.

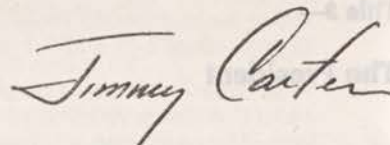
In marking the anniversaries of the National Environmental Policy Act and of Earth Day, let us rededicate ourselves to our great goal—freeing the people of this earth from disease, pollution, and the spread of toxic chemicals; from the lack of basic necessities; and from the destruction of our common natural and cultural heritage. Let us rededicate ourselves to the creation and maintenance of safe and healthy surroundings, to the wise husbanding of the natural resources that are a pillar of our well-being, and to the protection of free-flowing streams, majestic mountain forests, and diverse cityscapes pulsing with life.

We have now begun to make a serious investment in the quality of the environment at home and abroad. The earth is a fragile asset. The return on wise investments in our environment will be reaped not only by ourselves, but by generations of our descendants. We must achieve another decade of environmental progress.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby proclaim Tuesday, April 22, 1980, as Earth Day. I call upon all citizens and government officials to observe this day with appropriate ceremonies and activities. I ask that special attention be given to community activities and educational efforts directed to protecting and enhancing our lifegiving environment. On this tenth anniversary, as we enter a second decade of environmental progress, I further urge all of the people of the United

States to dedicate themselves anew to attaining the Nation's environmental goals, as expressed in the National Environmental Policy Act.

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



[FR Doc. 80-341

Filed 1-2-80; 11:06 am]

Billing code 3195-01-M

Presidential Documents

Memorandum of January 2, 1980

Determination Under Section 202(a) of the Trade Act; Porcelain-on-Steel Cookware

Memorandum for the Special Representative for Trade Negotiations

Pursuant to section 202(b)(1) of the Trade Act of 1974 (P. L. 93-618, 88 Stat. 1978), I have determined the action I will take with respect to the report of the United States International Trade Commission (USITC), transmitted to me on November 5, 1979, concerning the results of its investigation of a petition for import relief filed by counsel for General Housewares Corporation on behalf of the domestic industry producing cooking ware of steel, enameled or glazed with vitreous glasses, provided for in item 653.97 of the Tariff Schedules of the United States.

After considering all relevant aspects of the case, including those set forth in section 202(c) of the Trade Act of 1974, I have determined that provision of import relief in the form of increased tariffs for four years is in the national economic interest. These increased tariffs will apply to all U.S. imports of porcelain-on-steel cookware except teakettles and imports valued over \$2.25 per pound. The additional duties will be 20, 20, 15 and 10 cents per pound, respectively, in the first, second, third, and fourth years of the relief period.

I have decided to modify the USITC remedy by: (1) excluding teakettles; (2) reducing by one year the duration of import relief; and (3) imposing additional specific tariffs that are somewhat smaller than those recommended by the USITC. My decision to exclude teakettles is based on the fact that they are not produced domestically in a wide range of shapes and styles.

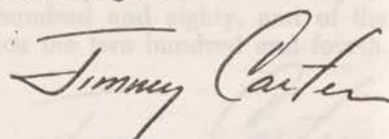
This four-year relief program should be sufficient to enable the sole remaining domestic producer of porcelain-on-steel cookware to adjust to import competition during the relief period. At the same time, the less-restrictive relief that I will proclaim will reduce the adverse effects of providing relief on U.S. consumers of porcelain-on-steel cookware and on our international economic interests.

In conjunction with providing import relief, I hereby direct you to request that the USITC advise me of the probable economic effect on the domestic porcelain-on-steel cookware industry of the termination of import relief after two years. This advice is to include a review of the progress and specific efforts being made by the domestic producer of porcelain-on-steel cookware to adjust to import competition. I also direct you to request, on my behalf, advice regarding termination of relief from the Secretaries of Commerce and Labor. This USITC, Commerce, and Labor advice is to be provided to me, through you, three months prior to the expiration of the second year of relief. It is my intention to continue relief for the entire four-year period if the domestic producer has begun to make reasonable progress toward adjustment to import competition during the first and second years of import relief and if a continuation of relief is necessary to further this adjustment process.

As required by section 203(e)(1) of the Trade Act of 1974, these additional tariffs will be implemented by Presidential Proclamation no later than January 17, 1980, which is 15 days after this determination.

This determination is to be published in the Federal Register.

THE WHITE HOUSE,
Washington, January 2, 1980.



[FR Doc. 80-342

Filed 1-2-80; 11:11 am]

Billing code 3195-01-M

Rules and Regulations

Federal Register

Vol. 45, No. 2

Thursday, January 3, 1980

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.

FEDERAL LABOR RELATIONS AUTHORITY

FEDERAL SERVICE IMPASSES PANEL

5 CFR Chapter XIV

New York Regional Office

AGENCY: Federal Labor Relations Authority (including the General Counsel of the Federal Labor Relations Authority) and Federal Service Impasses Panel.

ACTION: Interim rules and regulations.

SUMMARY: This rule amends Appendix A, paragraph (d)(2) (44 FR 44775) of the interim rules and regulations of the Federal Labor Relations Authority (Authority), General Counsel of the Federal Labor Relations Authority (General Counsel), and Federal Service Impasses Panel (Panel), published at 44 FR 44740 July 30, 1979 to establish a new room number and telephone numbers for the Authority's New York Regional Office.

EFFECTIVE DATE: December 31, 1979.

FOR FURTHER INFORMATION CONTACT: D. Randall Frye, Assistant General Counsel (202) 632-6284.

SUPPLEMENTARY INFORMATION: Effective July 30, 1979, the Authority, General Counsel, and Panel published, at 44 FR 44740, interim rules and regulations to principally govern the processing of cases by the Authority, General Counsel, and Panel under chapter 71 of title 5 of the United States Code. These interim rules and regulations are required by Title VII of the Civil Service Reform Act of 1978 and will continue to be applied until their expiration on January 31, 1980, or upon the effective date of final rules and regulations prior to January 31, 1980.

Appendix A, paragraph (D) of the interim rules and regulations (44 FR 44775) sets forth the temporary office addresses and telephone numbers of the

Regional Directors of the Authority. The Authority's New York Regional Office has changed its room number and telephone numbers from those listed in paragraph (d)(2) of Appendix A.

Accordingly, Appendix A, paragraph (d)(2) of the Authority, General Counsel, and Panel interim rules and regulations (44 FR 44775) is amended, in part, to read as follows:

Appendix A—Authority, General Counsel, Chief Administrative Law Judge, Regional Directors and Panel Temporary Addresses and Geographic Jurisdictions

(d) The office addresses of Regional Directors of the Authority are as follows:

(2) New York Regional Office, Room 241, 26 Federal Plaza, New York, New York 10007, Telephone: FTS-264-4934. Commercial—(212) 264-4934.

(5 U.S.C. 7134)

Dated: December 28, 1979.
Federal Labor Relations Authority,
Ronald W. Haughton,
Chairman.
H. Stephan Gordon,
General Counsel.

[FR Doc. 80-02 Filed 1-2-80; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 27

Cotton Classification Under Cotton Futures Legislation

AGENCY: Agricultural Marketing Service.

ACTION: Final rulemaking.

SUMMARY: This notice finalizes the removal of Houston, Texas from the list of bona fide spot cotton markets in § 27.93 and 27.94 of the regulations for Cotton Classification under Cotton Futures Legislation (7 CFR Part 27). Cotton is no longer traded in such volume and under such conditions in Houston to qualify this market as a bona fide spot market under the criteria contained in the U. S. Cotton Futures Act (90 Stat. 1841-46; 7 U.S.C. 15b).

EFFECTIVE DATE: February 4, 1980.

FOR FURTHER INFORMATION CONTACT: Loyd Frazier, Chief, Marketing Services

Branch, Cotton Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D. C. 20250 (202) 447-2147.

SUPPLEMENTARY INFORMATION:

On October 9, 1979, the U. S. Department of Agriculture issued a proposal to remove Houston, Texas from the list of bona fide spot cotton markets.

Spot cotton market prices are used by the New York Cotton Exchange to establish settlement differences (premiums and discounts) for cotton delivered on futures contracts whenever the quality delivered deviates from the base quality. The U. S. Cotton Futures Act requires the Secretary of Agriculture to designate cotton markets which may be used to establish such settlement differences. The Act directs the Secretary to designate only those markets in which spot cotton is sold in such volume and such conditions as customarily to reflect accurately the value of the base quality and the differences between the prices or values of the base quality and of other grades for which standards have been established. There are 10 markets so designated by the Secretary at the present time.

Factors supporting the proposal that Houston be removed from the list of bona fide spot markets are as follows:

1. The volume of cotton traded on the Houston market has declined significantly during the past 10 years. During the past year trading has declined further, to the point where less than 1,500 bales of cotton have been reported as traded on the Houston market. This fails to meet the concept of a bona fide spot market.

2. Practically all price information is provided by a single member of the Houston quotations committee. This, too, fails to meet the concept of a bona fide spot market.

3. Houston price quotations have not been used by the New York Cotton Exchange for the settlement of a futures contract since 1974.

4. The termination of Houston as a designated market was one of the recommendations made by the National Cotton Marketing Study Committee in August 1975. This committee was appointed from industry and government by the Secretary of Agriculture to study and appraise the

U. S. cotton marketing system and related foreign trade problems.

The Greenville, South Carolina spot market quotations will replace Houston quotations in establishing settlement differences for Futures Contract No. 1 of the New York Cotton Exchange.

The Greenville quotations are presently used in establishing differences for New York Futures Contract No. 2 and they are based upon a significant number of transactions by a large number of traders.

No objections to the proposed action were received during the 60-day-comment-period. One inquiry was received suggesting the designation of another spot cotton market in Texas for the purpose of establishing settlement differences for New York Futures Contract No. 1 instead of using the Greenville, South Carolina quotations. This possible alternative was thoroughly explored by the U. S. Department of Agriculture. However, no other cotton market in the state of Texas meeting the criteria for a designated spot market exists at this time.

§§ 27.93 and 27.94 [Amended]

Accordingly, § 27.93 of the regulations (7 CFR 27.93) governing cotton classification under cotton futures legislations shall be amended by deleting Houston, Texas from the list of bona fide spot cotton markets on the effective date. Further, § 27.94 (a) shall be amended by removing Houston, Texas and replacing it with Greenville, South Carolina.

This regulation has been determined not significant under the USDA criteria implementing Executive Order 12044.

Dated: December 28, 1979.

Irving W. Thomas,

Acting Deputy Administrator, Marketing Program Operations.

[FR Doc. 80-174 Filed 1-2-80; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 907

[Navel Orange Regulation 474; Navel Orange Regulation 473, Amdt. 1]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period January 4-

January 10, 1980, and increases the quantity of such oranges that may be so shipped during the period December 28, 1979-January 3, 1980. Such action is needed to provide for orderly marketing of fresh navel oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: This regulation becomes effective January 4, 1980, and the amendment is effective for the period December 28, 1979-January 3, 1980.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, (202) 447-5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendations and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The committee met on December 28, 1979, to consider supply and market conditions and other factors affecting the need for regulation, and recommended quantities of navel oranges deemed advisable to be handled during the specified weeks. The committee reports the demand for navel oranges has improved over recent weeks.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of navel oranges. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

Further, in accordance with procedures in Executive Order 12044, the emergency nature of this regulation

warrants publication without opportunity for further public comment. The regulation has not been classified significant under USDA criteria for implementing the Executive Order. An Impact Analysis is available from Malvin E. McGaha, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, phone (202) 447-5975.

§ 907.774 Navel Orange Regulation 474.

Order. (a) The quantities of navel oranges grown in Arizona and California which may be handled during the period January 4, 1980, through January 10, 1980, are established as follows:

- (1) District 1: 828,000 cartons;
- (2) District 2: 36,000 cartons;
- (3) District 3: 18,000 cartons;
- (4) District 4: 18,000 cartons.

(b) As used in this section, "handle," "District 1," "District 2," "District 3," "District 4" and "carton" mean the same as defined in the marketing order.

§ 907.773 [Amended]

Paragraph (a) in § 907.773 Navel Orange Regulation 473. (44 FR 76480), is hereby amended to read:

(a) * * * * *

- (1) District 1: 706,000 cartons;
- (2) District 2: 33,000 cartons;
- (3) District 3: 22,000 cartons;
- (4) District 4: 22,000 cartons.

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

Dated: December 31, 1979.

D. S. Kuryloski,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 80-233 Filed 1-2-80; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 79-WE-39-AD; Amdt. 39-3645]

Airworthiness Directives; Aircraft Metal Products Corp. Oil and Fuel System Hoses, P/N 762506

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires inspection of Aircraft Metal Products oil and fuel system hoses, P/N 762506. The purpose of this AD is to prevent the leakage of flammable fluid in the engine compartment or the loss of engine oil. This AD is necessary to prevent

explosion and/or fire in the engine compartment or an engine failure due to loss of engine oil.

DATES: Effective January 3, 1980. Compliance schedule—As prescribed in the body of the AD.

ADDRESSES: The applicable service information may be obtained from: Aircraft Metal Products, 4206 Glencoe Avenue, Venice, CA 90291.

Also, a copy of the service information may be reviewed at, or a copy obtained from:

Rules Docket in Room 916, FAA, 800 Independence Avenue, S.W., Washington, D.C. 20591, or

Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, California 90261.

FOR FURTHER INFORMATION CONTACT:

Kyle Olsen, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

SUPPLEMENTARY INFORMATION: There have been a number of failures in service of Aircraft Metal Products fuel and oil system hoses, P/N 762506. These failures have been in installations in the engine oil cooling system and have resulted in the loss of engine oil. Most of these failures have been determined to be caused from a twist load imposed by improper installation. Since this condition is likely to exist or develop on other airplanes using this hose, an Airworthiness Directive is being issued which requires inspection and replacement, if necessary, of these oil and fuel system hoses.

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

Adoption of the Amendment

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

Aircraft Metal Products Corp. Hoses. Applies to all general aviation airplanes with Aircraft Metal Products oil and fuel system hoses P/N 762506 installed. The subject hose is known to be installed on, but not limited to, certain Piper Model PA-28 and PA-32 aircraft.

To prevent possible fire or explosion in the engine compartment or engine failure due to loss of engine oil, accomplish the following

within 10 hours time in service from the effective date of this AD:

(a) Inspect hoses for fluid leakage, excessive abrasion or excessive length. Replace hose if fluid leakage, excessive abrasion or excessive length exists.

(b) Loosen each coupling fitting and notice if hose moves in direction of fitting, indicating a pre-existing hose twist. Replace the hose if there is evidence of a pre-existing hose twist.

(c) Retighten each coupling fitting, gripping the collar just behind the fitting with pliers with just enough force to keep the hose from turning with the retightened fitting. If the hose turns with the retightened fitting, loosen the coupling fitting and repeat the retightening procedure.

(d) Inspect the hose installation for adequate separation between metal hose and other parts of the airplane. If there is contact between metal parts, then complete insulation must be provided using AN742 cushion clamps and/or KOROSEAL lacing or equivalent.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections required by this AD.

(f) Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

This amendment becomes effective January 3, 1980.

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

Issued in Los Angeles, California on December 14, 1979.

William R. Krieger,

Acting Director, FAA Western Region.

[FR Doc. 80-17 Filed 1-2-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 79-WE-26-AD; Amdt. 39-3646]

Airworthiness Directives; Pacific Scientific Company—Rotary Buckle Restraint Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires removal from service of certain Pacific Scientific Company rotary buckles used in crew and attendant aircraft seat restraint systems. This AD is required because of failure of the rotary buckle to open under emergency conditions with possible entrapment of occupant.

DATES: Effective January 31, 1980. Compliance schedule—As prescribed in the body of the AD.

ADDRESSES: The applicable service information may be obtained from:

Department of Transportation, Federal Aviation Administration, Western Region, Attention: Regional Counsel, Airworthiness Rule Docket, P. O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

Also, a copy of the service information may be reviewed at, or a copy obtained from:

Pacific Scientific Company, Kin-Tech Division, 1346 South State College Boulevard, Anaheim, California 92803.

FOR FURTHER INFORMATION CONTACT:

Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P. O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive providing for removal from service of certain Pacific Scientific Company rotary restraint systems was published in the Federal Register at 44 FR 53755. The proposal was prompted by failure of rotary buckles to open under emergency conditions with possible entrapment of occupant.

Comments were received which strongly endorsed the proposed action. No adverse comments were received.

After careful review of all available data, including the comments above, the FAA has determined that sufficient evidence exist in the public interest in aviation safety to adopt the proposed rule as published.

Adoption of the Amendment

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

Pacific Scientific Company Kin-Tech Division. Applies to Pacific Scientific Restraint Systems rotary buckles manufactured through 1970.

Compliance required with one hundred eighty (180) days from the effective date of this AD.

To prevent failure to open of the flight crew and attendants' seat belts, accomplish the following:

(a) Inspect crew and attendants' restraint systems to determine if a Pacific Scientific rotary buckle is installed.

(b) If installed, determine if the rotary buckle assembly contains a black body plate assembly as identified in Figure I of this AD. No further action is required per this AD if

the rotary buckle assembly includes a black body plate assembly.

(c) For those restraint systems incorporating Pacific Scientific rotary buckles without a black body plate assembly as specified in Figure I of this AD:

(1) Substitute of any approved restraint system not incorporating the above described rotary buckle; or,

(2) Replace the buckle element of the restraint system with a Pacific Scientific

buckle element incorporating a black body plate assembly as identified in Figure I of this AD.

NOTE.—Pacific Scientific Service Bulletin 1101550-25-11 Revision "A" dated August 2, 1979 pertains to this subject.

(d) Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

14 CFR Part 71

[Airspace Docket No. 79-SW-28]

Designation of Alternate Airways; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: In a rule published in the Federal Register on November 29, 1979, Volume 44, page 68447, the description of V-13W radials were incorrect and this action corrects that error.

EFFECTIVE DATE: January 3, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis W. Still, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8525.

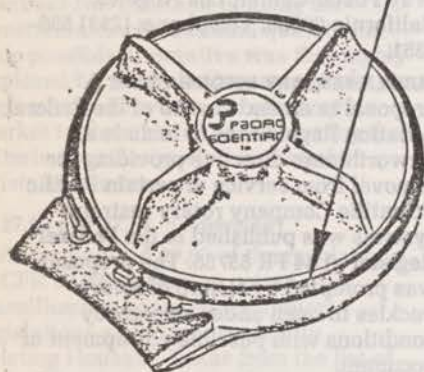
SUPPLEMENTARY INFORMATION: Federal Register Document 79-36423 was published on November 29, 1979, (44 FR 68447), that designated alternate airway V-13W between Palacios, Tex., and Humble, Tex., and designated alternate airway V-198S between Eagle Lake, Tex., and Sabine Pass, Tex. The radials describing the airway alignment were in error by one degree and action is taken herein to correct that mistake. Subpart C of Part 71 of the Federal Aviation Regulations was republished in the Federal Register on January 2, 1979, (44 FR 123). Since this correction is a minor matter upon which the public would have no particular desire to comment, I find that notice and public procedure are unnecessary.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Federal Register Document 79-36423 as published in the Federal Register on November 29, 1979, page 68447, is incorrect. Under V-13 delete "via INT Palacios 016" and Humble 243" Humble;" and substitute "via INT Palacios 017" and Humble 242" radials Humble;" therefor.

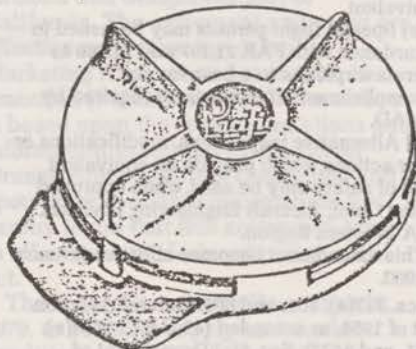
(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

BODY PLATE ASS'Y
(BLACK) INDEX NO.8



NEW DESIGN

NO BODY PLATE
ASSY



ORIGINAL DESIGN

(May also have two vanes rather than four)

FIGURE I

This amendment becomes effective January 31, 1980.

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

Issued in Los Angeles, California, on December 17, 1979.

William R. Krieger,

Acting Director, FAA Western Region.

[FR Doc. 80-18 Filed 1-2-80; 8:45 am]

BILLING CODE 4910-13-M

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

Issued in Washington, D.C., on December 20, 1979.

William E. Broadwater,
Chief, Airspace and Air Traffic Rules
Division.

[FR Doc. 80-16 Filed 1-2-80; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 79-SO-50]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: A special instrument approach procedure has been developed for the private use United Technologies Airport located near Jupiter, Florida. This rule lowers the base of controlled airspace in the vicinity of the United Technologies Airport from 1,200 to 700 feet above ground to provide necessary controlled airspace for accommodation of Instrument Flight Rule (IFR) operations.

EFFECTIVE DATE: 0901 GMT, January 24, 1980.

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

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

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published in the Federal Register on Thursday, August 16, 1979 (44 FR 47951), which proposed designation of the Jupiter, Florida, Transition Area. In response to this notice, an objection was received from the Florida Department of Transportation, Bureau of Aviation. Negotiation between the Airport

sponsor and the Bureau of Aviation resolved the differences, and a formal letter withdrawing this objection, subject to certain conditions agreed to between the principals, was received in this office on December 4, 1979. This action will provide the necessary controlled airspace to accommodate aircraft performing IFR operations at the United Technologies Airport.

Adoption of the Amendment

Accordingly, Subpart G, § 71.181 (44 FR 442) of Part 71 of the Federal Aviation Regulations (14 CFR 71) is amended, effective 0901 GMT, January 24, 1980, by adding the following:

Jupiter, Fla.

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the United Technologies Airport (Latitude 26°54'28" N., Longitude 80°19'33" W.).

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

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

Issued in East Point, Georgia, on December 14, 1979.

Louis J. Cardinali,
Director, Southern Region.

[FR Doc. 80-19 Filed 1-2-80; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 79-SW-53]

Special Use Airspace; Alteration of Restricted Area

Correction

In FR Doc. 79-37872 appearing on page 72106 in the issue for Thursday, December 13, 1979, under R-5103B *McGregor, N. Mex.*, in the eleventh line, "32°36'40" N. . . .", should have read "32°36'00" N. . . .".

BILLING CODE 1505-01-M

14 CFR Parts 71, 73, and 75

[Airspace docket No. 79-WA-16]

Compilation of Airspace Designation Regulations

Cross Reference: For a compilation of the current airspace designations and pending amendments to those designations issued by the FAA and published in the Federal Register, see FR Doc. 79-39238 published in the Federal Register, of Wednesday, January 2, 1980 (45 FR 301).

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 19909; Amdt. No. 1154]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, may be

ordered from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The annual subscription price is \$135.00.

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

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

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

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

effective date at least 30 days after publication is provided.

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

Adoption of the Amendment

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

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

* * * *Effective February 21, 1980*

Modesto, CA—Modesto City-County Airport—Harry Sham Field, VOR Rwy 10L, Amdt. 8

Modesto, CA—Modesto City-County Airport—Harry Sham Field, VOR Rwy 28R, Amdt. 9

Mayfield, KY—Mayfield, Graves County, VOR/DME-A, Amdt. 2

Gruver, TX—Gruver Muni., VOR/DME-A, Original

Midland, TX—Midland Airpark, VOR/DME Rwy 25, Original

* * * *Effective February 7, 1980*

Benton, AR—Saline County, VOR-A, Amdt. 5
Siloam Springs, AR—Smith Field, VOR/DME-A, Amdt. 4

Merced, CA—Merced Muni., VOR Rwy 12, Amdt. 4

Merced, CA—Merced Muni., VOR Rwy 30, Amdt. 11

Elkhart, IN—Elkhart Muni., VOR Rwy 9, Amdt. 1

Elkhart, IN—Elkhart Muni., VOR Rwy 27, Amdt. 8

Elkhart, IN—Elkhart Muni., VOR/DME Rwy 35, Amdt. 1

Lapeer, MI—Dupont-Lapeer, VOR-A, Amdt. 9

Marion, OH—Marion Muni., VOR Rwy 24, Amdt. 1

Sioux Falls, SD—Joe Foss Field, VOR/DME or TACAN Rwy 33, Amdt. 3

Sioux Falls, SD—Joe Foss Field, VOR or TACAN Rwy 15, Amdt. 12

Harlingen, TX—Harlingen Industrial Airpark, VOR Rwy 13, Amdt. 6

Wichita Falls, TX—Wichita Valley, VOR-B, Amdt. 5

Wichita Falls, TX—Wichita Valley, VOR/DME-C, Amdt. 1

* * * *Effective January 24, 1980*

Dickinson, ND—Dickinson Municipal, VOR Rwy 17, Amdt. 12

Dickinson, ND—Dickinson Municipal, VOR/DME Rwy 35, Original

* * * *Effective November 28, 1979*

West Point, VA—West Point Muni., VOR-A Amdt. 2

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

* * * *Effective February 7, 1980*

Merced, CA—Merced Muni., LOC BC Rwy 12, Amdt. 4

Elkhart, IN—Elkhart Muni., SDF (BC) Rwy 9, Amdt. 2

Elkhart, IN—Elkhart Muni., SDF Rwy 27, Amdt. 2

College Station, TX—Easterwood Field, LOC BC Rwy 16, Amdt. 5, cancelled

Killeen, TX—Killeen Muni., LOC Rwy 1, Amdt. 1

* * * *Effective January 24, 1980*

Hayward, CA—Hayward Air Terminal, LOC/DME Rwy 28L, Original

Seattle, WA—Boeing Field/King County Intl, LOC BC Rwy 31L, Amdt. 8

* * * *Effective December 11, 1979*

Columbia, MO—Columbia Regional, LOC BC Rwy 20, Amdt. 6

* * * *Effective December 10, 1979*

Kansas City, KS—Fairfax Muni., LOC Rwy 35, Original

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

* * * *Effective February 21, 1980*

Modesto, CA—Modesto City-County Airport—Harry Sham Field, NDB Rwy 28R, Amdt. 4

Georgetown, TX—Georgetown Muni., NDB Rwy 17, Original

* * * *Effective February 7, 1980*

Marion, OH—Marion Muni., NDB Rwy 12, Amdt. 6

Sioux Falls, SD—Joe Foss Field, NDB Rwy 3, Amdt. 17

Abilene, TX—Abilene Municipal, NDB Rwy 35L, Amdt. 10, cancelled

Houston, TX—David Wayne Hooks Memorial, NDB Rwy 17R, Amdt. 8

* * * *Effective January 24, 1980*

Wilkes-Barre/Scranton, PA—Wilkes-Barre/Scranton Intl, NDB-A, Amdt. 13

Dallas, TX—Addison, NDB Rwy 15, Original

Pennington Gap, VA—Lee County, NDB Rwy 7, Amdt. 1 cancelled

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

* * * *Effective February 21, 1980*

Modesto, CA—Modesto City-County Airport—Harry Sham Field, ILS Rwy 28R, Amdt. 8

* * * *Effective February 7, 1980*

Merced, CA—Merced Muni., ILS Rwy 30, Amdt. 5

Sioux Falls, SD—Joe Foss Field, ILS Rwy 3, Amdt. 20

Sioux Falls, SD—Joe Foss Field, ILS Rwy 21, Amdt. 1

* * * Effective January 24, 1980

Wilkes-Barre/Scranton, PA—Wilkes-Barre/Scranton Intl, ILS Rwy 4, Amdt. 28
Wilkes-Barre/Scranton, PA—Wilkes-Barre/Scranton Intl, ILS Rwy 22, Amdt. 1
Dallas, TX—Addison, ILS Rwy 15, Amdt. 2
Seattle, WA—Boeing Field/King County Intl, ILS Rwy 13R, Amdt. 20

* * * Effective December 10, 1979

Kansas City, MO—Kansas City International, ILS Rwy 19, Amdt. 3

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

* * * Effective February 7, 1980

St. Louis, MO—Lambert-St. Louis International, RADAR-1, Amdt. 23
Sioux Falls, SD—Joe Foss Field, RADAR-1, Amdt. 3

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

* * * Effective February 7, 1980

Elkhart, IN—Elkhart Muni., RNAV Rwy 17, Amdt. 1
[Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49(b)(3).]

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

Issued in Washington, D.C. on December 21, 1979.

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

James M. Vines,
Chief, Aircraft Programs Division.

[FR Doc. 80-10 Filed 1-2-80; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 302

Foreign Excess Property; Amendment of Foreign Excess Property Regulations

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: This action amends the FEP regulations by designating the Assistant Secretary for Trade Administration as the Department of Commerce official to receive and act on appeals on FEP matters, in lieu of the Department of Commerce Appeals Board. It also provides for the designation of another Commerce official if, for any reason, the Assistant Secretary cannot act on an appeal; and establishes a time frame for the decision-making process.

DATE: This action shall be effective on January 1, 1980.

FOR FURTHER INFORMATION CONTACT: R. M. Seppa, who can be reached by telephone on (202) 724-3526.

SUPPLEMENTARY INFORMATION: The Department of Commerce proposed to take this action on October 17, 1979 (44 FR 61049 (1979)) and invited comments from interested parties on or before December 17, 1979. No comments were received. Accordingly, the FEP regulations are amended as set forth below.

Dated: December 27, 1979.

Robin B. Schwartzman,
Acting Deputy Assistant Secretary for Trade Regulation.

§ 302.2 [Amended]

Section 302.2 is amended by:

1. Deleting existing paragraph (d), and
2. Redesignating paragraphs (e) through (j) as paragraphs (d) through (i).

Section 302.12 is amended by changing the first sentence of paragraph (a) and revising paragraphs (b) and (c) to read as follows:

§ 302.12 Appeals.

(a) The Assistant Secretary for Trade Administration, U.S. Department of Commerce, shall consider appeals * * *

(b) Appeals from actions of the FEPO must be filed within 30 days of the date of such action. Appeals shall be made by letter addressed to the Assistant Secretary for Trade Administration, Room 3826, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, reference: FEP Appeal. If the applicant so requests, the Assistant Secretary may grant a hearing at the Department of Commerce in Washington, D.C. If the Assistant Secretary for Trade Administration cannot act on an appeal for any reason, the Secretary of Commerce may designate another Department of Commerce official to receive and act on the appeal.

(c) *Decisions.* The Assistant Secretary shall decide the appeal within 60 days following the date of the receipt of the appeal or any other date fixed by action

of the Assistant Secretary for the filing of a reply or other submission. The decision shall be in writing and shall be accompanied by an order signed by the Assistant Secretary giving effect to the decision. The order either may dispose of the case by confirming, modifying or reversing the decision of the FEPO or may refer the case back to the FEPO for further proceedings.

[FR Doc. 80-61 Filed 1-2-80; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 201, 204, and 282

[Docket No. RM79-14; Order No. 49-A]

Regulations Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978

Issued: December 27, 1979.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Granting in Part and Denying in Part Petitions for Rehearing, Amending Regulations, and Denying Motions to Waive Regulations and Accept Late-Filed Petitions.

SUMMARY: The Federal Energy Regulatory Commission hereby issues an order in response to the petitions which are filed requesting rehearing or clarification of Order No. 49, which contained final regulations implementing the incremental pricing program mandated by the Natural Gas Policy Act of 1978. This order on rehearing grants in part and denies in part the petitions for rehearing. The order also states that three notices of proposed rulemaking will be issued in the near future by the Commission in conjunction with the Commission's disposition of the petitions for rehearing. The grant of certain of the petitions necessitates amendments to the incremental pricing regulations. These amendments are set forth at the end of the order.

EFFECTIVE DATE: December 27, 1979

FOR FURTHER INFORMATION CONTACT:

Nancy E. Williams, Deputy Assistant General Counsel for Regulatory Development, 825 North Capitol Street, N.E., Room 8100-I, Washington, D.C. 20426, (202) 357-8033.

In the matter of Order granting in part and denying in part petitions for rehearing, reconsideration, modification, or clarification, amending regulations, and denying motions to waive

regulations and accept late-filed petitions.

Issued: December 27, 1979.

I. Filed Petitions

On September 28, 1979 (44 FR 57725, October 5, 1979), the Federal Energy Regulatory Commission (Commission) issued in Order No. 49 final regulations which in part implement Title II of the Natural Gas Policy Act of 1978 (NGPA). Order No. 49, along with companion Orders Nos. 50 and 51, sets forth the regulations necessary for implementation of Phase I of the incremental pricing program required by Title II.

Pursuant to section 506 of the NGPA and § 288.102 of the Commission's regulations, persons may petition the Commission for a rehearing of any rule issued by the Commission under the NGPA.

Timely petitions for rehearing of Order No. 49 were filed by the Atlanta Gas Light Company, the Brooklyn Union Gas Company, Cities Service Gas Company,¹ Consolidated Gas Supply Corporation,² the Mississippi River Transmission Corporation, Natural Gas Pipeline Company of America, Southern Natural Gas Company,³ Tennessee Gas Pipeline Company, a division of Tenneco Inc., Midwestern Gas Transmission Company and East Tennessee Natural Gas Company (a joint application),⁴ Tuna Research Foundation, Inc.,⁵ United Distribution Companies, United Gas Pipe Line Company, and Associated Gas Distributors.⁶

Late petitions for rehearing were filed by Laclede Gas Company, the National Food Processors Association,⁷ the National Forest Products Association (NFPA) and the American Plywood Association (APA) (a joint application),⁸ and the American Paper Institute, Inc.

¹ The petition of Cities Service includes requests for reconsideration and modification.

² The filing of Consolidated Gas Supply Company was styled as a Motion for Clarification or Application for Rehearing.

³ Southern Natural's petition includes a request for clarification.

⁴ This joint application includes requests for reconsideration and modification.

⁵ The filing of Tuna Research was not specifically styled as a petition for rehearing, but the Commission has determined to treat it as such for the reasons that it is in substance a petition for rehearing and it was timely filed.

⁶ The petition filed by Associated Gas Distributors was a joint application for rehearing of Orders Nos. 49 and 50. The application for rehearing of Order No. 50 has been treated in a separate order.

⁷ The petition of National Food Processors includes a request for clarification.

⁸ The petition of NFPA and APA includes a request for reconsideration.

(API). The National Food Processors Association and the NFPA and APA filed motions requesting that their petitions be accepted for filing although filed out of time. National Food, NFPA and APA state that their petitions were not filed within the 30-day filing period by a matter of minutes, but were promptly filed on the following, or 31st day. The API requested via a letter that its petition be accepted as timely filed, argued that the 30-day period for filing petitions for rehearing of a rule adopted in an informal rulemaking proceeding should be calculated on the basis of the date that the regulations are published in the Federal Register, not the date that the regulations are issued by the Commission. Laclede Gas Company submitted no explanation for its filing three days after the October 29th deadline.

The Commission believes that delay in the preparation and filing of documents before the Commission does not comprise good cause for the Commission to waive its regulations pertaining to the filing of applications for rehearing. And, although the Commission notes with interest the argument of API, it is not persuaded that sufficient good cause has been shown by API as to why its inquiry into Commission rules of practice and procedure was not commenced prior to a date close to the end of the 30-day period following the issuance date of Order No. 49. For these reasons, the Commission will treat these four late-filed petitions as petitions for reconsideration.⁹ As such, the merits of the arguments contained in these petitions have been considered by the Commission and are addressed below.

In addition, by letter of October 5, 1979, from the Honorable Pete V. Domenici, United States Senator from New Mexico, a letter dated October 3, 1979, was sent to the Commission discussing certain facts with respect to Gas Company of New Mexico. On October 15, 1979, the Chairman of the Commission responded to Senator Domenici and stated that the October 3, 1979 letter would be treated as an application for rehearing without prejudice to Gas Company of New Mexico filing a further request for rehearing. An additional letter on behalf of Gas Company of New Mexico, dated October 29, 1979, was filed with the

⁹ The Commission's consideration of these filings and action in response thereto does not serve to waive the Commission's right to assert that the petitioners are not entitled to seek judicial review of the Commission's order herein because they failed to apply timely for rehearing of Order No. 49. See *Boston Gas Company v. FERC*, 575 F.2d 975, 977-980 (1st Cir. 1978).

Commission on October 29, 1979. This letter stated that Gas Company of New Mexico did not object to the October 3, 1979 letter being treated as a petition for rehearing.

Further, Commissioner George R. Hall referred to the Secretary of the Commission a letter dated November 27, 1979, on behalf of the California Carpet Finishing Company, and requested the Secretary to treat the letter as a petition for rehearing. The Commission has considered this request and determined to treat the letter as a petition for reconsideration, treating it in a manner identical to the late-filed petitions for rehearing described above.¹⁰ A second letter with respect to the situation addressed by the California Carpet Finishing Company on behalf of Customweave Carpets, Inc. was received under date of November 27, 1979. This letter was referred to the Secretary of the Commission by Commissioner Hall for placement in the public file of this docket.

On November 8, 1979, the Brooklyn Union Gas Company filed a "Request for Prompt Clarification" of certain provisions of the regulations set forth in Order No. 49. On November 26, 1979, a joint "response" to Brooklyn Union's request for prompt clarification was filed by the North Carolina Utilities Commission, the public staff of the North Carolina Utilities Commission, the Attorney General of North Carolina, North Carolina Natural Gas Corporation, Pennsylvania & Southern Gas Company, Piedmont Natural Gas Company, Inc., Public Service Company of North Carolina, and United Cities Gas Company. The merits of these filings have been considered by the Commission and are addressed below.

On November 26, 1979, the Commission issued an order granting rehearing of Order No. 49 solely for the purposes of further consideration.

On December 10, 1979, the Brooklyn Union Gas Company filed a "Request for Expedited Disposition of Issue on Rehearing in Light of New Evidence." The argument raised in this petition is addressed below.

Finally, the Commission is in receipt of four letters, dated November 9, 1979, December 5, 1979, December 8, 1979, and December 17, 1979, submitted on behalf of Nitram, Inc. The Commission has determined to treat these four letters, in combination, as a petition for reconsideration.¹¹ The merits of the arguments raised in these letters are discussed below.

¹⁰ *Id.*
¹¹ *Id.*

The Commission has considered the numerous arguments raised in all of the filings described above. Based on this analysis, the Commission has determined to grant in part and deny in part rehearing of Order No. 49, amend certain provisions of the regulations contained in Parts 201, 204 and 282, and clarify certain aspects of Order No. 49.

II. Issues Raised in the Petitions.

Several of the petitions for rehearing were addressed to two main issues: (1) the Commission's assertion of jurisdiction in Order No. 49 to require that incremental pricing surcharges be passed through to direct industrial customers of interstate pipelines; and (2) the prorating fraction which was prescribed for the allocation of maximum surcharge absorption capabilities (MSAC) among suppliers. Both of these issues received considerable comment and discussion in the course of the rulemaking proceeding which preceded adoption of Order No. 49.

In addition to these issues, however, the petitions raised numerous other points, some of which had not been discussed in comments submitted on the proposals upon which Order No. 49 was based. Each of the issues raised in the petitions is discussed below, and where appropriate, a description is set forth of the amendments hereby adopted to the Part 282 regulations which are adopted in response to the petitions. In three instances, the Commission has determined to issue notices of proposed rulemaking with respect to amendments to its regulations, two of which the petitions for rehearing argue are necessary. Finally, a number of clarifications are set forth below, which serve either to clarify certain provisions of the regulations contained in Order No. 49 or statements made in the preamble to those regulations.

A. Definition of "Agricultural Use".

1. *Amendments Adopted.*—The NFPA and APA and the API request in their petitions that the definition of "agricultural use" be expanded to encompass wood processing. Section 206(b) of Title II of the NGPA exempts natural gas utilized for an "agricultural use" from incremental pricing surcharges. Specifically, NFPA and APA request that the processing of wood in order to obtain plywood and particleboard be deemed an "agricultural use" for purposes of the incremental pricing program, while the API makes a similar request with respect to the processing of wood in order to obtain paper or paperboard.

NFPA/APA's petition argues that "wood is, by any dictionary definition, a 'natural fiber'." Both petitions note that wood processing was not certified as an "essential agricultural use" for purposes of section 401 of the NGPA, but state that such certification was denied on a "storability" criterion, not on the basis that wood is not a "natural fiber."

Both petitions argue that the same logic which led the Commission to include within the definition of "agricultural use" certain textile operations should lead the Commission to treat the processing of wood as an agricultural use.

The Commission agrees with the petitioners that wood is a natural fiber and as such the processing of wood comes within the definition of "agricultural use" set forth in 206(b), in that "agricultural use" is defined to include "natural fiber processing."

For this reason, the Commission hereby amends the definition of "agricultural use" set forth in § 282.202(a) to include Standard Industrial Classification (SIC) Codes 2421, 2435, 2436, and 2492, as requested by NFPA/APA, and SIC Codes 2611, 2621, 2631, and 2661, which have been identified by Commission Staff as those encompassing the processing of wood into paper and paperboard in a usable form, prior to its conversion into end products. This criterion for identification of operations which process wood into paper and paperboard is consistent with API's request.

The exemption affidavit used for the incremental pricing program has also been modified to reflect the above changes.¹² A revised version of that affidavit is set forth below and copies of the revised version are available in the Commission's Office of Public Information.

2. *Natural Gas Used as a Boiler Fuel in the Production of Fertilizer*

The statutory definition of "agricultural use" provides that natural gas shall be considered to be used for an agricultural use to the extent such use is "as a process fuel or feedstock in the production of fertilizer, agricultural chemicals, animal feed, or food." Letters have been submitted to the Commission on behalf of one company, Nitram, Inc., which uses natural gas as a boiler fuel in the production of ammonium nitrate fertilizer. This company argues that it must use the steam raised in its boilers

which consume gas in order to manufacture the fertilizer, and thus its use of gas is as a "process fuel" in the manufacture of the fertilizer. This company requests the Commission to define "process fuel" as it appears in the section 206(b) definition of "agricultural use" to include the use of gas where the boilers form an integral step in the process required to manufacture the final product.

Commission Staff has discussed with Staff of the Department of Agriculture whether the definition of "agricultural use" in section 401(f)(1) of the NGPA (which is identical to section 206(b)(3) except for the "necessary for full food and fiber production" test in section 401) would include the use of gas as utilized by Nitram, Inc.¹³

These discussions lead the Commission to conclude that this issue, for purposes of the incremental pricing program, would benefit from further public comment. Thus, we have opened a docket for purposes of receiving comment on whether a rulemaking proceeding should be instituted to provide an exemption to natural gas used as a boiler fuel to raise steam, which in turn is utilized in the production of fertilizer. Any such comments should be submitted in Docket No. RM80-18. If the comments received persuade the Commission that a rulemaking proceeding should be instituted, the Commission would propose an exemptive rule under the authority of section 206(d) of the NGPA. By the terms of section 206(d), any exemptive rule adopted by the Commission would have to be submitted to the Congress for its review and possible one-House disapproval prior to the rule becoming effective.

B. *Direct Sales.*

Atlanta Gas Light Company, Associated Gas Distributors (AGD) and Laclede Gas Company allege that the Commission erred in providing that the MSAC's of direct industrial customers of an interstate pipeline could be calculated as the difference between the contract rate (negotiated by the customer with the supplying pipeline) and the applicable alternative fuel price ceiling. Atlanta Gas and AGD both argue that the Commission should require that MSAC's of such customers be determined with reference to the unit cost allocated to such sales in the interstate pipeline's most recent rate case determination. Petitioner AGD

¹² The version of the exemption affidavit set forth below also reflects changes consistent with the provisions of an interim rule issued today in docket No. RM80-16, *Disclosed Estimation Methodology Approach for Determination of Volumes of Natural Gas Used for Exempt Purposes under the Incremental Pricing Program.*

¹³ The Commission has been informed by letter of December 19, 1979, that the Department of Agriculture will issue a proposed interpretation of the list of essential agricultural uses certified pursuant to section 401 of the NGPA (7 CFR 2900.3) to this effect.

states that the regulations as adopted invite abuse, since under them "windfall profits" are "easily available" to an interstate pipeline.

In contrast, several pipelines—Cities Service Gas Company, Southern Natural Gas Company, Tennessee Gas Pipeline Company, United Gas Pipe Line Company, and Mississippi River Transmission Corporation—alleged error in the Commission's assertion of jurisdiction to ensure passthrough of incremental gas costs to direct sale customers. These petitioners request the Commission to retract its assertion of the right to exercise this jurisdiction at some time in the future.

The Commission noted in Order No. 49 that it currently has insufficient data to conclude that the regulations adopted with respect to direct industrial customers would engender a situation which is "real or merely theoretical". Further, the Commission stated that it would not undertake to adopt a regulatory solution to the problem if proved to be real unless it was established as of a scope which needed to be so addressed.

The Commission believes the issue of its jurisdiction with respect to direct industrial customers of interstate pipelines was sufficiently discussed in Order No. 49 and the public comment proceedings which preceded the issuance of that Order. No arguments have been raised in the petitions for rehearing which had not been raised previously. The Commission has not altered its position with respect to this issue and believes that further discussion is not needed at this time.

AGD in its petition urges the Commission to establish a "rigorous monitoring program" in order to ascertain instances of abuse under the regulations as adopted, if the Commission does not move to amend the regulations to guard against such abuse.

The Commission does not believe at the present time that a special program need be put in place to monitor the activity in the direct sales market. It appears, based on the filings received thus far, that adequate information is being furnished to the Commission in order for it to assess the extent to which the incremental pricing program might be circumvented by contract renegotiations. This information will be periodically reviewed and the Commission will be advised if the "real" problem reference above becomes of a size that would warrant Commission consideration.

Southern Natural, in addition to opposing the Commission's assertion of jurisdiction, requested clarification that

any further action the Commission might take in the exercise of that jurisdiction would be via a generic proceeding as contrasted to proceeding on an ad hoc basis with respect to individual situations.

It is the Commission's intent that any further action on its part with respect to the exercise or implementation of the jurisdiction with which it believes it is vested would be through an informal rulemaking proceeding, so that affected parties would have full opportunity to comment on the actions proposed by the Commission to address situations considered to be in need of a regulatory solution.

C. Prorating Fraction

1. Docket to be Held Open

Natural Gas Pipeline Company of America, Mississippi River Transmission Corporation, Southern Natural Gas Company, United Distribution Companies (UDC), and AGD requested in their petitions for rehearing that the Commission revised the fraction adopted for the allocation by a supplier of the maximum surcharge absorption capability (MSAC) on its system among its multiple suppliers. The pipeline companies argued that the fraction results in a heavier assignment of surcharges to pipelines further "downstream". Thus, the fraction would result in an allocation of surcharges to "downstream" pipelines which would ultimately have to be cleared into the general purchased gas costs adjustment (PGA) account rather than being absorbed by non-exempt customers. If such costs were placed in the PGA account, they would ultimately be borne to some extent by exempt customers.

AGD argued that the fraction which was adopted discriminates against distributors which are dependent to a significant degree on non-pipeline sources of high cost supplies which carry no incremental costs that are subject to passthrough.

The Commission explicitly recognized that the prorating fraction adopted in the final regulations reflected the needs of administrative practicality and feasibility and that it was not an academic "ideal". The procedure adopted also reflected the Commission's concern that the prorating fraction not create the potential for a significant amount of absorption capability to be "shielded" from allocation of surcharges.

The Commission acknowledges its concern with respect to the issue, however. The Commission further believes that the issue is one which will come into sharper focus as experience is gained under the incremental pricing program. UDC included in its petition for

rehearing a number of hypothetical numerical examples on this question, which indicate that the issue, and the considerations which the Commission should look to in balancing competing equities, change form as the relevant variables change.

For this reason, the Commission has determined to grant rehearing on this issue for the purposes of further consideration. The Commission will hold the issue open until the end of 1980 before rendering a decision on the merits. As experience is gained in the implementation of the program, petitioners are encouraged to supplement their petitions for rehearing with data indicating the actual effects of the prorating fraction as adopted. In addition, the Commission has directed the Staff to prepare for the Commission by the end of 1980 a report on the actual results of the prorating procedure currently included in the regulations.

If it appears from the data submitted by impacted parties and from the Staff analysis that amendments to the prorating procedure are necessary, the Commission will take action to issue such amendments.

2. Canadian Supplies Which Do Not Carry Incremental Costs

In the course of implementing the current prorating procedure, the Commission has become aware that one aspect of that procedure leaves open the potential for a significant amount of absorption capability to be shielded on certain distribution systems. This could occur where a supplier acquires a large volume of Canadian gas that does not carry incremental costs subject to passthrough from a supplier which is a "natural gas supplier", as defined in § 282.103 of the incremental pricing regulations. In such a situation, the purchasing supplier may include the purchased volumes in the prorating fraction, as currently structured. Since such volumes do not, however, carry incremental costs, their inclusion in the fraction serves to "shield" a portion of the absorption capability located on the supplier's system.

The main objective of the prorating fraction as adopted was to prevent the "shielding" of absorption capability to the greatest extent administratively feasible. The Commission believes that it would be administratively feasible to segregate the Canadian volumes not bearing incremental costs from the rest of the purchased flow. Thus, in a separate docket, the Commission will propose to require that such Canadian supplies be segregated and that they not be included in the prorating fraction. The notice of proposed rulemaking in that docket will set forth regulatory language

to implement the Commission's proposal.

The Commission has not previously requested comment on this issue and it is for this reason that this proposal of the Commission will be noticed separately as a proposed rule, upon which comment will be received prior to the Commission's making a final decision on the matter.

D. Small Boiler Facility Exemption

1. Statutory Provisions

Four of the filed documents—the petition for rehearing of Natural Gas Pipeline Company of America, the letter of the California Carpet Finishing Company, the letter of Customweave Carpets, Inc., and the petition for prompt clarification of Order No. 49 filed by the Brooklyn Union Gas Company—request amendments to address the situation which results from the two-pronged test for a "small boiler" which is set forth in section 206(a)(1) of the statute. Under that test, any facility in existence on the date of enactment of the NGPA which used 300 Mcf or less of gas for boiler fuel on an average day in the peak month of use in the base period selected by the Commission, i.e., 1977, is eligible for an exemption from incremental pricing surcharged on the basis that it is a "small" boiler facility.

This test thus grants an exemption to facilities which may have had abnormally low usage in the base period, for reasons such as curtailment. The two-prong test also grants an exemption to facilities which had no usage in the base period because they simply were not in operation in 1977, and to facilities which were not consuming natural gas at that time. All three types of facilities may, however, currently and under normal operations, use much greater quantities of gas than 300 Mcf per day.

The Commission agrees with petitioners that the "loophole" which exists in the statute and gives such facilities an exemption can result in inequitable treatment of these facilities as compared to their competitors. However, the Commission recognizes, as evidenced by the joint response of North Carolina entities to Brooklyn Union's petition, that this issue is of significant interest and the subject of differing views. For these reasons, the Commission will by separate notice propose to amend its regulations so that the three categories of facilities described above would be subject to being incrementally priced as to their non-exempt use of gas. This rulemaking will be conducted on an expedited schedule so that the Commission's position in this matter can be finalized at an early date. Until such time as the

Commission reaches a final determination on this issue, however, the current regulations will govern the question of which facilities are or are not eligible for an exemption from being incrementally priced as to their use of natural gas.

2. *"Existing" Facilities and Changes of Circumstances.*—The petition of Natural Gas Pipeline requested clarification of the term "in existence" and the "change of circumstances" rule contained in § 282.205. The Commission agrees that both terms would benefit from clarification and believes it would be useful to formalize the informal interpretations Staff has given of these terms over the past several weeks.

The Commission further believes that public comment on these clarifications would be helpful, and thus will include these two amendments as part of the proposed rulemaking described above which will be issued to address small boiler facilities.

3. *"New" Small Boilers.*—At the time of issuance of Order No. 49, the Commission issued a proposal to extend the small boiler exemption to facilities constructed since the enactment date of the NGPA. That proposal was noticed as Docket No. RM79-48.

A public hearing was held and written comments were received with regard to the proposal on "new" small boilers. However, the record which was developed was not extensive. Further, those comments which were submitted raised certain valid concerns with respect to the proposal.

For these reasons, the Commission has determined to issue a further notice of proposed rulemaking in Docket No. RM79-48. The further notice will specifically request additional data on the number of facilities which would be affected by the rule were it to be adopted, and will also discuss certain of the problems with the proposal which were noted by those commenters who did submit views on the first notice.

Since issuance of Order No. 49, the Commission has also received a number of petitions pursuant to section 502(c) of the NGPA and § 1.41 of the Commission's regulations requesting adjustments to the regulations in Order No. 49 which govern the small boiler facility exemption.¹⁴ Each of these petitions concerns a facility whose usage of natural gas as a boiler fuel has dropped below the 300 Mcf threshold since 1977. The petitioners thus request

exemptions on the basis that they are now "small" facilities.

The Commission believes there may be numerous other facilities whose usage has dropped below the 300 Mcf threshold since 1977 for valid business reasons. Thus, the Commission believes a generic rulemaking would be the most appropriate method of dealing with all such facilities. This category of facilities will be dealt with in the further notice to be issued in RM79-48, to consider whether these facilities should be treated as "newly" small facilities.

Until such time as the rule in Docket No. RM79-48 is finalized and becomes effective (any final rule adopted by the Commission will be subject to Congressional review), proceedings on the 502(c) applications that the Commission has received will be stayed and the currently effective regulations will govern which facilities are eligible for exemption from incremental pricing surcharges.

4. *Question No. 6 on the Exemption Affidavit.*—A number of questions have been raised since the initial issuance of the exemption affidavit as to the meaning of question No. 6 on the affidavit. If question No. 6 can be answered in the affirmative, a user may certify his facility is "small" and thus eligible for the small boiler exemption. Many commenters asserted that the original form of the question was ambiguous and would permit an applicant to respond in the affirmative who did not in fact meet the "300 Mcf or less on the average day in the peak month of use" test which is set forth in § 282.203 of the regulations.

The Commission does not believe that the original form of question No. 6 was ambiguous, in that the wording of the question tracked the language of section 206(a) of the NGPA and § 282.203 of the regulations. However, the number of queries raised with respect to the question led us to believe a revision of the question would eliminate a significant amount of confusion.

Thus, question No. 6 was revised and was first issued in a revised version of the affidavit dated November 2, 1979. All users who submitted earlier versions of the affidavit are advised to review their filing and compare their answer to question No. 6 with the answer they would give to the revised version of question No. 6. The revised form of the question is included in the most recent version of the affidavit, which is appended hereto. If users find their answers to the two questions are different, they should notify both their natural gas supplier and the Commission as to the change.

¹⁴ Petitions on this issue have been received from the following parties: The Illinois Brick Company, Rogers Dye-Finishing; Cordova Chemical Company of Michigan; Howell, a division of Burd, Inc.; BASF Wyandotte Corporation; Cerro Copper Products Co.; NCR Corporation; and Valentine Sugars, Inc.

E. Inclusion of Local Distribution Companies in Incremental Pricing Program

As noted above, two documents on behalf of Gas Company of New Mexico have been filed with the Commission. The Gas Company has argued for an exemption from the incremental pricing program for those local distribution companies that only rely to a small degree on supplies from the interstate market. As discussed in some detail in Order No. 49, the Commission has taken the position that any local distribution company which is dependent to some extent on interstate supplies becomes, by virtue of that dependence, subject to the incremental pricing program.

One petition has also been filed with the Commission under section 502(c) which requests exemption from the program for the reason that interstate gas represents only a small portion of petitioner's supplies.¹⁵

Gas Company of New Mexico suggested that the Commission consider a *de minimis* rule, which would provide that a local distribution company would be exempt from the program if it was only dependent on the interstate system for a small percentage of its supplies.

The Commission is not opposed to consideration of such a *de minimis* standard, if it were possible to determine a threshold percentage which was equitable and practicable. From the filings received thus far, the Commission has not been able to identify such a threshold. However, the Commission will continue to consider the question and stands ready to propose adoption of such a standard should it become apparent that it is possible to formulate a viable standard.¹⁶

F. Reduction of MSAC's by States or Local Distributors

In its petition for rehearing, the Brooklyn Union Gas Company requested the Commission to "adopt a timely and clear policy that rate structure or cost allocation changes made at the local or state level subsequent to enactment of Title II which have the effect of reducing, or eliminating entirely, a distributor's MSAC will be disregarded in calculating such distributor's MSAC." In its filing of December 10, 1979, entitled "Request for Expedited Disposition of Issue on Rehearing", Brooklyn Union requested the Commission to act promptly to

resolve the issue addressed in its petition for rehearing.

Brooklyn Union had voiced its concern on this issue throughout its comments filed prior to the adoption of Order No. 49. The Commission considered Brooklyn Union's argument along with all other comments filed in the course of the public comment procedure on the incremental pricing regulations. The Commission's position has not altered since issuance of Order No. 49, but the Commission believes it may be of benefit to state here again its rationale for not granting Brooklyn Union's request.

In general, the Commission has recognized throughout development of the incremental pricing regulations that the phenomenon about which Brooklyn Union is concerned could in fact develop. In those situations where State or local commissions take action to raise industrial rates to the level of the alternative fuel price ceilings established by the Energy Information Administration (EIA) of the Department of Energy (DOE) for the Commission, the Commission does not believe such action, by itself, is necessarily undesirable.

The Commission believes that most commissions will require that higher rates collected from industrial users will be reflected in lower rates to high-priority users, although it is evident that the crediting of surcharges against rates to high-priority users could differ from locality to locality from what it would be under the Commission's regulations.

The subject of State-wide exemptions from the incremental pricing program is discussed in detail in the Notice of Proposed Rulemaking issued December 21, 1979 in Docket No. RM79-47. As stated there, the Commission is not currently of the view that it will either encourage or discourage action taken by States to exempt themselves from the Federal incremental pricing program. If, however, a State (or local commission) were to structure its plan so that the net result were an offsetting of industrial rates within the meaning of section 205(b) of the NGPA, the Commission takes the position that such action would be in violation of the statute.

The Commission's intentions with respect to State actions are set forth in the notice issued in Docket No. RM79-47. With respect to contractual relationships between local distribution companies and their direct sale customers, however, the Commission will continue to monitor this situation, as stated in Order No. 49, to determine if contracts are being renegotiated in order to circumvent the intent of the incremental pricing program.

G. Accounting Regulations

As a result of discussions with impacted parties with regard to the implementation of the incremental pricing regulations, Commission Staff has become aware of three aspects of the accounting regulations promulgated in Order No. 49 which are in need of clarification. Thus, the Commission on its own motion amends certain provisions of Parts 201, 204 and 282, to address the problem areas noted and to clarify the present regulations.

The first area is the ambiguity which lead to a misinterpretation that there could be a double recovery of incremental costs not subject to incremental surcharges. The problem arises from the inclusion of an estimate of such costs in the current PGA clause and the concurrent deferral of such costs in account 192.1, unrecovered incremental gas costs. The accounting required that those costs be transferred to the PGA account, account 191, unrecovered purchased gas costs, but did not specify the accounting required to offset these costs by the amount already recovered through the current PGA.

The amendments set forth below rectify this deficiency. The amount of incremental costs remaining in account 192.1 following the billing of the applicable incremental surcharge will not flow back through the income accounts by reversing the entry which originally deferred those costs. These costs have, at this point, reverted to the status of purchased gas costs, as opposed to incremental costs, following the determination that they are not subject to incremental surcharge. As such, these costs are compared to the amount of such costs already recovered based on estimates, i.e., the PGA clause, and the resulting over or under collection of the costs is deferred in accordance with the PGA mechanism now in place, taking into account the aspects discussed below.

The Commission anticipates that natural gas suppliers not subject to the requirements of the Uniform System of Accounts will adopt accounting practices consistent with those reflected in the Commission's regulations.

The second aspect of the accounting regulations in need of clarification is the possible shift of gas purchase costs between jurisdictional and non-jurisdictional customers. The spillover of the incremental costs not subject to the incremental surcharge requirements is applicable to both jurisdictional and non-jurisdictional sales volumes. As such, the Commission finds that only that portion of the over or under

¹⁵ Petitioner on this issue is Lone Star Gas Company.

¹⁶ The disposition herein of this issue is without prejudice to Gas Company of New Mexico applying for a 502(c) adjustment under 18 CFR 1.41.

recovery of those costs discussed above, applicable to jurisdictional sales volumes, are to be deferred in account 191 for collection or refunding in the following PGA period. Stated another way, the Commission finds that the portion of a pipeline's purchased gas costs which cannot be passed through as incremental surcharges should be borne by jurisdictional and non-jurisdictional customers of the pipeline in the same manner they would be borne absent incremental pricing.

Consistent with this finding, each pipeline shall defer in account 191 over or under collections of only those pipeline gas costs related to the pipeline's jurisdictional sales, to be recovered or refunded in the following PGA period.

The third area of change in the accounting regulations is to remove pipeline supplier surcharges from the estimates of purchased gas costs and the estimates of incremental pricing surcharges. In the review of the first tariff clauses and tariff rate revisions filed by interstate pipelines; it became evident that the regulations as written were causing confusion. The changes below serve to simplify and clarify the methodology for calculating the "reduced PGA."

G. The "Reduced PGA" Approach

United Gas Pipe Line Company requested in its petition for rehearing that the Commission clarify whether or not it intended by adoption of the Part 282 regulations to require the use of a "reduced PGA" rate by interstate pipelines in their sales to direct industrial customers and by local distribution companies in sales to their customers.

The Commission agrees with United's argument that it does not have rate jurisdiction over the two categories of sales noted by United. It was not the intent of the Commission to imply by any statements in the preamble in Order No. 49 that the regulations set forth in Part 282 would require interstate pipelines to adopt a reduced PGA rate as the basis for their direct sales contracts. Nor did the Commission intend to indicate that such a requirement would apply henceforth to sales by local distribution companies to their customers. The Commission through adoption of the Part 282 regulations promulgated a requirement that the reduced PGA rate form the basis of sales only with respect to sales by interstate pipelines to their sale-for-resale customers.

This intent is reflected clearly in the provisions of § 282.504(c)(2), which states that the "rate" which is to be used as the basis for the calculation of the

MSAC of an individual industrial boiler fuel facility for a particular month is the "rate per million Btu's (excluding any incremental pricing surcharge), plus taxes, at which the non-exempt industrial boiler fuel facility purchased gas from the natural gas supplier during the previous month." This provision makes clear that the rate to be utilized is the current rate being billed by a facility's supplier, not a "reduced PGA" rate. The "reduced PGA" rate must be calculated under the regulations only by interstate pipelines and must be used as the basis for billings only in those billings rendered by interstate pipelines to their sale-for-resale customers.

Further indication of the Commission's intent with respect to this question can be found in the provisions of § 282.503(b)(3), clauses (i) and (ii). These provisions deal with the projected MSAC of an individual industrial facility, or in other words, the estimate of the surcharge which the facility will be able to absorb. The first of the two cited provisions states that the rate a local distribution company should use as the basis for the estimate of the surcharge is the "effective rate per million Btu's at the time of projection * * * unless the local distribution company elects to adjust such rate to reflect general rate changes which it is known will occur during the PGA period under authority of a state or local regulatory body." The second provision prescribes that an interstate pipeline should utilize in its calculations (with respect to its direct sale customers) "its effective contract rate per million Btu's at the time of projection * * * unless the pipeline elects to adjust such rate to reflect rate changes which it is known will occur during the PGA period." Contrary to United's request, the Commission believes that the Part 282 regulations are clear as originally promulgated with regard to this issue and they need not be modified.

H. Purchases from Affiliated Producers

Consolidated Gas Supply Corporation requested in its application that the Commission clarify § 282.301(k)(3), which describes that portion of the acquisition cost of natural gas purchased by an interstate pipeline from an affiliated producer which is subject to incremental pricing.

Consolidated states in its application its belief that the Commission intended to treat purchases from affiliated producers in the same way as purchases from unaffiliated producers. Consolidated avers that the present language of § 282.301(k)(3) does not reflect such an intent, however, since

the language of the section refers to the cost of gas produced by the affiliate rather than the first sale acquisition cost incurred by the pipeline. Consolidated also notes that no other categories of gas listed in Subpart C—wherein the portion of purchased cost of the various categories which is subject to being passed through as an incremental pricing surcharge is identified—relate to the cost of the producer, in contrast to the first sale acquisition cost incurred by the pipeline.

The Commission agrees with Consolidated's argument and hereby amends § 282.301(k)(3) to make clear that the portion of the cost to an interstate pipeline which is subject to being passed through as a surcharge is to be determined by reference to the first sale acquisition cost incurred by the pipeline with respect to that purchase. The amended regulation incorporates a cross-reference to § 270.203 of the Commission's regulations, which sets forth when sales by affiliates to pipelines will be considered to be first sales.

I. Emergency Transactions Pursuant to § 157.45, et seq., of the Commissions' Regulations

The Cities Service Gas Company and the Tennessee Gas Pipeline Company (in the joint application noted above) requested in their petitions that the Commission clarify Order No. 49 so as to make clear that the incremental pricing regulations do not apply to emergency transactions conducted pursuant to § 157.45, et seq., of the Commission's regulations.

The two petitions argue that if such transactions were included within the program, a portion of the acquisition costs would have to be passed through as incremental pricing surcharges and a supplier would be required to allocate a portion of its maximum surcharge absorption capability to volumes represented by the emergency transaction volumes.

The Commission never intended that the incremental pricing program would apply to the emergency transactions conducted under the provisions of § 157.45, et seq. Had this been the Commission's intent, a provision similar to § 282.301(j), which governs purchases made under the authority of section 311(b) of the NGPA, would have been included in § 282.301.

Both petitioners argue that clarifications are needed to § 282.504(c)(3), § 282.504(d)(3), and § 282.504(a)(2), to clearly exclude emergency transaction volumes from the applicability of those sections. Sections 282.504 (c)(3) and (d)(3) deal only with

areas where there are incurred incremental gas costs. Our previous statement makes clear that the Commission does not intend to consider any portion of the costs as incremental gas costs in § 157.45, *et seq.*, transactions. Therefore, the provisions of §§ 282.504(c)(3) and (d)(3) never come into operation and need not be clarified.

With respect to petitioner's request for clarification of § 282.504(a)(2), no such section exists. It appears possible that petitioners intended to cite § 282.504(d)(2), which deals with the allocation to multiple suppliers of the aggregate absorption capability of a natural gas supplier. The terms of this section, and its companion section in the "projected MSAC" provisions, § 282.503(c), could be interpreted so as to include volumes purchased in a § 157.45, *et seq.*, transaction. The Commission hereby states that this interpretation should not be followed and that the § 157.45, *et seq.*, volumes should simply not be included in the calculations required under the Part 282 regulations.

However, the Commission also wishes to restate its intention, as has been stated previously, to ultimately rescind the Part 157 regulations, because the Commission prefers that emergency transactions be carried out under the Part 284 regulations, promulgated under the authority of section 311 of the NGPA.

J. Refunds

One petitioner, Natural Gas Pipeline Company of America, requested that the Commission delete § 282.506 of the regulations on the grounds that it is both beyond the jurisdiction of the Commission and impracticable for pipelines to administer. The Commission disagrees that the requirements of § 282.506 are beyond its jurisdiction, since the regulation requires only that the refundable amounts be flowed through to "each appropriate natural gas supplier." The Commission agrees with Natural that it does not have the authority to require that those amounts be flowed on through to end-users.

In addition, the Commission is not persuaded by Natural's reasoning that the regulation as written would create an overly burdensome administrative task. Thus, the Commission denies rehearing of this request. However, this denial is without prejudice to the petitioner, or any other party who believes that the requirements of § 282.506 create a special hardship, filing a request for an adjustment to § 282.506 under the provisions of section 502(c) of the NGPA.

K. Optional Billing Procedure for Interstate Pipeline Direct Sales and for Local Distribution Company Sales-for-Resale

United Gas Pipeline requested in its petition for rehearing that the Commission modify the Part 282 regulations to include an optional billing procedure for sales by interstate pipelines to their direct industrial customers and for sales by local distribution companies to their sale-for-resale customers.

The regulations as adopted include optional billing procedures which can be utilized by interstate pipelines for their sales-for-resale and by local distribution companies with respect to their direct customers. The two optional billing procedures were included in the regulations as a result of comments received during the course of the development of the Part 282 regulations. The optional procedures were specifically designed to provide interstate pipelines and local distribution companies with adequate time to gather all information needed to make the actual calculations which must be made to arrive at surcharges under the "reduced PGA" approach. As noted by United, if the optional billing procedures had not been included, the regulations would require that a great volume of communication, computation and billing be computed within a 10-day period. The Commission acknowledges that the 10-day period may be as inadequate in the two situations cited by United as it is in the two situations currently covered by the regulations.

United requests that interstate pipelines be authorized to use either of the two optional procedures already in the regulations when billing their direct customers. The second procedure would only be useful where the incremental costs to be passed through by the pipeline are less than the aggregate absorption capability on the pipeline's system.

The Commission has determined to amend the regulations to include optional billing procedures for interstate pipelines and local distribution companies similar to the procedures already included in the regulations—i.e., to permit interstate pipelines to bill their direct customers at their applicable alternative fuel price ceilings and to permit local distribution companies to bill sale-for-resale customers at the level of the surcharge estimated for each particular customer.

To grant United's request in full might create the potential for an underestimation of the absorption capability of direct customers. The

effect of this would be that high priority customers would pay a higher "reduced PGA" rate than they would have if the estimates had been accurate for the duration of the PGA period in question. Thus, the regulations do not permit an interstate pipeline to bill its direct customers at the level of the surcharge estimated for the customer. The Commission is open to further consideration of United's request, however, should it develop that incremental costs incurred by a pipeline are consistently less than the total absorption capability of industrial customers served by the pipeline.

The amendments to §§ 282.504(c)(4), and (d)(4) which reflect that the optional billing procedures may be utilized by pipelines and distributors are set forth below.

L. November 1 Submetering Requirement

The National Food Processors Association and the Tuna Research Foundation, Inc., both request in their petitions that the submetering requirements which by the regulations will become effective November 1, 1980, be amended so as not to be mandatory in those situations where the output of a boiler is for both agricultural and non-agricultural purposes. The petitions argue that a submeter in such a situation would not be helpful.

The Tuna Research Foundation requests in the alternative that the definition of "agricultural use" be expanded to include the boiler fuel use of natural gas for the production of pet food. The Commission does not view the production of pet food (into which go the trimmings of tuna) as "food production" and thus one of the uses which by the terms of section 206(b)(3)(A) qualifies as an "agricultural use." As the Tuna Foundation acknowledges, the process use (not boiler fuel use) of natural gas used in the production of pet food has been certified as an "essential agricultural use" by the Secretary of Agriculture.

The Commission states for purposes of clarification that § 282.204(d)(6)(i)(B)(1) provides that as of November 1, 1980, the volumes of natural gas used for an agricultural purpose "shall be determined on the basis of and to the extent there are submeter reading records for each month, as signed under oath by a responsible company official, that show the extent to which gas is consumed for an agricultural use. . . ." The language of the requirement refers to "submeter reading records" but does not require that a submeter be installed so that the reading of that submeter would indicate

the volume of gas used for agricultural (or non-agricultural) purposes. The Commission recognizes that a certain amount of extrapolation from submeter readings will be necessary to calculate usage in the agricultural product situation. In addition, the Commission will assess over the next ten months whether the rules it has adopted governing estimates for the first ten months of the program can be retained in some form for the period after November 1. Those rules are set forth and described in a document issued today by the Commission in Docket No. RM80-16.

Natural Gas Pipeline Company of America petitioned the Commission for deletion of the November 1, 1980, submetering requirement. Natural's request is denied for the reason that this issue received adequate and full discussion before the submetering requirement was adopted. The request is also denied as premature since the requirement does not become effective until November 1, 1980, and the requirement will undergo continuing assessment during the first several months of implementation of the Phase I program. The issue will also receive analysis in connection with the Commission's rulemaking proceeding for promulgation of the Phase II program regulations.

M. Amendments to Filing Requirements

The Commission has received a number of petitions for adjustment under section 502(c) of the NGPA requesting relief from compliance with the filing and accounting procedures contained in Part 282. The petitions basically are one of two types.

One type of petitioner is a supplier who currently purchases no volumes of gas which carry incremental gas acquisition costs. Companies in this situation request that they not be required to make the tariff filings nor to file any of the other reports required under §§ 282.601-603 and that they not be required to keep the accounts required by § 282.502.

The Commission agrees that there is no benefit to be gained from this type of company complying with the requirements of Part 282 as indicated, as long as the situation of each company remains as it is at present.

The second type of petitioner is a company which functions merely as a gatherer of gas from producers, or functions only as a conduit pipeline. This type of petitioner requests relief from the MSAC calculations and reporting requirements contained in §§ 282.503 and 282.504, since his MSAC will always be zero. The Commission

believes that certain companies in these situations should be relieved of the MSAC requirements. The Commission presently believes that relief should be granted to three types of companies: (1) a company which is small, is located close to the producer-suppliers, performs only a gathering service, and sells the entirety of the gathered gas to one large interstate pipeline; (2) a company which is in a unique situation and all of its current purchased gas costs are allocated to interstate pipeline purchasers; and (3) a company which sells only to other interstate pipelines and sells to each an isolated, identifiable source of supply.

Companies such as those above should only be relieved of MSAC calculations, however. They should still be required to identify and report to purchasing pipelines each month the incremental gas costs portion of the purchase costs.

The Commission will handle the 502(c) petitions it has received in these areas on a case-by-case basis, since the facts of each are very significant and generic rules which will not sweep too broadly are difficult to formulate at this time.

N. Treatment of District Heating Facilities

The General Counsel of the Commission has to date received four formal requests for interpretation¹⁷ to establish that a district heating facility is not an industrial facility within the meaning of section 201 of Title II and § 282.103 of the Commission's regulations. A district heating facility is, in general terms, a facility which generates steam for sale to the public. The steam may flow to users who would be exempt from being incrementally priced if considered on an individual basis under the program, or it may flow to facilities which would be nonexempt industrial facilities, or it may flow to both types of facilities.

The question is whether the centralized facility which is generating steam should pay incremental surcharges on the gas it purchases to generate the steam.

The Commission believes that the question with respect to district heating facilities is of a general nature and

should be handled in this order on rehearing.

The Commission is persuaded that the mere act of raising steam is not sufficient to classify a district heating facility as an industrial facility under the definition in § 282.103(d). It is the use to which the steam is put and not the fact that the steam is raised that should determine the status of such a facility. Ideally, only that portion of gas used to generate steam which ultimately flows to what would be exempt facilities if considered on their own should be exempt from incremental surcharges. As a practical matter, however, a determination of whether or not a facility would be exempt if considered on its own is beset with difficulties.

If this approach were adopted, many of the complexities of the incremental pricing program would be transferred to the steam distribution system, although surcharges to the district heating company would likely be rolled into all steam customers. Thus, otherwise exempt customers could end up paying part of the incremental surcharges, and otherwise nonexempt customers could escape some of the surcharges. Since such a program would be administratively burdensome to all parties involved and would not achieve the statutory goal of flowing incremental gas acquisition costs through to nonexempt customers, the Commission believes that district heating systems which primarily serve nonindustrial steam requirements should be exempted from paying incremental surcharges as to their purchases of gas.

We have determined to use 1977 loads to determine the nature of the loads of district heating systems. Those systems with steam loads which were 50% or more nonindustrial or exempt industrial in 1977 need only complete an exemption affidavit as provided by the Commission for the incremental pricing program (a copy of the affidavit is appended hereto). A responsible company official of a district heating facility which sold 50% or more of its steam load to nonindustrial or exempt industrial customers may answer question No. 5 on the affidavit in the negative and submit the affidavit to the facility's supplier (with two copies to the Commission). Upon receipt of the affidavit, the supplier will consider the district heating facility to be exempt from incremental pricing surcharges. The Commission has determined to require district heating facilities which served (in 1977) loads not primarily residential, commercial, or otherwise exempt to file a petition for adjustment with the Commission under the

¹⁷ Requests for Interpretation have been received from Baltimore Gas and Electric Company; The Detroit Edison Company; Rochester Gas and Electric Corporation; and the International District Heating Association. The disposition of the district heating facility issue in this order renders individual responses to these requests unnecessary, except as to one request included in the filing of the Detroit Edison Company with respect to § 282.502 of the Commission's regulations.

procedures of 502(c) and § 1.41 of the Commission's regulations. In this context, the Commission believes that if more than 50% of annual steam sales were to nonexempt industrial facilities, the aggregate load should be viewed as not primarily residential, commercial, or otherwise exempt. Petitioners with such steam loads should address the question of why exemption from incremental pricing is necessary to prevent special hardship, inequity, or an unfair distribution of burdens.

The definition of "industrial facility" in § 282.103(d) of the Commission's regulations has been amended to incorporate the fifty percent (50%) rule described above.

O. Clarifications of a Technical Nature

1. *Definitions.*— Natural Gas Pipeline Company of America requested that the definitions of the terms "boiler fuel use" and "industrial boiler fuel facility" be added to the other definitions set for in § 282.103. Natural notes that the terms are defined in the statute.

It is, however, not necessary to set forth definitions of the two terms in § 282.103, since the statutory definitions of the terms are adopted in § 280.101. The definitions adopted in § 280.101 are applicable to all regulations set forth in Subchapter I of Chapter I of Title 18 of the Code of Federal Regulations, and the regulations in Part 282 are a subset of Subchapter I.

2. *Treatment of Certain Types of Intrastate Gas.*— One statement included in the preamble in Order No. 49 should be clarified so as to eliminate the confusion which the sentence as written has engendered. The statement appears in the discussion entitled "Prorating of MSAC" and would seem to indicate that a local distribution company that makes any purchase of gas, the price of which is governed by Title I of the NGPA, is treated as an interstate pipeline with respect to such purchases. The statement is too broad in scope and should not be so broad as to include purchases of gas such as described in sections 105 and 106 of Title I. Rather, as stated in section 204(c)(4) of the NGPA, only purchases of gas listed in section 203 or certain other costs as listed in 203(a)(8)(B), (9), or (10) render a local distribution company an interstate pipeline vis-a-vis those purchases. As such, of course, the local distribution company must pass through the incremental costs associated with the volumes to nonexempt industrial customers.

3. *Steam Utilized for Space Heating.*— One of the questions which has been frequently posed to Commission Staff merits discussion in this order. This

question is whether or not natural gas used by an industrial facility to generate steam which is in turn used by the facility for space heating purposes is subject to being incrementally priced. The current regulations do not specifically address this question, so that some ambiguity could be alleged to exist as to whether the regulations exclude or include the volumes of natural gas so used.

The Commission is of the belief that gas used for space heating purposes should be viewed in relationship to the use or operation which the space heating supports. In other words, if the space heating is a necessary component of a nonexempt industrial facility, then gas used to generate the steam used for the space heating should be considered as subject to being incrementally priced. If the steam is used to space heat a facility which is eligible for a partial exemption, then the Commission believes that the gas used for space heating purposes should be proportionately attributed to the end-uses of which it forms a component. For example, if a facility receives an exemption for half of its non-space heating boiler fuel use because half of the end-product produced by the facility is an agricultural product, half of the gas used to generate steam for space heating in the facility is also eligible for an exemption.

The question of gas used to generate steam for space heating is addressed in the Commission's interim rule issued today in Docket No. RM80-16 governing how estimates should be calculated during the first ten months of the incremental pricing program.

4. Industrial Facilities Which Generate and Sell Electricity to the Public.

Another question which has been raised to Staff several times relates to the treatment of gas sold to an industrial facility which utilizes the gas to generate electricity which is typically used only by the facility itself. However, the facility may at those times when it is generating more electricity than needed to meet its own demands sell the excess power to the regional grid of which it is a member.

The question then is whether such a sale renders the facility an "electric utility" under the NGPA and as such eligible for an exemption under section 206(c)(2) of Title II. The definition of "electric utility" in section 2(28) of the NGPA is:

"The term 'electric utility' means any person to the extent such person is engaged in the business of the generation of electricity and sale, directly or indirectly, of electricity to the public."

The Commission takes the position that an industrial facility as described above would be an electric utility to the extent of its sales of power to the public. Thus, the facility would be eligible for an exemption from being incrementally priced to the extent of its purchases of natural gas which are used to generate the electricity which is ultimately sold to the public.

The Commission Orders: For the reasons set forth above, the Commission orders:

A. The petitions for rehearing, reconsideration, modification and clarification are granted to the extent indicated in the body of this order. To the extent not so granted, the petitions are denied.

B. The motions and request for acceptance of late-filed petitions for rehearing are denied.

C. The request for prompt clarification, to the extent not addressed above, is dismissed.

D. The request for expedited disposition is dismissed.

E. Title 18 of the Code of Federal Regulations is amended by revisions in Parts 201, 204, and Part 282, to read as set forth below, effective immediately.

The regulations below are made effective immediately for the reason that they in part grant or recognize an exemption, relieve a restriction, or are interpretative in nature, which is consistent with section 553(d) of the Administrative Procedure Act. The remainder of the regulations deal with accounting regulations, which the Commission views as analogous to rules of practice and procedure, and thus not subject to the section 553(d) requirement.

(Natural Gas Act, as amended, 15 U.S.C. 717, *et seq.*; Natural Gas Policy Act of 1978, Pub. L. 95-621, 92 Stat. 3350, 15 U.S.C. 3301, *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.*)

By the Commission,
Kenneth F. Plumb,
Secretary.

Federal Energy Regulatory
Commission, Washington, D.C. 20426.

Exemptions from incremental pricing for certain categories of industrial boiler fuel use of natural gas.

Docket No. RM79-14.

Participation is Voluntary.

Copies of executed exemption affidavits filed with the Commission shall be available through the Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Please Read Before Completing This Affidavit

Purpose

The Natural Gas Policy Act of 1978 (NGPA) provides that natural gas used as boiler fuel by any industrial boiler fuel facility will be subject to incremental pricing surcharges unless exempted. The statute provides for certain exemptions from these incremental pricing surcharges. To be wholly or partially exempt from incremental pricing surcharges the boiler fuel must be consumed for one of the statutorily exempt uses. This affidavit serves the purpose of identifying those natural gas uses within your facility which are entitled to a full or partial statutory exemption from incremental pricing surcharges but which could not be identified as exempt through review of the records of your natural gas supplier.

Important

If circumstances or ownership change with respect to your facility, you should immediately notify your natural gas supplier(s) of the change so that the correct amount of surcharge may be calculated as to your gas use. Failure to report changes may lead to civil and criminal penalties under Section 504 of the Natural Gas Policy Act of 1978.

General Instructions

If you claim an exemption from incremental pricing surcharges for all, or a portion, of the gas used by your facility which has been identified by your natural gas supplier as a potentially non-exempt industrial boiler fuel facility, this affidavit should be completed and signed, under oath, by a responsible official associated with the facility. A separate affidavit must be filed for each facility for which a total or partial exemption from incremental pricing surcharges is claimed.

The original and two copies of this affidavit should be submitted to: Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Also, one copy must be submitted to your natural gas supplier. Additionally, each industrial facility must retain such records, documents and data which formed the basis for the exemption claimed on this affidavit. Definitions which may be helpful in completing this affidavit are provided below.

If you have any questions concerning this affidavit contact Ms. Alice Fernandez on (202) 357-8965.

Definitions

(1) "Natural gas supplier" means an interstate pipeline or a local distribution company.

(2) "Local distribution company" means any person other than an interstate pipeline that receives gas directly or indirectly from an interstate pipeline and which is engaged in the sale of natural gas for resale or for ultimate consumption. A person is not considered as having received gas directly or indirectly from an interstate pipeline if the only service performed by an interstate pipeline for the purchaser is a transportation service.

(3) "Boiler fuel use" means the use of any fuel for the generation of steam or electricity.

(4) "Facility" means all buildings and equipment located at the same geographic site which are commonly considered to be part of one plant, mill, refinery, or other industrial complex.

(5) (a) "Industrial facility" means any facility engaged primarily in the extraction or processing of raw materials, or in the processing or changing of raw or unfinished materials into another form or product.

(b) A district heating facility which sold more than 50% of its steam in 1977 for residential, commercial or industrial uses exempt from being incrementally priced shall not be considered to be an "industrial facility." For purposes of this paragraph, a "district heating facility" is a facility which generates steam which is sold to the public.

(6) "Industrial boiler fuel facility" means any industrial facility which uses natural gas as a boiler fuel.

(7) "Non-exempt industrial boiler fuel facility" means any industrial boiler fuel facility other than any such facility which has been exempted from the incremental pricing program in accordance with Part 282 of the Commission's rules and regulations.

(8) "Agricultural use" means any use of natural gas (a) which is certified by the Secretary of Agriculture under 7 CFR 2900.3 as an "essential agricultural use" pursuant to section 401(c) of the NGPA; or (b) which is used in the following manufacturing operations as set forth in the *Standard Industrial Classification Manual—1972*; provided that, the use of natural gas in the textile operations is limited as set forth below to the production or processing of natural fiber:

Industry SIC No. and Industry Description

- 221 Broad Woven Fabric Mills, Cotton.
- 222 Broad Woven Fabric Mills, Man-made Fiber and Silk (natural fiber processing only).

- 223 Broad Woven Fabric Mills, Wool (Including Dyeing and Finishing).
- 224 Narrow Fabrics and Other Smallwares Mills: Cotton, Wool, Silk, and Man-made Fiber (natural fiber processing only).
- 2257 Circular Knit Fabric Mills (natural fiber processing only).
- 2258 Warp Knit Fabric Mills (natural fiber processing only).
- 226 Dyeing and Finishing Textiles, Except Wool Fabrics and Knit Goods (natural fiber processing only).
- 228 Yarn and Thread Mills (natural fiber processing only).
- 2291 Felt Goods, Except Woven Felts and Hats (natural fiber processing only).
- 2293 Paddings and Upholstery Filling (natural fiber processing only).
- 2294 Processed Waste and Recovered Fibers and Flock (natural fiber processing only).
- 2295 Coated Fabric, Not Rubberized (natural fiber processing only).
- 2297 Nonwoven Fabrics (natural fiber processing only).
- 2299 Textile Goods, Not Elsewhere Classified (natural fiber processing only).
- 2421 Sawmills and Planing Mills, General.
- 2435 Hardwood Veneer and Plywood.
- 2436 Software Veneer and Plywood.
- 2492 Particleboard.
- 2611 Pulp Mills.
- 2621 Paper Mills, Except Building Paper Mills.
- 2631 Paperboard Mills.
- 2661 Building Paper and Building Board Mills.

(9) "School" means a facility the primary function of which is the delivery of instruction to regularly enrolled students in attendance at such facility. Facilities used for both educational and non-educational activities are not included under this definition unless the latter activities are merely incidental to the delivery of instruction.

(10) "Hospital" means a facility the primary function of which is the delivery of medical care to patients who remain at the facility. Outpatient clinics or doctor's offices are not included in this definition. Nursing homes and convalescent homes are included in this definition.

(11) "Similar institution" means a facility the primary function of which is the same as the primary function of the facility to which it is compared.

(12) "Qualifying cogeneration facility" means a cogeneration facility which meets the requirements prescribed by the Commission pursuant to section 201 of the Public Utility Regulatory Policies Act of 1978.

UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY COMMISSION

Exemptions From Incremental Pricing for Certain Categories of Industrial Boiler Fuel Use of Natural Gas

1. Name of Company or Organization:

2. Name of Facility: _____

* * * * *

3. Address: _____
 Number _____
 Street _____
 City/Town _____
 County _____
 State _____
 Zip Code _____

* * * * *

4. Name of Natural Gas Supplier: _____

* * * * *

5. Is your facility an "industrial boiler fuel facility", as defined in the "Definitions" of this affidavit?

- (a) ☐ No — Sign and return affidavit.
 (b) ☐ Yes — Continue to 6.

* * * * *

6. Was your industrial boiler fuel facility in existence on November 9, 1978; and, on the basis of records, documents, or data in your possession, was your facility's average daily consumption of natural gas for boiler fuel, for the month of peak usage in 1977, 300 Mcf per day or less?

- (a) ☐ Yes — Sign and return affidavit.
 (b) ☐ No — Continue to 7.

* * * * *

7. Is all of the natural gas consumed as boiler fuel at your facility for an agricultural use?

- (a) ☐ Yes — Sign and return affidavit.
 (b) ☐ No — Continue to 8.

* * * * *

8. Is your facility, in its entirety, any of the following:

- (a) A school, hospital, or similar facility?
☐ Yes ☐ No
 (b) Used for generation of electricity by an electric generation station owned by an electric utility?
☐ Yes ☐ No
 (c) A qualifying co-generation facility?
☐ Yes ☐ No

If the answer is "yes" to any of the above, sign and return this affidavit. If the answer is "no", continue to 52.

* * * * *

9. Is a portion, though not all, of the gas consumed at your facility used as boiler fuel for an agricultural use?

- (a) ☐ Yes — Sign and return affidavit, and see item (1) of the "Notice" below.

* * * * *

10. Is your facility, in part, but not in its entirety, any of the following:

- (a) A school, hospital, or similar facility?
 (b) Used for the generation of electricity by an electric generation station owned by an electric utility?
☐ Yes ☐ No
 (c) A qualifying co-generation facility?
☐ Yes ☐ No

If the answer is "yes" to any of the above, sign and return this affidavit and see item (2) of the "Notice" below.

If the answer is "no" to all questions in items 6 through 10, you should not return this affidavit, but see item (3) of the "Notice" below.

Notice

(1) Question 9.

If you have responded affirmatively to question 9, the volume of natural gas used in your facility which shall be exempt from incremental pricing—

(a) for the period January 1, 1980, through October 31, 1980, may be determined on the basis of a disclosed estimation methodology and monthly estimates which are certified by a responsible company official, in accord with § 282.207 of the Commission's regulations; and

(b) for the period beginning November 1, 1980, shall be determined on the basis of submeter reading records for each calendar month, as signed under oath by a responsible company official, which show the extent to which gas is consumed for an agricultural use and which are furnished to the facility's natural gas supplier as required by the supplier.

• Certified monthly estimates may be utilized for a period following November 1, 1980, if you have obtained a purchase order for all submeters which will be needed in your facility by November 1, 1980, and expect installation within a reasonable time period.

(2) Question 10.

If you have responded affirmatively to any part of question 10, the volume of natural gas which shall be exempt from incremental pricing—

(a) for the period January 1, 1980, through October 31, 1980, may be determined on the basis of a disclosed estimation methodology and monthly estimates which are certified by a responsible company official in accord with § 282.207 of the Commission's regulations; and

(b) for the period beginning November 1, 1980, shall be determined on the basis of submeters which permit determination of the volume of exempt usage and which are available to be read by the facility's natural gas supplier, or on the basis of submeter reading records for each month, as signed under oath by a responsible company official, which show the extent to which gas is consumed for an exempt use and which are furnished to the facility's natural gas supplier as required by the supplier.

• Certified monthly estimates may be utilized for a period following November 1, 1980, if you have obtained a purchase order for all submeters which will be needed in your facility by November 1, 1980, and expect installation within a reasonable time period.

(3) Users Who Do Not Return Affidavits.

If you do not complete and return this affidavit setting forth your claim to a total or partial exemption, ALL gas sold to your facility will be subject to incremental pricing surcharges. However, that volume of gas which is used in your facility for a use other than boiler fuel use will not be subject to incremental pricing surcharges provided that the volume is determined in any of the following ways—

(a) for the period January 1, 1980, through October 31, 1980, on the basis of a disclosed estimation methodology and monthly estimates which are certified by a responsible company official, in accord with

§ 282.207 of the Commission's regulations; and

(b) for the period beginning November 1, 1980, on the basis of submeters which permit determination of the volume of non-boiler fuel usage and which are available to be read by the facility's natural gas supplier, or on the basis of submeter reading records for each calendar month, as signed under oath by a responsible company official, which show the extent to which gas is consumed for a non-boiler fuel use and which are furnished to the facility's natural gas supplier as required by the supplier.

• Certified monthly estimates may be utilized for a period following November 1, 1980, if you have obtained a purchase order for all submeters which will be needed in your facility by November 1, 1980, and expect installation within a reasonable time period.

Dated: _____

Signature: _____

Person completing this affidavit: _____

Name: _____

Title: _____

Phone number: _____

Subscribed and sworn to before me this

_____ day of _____.

Notary Public: _____

PART 201—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT (CLASS A AND CLASS B)

1. Part 201, account 192.1 is amended in paragraph D to read as follows:

192.1 Unrecovered incremental gas costs.

* * * * *

D. Those costs accumulated in this account for gas received during a calendar month which are not subject to passthrough by incremental pricing surcharges because of alternative fuel price ceilings shall be cleared from this account by a debit to account 805.2 and a credit to this account 192.1 no later than the end of the month in which the applicable surcharges are billed.

* * * * *

2. Part 201, account 805.2 is amended in paragraph C to read as follows:

805.2 Incremental gas cost adjustments.

* * * * *

C. This account shall be debited with amounts from account 192.1, Unrecovered Incremental Gas Costs, which are passed through by means of incremental pricing surcharges and for the amounts remaining in account 192.1 once disposition of such amounts are determined.

* * * * *

PART 204—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT (CLASS C AND CLASS D)

3. Part 204, account 192.1 is amended in paragraph D to read as follows:

192.1 Unrecovered incremental gas costs.

D. Those costs accumulated in this account for gas received during a calendar month which are not subject to pass-through by incremental pricing surcharges because of alternative fuel price ceilings shall be cleared from this account by a debit to account 731.2 and a credit to account 192.1 no later than the end of the month in which the applicable surcharges are billed.

4. Part 204, account 731.2 is amended in paragraph C to read as follows:

731.2 Incremental gas cost adjustments.

C. This account shall be debited with amounts from account 192.1, Unrecovered Incremental Gas Costs, which are passed through by means of incremental pricing surcharges and for the amounts remaining in account 192.1 once disposition of such amounts are determined.

PART 282—INCREMENTAL PRICING

5. Section 282.103 is amended in paragraph (d) to read as follows:

§ 282.103 Definitions.

For purposes of this part:

(d)(1) "Industrial facility" means any facility engaged primarily in the extraction or processing of raw materials, or in the processing or changing of raw or unfinished materials into another form or product.

(2) A district heating facility which sold more than 50% of its steam in 1977 for residential, commercial or industrial uses exempt from the provisions of this part shall not be considered to be an "industrial facility." For purposes of this paragraph, a "district heating facility" is a facility which generates steam which is sold to the public.

6. Section 282.202 is amended in subparagraph (2) of paragraph (a) to read as follows:

§ 282.202 Definitions.

For the purposes of this subpart:

(a) * * *

(2) Which is used in the following manufacturing operations as set forth in the *Standard Industrial Classification Manual—1972*; provided that, the use of natural gas in the textile operations is limited as set forth below to the production or proceeding of natural fiber:

- Industry SIC No. and Industry Description
- 221—Broad Woven Fabric Mills, Cotton
- 222—Broad Woven Fabric Mills, Man-made Fiber and Silk (natural fiber processing only)
- 223—Broad Woven Fabric Mills, Wool (Including Dyeing and Finishing)
- 224—Narrow Fabrics and Other Smallwares Mills: Cotton, Wool, Silk, and Man-made Fiber (natural fiber processing only)
- 2257—Circular Knot Fabric Mills (natural fiber processing only)
- 2258—Warp Knit Fabric Mills (natural fiber processing only)
- 226—Dyeing and Finishing Textiles, Except Wool Fabrics and Knit Goods (natural fiber processing only)
- 228—Yarn and Thread Mills (natural fiber processing only)
- 2291—Felt Goods, Except Woven Felts and Hats (natural fiber processing only)
- 2293—Paddings and Upholstery Filling (natural fiber processing only)
- 2294—Processed Waste and Recovered Fibers and Flock (natural fiber processing only)
- 2295—Coated Fabric, Not Rubberized (natural fiber processing only)
- 2297—Nonwoven Fabrics (natural fiber processing only)
- 2299—Textile Goods, Not Elsewhere Classified (natural fiber processing only)
- 2421—Sawmills and Planing Mills, General
- 2435—Hardwood Veneer and Plywood
- 2436—Softwood Veneer and Plywood
- 2492—Particleboard
- 2611—Pulp Mills
- 2621—Paper Mills, Except Building Paper Mills
- 2631—Paperboard Mills
- 2661—Building Paper and Building Board Mills

7. Section 282.301 is amended in subparagraph (3) of paragraph (k) to read as follows:

§ 282.301 Costs subject to incremental pricing.

(k) Pipeline produced gas. * * *

(3) The first sale acquisition cost of gas purchased by an interstate pipeline from a producer affiliate shall be treated in the same manner as other first sale acquisition costs to the extent that the sale by the affiliate to the pipeline is a first sale under § 270.203.

8. Section 282.502 is amended in subparagraph (2) of paragraph (d) to read as follows:

§ 282.502 Accounting.

* * *

(d) Crediting the unrecovered incremental gas costs account. * * *

(2) The unrecovered incremental gas costs account shall be credited with any amount which was accumulated in the account for gas received during a calendar month but which, due to the alternative fuel price ceilings established pursuant to § 282.404, cannot be collected by way of incremental pricing surcharges to be billed during the subsequent month. Such credit, and the offsetting debit to account 805.2 or 731.2 may be made immediately, but no later than the end of the month in which the applicable surcharges are billed.

9. Section 282.503 is amended in subparagraph (1), clauses (2)(i) and (2)(ii) of paragraph (a) to read as follows:

§ 282.503 PGA reduction.

(a) General rule. (1) An interstate pipeline company which files purchased gas adjustment (PGA) rate changes with the Commission under authority of § 154.38(d) shall, each PGA period, reduce its total projected gas acquisition cost (not including pipeline supplier incremental pricing surcharges) by the amount which it projects it will recover during the next PGA period through incremental pricing surcharges (not including that portion which represents pipeline supplier incremental pricing surcharges.) The total projected gas acquisition cost, as reduced, shall be used to derive the pipeline's PGA rate for the coming PGA period in the manner prescribed in the pipeline's effective PGA provision.

(2) The amount which an interstate pipeline projects it will recover through incremental pricing surcharges during a PGA period shall be the lesser of:

(i) The costs subject to incremental pricing, as described in paragraphs (a) through (k) of § 282.301, which the pipeline projects it will incur during the coming PGA period; or

(ii) The total of the projected maximum surcharge absorption capabilities (MSAC) of each of the non-exempt industrial boiler fuel facilities directly served by the pipeline, as computed in accordance with paragraph (b), plus the total of the projected MSAC's of the pipeline's sale-for-resale customers, as determined by each of the customers in accordance with paragraph (c) and reported to the pipeline in accordance with paragraph (d), less the MSAC allocated to pipeline suppliers.

10. Section 282.504 is amended in subparagraph (4) of paragraph (c) and in

subparagraph (4) of paragraph (d) to read as follows:

§ 282.504 Incremental pricing surcharge.

(c) *Surcharges on non-exempt industrial boiler fuel facilities.* * * *

(4) *Optional billing procedures.* (i) A natural gas supplier may elect to bill non-exempt industrial boiler fuel facilities served by it at the level of the alternative fuel price ceilings plus taxes which are applicable to such facilities.

(ii) If a natural gas supplier bills a non-exempt industrial boiler fuel facility at the level of the applicable alternative fuel price ceiling for service during the previous month and the MSAC of the non-exempt boiler fuel facility for such month exceeds the facility's pro rata share of the total incremental gas costs incurred by the natural gas supplier during the previous month, then the natural gas supplier shall refund the excess to the facility in the next bill rendered to the facility.

(d) *Surcharges on sale-for-resale customers.* * * *

(4) *Optional billing procedures.* A natural gas supplier may elect to bill any sale-for-resale customer it serves by utilizing the projected surcharge of the customer for the previous month, as calculated pursuant to § 282.503(a)(2).

(i) If a natural gas supplier bills a sale-for-resale customer at the level of the projected surcharge for service during the previous month and the projected surcharge of the sale-for-resale customer for such month exceeds the actual surcharge that should have been billed for that month, as calculated in accordance with paragraph (d)(1), then the natural gas supplier shall refund the excess to the sale-for-resale customer in the next bill rendered to the customer.

(ii) If a natural gas supplier bills a sale-for-resale customer at the level of the projected surcharges for service during the previous month and the projected surcharge of the sale-for-resale customer for such month is less than the actual surcharge that should have been billed for that month, as calculated in accordance with paragraph (d)(1), then the natural gas supplier shall bill the difference to the sale-for-resale customer in the next bill rendered to the customer.

[FR Doc. 80-26 Filed 1-2-80; 8:45 am]

BILLING CODE 6450-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1613

Final Regulation; Correction

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final Regulation; Correction.

SUMMARY: The Equal Employment Opportunity Commission has adopted certain regulations of the Civil Service Commission at 43 FR 60900 (December 29, 1978). The Commission corrects a typographical error in this regulation.

EFFECTIVE DATE: December 15, 1978.

FOR FURTHER INFORMATION CONTACT: Nestor Cruz, Office of Review and Appeals, Equal Employment Opportunity Commission, Room 4280, 2401 E Street NW., Washington, D.C. 20506, (202) 653-7435.

§ 1613.232 [Corrected]

1. On page 60901, first column, § 1613.232, at the third full paragraph, the last sentence which states "The 'Office of Appeals and Review' * * *" should state "The 'Office of Review and Appeals' * * *"

For the Commission.

Dated: November 21, 1979.

Eleanor Holmes Norton,
Chair.

[FR Doc. 80-49 Filed 1-2-80; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF THE INTERIOR

Heritage Conservation and Recreation Service

36 CFR Part 1226

Grants and Allocations for Recreation and Conservation Use of Abandoned Railroad Rights-of-Way

AGENCY: Heritage Conservation and Recreation Service, DOI.

ACTION: Final rule.

SUMMARY: Since the Heritage Conservation and Recreation Service was established on January 25, 1978, regulations currently published in Title 43, Subtitle A, which pertain to the programs of the Service must be transferred to Title 36, Chapter 12. So that the Service's regulations are consolidated under one Title, this document adopts the transfer of 43 CFR, Subtitle A, Part 31 with all contents remaining the same.

EFFECTIVE DATE: January 3, 1980.

FOR FURTHER INFORMATION CONTACT: Rowland T. Bowers, DOI, HCRS, Division of State Programs, Pension Building, 440 G Street, N.W., Washington, D.C., 20243 (202-343-7801).

SUPPLEMENTARY INFORMATION: This document adds Title 36 regulations previously codified in 43 CFR, Subtitle A, Part 31. The regulations at 43 CFR, Subtitle A, Part 31 are transferred and redesignated as 36 CFR, Chapter 12, Part 1226.

Dated: December 26, 1979.

Bob Herbst,

Assistant Secretary of the Interior.

[FR Doc. 80-115 Filed 1-2-80; 8:45 am]

BILLING CODE 4310-03-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1379-3]

Georgia; Approval of Plan Revisions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today announces approval action on portions of the recent State Implementation Plan (SIP) revision submittal made by the Georgia Environmental Protection Division. These portions were adopted pursuant to requirements of the Clean Air Act other than those set forth in Part D of Title I, Plan Requirements for Nonattainment Areas, or pursuant to regulations the Agency has devised to implement the Act. These revisions involve changes in the Georgia ambient air quality standards, regulations for the prevention of significant deterioration of air quality, additional emission standards, and rules concerning source monitoring, permits, exceptions, exemptions, and enforcement.

The specific portions of the Georgia implementation plan revisions that EPA is taking final action on were described in detail in the Federal Register of August 14, 1979 (44 FR 47557).

DATE: These actions are effective January 3, 1980.

ADDRESSES: Copies of the materials submitted by Georgia and the comments received in response to the proposal notice of August 14, 1979 (44 FR 47557) may be examined during normal business hours at the following locations:

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

Library, Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30308.

FOR FURTHER INFORMATION CONTACT:

Melvin Russell, Air Programs Branch, Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia, 30308, 404/881-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION: In the May 9, 1979, Federal Register (44 FR 27184), the Regional Administrator proposed approval action on the State Implementation Plan (SIP) revisions which the Georgia Environmental Protection Division submitted pursuant to requirements of Part D of Title I of the Clean Air Act (CAA) with regard to nonattainment areas. At the time, it was noted that the SIP revision submittal contained changes applicable to other portions of the CAA and that these would be dealt with in a separate Federal Register notice. On August 14, 1979 (44 FR 47557) approval of these revisions was proposed.

EPA announces today its approval of these portions of the "Amendments, Additions, Partial Repeals and Revisions of the Rules and Regulations of the Department of Natural Resources, Chapter 391-3-1, Air Quality Control as amended and adopted by the Board of Natural Resources on February 23, 1979" that were not addressed in the May 9, 1979 Federal Register notice.

These revisions involve changes in the Georgia ambient air quality standards, regulations for the prevention of significant deterioration of air quality, additional emission standards, and rules concerning source monitoring, permits, exceptions, exemptions, and enforcement. For a detailed description, the reader may consult the proposal notice of August 14, 1979 (44 FR 47557).

The State's ambient standards for sulfur dioxide, particulate matter, carbon monoxide, ozone, nitrogen dioxide, and lead are now consistent with the Federal standards. The State's ambient standard for nonmethane hydrocarbons is dropped.

The revised regulations now specify that the portion of a stack's height which exceeds good engineering practice will not be taken into account in determining the degree of emission limitation required for the control of air pollutants.

Federal continuous monitoring requirements are incorporated in the revised regulations.

A regulation embodying the "bubble concept" is added.

A number of changes are made in the limitations on visible emissions. A new section, rule 391-3-1-.02(7), adopts by reference the Federal regulations for the

prevention of significant deterioration of air quality. The U.S. Court of Appeals for the District of Columbia Circuit recently overturned the Agency's PSD regulations in major respects. Although the court stayed its decision until resolution of petitions for reconsideration, EPA's regulations (40 CFR 51.24) governing the state PSD plans will have to be rewritten after the final decision. Because of the court-mandated changes, the Georgia regulation will no longer be consistent with EPA's requirements. Although the Georgia regulation is approved today, the State will be required at some later date to revise it to conform to the new Federal requirements.

General Comments

The following comments were submitted by the Union Camp Corporation.

Comment: The opacity limits for several processes should allow for short periods during soot blowing, upsets, etc., when the opacity could exceed the set limit. These processes should be allowed an opacity limit of 20% for greater than the set limit of six minutes during any hour.

Agency Response: The State selected limits which were appropriate for the several processes involved. There are no EPA regulatory requirements which are not met by the State regulations.

Comment: Until such time as opacity measurement methods are definable for fugitive dust, the opacity limit for fugitive dust should be removed.

Agency Response: In order to insure that a degree of consistency is used in determining that a source is utilizing reasonable precautions in preventing fugitive dust, the State has elected to specify an opacity limit for fugitive dust sources. The traditional method of visible observation for opacity determination is used for fugitive dust sources.

Comment: The commenter suggested relocation of the sampler (TSP) at Lathrop and Augusta Streets in Savannah.

Agency Response: EPA has evaluated the sampler and found it to be consistent with approved siting criteria. Therefore, the agency will not recommend moving the sampler.

Comment: The commenter endorsed both the opacity limits for "Fuel Burning Equipment" constructed or extensively modified after January 1, 1972, and the "bubble concept."

Agency Response: No response is deemed necessary.

Action: EPA's review of the proposed Georgia revisions has indicated that they are consistent with the

requirements of the Clean Air Act and the Agency's implementing regulations. Accordingly, they are hereby approved. This action is effective immediately.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044. (Section 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: December 21, 1979.

Douglas M. Costle,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart L—Georgia

In § 52.570, paragraph (c) is amended by adding subparagraph (19) as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

* * * * *

(19) Miscellaneous implementation plan revisions, submitted on March 9, 1979, by the Georgia Department of Natural Resources.

[FR Doc. 80-103 Filed 1-2-80; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 52

[FRL 1379-2]

Georgia; Approval of Order for Georgia Power Co.'s Plant Bowen

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today announces its approval of a State implementation plan revision submitted by the Georgia Environmental Protection Division pursuant to section 110 of the Clean Air Act. The revision consists of an order which imposes special operating conditions (including reduced load) and a correlated opacity limit (25% initially) on Units 1 and 2 of Georgia Power Company's Plant Bowen, at Taylorsville, Georgia, until such time as additional control equipment can be installed at the two units. The order is designed to

assure that these units will remain in compliance with the State's particulate limiting regulations while the new control equipment is being installed. Under the order, installation is to be complete on Unit 1 by January 1, 1982, and on Unit 2 by July 1, 1981. This order was announced as proposed rulemaking in the Federal Register of August 1, 1979 (44 FR 75194); no comments were received in response to that notice.

DATE: This action is effective January 3, 1980.

ADDRESSES: Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

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

Library, Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30308.

Air Protection Branch, Environmental Protection Division, Georgia Department of Natural Resources, 270 Washington Street SW., Atlanta Georgia 30334.

FOR FURTHER INFORMATION CONTACT: Raymond Gregory, Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30308, Telephone: 404/881-3286, (FTS 257-3286).

SUPPLEMENTAL INFORMATION: Following notice and public hearing in conformity with 40 CFR 51.4, the Georgia Environmental Protection Division on May 16, 1978, issued an order to the Georgia Power Company for coal-fired Units 1 and 2 of its Plant Bowen; the Company had consented to the order on May 11, 1979. The order was submitted to EPA as a proposed implementation plan revision on the date of its issuance.

The Plant Bowen order specifies operating conditions, reporting requirements, and an approximate correlated opacity limit based on simultaneous stack and opacity tests. An opacity limit of 25% has been assigned initially as adequate to assure compliance with applicable limits on mass emissions of particulate matter. The State may require further correlation testing as necessary. The provisions of the order are designed to assure that the two units will remain in compliance with Georgia particulate limiting regulation 391-3-1-.02(2)(d) while new control equipment is being installed. Therefore, the order is temporary and expires on July 1, 1981, for Unit 2 and January 1, 1982, for Unit 1. The Agency has carefully reviewed the order and has determined its terms are adequate to assure compliance. Accordingly, it is hereby approved as an

implementation plan revision. This action is effective immediately.

Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Section 110(a) of the Clean Air Act (42 U.S.C. 7410(a)))

Dated: December 21, 1979.

Douglas M. Costle,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart L—Georgia

In § 52.570(c), paragraph (18) is added as follows:

§ 52.570 Identification of Plan.

(c) * * * * *

(18) Order for Georgia Power Company's Plant Bowen, Units 1 and 2, Taylorsville, submitted on May 16, 1979, by the Georgia Department of Natural Resources.

[FR Doc. 80-105 Filed 1-2-80; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 52

[FRL 1379-1]

Illinois; Approval and Promulgation of Implementation Plan

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This action approves a revision to the Illinois State Implementation Plan submitted to the U.S. Environmental Protection Agency by the Illinois Pollution Control Board pursuant to section 110(A)(3) of the Clean Air Act (42 U.S.C. 7410(a)(3)). The revision extends the date that Shell Oil Company's Wood River, Madison County, Illinois petroleum refinery must be in compliance with certain regulations contained in the federally approved State Implementation Plan (SIP). Any extension of the SIP compliance dates for major sources of

pollution must be submitted as a proposed SIP revision to the U.S. Environmental Protection Agency (USEPA) for approval/disapproval. 42 U.S.C. 7410.

The Company's Wood River refinery is to be in compliance with Rule 204(f)(1)(A) of the Illinois Pollution Control Board's Regulations by November 1, 1979. U.S. Environmental Protection Agency (USEPA) is aware that the date of final compliance has already passed but is publishing this Final Rule to give the public notice that the Proposed Rule appearing at 44 FR 50619 on August 29, 1979 was approved. The supporting documentation demonstrates that this SIP revision will not interfere with the attainment and maintenance of the National Ambient Air Quality Standards for sulfur dioxide.

EFFECTIVE DATE: January 3, 1980.

FOR FURTHER INFORMATION CONTACT: Elizabeth Maxwell, Assistant Regional Counsel, Region V, (312) 886-6063.

SUPPLEMENTARY INFORMATION: The Shell Oil Company operates a petroleum refinery at Wood River, Madison County, Illinois. On October 30, 1978 the Company petitioned for variance from Rule 204(f)(1)(A) of the Illinois Pollution Control Board's Regulations. The time for which the variance was requested was until November 1, 1979. This period of time would enable the Company to complete installation of a Shell Claus Off Gas Treatment Unit (SCOT Unit) for better control of sulfur dioxide emissions.

A public hearing was held in this matter on October 30, 1978, in conformity with a notice of hearing requirement set forth in 40 CFR, Part 51.4. The Illinois Pollution Control Board granted the variance December 14, 1978 in IPCB Order PCB 78-190. On March 21, 1979 the Order was submitted by the Illinois Environmental Protection Agency (IEPA) to USEPA as a proposed revision to the SIP.

Pursuant to section 110 of the Clean Air Act, State Administrative Orders which extend compliance dates for major sources must be submitted to USEPA for approval as SIP revisions. 42 U.S.C. 7410.

On August 29, 1979 (44 FR 50619) the Administrator published the Order as a proposed revision to the Illinois State Implementation Plan and invited comment. Interested parties were given until September 28, 1979 to submit written comments on the proposed SIP revision. None was received.

Final approval of Illinois Pollution Control Board's Order No. 78-190 as a revision to the Illinois State Implementation Plan is the subject of

today's rulemaking. The Order was submitted to USEPA after notice and public hearings were held in accordance with the procedural requirements of 40 CFR Parts 51.4 and 51.6. The revision requires the Company to apply for an operating permit for SRU-2 by November 1, 1979, and submit to the IEPA stack test results which show final compliance by November 1, 1979, with the standard found in Rule 204(f)(1)(A).

Final approval of the Order as a SIP revision is effective upon publication [January 3, 1980]. The Administrator finds good cause for making this revision effective immediately as the Order is already effective in the State of Illinois.

After review of all relevant materials, the Administrator has determined that the revision meets the requirements of section 110(a)(3) of the Clean Air Act and USEPA regulations in 40 CFR Part 51.6. The revision is legally enforceable, will not interfere with attainment or maintenance of the NAAQS and has been subjected to reasonable notice and public hearings; accordingly, the revision is approved.

Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels these regulations as "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This Final Rulemaking is issued under the authority of section 110 of the Clean Air Act, as amended.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLAN

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

Subpart 0—Illinois

(1) Section 52.720 is amended by adding a new paragraph (c)(15) as follows:

§ 52.720 Identification plan.

(c) ***
(15) Revision consisting of an Illinois Pollution control Board Order issued to Shell Oil Company's Wood River refinery on December 14, 1978 by the Illinois Environmental Protection Agency.

(42 U.S.C. 7410)

Dated: December 21, 1979.

Douglas Costle,
Administrator.

[FR Doc. 80-104 Filed 1-2-80; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 31

Grants and Allocations for Recreation and Conservation Use of Abandoned Railroad Rights-of-Way

AGENCY: Office of the Secretary, DOI.

ACTION: Final rule.

SUMMARY: Since the Heritage Conservation and Recreation Service was established on January 25, 1978, regulations currently published in Title 43, Subtitle A, which pertain to the programs of the Service must be transferred to Title 36, Chapter 12. So that the Service's regulations are consolidated under one Title, this document redesignates 43 CFR, Subtitle A, Part 31 to 36 CFR, Chapter 12, Part 1226 with all contents remaining the same.

EFFECTIVE DATE: January 3, 1980.

FOR FURTHER INFORMATION CONTACT: Rowland T. Bowers, DOI, HCRS, Division of State Programs, Pension Building, 440 G Street, N.W., Washington, D.C. 20243 (202-343-7801).

SUPPLEMENTARY INFORMATION: This document transfers and redesignates 43 CFR, Subtitle A, Part 31 to 36 CFR, Chapter 12, Part 1226, therefore, Part 31 is deleted from Title 43.

Dated: December 28, 1979.

Bob Herbst,
Assistant Secretary of the Interior.

[FR Doc. 80-110 Filed 1-2-80; 8:45 am]

BILLING CODE 4310-03-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. No. 1-151]

Organization and Delegation of Power and Duties

AGENCY: Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This amendment delegates to the Federal Aviation Administrator the authority vested in the Secretary by Executive Order 12183. That Executive Order revoked Executive Orders 11322,

11419 and 11978, which ordered economic and other sanctions against Rhodesia, and directed the Secretary to take appropriate action to implement the revocation of the earlier Executive Orders.

EFFECTIVE DATES: This amendment is effective on January 3, 1980.

FOR FURTHER INFORMATION CONTACT:

Jack Lusk, Office of the General Counsel, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426-4723.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, it is excepted from notice and public procedure requirements and it may be made effective in fewer than 30 days after publication in the *Federal Register*.

Discussion of Delegation

On December 15, 1979, the President issued Executive Order 12183 (44 FR 74787; December 18, 1979) lifting the sanctions on trade with Rhodesia that were previously imposed by Executive Orders 11322, 11419, and 11978. The new Order also provides authority to take and continue enforcement actions for violation of regulations implementing the earlier Orders. By earlier delegation the Administrator of the Federal Aviation Administration (FAA) was given authority to implement the Rhodesia sanctions with respect to aviation operations. A delegation of the authority contained in the latest Executive Order to the Administrator of FAA is needed so that necessary action may be taken by FAA to implement the new Executive Order.

Accordingly, Part 1 of Title 49 of the Code of Federal Regulations (49 CFR Part 1) is amended by adding a new sentence to the end of paragraph (d) of § 1.47, to read as follows:

§ 1.47 Delegations to Federal Aviation Administrator.

* * * * *

(d) * * * Carry out the functions vested in the Secretary by Executive Order 12183.

* * * * *

(Sec. 9(e)(1), Department of Transportation Act (49 U.S.C. 1657(e)))

Issued in Washington, D.C., on December 21, 1979.

Neil Goldschmidt,
Secretary of Transportation.

[FR Doc. 80-14 Filed 1-2-80; 8:45 am]

BILLING CODE 4910-02-M

National Highway Traffic Safety Administration

49 CFR Part 580

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: This notice allows States to use an abbreviated odometer disclosure statement on all motor vehicle ownership documents. The existing regulation permitted the shortened form to be used merely on the certificate of title. The purpose of this expansion is to increase State usage of odometer disclosure statements.

DATE: January 3, 1980.

FOR FURTHER INFORMATION CONTACT: Kathleen DeMeter, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-1834).

SUPPLEMENTARY INFORMATION: Section 408 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1988) requires each transferor of a motor vehicle to provide to the transferee a written disclosure of the distance traveled by the vehicle. 49 CFR Part 580 prescribes the information to be included on the disclosure statement. On August 1, 1977, NHTSA amended the odometer disclosure statement (42 FR 38906). The amended statement is clearer than the former statement and less likely to be misused, but it is also longer.

NHTSA has urged the States to include the odometer statement on the title. Six States had included the original statement. In commenting on the longer statement, several States observed that the title, with its size limitations, presented more problems with inclusion of the odometer statement than did other documents relating to the transfer and ownership of motor vehicles. Because of this, the 1977 amendment specifically allowed a shortened form to be used on certificates of title, but not on other ownership documents.

On May 7, 1979, the NHTSA issued a notice of proposed rulemaking in which it granted a petition by the American Association of Motor Vehicle Administrators (AAMVA) to amend the Federal odometer disclosure requirements to allow the abbreviated form to be used on ownership documents other than the certificate of title (44 FR 28032). The AAMVA emphasized that many of the State documents used to evidence ownership

of motor vehicles are too small to accommodate the additional information required. They argued that States should not have to rely on separate odometer forms for these transfers but should be allowed to use the shortened form on all documents which evidence ownership, not only on the certificate of title.

Seven States responded to the notice of proposed rulemaking. Comments were received from the motor vehicle departments in Virginia, Washington, Delaware, Wisconsin, New Jersey, Texas, and Oregon. Most comments were favorable. The Virginia Division of Motor Vehicles asked that the short form be acceptable on all applications for title. The more State documents that contain mileage information the more difficult it will be for odometer rollbacks to go undetected. Consequently, the NHTSA encourages the use of the short form on applications for title as well as certificates of title.

Washington and Wisconsin suggested respectively that the introductory paragraph citing the Federal law be deleted or shortened due to document size limitations. The August 1, 1977, amendment to the disclosure form noted that a reference to State law may be substituted for the citation to the Federal law.

Consistent with this interpretation, it is the agency's opinion that the actual law need not be cited if a warning statement appears such as that suggested by Washington, "Warning False Statements Violate Federal Law."

The Texas State Department of Highways and Public Transportation offered the only negative comments to the proposal. It argued that a purchaser who finances a motor vehicle could not execute a form on the certificate of title at the time of sale because the certificate is held by a bank or financial institution as security. Although the Texas comment illustrates the difficulties of trying to require the use of titles for odometer disclosure, the amendment is permissive and would not require Texas to change its practices in any way.

In accordance with Executive Order 12044, the regulation has been reviewed for environmental and economic impacts. It has been determined that the cost of implementing this regulation will be minimal.

There are no additional requirements. The regulation permits States to provide certain information on ownership documents but does not require them to do so. There are no environmental or other economic impacts, therefore, this regulation is not significant.

In light of the foregoing, Part 580, Odometer Disclosure Requirements, of

Title 49, Code of Federal Regulations, is amended as follows:

Section 580.4 is amended by amending paragraph (f)(1) to read as set forth below and by deleting paragraph (f)(3).

§ 580.4 Disclosure of odometer information.

* * * * *

(f) * * *

(1) If the laws or regulations of the State in which the transfer occurs require the odometer disclosure to be made on the certificate of title or other State documents which evidences ownership, the transferor may make the disclosure required by this section by executing the State certificate of title or such other ownership document. In order to utilize the above documents as substitutes for the Federal odometer disclosure statement, they must contain essentially the same information required by paragraphs (a), (b), (c) and (e) of this section. If the information contained thereon varies in any way from that required for the Federal form, the State must obtain approval from the National Highway Traffic Safety Administration before its certificate of title or other ownership document can be used as a substitute for the Federal form. Such approval may be obtained by submitting a copy of the proposed document to the Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

(Sec. 408, Pub. L. 92-513, 86 Stat. 962, as amended by Pub. L. 94-314, 90 Stat. 983 (15 U.S.C. 1988); delegation of authority at 49 CFR 501.8(i))

Issued on December 20, 1979.

Joan Claybrook,
Administrator, National Highway Traffic Safety Administration.

[FR Doc. 80-15 Filed 1-2-80; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Service Order No. 1290-A]

The Chesapeake and Ohio Railway Co. Authorized to Operate Over Tracks of Consolidated Rail Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: Service Order No. 1290-A vacates Service Order No. 1290. Service Order No. 1290 authorized The Chesapeake and Ohio Railway Company to operate over tracks of

Consolidated Rail Corporation between Alexis, Ohio, and Swan Creek, Toledo, Ohio.

Chesapeake and Ohio Railway has received permanent operating authority in Finance Docket 28997-F (Sub-No. 1) to operate over these tracks so Service Order No. 1290 is not needed to be kept in effect.

EFFECTIVE: 11:59 p.m., December 21, 1979

FOR FURTHER INFORMATION CONTACT:

J. Kenneth Carter, (202) 275-7840

Decided: December 19, 1979.

Upon further consideration of Service Order No. 1290 (42 FR 63890; 43 FR 14021, 45868 and 44 FR 19202), and good cause appearing therefor:

It is ordered, § 1033.1290 the Chesapeake and Ohio Railway Company authorized to operate over Tracks of Consolidated Rail Corporation, Service Order No. 1290 is vacated effective 11:59 p.m., December 21, 1979.

(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 it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington, and John R. Michael.

Agatha L. Mergenovich
Secretary.

[FR Doc. 80-212 Filed 1-2-80; 8:45 am]

BILLING CODE 7035-01-M

49 CFR 1033

[Service Order No. 1350-A]

West Virginia Railroad Maintenance Authority Authorized To Operate Over Tracks Abandoned by the Chesapeake and Ohio Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: Service Order No. 1350-A vacates Service Order No. 1350, which authorizes the West Virginia Railroad Maintenance Authority to operate over tracks abandoned by the Chesapeake and Ohio Railway Company between Caldwell and Durbin, West Virginia. Since no service is being provided over this line, an emergency no longer exists and Service Order No. 1350 is vacated.

EFFECTIVE DATE: 11:59 p.m., December 21, 1979.

FOR FURTHER INFORMATION CONTACT:

J. Kenneth Carter, (202) 275-7840.

Decided December 19, 1979.

Upon further consideration of Service Order No. 1350 (44 FR 877 and 39407), and good cause appearing therefor: *It is ordered, § 1033.1350 West Virginia Railroad Maintenance Authority authorized to operate over tracks abandoned by the Chesapeake and Ohio Railway Company, Service Order No. 1350 is vacated effective 11:59 p.m., December 21, 1979.*

(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 all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. 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.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-211 Filed 1-2-80; 8:45 am]

BILLING CODE: 7035-01-M

49 CFR Part 1033

[Amdt. 1 to Service Order No. 1386]

The Atchison, Topeka and Santa Fe Railway Co. Authorized To Operate Over Tracks of Chicago, Rock Island, and Pacific Railroad Co. at Alva, Okla.

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: Authorizes the Atchison, Topeka and Santa Fe Railway Company to operate over tracks of Chicago, Rock Island and Pacific Railroad Company (RI) at Alva, Oklahoma, and permits shippers to receive essential railroad service which would be otherwise unavailable due to track embargoes on the RI.

EFFECTIVE: 12:01 a.m., December 22, 1979, and continuing in effect until 11:59 p.m., March 2, 1980.

FOR FURTHER INFORMATION CONTACT:

J. Kenneth Carter, (202) 275-7840.

Decided: December 19, 1979.

Upon further consideration of Service Order No. 1386 (44 F.R. 40068), and good cause appearing therefor:

It is ordered,

Service Order No. 1386 is amended by substituting the following paragraph (e) for paragraph (e) thereof:

§ 1033.1386 The Atchison, Topeka and Santa Fe Railway Company authorized to operate over tracks of Chicago, Rock Island and Pacific Railroad Company at Alva, Oklahoma.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., March 2, 1980, unless otherwise modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 12:01 a.m., December 22, 1979.

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

This amendment 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 amendment 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.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-213 Filed 1-2-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 671

Tanner Crab off Alaska; Amendment to Fishery Management Plan and Final Regulations

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

ACTION: Final regulations.

SUMMARY: Amendment No. 4 extending the Fishery Management Plan for Tanner Crab off Alaska (FMP) through October 31, 1980, has been approved. Amendments to the regulations, to govern fishing for Tanner crab during the 1980 fishing year, are promulgated. The amendment and regulations are

necessary to authorize fishing by vessels of foreign nations during the 1980 fishing year, and to assure that fishing by vessels of the United States is conducted in a manner consistent with the conservation and other objectives of the Fishery Conservation and Management Act (Act) of 1976, as amended.

EFFECTIVE DATE: January 1, 1980.

FOR FURTHER INFORMATION CONTACT: Harry L. Rietze, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, Telephone: (907) 586-7221.

SUPPLEMENTARY INFORMATION: On September 5, 1979, the North Pacific Fishery Management Council submitted Amendment No. 4 to the Secretary of Commerce for approval. That amendment continued the existing plan from November 1, 1979, through October 31, 1980. On October 23, 1979, the Assistant Administrator for Fisheries (NOAA) approved the amendment and published proposed implementing regulations (42 FR 61982, October 29, 1979). The purpose of the extension amendment was to prevent a long lapse in management of the Tanner crab fishery which would have resulted if the amendment had been delayed to incorporate new information which became available at the end of September.

New information was considered by the Council at its meeting on October 4-5, 1979, and was incorporated in an additional amendment. This amendment, which would be Amendment No. 5, was proposed by the Council, and Secretarial review began on November 13, 1979.

Public Comments

The only comments received on the extension amendment expressed the opinions that: (1) the overall condition of the Tanner crab stock is stable; (2) U.S. scientists preferred to estimate the abundance of Tanner crab on the basis of crabs with carapace length of more than 110 mm, while Japanese scientists believe that 100 mm is a more appropriate size; (3) U.S. scientists calculated the abundance of Tanner crab on the assumption that vulnerability was 1.0, while Japanese scientists estimated that the vulnerability is from 0.3 to 0.51; and (4) the unutilized portion of estimated domestic annual harvest (DAH), if any, should be reallocated to the total allowable level of foreign fishing (TALFF). The comments did not address the issues and data presented in this extension amendment. Rather, the comments raise questions about the

validity of new information presented to the Council at the October 4-5, 1979, meeting. The information, including the results of the 1979 Eastern Bering Sea king and Tanner crab survey conducted by the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, formed the basis for an additional Council amendment No. 5 to the Tanner crab FMP. This amendment was submitted to the Secretary for review on November 13, 1979. If this amendment is approved, a period for public comment on the amendment and implementing regulations will be provided. These comments will be considered during that comment period.

Amendment No. 4 changes only the effective dates of the FMP. No changes to 50 CFR 671 (43 FR 57150, as amended by 44 FR 15503), applicable to vessels of the United States, are required to continue effectiveness of these regulations during the 1980 fishing year.

The Assistant Administrator for Fisheries, NOAA, under a delegation of authority from the Secretary of Commerce, has determined that the amendment to the FMP extending the effective date: (1) is necessary and appropriate to the conservation and management of Tanner crab resources off the coast of Alaska; (2) is consistent with the National Standards, other provisions of the Act and other applicable law; (3) does not constitute a major Federal action requiring the preparation of an environmental impact statement; and (4) does not constitute a significant action requiring preparation of a regulatory impact analysis under Executive Order 12044.

In addition, the Assistant Administrator has decided to waive the 30-day cooling off period provided for in the Administrative Procedures Act for the following reasons: (1) the regulations confer a benefit on foreign nations and avoid unnecessary disruption of the foreign fishery; (2) no changes have been made in the substance of the regulations, so no additional period is required to become accustomed to new requirements; and (3) the U.S. fishery began in November, and availability of the inseason adjustment and closure provisions of the regulations are necessary to assure adequate protection of the Tanner crab resource.

Signed at Washington, D.C., this 28th day of December, 1979.

Winfred H. Meibohm,
Executive Director, National Marine
Fisheries Service.

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

§ 611.91 [Continued in effect]

1. 50 CFR Part 611.91 is continued in effect without change until October 31, 1980.

§ 671.21 [Amended]

2. 50 CFR 671.21(a) is amended by deleting "January 1 and ending on December 31, 1979", and substituting "November 1, 1979, and ending on October 31, 1980."

[FR Doc. 79-39959 Filed 12-28-79; 11:46 am]

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50 CFR Part 652

Atlantic Surf Clam and Ocean Quahog Fisheries: Final Regulations

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

ACTION: Final regulations.

SUMMARY: These final regulations for the Atlantic surf clam and ocean quahog fisheries implement the amendment to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries [FMP], approved by the Assistant Administrator for Fisheries, to regulate fishing during the period beginning January 1, 1980, and ending on December 31, 1981.

While the management plan and the implementing regulations are similar to those which have been in place since November 17, 1977, a number of changes have been made. These changes include provision for an increase in the optimum yield for the ocean quahog fishery in each of the next two years, a make-up day for surf clam fishing time lost due to bad winter weather, creation of a separate management area and management measures for the New England fishery, and closure to fishing of a number of ocean dumping sites within the fishery conservation zone [FCZ].

The regulations also have been revised to incorporate the prior amendments to the regulations and the FMP within their text, and to conform to the clearer, more understandable format now used for regulations implementing FMP's.

EFFECTIVE DATE: January 1, 1980.

FOR FURTHER INFORMATION CONTACT: Allen E. Peterson, Jr., Regional Director, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930. Telephone (617) 281-3600.

SUPPLEMENTARY INFORMATION: Pursuant to the Fishery Conservation and Management Act of 1976, the FMP was amended by the Mid-Atlantic Fishery Management Council [the Council] to extend the management program

established in the FMP through the end of calendar year 1981. The amendment addressed a number of continuing problems while retaining the basic management framework established by the FMP.

The amendment establishes an optimum yield and annual quota for surf clams in the Mid-Atlantic identical to that established for the last two years, but allows optimum yield and the annual quota for ocean quahogs to rise by 5 million pounds (500,000 bushels) in each of the two years following implementation. This increase in the allowable amount of ocean quahogs reflects the growth of the industry and the concern that, without an increased quota, closure of the ocean quahog fishery could occur while the biological evidence cautiously supports greater harvest levels. On December 7, 1979 (44 FR 70503), NOAA published a correction to section 652.22(c) of the proposed regulations (November 9, 1979; 44 FR 65372) dealing with procedures for reducing the amount of fishing time for ocean quahogs. The correction notice inadvertently eliminated the first sentence of section 652.22(c); that sentence is restored in these final regulations.

The amendment also provides for a make-up period for surf clam fishing time lost during the winter months from December through March. The make-up period was developed to address the concern of many fishermen that under the original management program, they might go for long periods without being able to fish due to weather conditions, or that they might feel compelled to fish in unsafe weather to earn enough money to meet their financial obligations. A fisherman may now claim a make-up period on the day after the regular fishing period if (as described more fully in section 652.22 of the regulations) the National Marine Fisheries Service is contacted in that area and if small craft warnings were posted within four hours before the vessel's scheduled authorized fishing period was to start.

Because of the change in patterns of catch that are expected as a result of the make-up period, the quarterly quotas have been revised. The surf clam allocations for the first and fourth quarters of each year are increased from 350,000 to 400,000 bushels each, while those for the second and third quarters correspondingly are decreased from 550,000 to 500,000 bushels each.

The moratorium, which prevents the entry of new vessels into the surf clam fishery, has been extended through the end of 1981 in the Mid-Atlantic area. However, the moratorium will no longer apply to vessels which fish for surf

clams only in the New England area. A separate optimum yield and quota for the New England area has been established at 25,000 bushels of surf clams annually. There will no longer be any restrictions on the number of days or hours during which surf clam fishing may be conducted in the New England area, unless it appears that the quota for that area would be exceeded without such restrictions.

The new regulations also close a number of offshore dumpsites to fishing. The Council asked that such areas be closed because of the presence of hazardous chemicals and pollutants.

Public Comments

These regulations were published in proposed form on November 9, 1979 (44 FR 65372) and public comment was invited. Comments of substance concerning the regulations have been received only from the Mid-Atlantic Fishery Management Council, the Food and Drug Administration (FDA), the U.S. Coast Guard, and the National Food Processors Association. The Council clarified its position on a number of issues which are addressed by the regulations, and requested that the partial disapproval of two of the management measures the Council had proposed be reconsidered. The Council had originally asked that a 4 1/2 inch minimum landing size be established for surf clams (with certain exceptions) and that a deadline for application for surf clam permits and subsequent landing of a specified amount of surf clams be imposed. Those measures were not approved because implementation of the minimum landing size would have been impractical as proposed due to difficulties in enforcement, and because a deadline on surf clam permit applications, combined with the Council's proposed performance requirement, would have imposed different requirements on vessels which had entered the fishery from those vessels which had not yet done so. While the Council's continuing interest in the adoption of these two measures is recognized, the considerations which led to the partial disapproval remain valid. The Council has been encouraged to develop both ideas further and, if it wishes, to submit another amendment to the FMP.

The Council commented that § 652.15 of the proposed regulations (§ 652.9 of the final regulations) should provide for explicit periods of permit suspension for violations of varying severity. The regulations do provide for the revocation, modification, or suspension of vessel permits for violation of any provision of the Fishery Conservation

and Management Act, the regulations, or permits issued pursuant to the regulations. Because the use of such authority would depend largely on the circumstances of a given violation, on its severity and whether such violations were flagrant or repetitive, it would be discretionary and could only be applied to the case at hand. It would be difficult, therefore, and would serve no useful purpose to publish a schedule of suspensions which should, in practice, be flexibly applied where necessary to achieve compliance with the regulations.

The Council has provided additional information concerning its deliberations regarding its recommended deletion of that part of the regulations which allows transfer of surf clam vessel permits only in those cases where failure to allow the permit transfer would result in substantial economic hardship to someone with a history of involvement in the fishery. The Council believes that such a provision unnecessarily restricts the vessel owner's market in selling the vessel if the owner wishes to leave the fishery for some reason. The restriction was originally applied to maintain the social and economic character of the fishery. It now appears that the character of the fishery will not readily change if vessel owners are free to sell their vessels to anyone they choose with the vessel retaining its eligibility for a permit under the new owner. While the Council requested in its amendment that permits be freely continued on change of ownership, there was concern within NOAA that the possible effects of such a change in procedure may not have been examined thoroughly. The Council has since provided material which indicates it had discussed and considered the effects of the change on a number of occasions, and that the Council determined that any adverse consequences of allowing the change would be offset by creating an open and free market for vessels currently in the fishery. Since every request for transfer of a permit so far received has been approved, it appears that the market tends to maintain the social and economic character of the fishery. Therefore, the requirement that transfer of permits be confined only to those instances where substantial economic hardship would otherwise occur has been deleted from the final regulations.

The Council has commented that the regulatory language dealing with the imposition of effort restrictions on the fishery in the newly created New England management area differs from that proposed in its amendment. The Council had asked that effort restrictions be applied when 50 percent

of the quota for the area has been taken. This did not consider the possibility that 50 percent of the quota might be taken in perhaps 90 percent of the time, and that effort restriction would then be unnecessary. The language in the proposed and final regulations allows for the imposition of effort restrictions when 50 percent of the quota has been taken if it is determined that the quota would otherwise be exceeded. It is felt that this procedure will allow for greater flexibility in management of the New England area, and will be more responsive to circumstances within the fishery than the other proposal, thus achieving the intended purpose of maintaining an orderly fishery throughout the year.

The Council had suggested that the regulations require continuation of the vessel entry moratorium in the surf clam fishery at least until December 31, 1981. The proposed and final regulations provide for termination of the moratorium on an earlier date if the Secretary decides to do so after public hearings and consultation with the three affected Fishery Management Councils. This provides a procedure for termination of the moratorium in the event that it is no longer needed to achieve the objectives of the management program. At the present time it appears probable that the moratorium will remain in place for the full period proposed by the Council. However, because the Council is currently devoting considerable efforts to devising an alternative to the moratorium, it was felt to be prudent to provide a procedure under which the moratorium could be terminated to implement any such alternative which is developed.

The Council recommended in its amendment that two offshore ocean dump sites be closed to fishing due to environmental degradation. This was approved, and the areas were identified in the proposed regulations. The Council was not aware that the Food and Drug Administration [FDA] operated a program to monitor and advise against the harvest of shellfish from polluted offshore areas. The Council has been apprised of and studied the areas currently monitored by the FDA, and has requested that all areas within the FCZ, for which Notice to Harvesters Warnings are in force under the National Shellfish Sanitation Program, be closed to fishing for surf clams and ocean quahogs. This modification will assure that areas monitored and enforced by the federal agencies concerned about the fishery are uniform and consistent. Closure of such areas to

fishing is consistent with the Council's request that fishing be prohibited in areas subject to environmental degradation. Therefore, the regulation has been revised to reflect the Council's comment. The FDA has commented in support of closure of such areas, and has indicated its desire to coordinate closely on the monitoring and assessment of closed areas.

NOAA intends that §§ 652.23 (b) and (c) of these final regulations operate to continue in effect the closure of two areas because of large numbers of under-size clams. One area is closed off Atlantic City, New Jersey (see 43 FR 42765; September 21, 1978); another area is closed off Ocean City, Maryland (see 44 FR 73108; December 17, 1979).

The U.S. Coast Guard commented that the additional message traffic associated with claiming the make-up period could hamper their effectiveness in carrying out search and rescue functions. The final regulations provide for contacting NMFS to claim the make-up period instead of the Coast Guard.

Comments were received objecting to the processor data reporting requirements, claiming that the requirements are not authorized by the Fishery Conservation and Management Act of 1976, and that the requirements should not be implemented at this time. Some of the data objected to (such as price information) has been required from surf clam and ocean quahog processors since November 1977 (42 FR 59948; November 22, 1977). Other processor reporting requirements have been in effect since February 1978 (43 FR 6952; February 17, 1978). In September 1979, NOAA issued final regulations requiring processor capacity annual reports, implementing Pub. L. 95-354 (44 FR 55590; September 27, 1979).

NOAA believes it has legal authority to collect the processor data required by these final regulations. The data is used for estimating U.S. processing capacity and utilization as required by Pub. L. 95-354, and for determining and predicting social and economic impacts on the processing industry which may result from various management measures. Public hearings discussing the amendments to the FMP were held throughout the Northeast in 1979, and processors' comments at those hearings influenced the processor reporting requirements established in the regulation implementing Amendment No. 1 to the FMP (see 44 FR 55590). Because these final regulations basically carry on a processor reporting system which has been in effect since 1977, and because the processor data is necessary to carry out Pub. L. 95-354 and effective assessment of the FMP's management of

the fishery, NOAA believes the processor reporting requirements continued by the regulations should be implemented without delay. Data submitted by processors under these regulations are protected under the NOAA "Confidentiality of Statistics" regulations (44 FR 70480; December 7, 1979).

In addition to the changes discussed above, several editorial or technical changes have been made in the regulations, including revision of the proposed sequential order of Subpart A of the regulations to correspond to the system used in other Northwest Atlantic Ocean domestic fisheries regulations.

Note.—A Final Supplemental Environmental Impact Statement on the implementation of these amendments has been filed with the Environmental Protection Agency. A regulatory analysis has been prepared for this action under E.O. 12044. Persons wishing to inspect the regulatory analysis should contact the Regional Director (see "For Further Information Contact" above).

Signed at Washington, D.C., this 31st day of December, 1979.

Winfred H. Meibohm,
Executive Director, National Marine
Fisheries Service.

Authority: 16 U.S.C. § 1801 *et seq.*

Therefore, 50 CFR Part 652 is amended to read as follows:

PART 652—ATLANTIC SURF CLAM AND OCEAN QUAHOG FISHERIES

SUBPART A—GENERAL PROVISIONS

Sec.

- 652.1 Purpose.
- 652.2 Definitions.
- 652.3 Foreign fishing.
- 652.4 Permits.
- 652.5 Recordkeeping and reporting requirements.
- 652.6 Vessel identification.
- 652.7 Prohibitions.
- 652.8 Facilitation of enforcement.
- 652.9 Penalties.

Subpart B—Management Measures

- 652.21 Catch quotas.
- 652.22 Effort restrictions.
- 652.23 Closed areas.
- 652.24 Vessel moratorium.

Authority: 16 U.S.C. § 1801 *et seq.*

Subpart A—General Provisions

§ 652.1 Purpose.

This Part regulates fishing for surf clams (*Spisula solidissima*) and ocean quahogs (*Arctica islandica*) in the Atlantic Ocean Fishery Conservation Zone (FCZ) from January 1, 1980 to December 31, 1981.

§ 652.2 Definitions.

In addition to the definitions in the Act, and unless the context requires otherwise, the terms used in this Part 652 shall have the following meaning (some definitions in the Act have been repeated here to aid fishermen in understanding the regulations).

(a) *Act* means the Fishery Conservation and Management Act of 1976, 16 U.S.C. § 1801 *et seq.*, as amended.

(b) *Assistant Administrator* means the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

(c) *Authorized officer* means:

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

(2) Any certified Enforcement or Special Agent of the NMFS;

(3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce or 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.

(d) *Bushel* means a standard unit of measure presumed to hold 1.88 cubic feet of surf clams or ocean quahogs in the shell.

(e) *Cage* means a standard unit of measure presumed to hold 32 bushels of surf clams or ocean quahogs in the shell. The outside dimensions of a standard cage generally are 3' wide, 4' long and 5' high.

(f) *Directed fishery* means, with respect to any species, a fishery conducted for the purpose of catching that species.

(g) *Fish* means any finfish, mollusks (including surf clams and ocean quahogs), crustaceans, and all other forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

(h) *Fishery Conservation Zone (FCZ)* means the zone contiguous to the territorial sea of the U.S., the inner boundary of which is a line coterminous with the seaward boundary of each of the coastal States and the outer boundary of which is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

(i) *Fishing* means:

(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.

The term "fishing" does not include any scientific research activity which is conducted by any scientific research vessel.

(j) *Fishing trip* means a departure from port, transit to the fishing grounds, fishing, and discharge of any part of the catch on board.

(k) *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; or

(2) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

(l) *Mid-Atlantic Area* means that portion of the FCZ south of the line that begins at 41°18'16.249" North latitude and 71°54'28.477" West longitude and proceeds S 37°22'32.75" E to the point of intersection with the outward boundary of the FCZ.

(m) *New England Area* means that portion of the FCZ north of the line that begins at 41°18'16.249" North latitude and 71°54'28.477" West longitude and proceeds S 37°22'32.75" E to the point of intersection with the outward boundary of the FCZ.

(n) *NMFS* means the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration.

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

(p) *Owner* means, with respect to any vessel: (1) any person who owns that vessel in whole or in part; (2) any charterer of the vessel, whether bareboat, time, or voyage; or (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.

(q) *Person* means any individual, corporation, partnership, association, or other entity.

(r) *Regional Director* means the Regional Director, Northeast Region, NMFS, Federal Building, 14 Elm Street Gloucester, MA 01930. Telephone 617-281-3600.

(s) *Secretary* means the Secretary of Commerce or the designee of the Secretary.

(t) *Vessel of the United States* means:

(1) A vessel documented or numbered by the Coast Guard under U.S. law; or

(2) A vessel, under five net tons, which is registered under the laws of any State.

§ 652.3 Foreign Fishing.

Fishing for surf clams or ocean quahogs in the FCZ by any vessel other than a vessel of the United States is prohibited.

§ 652.4 Permits.

(a) *General*. A vessel owner or operator must obtain a permit in order to:

(1) conduct a directed fishery for surf clams or ocean quahogs within the FCZ, or

(2) land or transfer to another vessel any surf clams or ocean quahogs or part thereof caught within the FCZ.

(b) *Eligibility*. (1) *Surf clams—New England and Mid-Atlantic*. A vessel is eligible for a surf clam permit permitting harvest of surf clams in both the New England and Mid-Atlantic Areas if it meets any of the following criteria:

(i) The vessel has landed surf clams in the course of conducting a directed fishery for surf clams between November 18, 1976, and November 17, 1977; or

(ii) The vessel was under construction for, or was being rigged for, use in the directed fishery for surf clams on November 17, 1977. For the purpose of this paragraph (b)(1)(ii), "under construction" means that the keel had been laid, and "being re-rigged" means physical alteration of the vessel or its gear had begun to transform the vessel into one capable of fishing commercially for surf clams; or

(iii) The vessel is replacing a vessel of substantially similar harvesting capacity which involuntarily left the surf clam fishery during the moratorium, and both the entering and replaced vessels are owned by the same person.

(2) *Surf clams—New England only*. Any vessel of the United States is eligible for a permit allowing it to harvest surf clams in the New England Area only.

(3) *Ocean quahogs*. Any vessel of the United States is eligible for a permit allowing it to harvest ocean quahogs only.

(c) *Application*. Permit applications may be obtained by contacting the Regional Director. The owner or operator may apply for a permit by submitting an application form supplied

by the Regional Director containing the following information:

- (1) Names, mailing addresses, and telephone numbers of the owner and operator;
- (2) The name of the vessel;
- (3) The vessel's United States Coast Guard documentation number or State license number;
- (4) Engine and pump horsepower;
- (5) Homeport of the vessel;
- (6) Directed fishery or fisheries;
- (7) Fish hold capacity (in "cages" or bushels);
- (8) Dredge size and number of dredges;
- (9) Amount of surf clams and ocean quahogs landed between November 18, 1976 and November 17, 1977 (in bushels, if applicable);
- (10) Number of fishing trips between November 18, 1976 and November 17, 1977;
- (11) Date of beginning of construction or re-rigging (if applicable);
- (12) Signature of the owner or operator; and
- (13) Any other information which may be necessary for the issuance or administration of the permit.

(d) *Issuance.* The Regional Director shall issue a permit to each eligible vessel for which an application is submitted. The eligibility of a vessel to fish for surf clams will be determined consistent with this section. There will be no fee for the initial permit. A lost or mutilated permit will be replaced at a cost of \$25.

(e) *Appeal of denial of permit.* (1) Any applicant denied a permit by the Regional Director may appeal to the Assistant Administrator for review of the denial. Any such appeal must be in writing. Any of the following grounds may form the basis for review:

- (i) Applicant believes denial was in error;
- (ii) Applicant was prevented by circumstances beyond his control from meeting relevant criteria;
- (iii) Applicant has new or additional information which might change the initial decision; or
- (iv) Applicant can show that significant and unusual hardship will result from the denial.

(2) The appeal may be presented, at the option of the applicant, at a hearing before a person appointed by the Assistant Administrator to hear the appeal.

(3) The decision of the Assistant Administrator shall be the final decision of the Department of Commerce.

(f) *Transfer.* A permit is valid only for the vessel for which it is issued.

(g) *Display.* The permit must be carried, at all times, on board the vessel

for which it is issued, and must be maintained in legible condition. The permit, the vessel, its gear and catch shall be subject to inspection upon request of any authorized officer.

(h) *Expiration.* Except as provided in paragraph (h)(2), a permit shall expire:

(1) When the owner or operator retires the vessel from the fishery (it shall be a rebuttable presumption that failure to land any surf clams or ocean quahogs for 52 consecutive weeks constitutes retirement from the fishery) or

(2) When the ownership of the vessel changes; however, the Regional Director may authorize continuation of a vessel permit for the surf clam fishery if the new owner so requests and the vessel meets the relevant criteria of eligibility set forth in § 652.4(b). Applications for continuation of a permit must be addressed to the Regional Director.

(i) *Sanctions.* Subpart D of 50 CFR 621 (Civil Procedures) shall govern the imposition of permit sanctions against a permit issued under this Part. As specified in that Subpart D, a permit may be revoked, modified, or suspended if the permitted 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 permitted vessel, is not paid.

§ 652.5 Recordkeeping and reporting requirements.

(a) *Dealers.* (1) *Weekly report.* Any person who buys surf clams or ocean quahogs from a fishing vessel subject to these regulations shall provide at least the following information to the Regional Director on a weekly basis, on forms supplied by the Regional Director:

- (i) Name and mailing address of dealer or processing plant;
- (ii) Name and permit number of the vessel from which surf clams or ocean quahogs are landed or received;
- (iii) Dates of purchases;
- (iv) Number of bushels purchased, by species;
- (v) Price per bushel, by species; and
- (vi) Meat yield per bushel, by species.

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section shall also provide the following information to the Regional Director on an annual basis, on forms supplied by the Regional Director:

- (i) Number of dealer or processing plant employees during each month of the year just ended;
- (ii) Number of employees engaged in production of processed surf clam and ocean quahog products, by species, during each month of the year just ended;

(iii) Total payroll of those employees in paragraph (a)(2)(ii) of this section during each month of the year just ended;

(iv) Plant capacity to process surf clams and ocean quahog shellstock, or to process surf clam and ocean quahog meats into finished products, by species; and

(v) An estimate, for the next year, of the capacities described in paragraph (a)(2)(iv) of this section.

If the capacities described in paragraph (a)(2)(iv) of this section increase or decrease more than ten percent during any year, the processor shall promptly notify the Regional Director of the change in capacity.

(3) *At-sea activities.* All persons purchasing, receiving, or processing surf clams or ocean quahogs at sea for transport to any port of the United States must submit information identical to that required by paragraphs (a)(1) and (2) of this section and provide those reports to the Regional Director on the same frequency basis.

(b) *Owners and operators.* (1) *Daily fishing log.* The owner or operator of any vessel conducting any fishing operations subject to these regulations shall maintain, on board the vessel, an accurate daily fishing log for each fishing trip, on forms supplied by the Regional Director showing at least:

- (i) Name and permit number of the vessel;
- (ii) Total amount in bushels of each species taken;
- (iii) Date(s) caught;
- (iv) Time at sea;
- (v) Duration of fishing time;
- (vi) Locality fished;
- (vii) Crew size;
- (viii) Crew share by percentage;
- (ix) Landing port;
- (x) Date sold;
- (xi) Price per bushel; and
- (xii) Buyer.

(2) *When to fill in log.* To the extent possible, owners or operators shall fill in such logbooks before landing any surf clams or ocean quahogs at the end of any fishing trip. All logbook information required in paragraph (b)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* The owner or operator shall make the logbook available for inspection by an authorized official at any time during or after a trip.

(4) *Record retention.* For one year after the date of the last entry in the log, the owner or operator shall keep each logbook at the owner or operator's principal place of business.

(5) *Weekly reports.* The owner or operator shall submit weekly reports to the Regional Director, on forms supplied

by the Regional Director. If no fishing trip is made during a week, a report so stating must be submitted.

(6) **Annual reports.** All persons required to submit reports under paragraph (b) of this section shall submit annually to the Regional Director, on forms supplied by the Regional Director, at least the following information relating to vessel characteristics: name of the vessel, vessel's U.S. Coast Guard documentation number or State license number, engine and pump horsepower, homeport of vessel, hold capacity (in bushels or cages), and dredge size and number of dredges.

§ 652.6 Vessel identification.

(a) **Official number.** Each fishing vessel 25 feet in length or longer subject to these regulations shall display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft. Vessels under 25 feet in length do not need to display any number. The official number is the documentation number issued by the U.S. Coast Guard or the certificate of number issued by a State or the Coast Guard for undocumented vessels.

(b) **Markings.** Markings shall be at least eighteen (18) inches in height, legible, and of a color that contrasts with the background.

(c) **Duties of the operator.** The operator of each vessel shall:

(1) Keep the required identifying markings clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging or its fishing gear obstructs the view of the markings from an enforcement vessel or aircraft.

(d) **New Jersey vessels.** Instead of complying with paragraphs (a) and (b) of this section, vessels licensed under New Jersey law may use the appropriate vessel identification markings established by that State.

§ 652.7 Prohibitions.

(a) No person shall catch and retain on board any surf clams or ocean quahogs:

(1) During closed seasons; or

(2) In closed areas as specified in these regulations; or

(3) On days of the week on which fishing for these species is not permitted.

(b) No person shall fish for surf clams except during the authorized time period(s) assigned to the vessel he is operating.

(c) No person shall catch and retain on board any surf clams on other than an authorized surf clam fishing trip.

(d) No person shall possess, have custody of or control of, ship transport, offer for sale, deliver for sale, sell, purchase, import, export, or land, any surf clams, ocean quahogs, or parts thereof, which were taken in violation of the Act, these regulations, or any regulations issued under the Act.

(e) No person engaged in the surf clam or ocean quahog fisheries as an owner or operator, or as a dealer, processor, buyer or receiver shall unload or cause to be unloaded, or sell or buy, any surf clams or ocean quahogs whether on land or at sea, without preparing and submitting the documents required by section 652.5.

(f) No person shall:

(1) 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, no matter where that vessel may be located, in connection with the enforcement of the Act, these regulations, or any other regulations issued under the Act;

(2) Forcibly assault, resist, oppose, impede, intimidate or interfere with any authorized officer in the conduct of any search or inspection described in paragraph (f)(1) of this section;

(3) Resist a lawful arrest for any act prohibited by these regulations; or

(4) 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 these regulations.

(g) No person shall use any fishing vessel to engage in fishing without a permit, or after the revocation, or during the period of suspension, of an applicable permit issued under Section 652.4.

(h) No person shall alter, erase or mutilate: (1) any permit issued under section 652.4; or (2) any letter of authorization issued under section 652.22.

(i) No person shall violate any other provision of the Act, these regulations, or any applicable permit issued under Section 652.4.

§ 652.8 Facilitation of enforcement.

(a) **General.** The owner or operator of any fishing vessel subject to these regulations shall immediately comply with instructions issued by any authorized officer to facilitate safe boarding and inspection of the vessel, its gear, logbook and catch for purposes of enforcing the Act and these regulations.

(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 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";

(3) "AA AA AA etc." which is the call to an unknown station; to which the signalled vessel should respond by illuminating the vessel identification required by section 652.6;

(c) **Boarding.** A vessel signalled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way as to permit the authorized officer and his party to come aboard;

(2) Provide a safe ladder for the authorized officer and the boarding 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 necessary to ensure the safety of the authorized officer and his party and to facilitate the boarding.

§ 652.9 Penalties.

(a) Any person or fishing vessel found to be in violation of these regulations, including the logbook and other reporting requirements, shall be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act, in 50 CFR Parts 620 (Citations) and 621 (Civil Procedures), and in other applicable law.

(b) The Assistant Administrator may revoke, modify, or suspend the permit of a vessel whose owner or operator violates any provisions of the Act, these regulations, or any applicable permit.

Subpart B—Management Measures

§ 652.21 Catch quotas.

(a) **Surf clams: Mid-Atlantic Area.** The amount of surf clams which may be caught in the mid-Atlantic Area by fishing vessels subject to these regulations is, for the applicable quarter:

| | Bushels |
|-----------------------------|-----------|
| January 1–March 31 | 400,000 |
| April 1–June 30 | 500,000 |
| July 1–September 30 | 500,000 |
| October 1–December 31 | 400,000 |
| Annual quota | 1,800,000 |

(1) **Adjustments.** If the actual catch of surf clams in the Mid-Atlantic Area in

any quarter falls more than 5,000 bushels short of the specified quarterly quota, the Regional Director shall add the amount of the shortfall to the next succeeding quarterly quota. If the actual catch of surf clams in any quarter exceeds the specified quarterly quota, the Regional Director shall subtract the amount of the excess from the next succeeding quarterly quota.

(2) *Notice.* The Assistant Administrator shall publish a notice in the Federal Register whenever the Regional Director adjusts the quarterly quota of surf clams under paragraph (a)(1) of this section.

(b) *Surf clams: New England Area.* The amount of surf clams which may be caught in the New England Area by fishing vessels subject to these regulations is, for each year, 25,000 bushels.

(c) *Ocean Quahogs.* The annual quota for ocean quahogs is 3,500,000 bushels for 1980 and 4,000,000 bushels for 1981. If necessary, the Regional Director may establish quarterly quotas for ocean quahogs. In that event, the Assistant Administrator shall publish notice of such quarterly quotas in the Federal Register. In the event that the Regional Director establishes quarterly quotas for ocean quahogs, if the actual catch of ocean quahogs falls more than 5,000 bushels short of the specified quarterly quota, the Regional Director shall add the amount of the shortfall to the next succeeding quarterly quota. If the actual catch of ocean quahogs in any quarter exceeds the specified quarterly quota, the Regional Director shall subtract the amount of the excess from the next succeeding quarterly quota.

(d) *Closure.* If the Regional Director determines (based on logbook reports, processor reports, vessel inspections, or other information) that the quota for surf clams or ocean quahogs for any time period indicated in § 652.21 will be exceeded, the Assistant Administrator shall publish a notice in the Federal Register stating the determination and stating a date and time for closure of the surf clam or ocean quahog fishery for the remainder of the time period. The Regional Director shall send notice of the action to each surf clam or ocean quahog processor and to each surf clam or ocean quahog vessel owner or operator.

(e) *Presumption.* The presence of surf clams or ocean quahogs aboard any fishing vessel or the presence of any part of the vessel's gear in the water more than 12 hours after a fishery closure announcement becomes effective under paragraph (d) of this section shall be prima facie evidence

that such clams or quahogs were taken in violation of these regulations.

§ 652.22 Effort restrictions.

(a) *Surf clams, Mid-Atlantic Area.* (1) Fishing for surf clams shall be permitted only during the period beginning 5:00 PM Sunday and ending 5:00 PM Thursday.

(2) The Regional Director will notify each owner or operator of a fishing vessel engaged in the surf clam fishery in the Mid-Atlantic Area concerning the allowable combinations of fishing periods for varying levels of allowable weekly fishing time. The vessel owner or operator shall send the Regional Director written notice of the owner or operator's selection of allowable surf clam fishing periods for that vessel. All selections must be received by the Regional Director not later than 15 days before the beginning of the quarter for which the selection is to be effective. The Regional Director will send a letter of authorization to each owner or operator, stating the periods during which the vessel is authorized to fish for surf clams. The letter of authorization shall be kept aboard the vessel at all times. Fishing shall be conducted only during the times and under those conditions authorized by the Regional Director on the letter of authorization. Requests for changes in a vessel's authorized fishing periods will not be considered once a quarter has begun. All requests for changes in authorized fishing periods for a subsequent quarter must be received by the Regional Director 15 days prior to the beginning of that quarter. Fishing for any part of an authorized period will be counted as one day of fishing. In this paragraph, "fishing" means the actual or attempted catching of fish, but not activities in preparation for fishing, such as traveling to or from the fishing grounds. The presence of a vessel's fishing gear in the water at a time which is more than one-half hour before the beginning, or one-half hour after the end, of the vessel's authorized fishing period shall be prima facie evidence that the vessel is fishing in violation of these regulations.

(3) Each quarter will begin with each vessel limited to 24 hours of fishing time, to allow fishing for surf clams to be conducted throughout the entire quarter without exceeding the quota for that quarter (as adjusted under § 652.21(a)(1)). All authorized fishing periods will end at 5:00 PM.

(4) If, on review of the available information and public comment, including current and expected levels of fishing effort, the Regional Director determines during any quarter that the quarterly quota of surf clams (as adjusted under § 652.21(a)(1)) will be

exceeded, the number of hours per week during which fishing for surf clams is permitted may be reduced to avoid prolonged closure of the fishery.

(5) If, on review of the available information and public comment, including current and expected levels of fishing effort, the Regional Director determines during any quarter that the quarterly quota of surf clams (as adjusted under § 652.21(a)(1)) will not be harvested, and that the catch rate has not diminished as a result of a decline in abundance of stocks of surf clams, the Regional Director may increase the number of hours per week during which fishing for surf clams is permitted to facilitate the harvest of the full quarterly quota.

(6) The Assistant Administrator shall publish a notice in the Federal Register of any reduction or increase in hours per week during which fishing for surf clams is permitted. The reduction or increase may take effect immediately upon publication in the Federal Register. The Regional Director shall also send notice of the change to each surf clam or ocean quahog processor in the fishery, and to each surf clam or ocean quahog vessel owner or operator.

(7) During the months of December, January, February, and March, fishermen may claim a make-up period if small craft warnings are posted in the "key port" of the geographic zone from which the vessel fishes. Vessels fishing from ports in New Jersey and northward are in Zone 1. The "key port" of Zone 1 is Wildwood—Cape May, New Jersey. Vessels fishing from ports on the Delmarva Peninsula and southward are in Zone 2. The "key port" for Zone 2 is Chincoteague, Virginia.

(i) If small craft warnings are posted in the key port of the zone from which the vessel fishes, within four hours before the vessel's scheduled authorized fishing period is to start, then the vessel may elect not to fish during the scheduled authorized fishing period and may instead claim a make-up period.

(A) To claim the make-up period, the vessel owner or operator must contact the NMFS before the scheduled authorized fishing period starts. The Regional Director will notify each vessel owner or operator in writing as to the procedure to follow in contacting NMFS.

(B) The make-up period shall be equal in length to the scheduled authorized fishing period, and shall begin 24 hours after the scheduled beginning of said period, except that if the make-up period could not then be completed before the end of the fishing week on Thursday at 5 p.m., then the make-up period shall begin 96 hours after the beginning of the scheduled authorized fishing period.

(C) Before using this make-up day provision, each vessel owner must notify the Regional Director, in writing, of the port from which the vessel fishes. If that port changes, the vessel owner shall promptly notify the Regional Director of the change, in writing.

(D) Any vessel which uses a make-up period without claiming it under this procedure, or which fishes during a scheduled authorized fishing period for which it has claimed a make-up period, shall be liable to forfeit its use of the make-up provision in the future; the vessel and its owner or operator also may be subject to other penalties as prescribed in section 652.9 of these regulations.

(8) *Presumption.* The presence of surf clams aboard any fishing vessel engaged in the surf clam fishery, or the presence of any part of a vessel's gear in the water more than 12 hours after a weekly closure occurs under this paragraph (a), shall be prima facie evidence that such surf clams were taken in violation of these regulations.

(b) *Surf clams. New England Area.* (1) Fishing for surf clams shall be permitted seven days per week.

(2) When 50 percent of the quota of surf clams indicated in section 652.21(b) has been caught, the Regional Director shall, on review of the available information and public comment, determine whether the total catch of surf clams during the remainder of the year will exceed the annual quota. If the Regional Director determines that the quota probably will be exceeded, the Regional Director may reduce the number of days per week, or establish authorized periods, during which fishing for surf clams is permitted.

(3) The Assistant Administrator shall publish a notice in the *Federal Register* of any reduction in days per week during which fishing for surf clams is permitted. The reduction may be effective immediately upon publication in the *Federal Register*. The Regional Director shall also send notice of any reduction to each surf clam or ocean quahog processor in the fishery and to each surf clam or ocean quahog vessel owner or operator.

(c) *Ocean Quahogs.* (1) Fishing for ocean quahogs shall be permitted seven days per week.

(2) When 50 percent of the quota of ocean quahogs for any time period indicated in section 652.21(c) has been caught, the Regional Director shall, on review of the available information and public comment, determine whether the total catch of ocean quahogs during the applicable time period will exceed the quota for that time period. If the Regional Director determines that the

quota will be exceeded, the Regional Director may reduce the number of days per week during which fishing for ocean quahogs is permitted.

(3) The Assistant Administrator shall publish a notice in the *Federal Register* of any reduction in the days per week during which fishing for ocean quahogs is permitted. The reduction may be effective immediately upon publication in the *Federal Register*. The Regional Director shall also send notice of any reduction to each surf clam or ocean quahog processor in the fishery and to each surf clam or ocean quahog vessel owner or operator.

§ 652.23 Closed Areas.

(a) *Areas closed because of environmental degradation.* Certain areas are closed to all surf clam and ocean quahog fishing because of adverse environmental conditions. These areas will remain closed until the Assistant Administrator determines that the adverse environmental conditions have been corrected. If additional areas, due to the presence or introduction of hazardous materials or pollutants, are identified as being contaminated by the Food and Drug Administration, they may be closed by the Assistant Administrator after public hearing is held to discuss and assess the effects of such a closure. The areas currently closed are described as follows:

(1) A waste disposal site known as the "Boston Foul Ground" and located at 45°25'36" N latitude and 70°35'00" W longitude with a radius of one nautical mile in every direction from that point.

(See Appendix A)

(2) A polluted area and waste disposal site known as the "New York Bight Closure" and located at 40°25'04" N latitude and 73°43'38" W longitude and with a radius of six nautical miles in every direction from that point, extending northwestward from a point on the arc at 40°31'00" N latitude and 73°43'38" W longitude directly toward Atlantic Beach Light in New York to the limit of state territorial waters of New York; and extending southwestward from a point on the arc at 40°19'48" N latitude and 73°45'42" W longitude to a point at the limit of the state territorial waters of New Jersey at 40°14'00" N latitude and 73°55'42" W longitude.

(See Appendix B)

(3) A pair of areas used for the disposal of chemicals and sewage sludge known as the "Philadelphia and Dupont Closure" and located at 38°23'15" N latitude and 74°14'45" W longitude; and 38°32'30" N latitude and 74°20'00" W longitude with a radius of four and three-quarters nautical miles in every direction from those two points.

(See Appendix C)

(4) A toxic industrial dump site known as the "106 Dumpsite" and located between 38°40'00" N latitude and 39°00'00" N latitude and between 72°00'00" W longitude and 72°30'00" W longitude.

(b) *Areas closed because of small surf clams.* Areas may be closed to surf clam and ocean quahog fishing upon a determination by the Regional Director (based on logbook entries, processors' reports, survey cruises, or other information) that the area contains surf clams of which:

(1) 60 percent or more are smaller than 4½ inches in size, and;

(2) not more than 15 percent are larger than 5½ inches in size. (Sizes shall be measured at the longest dimension of the surf clam.)

(c) *Notice.* The Assistant Administrator shall publish notice of any area closed under paragraphs (a) or (b) of this section in the *Federal Register*. The Regional Director shall send notice of the closed area to each surf clam or ocean quahog processor and to each surf clam or ocean quahog vessel owner or operator.

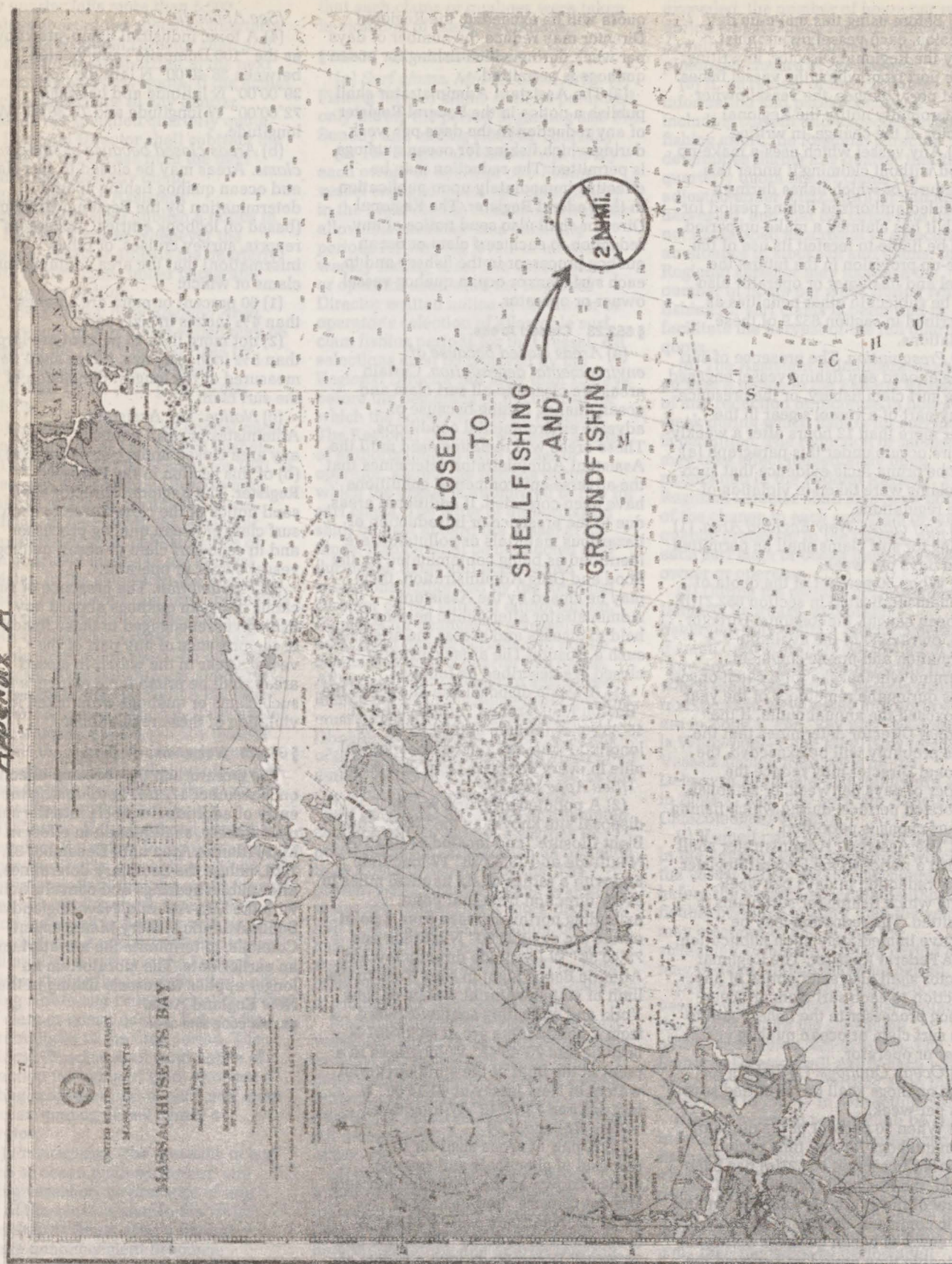
(d) *Presumption.* The presence of surf clams or ocean quahogs aboard any fishing vessel engaged in those fisheries, or the presence of any part of the vessel's gear in the water, in closed areas shall be prima facie evidence that such clams or quahogs were taken in violation of these regulations.

§ 652.24 Vessel moratorium.

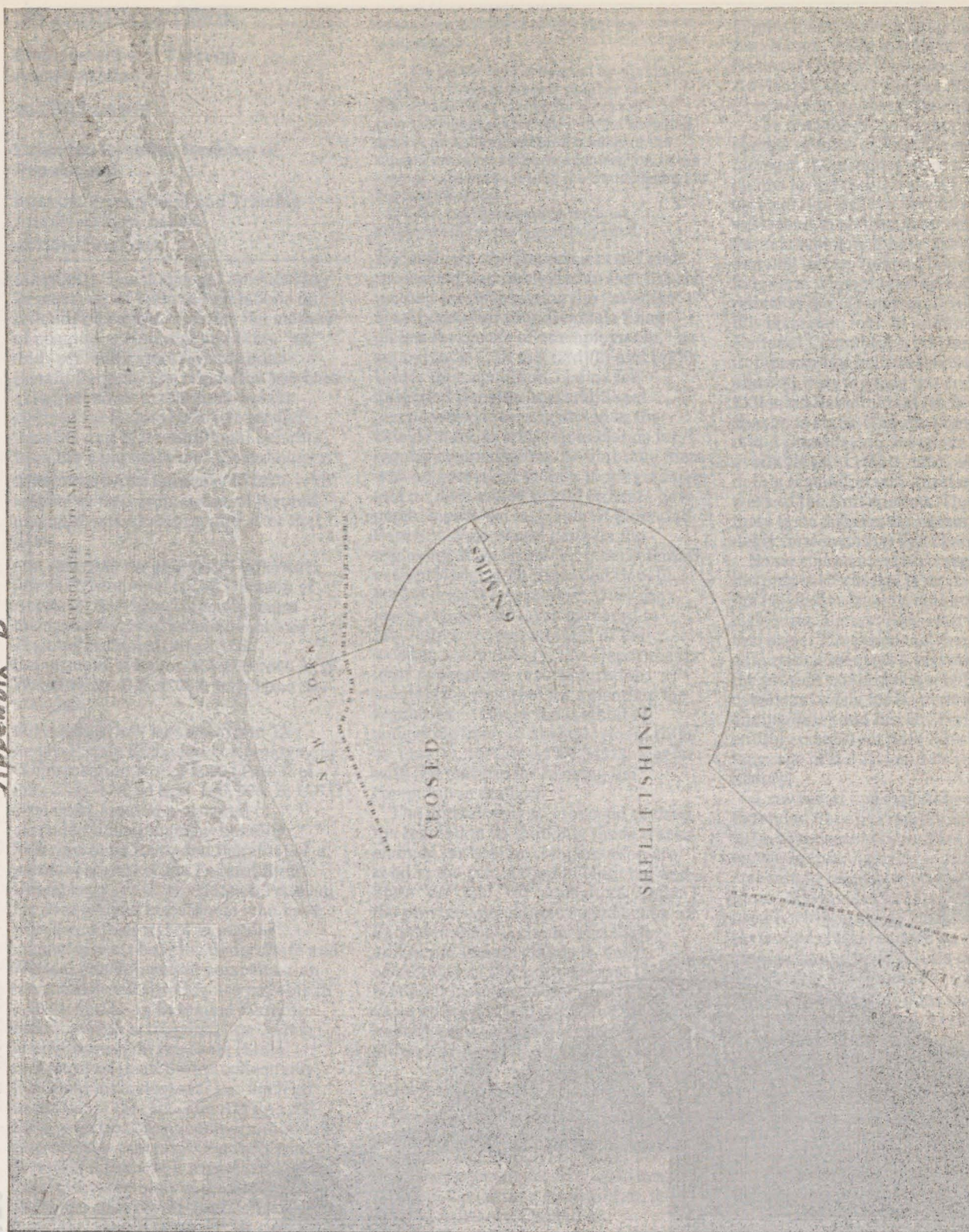
The moratorium that became effective on November 17, 1977, prohibiting the entry of additional vessels into the surf clam fishery, shall remain in effect in the Mid-Atlantic Area until December 31, 1981, unless the Secretary determines, after public hearings and consultation with the Mid-Atlantic, New England and South Atlantic Fishery Management Councils, to terminate the moratorium at an earlier date. The moratorium no longer applies to vessels fishing in the New England Area.

BILLING CODE 3510-22-M

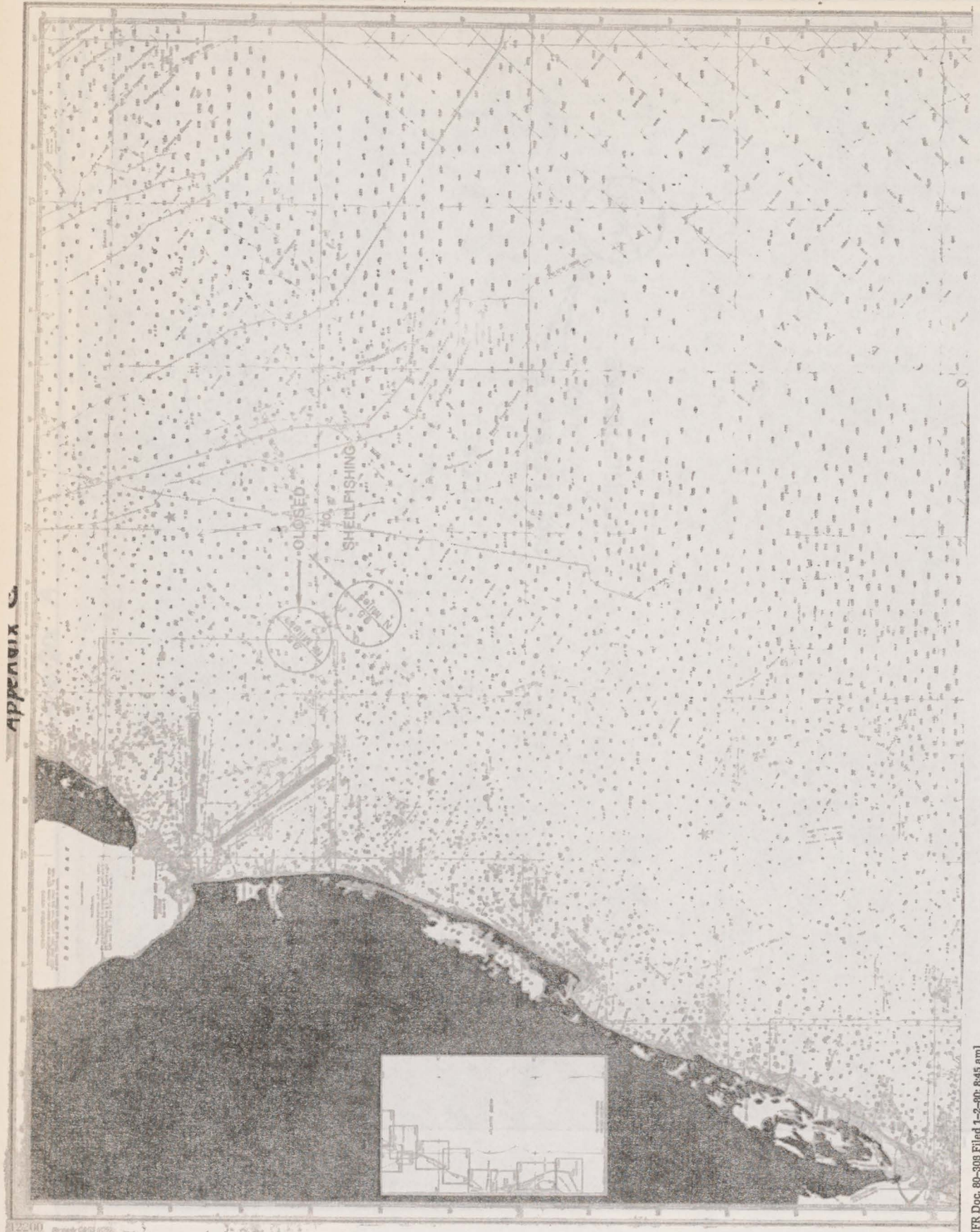
Appendix A



Appendix B



Appendix C



DEPARTMENT OF LABOR

Employment and Training
Administration

20 CFR Part 615

Extended Benefits; Revision of
Regulations

AGENCY: Employment and Training
Administration, Labor.

ACTION: Final rule.

SUMMARY: This document amends the Department of Labor's regulations on Extended Benefits to revise the method of computing National and State "on" and "off" indicators for Extended Benefit Periods. The regulation has been amended so as to eliminate weeks claimed for Federal-State Extended Benefits and State additional benefits from the computation of the indicators.

EFFECTIVE DATE: February 3, 1980, with respect to the computation of insured unemployment rates on and after that date.

FOR FURTHER INFORMATION CONTACT: James H. Manning, Chief, Division of Actuarial Services, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213; telephone 202-376-7231.

SUPPLEMENTARY INFORMATION: The Federal-State Extended Unemployment Compensation Act of 1970 (Title II of Pub. L. 91-373; 84 Stat. 695, 708; 26 U.S.C. 3304 note) created a program of extended unemployment benefits (referred to as Extended Benefits) as a permanent part of the Federal-State Unemployment Compensation Program for unemployed individuals who have exhausted their rights to regular unemployment benefits under State and Federal unemployment compensation laws. Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered "on" when unemployment in the State (State indicator) or in all States collectively (National indicator) reaches the high levels set in the Act. The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when unemployment both in the State and in all States collectively is no longer at the high levels set in the Act.

National and State "on" and "off" indicators are triggered by the national or state "rate of insured unemployment", a term which is defined

in section 203(f)(1) of the Act as meaning—

... the percentage arrived at by dividing—
(A) the average weekly number of individuals filing claims for weeks of unemployment with respect to the specified period, as determined on the basis of the reports made by all State agencies (or, in the case of subsection (e), by the State agency) to the Secretary, by

(B) the average monthly covered employment for the specified period.

Accordingly, the Department of Labor prescribed and published in Part 615 the method for determining the "average weekly number of individuals filing claims for weeks of unemployment," as set out in 20 CFR 615.12(d)(2) and (e)(2). Under this regulation, claims for Extended Benefits and additional compensation were included in the calculations, in addition to claims for regular compensation. At that time there was no precedent to look to for guidance and no data which would indicate how much impact the inclusion of Extended Benefit claims would have on the triggering of an Extended Benefit Period or in prolonging an Extended Benefit Period once it had started. Over the years enough data was gathered to facilitate a reconsideration of the existing methodology. The Department, after appropriate reconsideration, published a proposal for amending the regulation to revise the method of computing insured unemployment rates on June 15, 1979, at 44 FR 34512, together with the reasons for revising the computation method.

The amendment as proposed revised the regulation so that only those weeks claimed for regular compensation are used in the calculation of National and State "on" and "off" indicators. Under the previous regulation the inclusion of Extended Benefit claims and State additional benefit claims in the calculation of the indicator rate (1) rendered inadequate the use of the rate as an economic indicator, and (2) tended to define the level of unemployment differently for "on" and "off" triggers.

Comments Received

The Department received comments on the proposed change from both employer and employee groups, six State employment security agencies, the National Governor's Association, the Federal Advisory Council on Unemployment Insurance, and the National Commission on Unemployment Compensation. In all, approximately 40 responses were received. In general, employer groups and the State

employment security agencies favored the change, while employee groups, the National Governor's Association, the Advisory Council and the National Commission opposed the change.

The reasons given for opposing the change revolve around the anticipated increase in unemployment insurance claims in the months ahead. Several commenters believe that this change will result in shorter Extended Benefit Periods which will have the effect of denying unemployment benefits to the long-term unemployed as well as reducing the counter-cyclical effect of this economic tool. In addition, the National Commission on Unemployment Compensation believes that it should be allowed time to study the entire Extended Benefit Program before any change is made. The recommendations of the Commission, however, will not be available until July 1, 1980, and nothing in this regulation will interfere with the work of the Commission. Therefore, there is no substantial reason to further delay implementing this change.

Some commenters also suggested that the proposed change is inconsistent with the legislative history of the Act. The legislative history, however, is silent on this issue. The proposed change, by eliminating inequities and anomalies in the present methodology, will afford a consistent basis for beginning and ending Extended Benefit Periods, and is entirely consistent with the statutory language of the Act and its legislative history.

A review of our experience under the Extended Benefit Program during the 1974-75 recession period led us to conclude that, by using a different measure to trigger on the program (normally, regular claims only) than is used for triggering off the program (extended claims as well as regular claims), inequitable results could and did arise in the States. For example, two States could have had the same rate of insured unemployment, exclusive of Extended Benefit claims, and Extended Benefits could be payable for many months in one State and not at all in another. This could happen because the first State at one point had a high enough insured unemployment rate (IUR) to trigger on the program, whereas the IUR in the latter State never reached the trigger point.

As unemployment decreased in the first State, the IUR could fall below the level which would otherwise trigger off the program. Because claims for Extended Benefits were included in the count, the program would continue to

operate after the IUR (without Extended Benefit claims) reached the same level as the second State. This inequity could result in the taxpayer in the second State (and other States) financing Extended Benefits for claimants in the first State, under almost identical economic circumstances, when its own citizens were not able to receive these benefits.

In addition, during a protracted period of high unemployment in a large State such as California or New York, the inclusion of Extended Benefits in the IUR calculation could cause the program to trigger on earlier in all States even though unemployment throughout most of the Nation was relatively low.

Another inequity could occur in States that use the standard State indicator (see 20 CFR 615.12(b)), which requires that the current IUR equal or exceed 120 percent of the average of the IUR's for the corresponding periods in the preceding two years. An inequity could result when, for example, a State Extended Benefit Period was delayed in triggering on due to the comparison of the current rate of insured unemployment, exclusive of claims for Extended Benefits, with the average of the two previous years when the rate may have included claims for Extended Benefits. For States with identical IUR's, exclusive of Extended Benefit claims, one could be triggered on and the other would not solely because of the inclusion of claims for Extended Benefits in the calculations.

The change proposed for calculating IUR's would correct these inequities and anomalies. Ideally, the most desirable time to effect any such change is when it causes minimal impact. Extended Benefit Periods are in effect in only three States at this time, Alaska, Puerto Rico, and Michigan, and each of these three States will not be immediately affected by the change in the IUR calculation. Although this change will affect the future triggering on and off of Extended Benefit Periods, it is believed

that the earliest possible effective date of the change will have the least impact. Furthermore, in order to assure that the change will be equalized in its effects, the change will be effective with respect to IUR's computed for the preceding two years, so that in determining whether a current IUR is 120 percent higher than the average of the IUR's for the preceding two-year periods, a State will be making the calculation using the same elements. For this purpose the freeze on past IUR's provided for in 20 CFR 615.12(f) will not be applicable to the adjustment of past IUR's to eliminate Extended Benefit claims and State additional benefit claims when calculating future IUR's for the purposes of the indicators.

Therefore, after careful consideration of all of the comments received, and further consideration of the changes proposed, it has been decided to publish the amendments as they were proposed, and to make the changes effective at the earliest date provided by law.

Note.—The Department of Labor has determined that this document does not contain a major proposal requiring the preparation of a regulatory analysis under Executive Order 12044 and applicable guidelines.

This document was prepared under the direction and control of Robert B. Edwards, Administrator, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213.

Accordingly, 20 CFR 615.12 (d)(2) and (e)(2) and (e)(3) are revised to read as follows:

§ 615.12 Determination of "on" and "off" indicators.

* * * * *

(d) *Computation of national insured unemployment rates.*

* * * * *

(2) *Method of computing the national indicator rate.* The seasonally adjusted

weekly average number of weeks claimed in all States is computed in the following manner:

(i) The number of weeks claimed for regular compensation reported by all State agencies is compiled for the current week and for each of the preceding 12 weeks.

(ii) The national total of unadjusted weeks claimed for each week in the 13-week period obtained in subdivision (i) of this paragraph is seasonally adjusted, using the applicable seasonal adjustment factor or factors developed and published by the Bureau of Labor Statistics of the U.S. Department of Labor.

(iii) The resulting weekly totals are added for the 13 weeks and divided by 13 to obtain the average weekly volume for the 13-week period.

* * * * *

(e)(2) *Method of computing the State indicator rates.* The unadjusted weekly average number of weeks claimed in the State is computed in the following manner:

The number of weeks claimed for regular compensation for the current week and for each of the preceding 12 weeks are added and divided by 13 to obtain the average weekly volume for the 13-week period.

(e)(3) *Rates for preceding 2 years.* Determinations of State rates for the corresponding 13-week periods in the preceding 2 years shall be made in the same manner as provided in subsections (e) (1) and (2) of this section.

* * * * *

Authority: Title II, Pub. L. 91-373 (94 Stat. 695, 708); secs. 118, 212, and 311 of Pub. L. 94-566 (90 Stat. 2667, 2672, 2677, 2678); 5 U.S.C. 553; Secretary's Order No. 4-75 (40 FR 18515).

Signed at Washington, D.C., on January 2, 1980.

Ernest G. Green,

Assistant Secretary for Employment and Training.

[FR Doc. 80-329 Filed 1-2-80; 9:45 am]

BILLING CODE 4510-30-M

Proposed Rules

Federal Register

Vol 45, No. 2

Thursday, January 3, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 211

[Docket No. ERA-R-79-23C]

Motor Gasoline Allocation; Adjustments and Downward of Energy.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Change of hearing date.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that the date for the Washington, D.C. hearing regarding the proposed rule to establish a downward adjustment and certification procedure for wholesale purchaser-resellers of motor gasoline (44 FR 69962, December 5, 1979) has been changed from January 24-25 to January 31-February 1, 1980. The hearings will begin at 9:30 a.m.

DATES: Requests to speak by 4:30 p.m., January 15, 1980. If you are selected to be heard, you will be so notified before 4:30 p.m. January 17, 1980.

Hearing Location: Washington, D.C. hearing—Room 2105, 2000 M Street, N.W., Washington, D.C.

ADDRESSES: Requests to speak for the Washington, D.C. hearing to: Economic Regulatory Administration, Office of Public Hearing Management, Docket No. ERA-R-79-23C, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert G. Gillette (Comment Procedures), Economic Regulatory Administration, Room 2214B, 2000 M Street NW., Washington, D.C. 20461, (202) 254-5201.

William Webb (Office of Public Information), Economic Regulatory Administration, Room B-110, 2000 M Street NW., Washington, D.C. 20461, (202) 634-2170.

William Caldwell (Regulations and Emergency Planning), Economic Regulatory Administration, Room 7202, 2000 M Street NW., Washington, D.C. 20461, (202) 254-3910.

Alan Lockard (Office of Petroleum Operations), Economic Regulatory Administration, Room 6222, 2000 M Street NW., Washington, D.C. 20461, (202) 254-7422.

Joel M. Yudson (Office of General Counsel), Department of Energy, Room 6A-127, 1000 Independence Ave. SW., Washington, D.C. 20585, (202) 252-6744.

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

Douglas G. Robinson,

Acting Administrator, Economic Regulatory Administration.

[FR Doc. 80-178 Filed 1-2-80; 8:45 am]

BILLING CODE 6450-01-M

10 CFR Part 212

[Docket No. ERA-R-79-32E]

Resellers' and Reseller-Retailers' Price Rules for Gasoline

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Change of hearing date.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that the date for the Washington, D.C. public hearing regarding the resellers' and reseller-retailers' price rules proposed amendments (44 FR 69601, December 3, 1979) has been changed from January 22-23 to January 29-30, 1980. The hearings will begin at 9:30 a.m.

DATES: Requests to speak by 4:30 p.m., January 15, 1980. If you are selected to be heard, you will be so notified before 4:30 p.m. January 17, 1980.

Hearing Location: Washington, D.C. hearing—Room 2105, 2000 M Street, Washington, D.C.

ADDRESSES: Requests to speak: Economic Regulatory Administration, Office of Public Hearing Management, Docket No. ERA-R-79-32E, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Comment Procedures), Economic Regulatory Administration, Room 2222-A, 2000 M Street NW., Washington, D.C. 20461, (202) 254-5201.

William Webb (Office of Public Information), Economic Regulatory Administration, Room B-110, 2000 M Street NW., Washington, D.C. 20461, (202) 634-2170.

Chuck Boehl or Ed Mampe (Office of Regulations and Emergency Planning), Economic Regulatory Administration,

Room 2314, 2000 M Street NW., Washington, D.C. 20461, (202) 254-7200.

William Mayo Lee (Office of General Counsel), Department of Energy, Room 6A-127, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6754.

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

Douglas G. Robinson,

Acting Administrator, Economic Regulatory Administration.

[FR Doc. 80-183 Filed 1-2-80; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. 1

[Docket No. 19751; Petition Notice No. PR 79-14]

Petition for Rule Making of the Dallas/Fort Worth Regional Airport (DFW)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Publication of petition for rule making request for comments.

SUMMARY: This notice publishes for public comment the petition of the Dallas/Fort Worth Regional Airport (DFW), dated October 5, 1979, to amend section 107.17(a)(2) of the Federal Aviation Regulations, 14 CFR Part 107. In particular, the DFW asks that the requirement of § 107.17(a)(2), that airport operators, in accordance with § 107.15, provide uniformed law enforcement officers to support passenger screening operations, be revised to permit the operators the option of using a mix of uniformed and nonuniformed officers in conjunction with a flexible law enforcement response system. This notice does not propose regulations for adoption or represent an FAA position on the merits of the Petition.

DATES: Comments must be received on or before March 1, 1980

ADDRESSES: Send comments concerning the proposal, in duplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-24), Docket No. 19751, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Raymond E. Ramakis, Regulatory Projects Branch (AVS-24), Federal

Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION:

Comments Invited.

Interested persons are invited to submit such written data, views, or arguments on the petition for rule making as they desire. Communications should identify the regulatory docket or petition notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, SW., Washington, D.C. 20591. All communications received on or before March 1, 1980, will be considered by the Administrator before taking action on the petition for rule making. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rule making will be filed in the docket.

AVAILABILITY OF NOTICE: Any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the petition notice number of this document.

BACKGROUND INFORMATION: By letter, dated April 24, 1979, DFW petition for an exemption from § 107.17(a)(2) [44 FR 31340; May 31, 1979]. The FAA denied the Petition of Exemption on August 22, 1979, primarily because DFW failed to show that its arguments for relief were uniquely applicable to its airport. In the Denial of Exemption, the FAA suggested that DFW consider petitioning for an amendment to § 107.17(a)(2).

On October 5, 1979, DFW submitted a petition for rule making, in accordance with Part 11 of the Federal Aviation Regulations, to amend § 107.17(a)(2). This petition is published in its entirety as part of this notice.

Specifically, § 107.17(a)(2) requires that law enforcement officers used to perform the law enforcement support function required by § 107.15 be readily identifiable by uniform. The petition asks that an airport which has a flexible response law enforcement system (permits officer to respond to screening checkpoint within specified time as opposed to being stationed at the checkpoint) be given the option of using

a mix of uniformed and nonuniformed officers.

The petitioner contends that the current rule is not flexible enough to permit the utilization of nonuniformed officers who are, in most cases, able to effectively handle an incident at a checkpoint with less antagonism than a uniformed law enforcement officer. DFW also states that allowing a mix of uniformed and nonuniformed officers permits a better utilization of manpower and is cost effective.

Although this notice sets forth the contents of the DFW petition as received by the FAA without changes, it should be understood that its publication to receive public comment is in accordance with FAA procedures governing the processing of petitions for rule making. It does not propose a regulatory rule for adoption, represent an FAA position, or otherwise commit the agency on the merits of the petition. The FAA intends to proceed to consider the petition under the applicable procedures of Part 11 and to reach a conclusion on the merits of the DFW proposal after it has had an opportunity to carefully evaluate it in light of the comments received and other relevant matters presented. If the FAA concludes that it should initiate public rule making procedures on the DFW petition, appropriate rule making action, including an evaluation of the proposal, will be published.

The Dallas/Forth Worth Regional Airport (DFW) Petition

Accordingly, the Federal Aviation Administration publishes verbatim for public comment the following petition for rulemaking of the Dallas/Forth Worth Regional Airport, dated October 5, 1979.

Issued in Washington, D.C., on December 17, 1979.

Edward P. Faberman,
Acting Assistant Chief Counsel, Regulations
and Enforcement Division.
Dallas/Forth Worth Airport,
October 5, 1979.

Mr. Langhorne Bond,
Administrator, Federal Aviation
Administration, 800 Independence
Avenue, S.W., Washington, D.C.

Dear Mr. Bond: Federal Aviation Regulation 107.17(a)(2) specifies that the airport operator may use no person as a required law enforcement officer on duty at the airport unless the officer is readily identifiable by "uniform".

Attached is a letter from Mr. Richard Lally, Director of Civil Aviation Security. Mr. Lally, in addressing our request for an exemption from the 107 uniform requirement, suggested we explore an amendment rather than an exemption to allow any U.S. airport the option of using a mix of uniformed/non-

uniformed law enforcement officers for airport flexible response security programs.

In accordance with FAR 11.25, we respectfully request an amendment to that portion of FAR 107.17(a)(2) which requires all law enforcement officers to be in uniform while performing the duties required under FAR 107.

Very truly yours,

Jack Downey,
Acting Executive Director.

Historically, security checkpoint incidents at D/FW have fallen into three general categories. Eighty-five percent (85%) involve persons who unintentionally violate the law. These persons are very appreciative of the low-key response by an officer in civilian dress. Fourteen percent (14%) of the checkpoint incidents are committed by vocally abusive persons who calm down when the seriousness of a situation is explained. Non-uniformed law enforcement presence lessens the antagonism of the violator, thereby reducing a stressful situation between the officer and violator. The non-uniformed officer makes a significant contribution to the climate of courteous and efficient treatment extended to passengers in these two categories.

The officer responding to the third category of violator is confronted with an aggressive, often violent individual. An officer in civilian dress can be at the checkpoint, assess the situation and act to assemble back-up and equipment before being recognized by the violator as a threat. In addition, the officer may assume a role other than officer in order to gain more information without actually confronting the individual as a police officer. The non-uniformed officer, in combination with the Dallas/Forth Worth Airport CCTV system has proven advantageous in this percentage of passenger traffic.

The general public seems to prefer the non-alarming contact of the plain clothes officer. Local airline managers have expressed a decided preference for the expedient, low-key manner in which checkpoint incidents are handled. At a recent Air Transport Associations Security Sub-Committee meeting, D/FW airline managers unanimously voted their support. A majority of these managers whose combined passenger load comprises 80% of airline traffic from D/FW Airport submitted letters of endorsement.

From a professional point of view, the plain clothes officer is not distracted by persons seeking directions or general information. Full attention can be directed to the primary responsibility of the officer. In the conduct of routine surveillance of the boarding area, the non-uniformed officer, in many instances, is able to identify a potential problem before the person reaches the screening station.

The new FAR 107 which went into effect March 29, 1979, recognizes flexibility as a valid law enforcement concept. A key element in a comprehensive law enforcement program that goes beyond prevention is the option to use a mix of uniformed and non-uniformed officers as the circumstances dictate. At the Dallas/Forth Worth Airport, we have successfully used this combination since 1973.

We respectfully submit that the use of mixed uniformed and non-uniformed dress permits greater service to the public, better utilization of resources and more safety in air transportation than is required under FAR 107. We request favorable consideration of this petition to allow U.S. airports to explore the use of a mix of uniformed and non-uniformed officers to participate in conjunction with a flexible law enforcement response system under FAR 107.15.

PETITION FOR AMENDMENT

Rule

FAR 107.17(a)(2)—No airport operator may use any person as a required law enforcement officer unless, while on duty on the airport, the officer . . . (2) is readily identifiable by uniform and displays or carries a badge or other indicia of authority.

Petition

The Dallas/Fort Worth Airport Board requests an amendment of FAR 107.17(a)(2) to allow that portions of (2) above which requires the officer to be in uniform to become an option under "flexible response" based on the varying demands and diversity of U.S. airports.

Summary

The Dallas/Fort Worth Airport employs 166 police officers who are assigned full time to the airport. Fifty-five (55) of these officers are in the Anti-Air Piracy Division. The remainder constitute a uniformed police presence in the terminals and public areas. They are highly visible to the general public while performing patrol duties and serving as a secondary or back-up response for the Anti-Air Piracy officers.

An amendment of FAR 107.17(a)(2) would allow officers assigned to an airport anti-air piracy program to function in a uniformed and non-uniformed mix at the discretion of the airport operator as circumstances warrant.

Supporting Comments and Exhibits

Since 1973, airport police officers at FAR 107 airports have successfully performed in a combination of uniformed and non-uniformed dress. These officers meet fully the criteria for support, identification and authority as presently set out in FAR 107.15 and 107.17 except for being 100% uniformed. At the Dallas/Fort Worth Airport, these officers continued in this mix of dress upon implementation of closed circuit television beginning in August, 1977. At that time, and as the CCTV system became operational in Dallas/Fort Worth Airport terminals, the uniformed personnel were withdrawn from their positions at the security checkpoints.

[Exemption No. 2802]

United States of America, Federal Aviation Administration, Department of Transportation, Washington, D.C. 20591

In the matter of the petition of Dallas/Fort Worth Regional Airport Board for an exemption from the § 107.17(a)(2) of the Federal Aviation Regulations, Regulatory Docket No. 19155.

Denial of Exemption

By letter dated April 24, 1979, the Dallas/Fort Worth Regional Airport Board petitioned for an exemption from Section 107.17(a)(2) of the Federal Aviation Regulations in order to permit certain law enforcement officers required to support the security program of the Dallas/Fort Worth Regional Airport to be nonuniformed at the petitioner's discretion.

Section 107.17(a)(2) provides that no airport operator may use any person as a required law enforcement officer unless, while on duty at the airport, the officer is readily identifiable by uniform and displays or carries a badge or other indicia of authority.

The Petitioner asserts that the officers who are readily identifiable by uniform are not functioning with maximum effectiveness or with maximum safety for themselves or the public.

The Petitioner states that the airport employs a total of 166 officers on a full-time basis, 55 of whom are engaged in "anti-air piracy" duties and meet the requirements of Part 107. The 111 officers not assigned to those duties constitute a uniformed police presence in the terminals and public areas and represent a highly visible force while patrolling or responding as back up support to the assigned team of 55 officers.

Petitioner points out that starting in August 1977, upon implementation of a Closed Circuit Television (CCTV) system and a quick response plan replacing the stationing of officers at each screening point (authorized by FAA Exemption No. 2299), the uniformed contract guards were replaced by a combination of uniformed and nonuniformed officers. Petitioner asserts that, since that time, in only about 14 percent of the cases of officers responding to alarms at screening points has the obvious display of uniformed presence of police authority been useful in resolving or averting criminal or disruptive acts.

In further support of its petition, the Board states that, historically, about 85 percent of officer responses have involved persons who unintentionally violate the law and who have appreciated the low-key response by a nonuniformed officer. Moreover, the Petitioner argues that in aggressive, violent situations nonuniformed officers can evaluate the threat and call for proper backup support and equipment without the disadvantage of an immediate officer-violator confrontation.

The Petitioner also contends that when an officer is unrecognized as such, there are no distractions caused by citizens seeking information and, as a result, the officer can often detect, and act to prevent, potential problems before their occurrence.

When the public was invited to comment on this petition (44 FR 31340; May 31, 1979), the Airline Pilots Association took strong exception to the granting of the exemption based on its contention that the visible presence of a uniformed law enforcement officer served as a psychological deterrent to would-be hijackers and, since the officer is no longer stationed at a screening point but patrolling a general area, there is an even greater need for the officer to be recognized as such, both by the public and by fellow officers.

The FAA has carefully considered the contents of the petition, the supporting

materials submitted with it, and the comments of the Airline Pilots Association.

A primary concern is whether the use of nonuniformed officers will decrease the deterrent effect of public awareness of police presence. Revised Part 107, effective March 29, 1979, requires that law enforcement officers used by an airport operator to support its security program be readily identifiable by uniform, and display or carry a badge or other indicia of authority. Prior to that time Part 107 only required that the law enforcement officer be "identifiable by uniform, badge, or other indicia of authority."

When this revision was proposed in Notice 77-8, several persons commented on the new uniform requirement. In the preamble to the revision of Part 107 the FAA stated that it believes that uniforms are essential for public recognition. The FAA also emphasized that, where the flexible response concept is adopted with officers patrolling in the terminal rather than stationed at the screening point, there is an even greater need for the law enforcement officer to be immediately recognizable as a police officer, both by the public and by fellow officers.

The FAA recognizes that there could be circumstances in which other factors might provide an equivalent deterrent, which would permit the substitution of nonuniformed officers for some law enforcement officers used to support an airport security program. Moreover, the effectiveness of nonuniformed officers in controlling certain problems may also support this substitution. However, the relief requested by the petitioner should not be provided by exemption, since the petitioner has not shown that the arguments it presents for this relief are uniquely applicable to its airport. If this relief is appropriate, it should be available, through a revision of Part 107, to other Part 107 certificate holders when the circumstances at a particular airport warrant it. Accordingly, the Board may wish to petition for an amendment to § 107.17(a)(2), in accordance with the rulemaking procedures in Part 11 of the Federal Aviation Regulations.

In consideration of the foregoing, I find that granting of an exemption would not be in the public interest. Therefore pursuant to the authority contained in section 313(a) and 601(c) of the Federal Aviation Act of 1958, delegated to me by the Administrator (14 CFR 11.53), the petition of the Dallas/Fort Worth Regional Airport Board for an exemption from FAR 107.17(a)(2) of the Federal Aviation Regulations is hereby denied.

Issued in Washington, D.C., on August 22, 1979.

Richard F. Lally,

Director of Civil Aviation Security.

[FR Doc. 80-20 Filed 1-2-80; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Secretary****24 CFR Part 570****[Docket No. R. 79-759]****Pockets of Poverty****AGENCY:** U.S. Department of Housing and Urban Development.**ACTION:** Notice of Congressional waiver request under Section 7(o)(4) of the Department of Housing and Urban Development Act.

SUMMARY: Recently enacted legislation enables the Congress to review certain HUD rules prior to their publication and requires deferral of the effective date of such rules. The legislation, however, permits the Secretary to request waiver of the review procedure and the deferred effective date requirement in appropriate instances. This Notice lists and briefly summarizes for public information interim rule with respect to which the Secretary is presently requesting waiver.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 7th Street, SW, Washington, D.C. 20410, (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairman and Ranking Minority Members of both Congressional Banking Committees the interim rule listed below. The purpose of the transmittal is to request waiver of the Congressional review procedure and the deferred effective date requirement for the interim rule under Section 7(o)(4) of the Department of Housing and Urban Development Act.

A summary of the rulemaking document for which waiver has been requested is set forth below:

Interim Rule—24 CFR Part 570—Pockets of Poverty

This rule modifies the requirements governing Urban Development Action Grants available to assist communities in revitalizing the economic base of their Pockets of Poverty. As such, it extends program eligibility to a group of cities and urban counties previously found to be ineligible. The rule implements the amendments made to Section 119 of the Housing and Community Development Act of 1974 as amended by Section 104(a) of the Housing and Community Development Act Amendments of 1979.

Issued at Washington, D.C. December 21, 1979.

Moon Landrieu,
Secretary, U.S. Department of Housing and Urban Development.

[FR Doc. 80-44 Filed 1-2-80; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 885**[Docket No. R-79-758]****Loans for Housing for the Elderly or Handicapped****AGENCY:** Department of Housing and Urban Development.**ACTION:** Notice of transmittal of proposed rule to Congress under Section 7(o) of the Department of HUD Act.

SUMMARY: Recently enacted legislation authorizes Congress to review certain HUD rules for fifteen (15) calendar days of continuous session of Congress prior to each such rule's publication in the Federal Register. This Notice lists and summarizes for public information a proposed rule which the Secretary is submitting to Congress for such review.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 7th Street, SW., Washington, D.C. 20410 (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairmen and Ranking Minority Members of both the Senate Banking, Housing and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the following rulemaking document:

24 CFR Part 885—Section 202 Loans for Housing for the Elderly or Handicapped

This rule would revise the definition of "borrower" to require that at least thirty percent (30%) of the members of the governing board of private nonprofit corporations or nonprofit consumer cooperatives live in the community where the housing project is to be located. The members may not be representatives of any national organization which is a sponsor of the project. The rule also would authorize the Field Office Manager to cancel any reservation of loan funds if construction or substantial rehabilitation has not commenced within twelve months (instead of eighteen months) following issuance of Notice of Fund Reservation.

(Section 7(o) of the Department of HUD Act, 42 U.S.C. 3535(o), Section 324 of the Housing and Community Development Amendments of 1978)

Issued at Washington, D.C., December 21, 1979.

Moon Landrieu,
Secretary, Department of Housing and Urban Development.

[FR Doc. 80-47 Filed 1-2-80; 8:45 am]

BILLING CODE 4210-01-M

24 CFR Part 888**[Docket No. R-79-756]****Congressional Waiver Request****AGENCY:** Department of Housing and Urban Development.**ACTION:** Notice of Congressional waiver request under Section 7(o)(4) of the Department of Housing and Urban Development Act.

SUMMARY: Recently enacted legislation enables the Congress to review certain HUD rules. The legislation, however, permits the Secretary to request waiver of the review procedure in appropriate instances. This Notice lists and briefly summarizes for public information a final rule with respect to which the Secretary is presently requesting waiver.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 7th Street, S.W., Washington, D.C. 20410 (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairman and Ranking Minority Members of both Congressional Banking Committees the final rule listed below. The purpose of the transmittal is to request waiver of the deferral of effective date for the final rule under Section 7(o)(3) of the Department of HUD Act. A summary of the rulemaking document for which waiver has been requested is set forth below:

Final Rule—24 CFR Part 888, Subpart A, Schedule A—Section 8 Housing Assistance Payments Program—Fair Market Rents for New Construction and Substantial Rehabilitation (including Housing Finance and Development Agencies Program).

This final rule establishes the Section 8 Fair Market Rents applicable to New Construction and Substantial Rehabilitation for all market areas, in compliance with the requirements of Section 8(c)(1) of the U.S. Housing Act of 1937. Section 8 Fair Market Rents are published annually in the Federal Register. HUD published the last annual revision of the Fair Market Rents applicable to New Construction and Substantial Rehabilitation on July 13, 1979, effective April 1, 1979. These revised Fair Market Rent schedules are

effective retroactive to October 1, 1979, to coincide with the fiscal year. Hereafter, each proposed annual revision of the Fair Market Rents will be published effective October 1.

(Section 7(o) of the Department of HUD Act, 42 U.S.C. 3535(o), Section 324 of the Housing and Community Development Amendments of 1978)

Issued at Washington, D.C., December 19, 1979.

Moon Landrieu,
Secretary, Department of Housing and Urban Development.

[FR Doc. 80-45 Filed 1-2-80; 8:45 am]

BILLING CODE 4210-01-M

VETERANS ADMINISTRATION

38 CFR Part 21

Education Benefits; Standards of Progress and Conduct

AGENCY: Veterans Administration.

ACTION: Proposed Regulation.

SUMMARY: The proposed regulation makes clear that the standards of progress and conduct which educational institutions, offering accredited courses to veterans and eligible persons, must include in the catalog submitted to the State approving agency are the same standards which the Veterans Administration uses to determine when educational assistance should be discontinued to a veteran or eligible person whose conduct or progress is unsatisfactory. At present the regulation is ambiguous on this subject. This leads to situations where schools are enforcing standards which do not appear in the catalog. The proposal corrects this ambiguity.

DATES: Comments must be received on or before February 4, 1980. It is proposed to make this amendment effective the date of final approval.

ADDRESS: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Comments will be available for inspection at the address shown above during normal business hours until February 14, 1980.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education and Rehabilitation Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, N.W., Washington, DC 20420 (202-389-2092).

SUPPLEMENTARY INFORMATION: Section 21.4253(d), Title 38, Code of Federal

Regulations, is amended to require that the standards of progress and conduct a school is using that allows the Veterans Administration to determine when to terminate educational assistance to a veteran and eligible person be the same as the standards in the school's catalog or bulletin.

This proposed regulation does not meet the Veterans Administration's established criteria for significant regulations. Most schools have published standards which include conditions for interruption for a student's unsatisfactory progress or conduct. These are being enforced. Therefore, the number of schools and veterans that will be affected will be small. The proposal will have no effect, either direct or indirect, on businesses, the general public, the environment or State and local governments. The proposed regulation will not burden educational institutions with any additional reporting requirements. There will be no costs to businesses caused by this proposal. The few educational institutions which are not enforcing published standards may incur some costs, but this should be minor. The proposal will have no effect on other Veterans Administration programs.

Additional Comment Information

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, N.W., Washington, DC 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 am and 4:30 pm Monday through Friday (except holidays) until February 14, 1980. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

Approved: December 26, 1979.

By direction of the Administrator:
Rufus H. Wilson,
Deputy Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

In § 21.4253, paragraph (d)(4) is revised to read as follows:

§ 21.4253 Accredited courses.

* * * * *

(d) *School qualification.* A school desiring to enroll veterans or eligible persons in accredited courses will make application for approval of such courses to the State approving agency. The State approving agency may approve the application of the school when the school and its accredited courses are found to have met the following criteria and additional reasonable criteria established by the State approving agency:

* * * * *

(4) The school enforces the policy relative to standards of conduct and progress required of the student, as stated in the certified copies of the school's catalog or bulletin which have been submitted to the State approving agency. The school policy relative to standards of progress must be specific enough to determine the date when educational benefits should be discontinued, pursuant to 38 U.S.C. 1674, because the veterans or eligible person ceases to make satisfactory progress. The policy must include the grade or grade point average that will be maintained if the student is to graduate. For example, 4-year college may require a 1.5 grade point average the first year, a 1.75 average at mid-year the second year, and a cumulative average of 2.0 thereafter on the basis of 4.0 for an A. (38 U.S.C. 1775(b), 1776(b))

* * * * *

(38 U.S.C. 210-(c))
[FR Doc. 80-93 Filed 1-2-80; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 401

[FRL 1383-6]

Toxic Pollutant List; Proposal To Add Ammonia

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposal.

SUMMARY: The Environmental Protection Agency is proposing to add ammonia to its list of toxic pollutant under the Clean Water Act. Substances listed as toxic pollutants are not eligible for waivers from best available technology economically achievable (BAT) effluent limitations. Toxic pollutants may also be subject to more stringent effluent standards.

DATES: Written public comments will be received March 3, 1980.

TO FORWARD COMMENTS OR FOR FURTHER INFORMATION CONTACT: Joseph A. Krivak, Acting Director, Criteria and

Standards Division (WH-585), Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 telephone 202/755-0100.

SUPPLEMENTARY INFORMATION:

Background

The 1977 Amendments to the Clean Water Act, 33 U.S.C. 1251 *et seq.*, establish different regulatory requirements for different categories of pollutants. Under section 301(b)(2)(A), industrial sources must meet best available technology (BAT) requirements for all pollutants except those identified under section 304(a)(4) as conventional pollutants. However, pollutants listed as toxic under section 307(a) are not eligible for waivers from BAT based on water quality (section 301(g)) or economic (section 301(c)) grounds. In addition, listing a pollutant under section 307 may affect the dates by which BAT requirements must be achieved, and could lead to establishment of effluent standards under section 307.

On January 31, 1978, EPA published a list of 65 toxic pollutants pursuant to section 307(a) of the Clean Water Act (33 U.S.C. 1317(a)). That section also authorizes the Administrator to add or remove substances from such list. On July 30, 1979 (44 FR 44501) EPA established 40 CFR section 401.15 as the section to contain this list. The addition of ammonia constitutes the first addition to that initial list of 65 toxic pollutants.

The Act provides that the following factors be taken into account in listing pollutants on the section 307(a)(1) list: "the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms, and the nature and extent of the effect of the toxic pollutant on such organisms."

Additional guidance on factors to consider in supporting a change to the toxic pollutant list was published in the Federal Register (44 FR 18279; March 27, 1979). It is not necessary that every pollutant listed under section 307 demonstrate adverse effects in each of the enumerated areas. For instance, a substance with high acute toxicity may be listed, even though it is not highly persistent.

EPA has reviewed ammonia in light of these factors and believes that total ammonia should be added to the toxic pollutant list.

This proposal is based on the following information:

1. Toxicity.

Un-ionized ammonia is acutely or chronically toxic to many important

freshwater and marine aquatic organisms at ambient water concentrations below 4,200 µg/l. Salmonid fishes, which are of commercial and recreational importance in the United States, are especially sensitive to the toxic effects of un-ionized ammonia at concentrations as low as 25 µg/l during prolonged exposure.

The scientific literature indicates the following toxic effects of un-ionized ammonia. Un-ionized ammonia has:

a. reduced the growth rate and caused severe pathological changes in the gills and liver of the rainbow trout, *Salmo gairdneri*, after 6 months exposure to 25 µg/l and above (Smith and Piper, 1975);

b. retarded early growth and development in the rainbow trout, *Salmo gairdneri*, after 42 days exposure to 60 µg/l (Burkhalter and Kaya, 1977);

c. caused extensive necrobiotic and necrotic changes and tissue disintegration in the carp, *Cyprinus carpio*, after 35 days exposure to a concentration of approximately 100 µg/l (Flis, 1968);

d. caused irreversible blood damage, inhibited growth, and increased susceptibility to disease in the rainbow trout, *Salmo gairdneri*, after 7 days exposure to 270 µg/l (Reichenbach-Klinke, 1967);

e. exhibited a 24-hour LC50 value of 280 µg/l in the Atlantic salmon smolt, *Salmo salar* (Herbert and Shurben, 1965);

f. exhibited a 96-hour LC50 value of 485 µg/l in the bluegill, *Lepomis macrochirus* (Roseboom and Richey, 1977); and

g. caused 50 percent reduction in growth in a combined population of five species of penaeid shrimp after 3 weeks exposure to 550 µg/l (Wichins, 1976).

In addition to its capacity to induce acute and chronic toxicity in aquatic organisms, ammonia is readily oxidized to nitrite (Krueger, et al., 1973) which is as toxic to fish as un-ionized ammonia. Russo, et al., (1974) reported 96-hour LC50 values for nitrite ion to range from 190 to 390 µg NO₂-N/l when tested with the rainbow trout, *Salmo gairdneri*, at various stages of development. Thurston et al., (1978) and Russo and Thurston (1975) reported 96-hour LC50 values for nitrite which ranged from 480 to 740 µg NO₂-N/l in the cutthroat trout, *Salmo clarki*. Smith and Williams (1974) reported development of methemoglobinemia and 40 percent mortality in the chinook salmon, *Oncorhynchus tshawytscha*, after 24 hours exposure to a concentration of 500 µg NO₂-N/l. The oxidation of ammonia to nitrite and then to nitrate during the bacterial nitrification process also

lowers the dissolved oxygen content of the water. Lowered dissolved oxygen both increases ammonia toxicity (Downing and Merckens, 1955; Lloyd, 1961) and has adverse effects on aquatic life in its own right.

Ammonia does not appear to be carcinogenic, teratogenic, or mutagenic in man or in other animals. Few data are available on dose-related lethal or chronic sublethal effects of un-ionized ammonia on non-human mammals.

When ammonia dissolves in water, some of the ammonia reacts with the water to form ammonium ions. A chemical equilibrium is established which contains un-ionized ammonia (NH₃), ionized ammonia (NH₄⁺), and hydroxide ions (OH⁻). The toxicity of aqueous solutions of ammonia is attributed to the NH₃ species (Chipman, 1934; Wuhrmann, et al., 1947; Wuhrmann and Woker, 1948; Downing and Merckens, 1955; Hemens, 1966). Tabata (1962) reported that the un-ionized fraction of dissolved ammonia is approximately 50 times more toxic than the ionized fraction (NH₄⁺). Because of the equilibrium relationship among NH₃, NH₄⁺, and OH⁻, the toxicity of ammonia is very much dependent upon pH as well as the concentration of total ammonia; the fraction of un-ionized ammonia (NH₃) increases as pH and total ammonia concentration is increased. Other factors also affect the concentration of NH₃ in water solutions, the most important of which are temperature and ionic strength. The concentration of NH₃ increases with increasing temperature, and decreases with increasing ionic strength. In aqueous ammonia solutions of dilute saline concentrations, the NH₃ concentration decreases with increasing salinity.

Because the proportion of un-ionized ammonia varies with environmental conditions and cannot be directly controlled in the ambient water, EPA is proposing to list total ammonia as a toxic pollutant.

2. Persistence. Ammonia biodegrades in water and generally is not persistent. However, certain environmental conditions may inhibit ammonia degradation resulting in temporary, but highly toxic, surges of ammonia. The persistence of ammonia in natural water systems depends upon the rate of bacterial nitrification of ammonia to nitrite and nitrate. Collins, et al. (1976) reported that inhibition of the nitrification process by the addition of the antibiotic erythromycin resulted in an increase in un-ionized ammonia concentration from 4 µg NH₃-N/l to 3,000 µg NH₃-N/l after 14 days in a recirculating aquarium stocked with 20

channel catfish fingerlings. Nitrification of ammonia in water is also inhibited by conditions of low pH and high organic content. Such conditions are characteristic of many natural waters in the United States, especially in the southeastern regions (Beck, et al., 1974).

Although the nitrite ion generally is a very short-lived metabolite which is rapidly converted to nitrate by *Nitrobacter* bacteria, environmental conditions not conducive to *Nitrobacter* proliferation may cause elevated concentrations of the nitrite ion.

3. **Bioconcentration, bioaccumulation, and biomagnification.** Ammonia does not bioconcentrate, bioaccumulate, or biomagnify in aquatic organisms. There appears to be no data on these properties for ammonia metabolites, nitrite and nitrate ions.

4. **Synergistic propensities and enhanced toxic properties.** Ammonia toxicity is increased by low levels of other pollutants such as dieldrin, as shown by Mehrle and Bloomfield (1974) in chronic studies with rainbow trout. Brown, et al. (1969) reported augmented NH_3 toxicity when rainbow trout were exposed to fluctuating concentrations of ammonia at two hour intervals as compared to constant exposure at the mean concentration.

5. **Water solubility.** Ammonia is highly water soluble. At a temperature of 20 degrees centigrade and one atmosphere of pressure, ammonia has a solubility in water of 33.1 percent by weight (Frear and Baber, 1963). No information is available on octanol-water partition coefficient determinations for ammonia.

6. **Extent of point source discharges of ammonia into water.** Ammonia is ubiquitous in the aquatic environment. It is present in most natural waters at low concentrations as a biological degradation product of naturally occurring nitrogenous organic matter from both aquatic and terrestrial organisms. However, toxic concentrations of ammonia are introduced into the aquatic environment by man through municipal sewage effluents, industrial dischargers, animal production for slaughtering, and fertilizer application (Willingham, 1976). Ammonia is a waste product in the meat products, leather tanning, iron and steel, petroleum refining, glass, inorganics, nonferrous metals, ferroalloys, and fertilizer industries.

The large number of National Pollutant Discharge Elimination System (NPDES) permits for ammonia indicates the extent of industrial point source discharges of this pollutant. Ammonia appears in approximately 2,000 NPDES permits. Raw wastes from the iron and

steel industry has ammonia at concentrations of 600,000 to 2,000,000 $\mu\text{g/l}$. In the meat packing industry, typical effluents contain total ammonia concentrations in the range of 20,000 to 80,000 $\mu\text{g/l}$; in the leather tanning and finishing industry, total ammonia effluent concentrations are in the range of 50,000 to 150,000 $\mu\text{g/l}$ (U.S. EPA, 1979a).

Total ammonia concentrations in surface waters of the United States in most cases average below 180 $\mu\text{g/l}$; however, total ammonia concentrations have been reported to average 500 $\mu\text{g/l}$ and higher in surface waters located near large metropolitan areas (National Academy of Sciences, 1977).

EPA has reviewed STORET data (U.S. EPA, 1979b) to assess the extent and occurrence patterns of ammonia in U.S. waters. This review showed that existing ambient water concentrations of un-ionized ammonia frequently exceed the EPA criterion of 20 $\mu\text{g/l}$ [Quality Criteria for Water, 41 FR 32947, August 6, 1976]. During summer months and at pH of 8 or greater, 44 percent of the 85th percentile readings exceeded the criterion. During winter months and at lower pH, as little as 12 percent of 85th percentile readings exceeded 20 $\mu\text{g/l}$. In general, ambient water ammonia concentrations were found to be highest near selected industrial discharges, sewage treatment plant effluent discharges, and near land under intense agricultural usage.

7. **Exposure.** The widespread presence of ammonia in U.S. waters indicates a significant potential for exposure of aquatic organisms and wildlife to ammonia. Further, data collected from the Agency's fish kill file attribute 157 separate fish kill incidents to ammonia during the period 1970-1978. Over nine million fish were killed in these incidents which were predominately of agricultural, industrial, and municipal origin.

8. **Annual production.** Annual production of ammonia is high. Commercial production of ammonia was 16.4 million short tons in the United States during 1975-1976 (Am. Chem. Soc., 1977).

9. **Use patterns.** Most of U.S. ammonia production is used in the manufacture of fertilizers and other inorganic and organic chemicals. Ammonia is also used in the treatment of drinking water to maintain effective residual chlorine levels.

10. **Analytical detection.** Analytical techniques can measure total ammonia concentrations as low as 10 $\mu\text{g/l}$ in water (National Academy of Sciences, 1977). Free ammonia concentrations are then calculated as a function of pH,

temperature, and ionic strength (salinity, total dissolved solids) (Trussell, 1972; Emerson, et al., 1975; Thurston, et al., 1974; Willingham, 1976; Bower and Bidwell, 1978).

Dated: December 21, 1979.

Douglas M. Costle,
Administrator.

Appendix

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Ammonium- und Ammoniakgehaltes fließender Gewässer." Vjschr. naturf. Ges. Zurich. 92:198.

[FR Doc. 80-102 Filed 1-2-80; 8:45 am]
BILLING CODE 6560-01-M

40 CFR Part 410

[FRL 1383-5]

Textile Mills Point Source Category Effluent Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: On October 29, 1979, EPA proposed regulations under the Clean Water Act to limit the discharge of effluents to waters of the United States and the introduction of pollutants into publicly owned treatment works from facilities that produce intermediate and finished textile products from various types of fiber, yarn, or fabric (44 FR 62204-62241). EPA is extending the period for comment on the proposed regulations from December 29, 1979, until February 15, 1980.

DATES: Comments on the proposed regulations for the textile industry must be submitted to EPA by February 15, 1980.

ADDRESS: Send comments to: Mr. James R. Berlow, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, Attention: EDG Docket Clerk, Textiles.

The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) PM-213. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: James R. Berlow (202) 426-2554.

SUPPLEMENTARY INFORMATION: On October 29, 1979, EPA proposed regulations to limit effluent discharges to waters of the United States and introduction of pollutants into publicly owned treatment works from facilities that produce intermediate and finished textile products from various types of fiber, yarn, or fabric (44 CFR 62204-62241). The proposal provides effluent limitations guidelines for "best available technology," "best conventional technology," and establishes new source performance standards and pretreatment standards under the Clean Water Act. The October 29 notice stated that comments were to be submitted by December 28, 1979.

On November 7, 1979, the American Textile Manufacturers Institute (ATMI), a trade association representing manufacturers of 85 percent of the nation's textiles, sent to EPA a letter requesting that the comment period be extended to allow 60 days review of the technical development document and economic impact analysis. On December 6, 1979, ATMI requested the comment period be extended to February 15, 1980.

The October 29 notice had stated that the technical and economic documents would be available on November 16 and 23 respectively. Problems were encountered in printing and distributing the documents, which did not become readily available until December 17.

EPA desires and encourages maximum public participation in its rulemakings and is therefore allowing 60 days of review and comment beyond December 17, 1979. The Agency believes that extension of the comment period to February 15, 1980 should provide more than ample time for all interested parties to provide meaningful comments on the proposed regulation.

Dated: December 27, 1979.

Sweep T. Davis,

Assistant Administrator for Water and Waste Management.

[FR Doc. 80-106 Filed 1-2-80; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 79-93]

Security for the Protection of the Public: Increase in Maximum Amount of Required Evidence of Financial Responsibility

AGENCY: Federal Maritime Commission.

ACTION: Enlargement of Time to Comment.

SUMMARY: Notice of proposed rulemaking in subject proceeding was published in the Federal Register of October 31, 1979 (44 F.R. 62546). Time for filing comments was set for January 2, 1980. International Committee on Passenger Lines has requested a 30-day enlargement of time to file comments. As grounds for the request, the Committee cites the holiday season and the necessity to contact members overseas. Although the Committee's reasons are not totally compelling, we are anxious to know the views of this organization regarding the proposal. The request, therefore, is granted.

DATES: Comments on or before: February 1, 1980.

ADDRESSES: Comments to: Secretary Federal Maritime Commission, Room 11101, 1100 L Street, N.W., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, Room 11101, 1100 L Street, N.W., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTAL INFORMATION: None.

By the Commission.¹

Francis C. Hurney,
Secretary.

[FR Doc. 80-117 Filed 1-2-80; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 79-04; Notice 2]

Federal Motor Vehicle Safety Standards Side Impact Protection; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Correction of Notice.

SUMMARY: On December 6, 1979, the NHTSA published in the Federal Register an advance notice of proposed rulemaking concerning the possible amendment of Safety Standard No. 214, *Side Door Strength*, to upgrade motor vehicle side impact protection and to extend the applicability of the standard to light-weight trucks and vans (44 FR 70204). That notice also announced that the NHTSA will hold a public meeting on January 31 and February 1, 1980, to permit all interested persons to present oral and written views concerning the proposed upgrade of the standard. The time for the meeting was inadvertently omitted from the notice, however. The purpose of this correction is to announce that the meeting will be held from 9 a.m. to 5 p.m. on both January 31 and February 1, 1980.

The advance notice specified that the public meeting on side impact protection is to be held at Federal Office Building 10A, Federal Aviation Administration Auditorium. However, because of scheduling problems that have arisen since the notice was issued, the location of the meeting must be changed. The new location is given below.

ADDRESS: The new location for the meeting is: The Thomas Jefferson Auditorium, U.S. Department of

Agriculture, between 12th and 14th Streets on Independence Avenue, S.W., Washington, D.C. Access to the auditorium is through either Wing 5 or 6 of the building (the wing numbers are noted on the exterior of the building).

FOR FURTHER INFORMATION CONTACT: Mr. William Brubaker, Office of Vehicle Standards, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202-426-2242).

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

Issued on December 21, 1979.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 80-107 Filed 1-2-80; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 575

[Docket No. 25; Notice 36]

Consumer Information Regulations; Uniform Tire Quality Grading

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to amend the Uniform Tire Quality Grading (UTQG) Standards to exclude from the application of that regulation tires manufactured in small quantities for vehicles no longer in production. The proposal is intended to benefit consumers and manufacturers by eliminating the expense of grading tires manufactured in small lots for specialized use, the purchase of which is unlikely to be based on comparisons of performance characteristics.

DATES: Comments must be received on or before February 4, 1980. Proposed effective date; date of publication of the final rule in the Federal Register.

ADDRESSES: Comments should refer to the docket number and be submitted to: Room 5108, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-2768).

FOR FURTHER INFORMATION CONTACT: Dr. F. Cecil Brenner, Office of Automotive Ratings, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, 202-426-1740.

SUPPLEMENTARY INFORMATION: The UTQG Standards (49 CFR 575.104) establish a system for grading passenger car tires in the performance areas of treadwear, traction, and temperature resistance. The grades will assist consumers in making comparisons among competing tire brands. Most provisions of the regulation became

effective April 1, 1979, for bias-ply tires, October 1, 1979, for bias-belted tires, and will take effect on April 1, 1980, for radial tires.

Paragraph 575.104(c) of the UTQG regulation limits the application of the standard to new pneumatic tires for use on passenger cars manufactured after 1948 (49 CFR 575.104(c)). Only snow tires, temporary use spare tires, and tires with rim diameters of 10 to 12 inches are excluded from the regulation's coverage by that paragraph.

It has been brought to NHTSA's attention by Denman Rubber Manufacturing Company, Dunlop Limited, and Universal Tire Company that certain tire manufacturers produce small quantities of tires for use on passenger cars which, while manufactured after 1948, are nonetheless considered antique or classic by their owners. These tires, which are within the present application of the UTQG Standards, may be produced in outdated sizes or with distinctive sidewall or tread designs and are generally manufactured on order in lots of between one and 2,000 tires per size. NHTSA estimates that approximately 36,000 tires of various sizes are produced each year for use on antique cars, with two-thirds of this production aimed at vehicles manufactured after 1948.

NHTSA believes that purchasers of this type of tire base their tire purchasing decisions primarily on appearance considerations, rather than performance and cost, and that actual choice among tires to serve these specialized purposes is extremely limited. These consumers would therefore be unlikely to rely on UTQG information in selecting tires. Also, the greater per-tire cost of testing the many varieties of antique car tires manufactured in small quantities could lead to deliberate undergrading by manufacturers in place of adequate testing, thereby decreasing the accuracy and value of the UTQG information.

The Intermark Tire Company has petitioned NHTSA to exempt from the coverage of the UTQG regulation another class of limited production tires. These are tires manufactured for use on vehicle models, the production of which was discontinued five or more years ago and which require tire sizes no longer used as original equipment. These tires are sold by a small group of manufacturers and importers and, NHTSA judges, the limited availability of the tires results in little marketplace competition in their sale. Annual sales for this class of tires is estimated at 500,000.

¹ Chairman Daschbach would deny the request.

The agency has tentatively concluded that the testing of these classes of tires is not justified by the resulting tire grading information because of the unlikelihood it will be relied on or useful for comparative shopping it will be relied on or useful for comparative shopping and that these tires could be excluded from the coverage of the regulation.

To avoid the subjectivity involved in identifying antique car, classic car, and other low volume specialized tires to distinguish them from those in common use, NHTSA proposed to remove from the application of the UTQG Standards any size and design of tire, the annual production of which by the tires' manufacturer, and in the case of tires marketed by a brand name owner, the annual purchase of which by the tires' brand name owner, does not exceed 15,000 tires. As used in the proposal, the term "design" refers to the structural properties of the tires, such as materials, construction, or tread pattern, rather than cosmetic or identifying characteristics on the tire sidewall. In addition, it would be required that the tires' size not have been listed as a vehicle manufacturer's recommended tire size designation on a new motor vehicle produced or imported into the United States in quantities greater than 10,000 during the calendar year preceding the year of the tires' manufacture, and that the tires' manufacturer or brand name owner produce or purchase annually no more than 35,000 tires otherwise meeting the criteria of limited production tires.

Dunlop's petition also asked that some form of labeling system be adopted for tires which are not required to be graded under the UTQG regulation, to facilities processing of such tires by United States customs authorities. Regulations governing importation of motor vehicle equipment (19 CFR 12.80) only require compliance with applicable Federal motor vehicle safety standards, as set forth in 49 CFR Part 571. Any tire marked with the DOT symbol as required by Standard No. 109 (49 CFR 571.109, S4.3.1) or Standard No. 119 (49 CFR 571.119, S6.5(a)), as applicable, or which is not required to comply with such standards, will be processed expeditiously by customs authorities, and the question of compliance with the UTQG regulation should not arise. While NHTSA does not consider it necessary to impose a labeling system for tires excluded from the UTQG Standards, the agency has no objection to voluntary labeling by manufacturers or importers.

To the extent that Intermark Tire Company's and Dunlop Limited's petitions for exemption and Intermark's petition for rulemaking are not granted by this notice, they are denied.

The agency has determined that the proposed amendments would have no appreciable effect on the environment. Since the proposed change would relieve a restriction, NHTSA has concluded that no additional costs will be imposed by implementation of this proposal. Therefore, this modification is judged not to have a significant impact for purposes of the Department's criteria for analysis and review of regulations.

In consideration of the foregoing, it is proposed that 49 CFR Part 575.104(c) be revised to read:

§ 575.104 Uniform tire quality grading standards

* * * * *

(c) *Application.* (1) This section applies to new pneumatic tires for use on passenger cars. However, this section does not apply to deep tread, winter-type snow tires, space-saver or temporary use spare tires, tires with nominal rim diameters of 10 to 12 inches, or to limited production tires as defined in paragraph (c)(2) of this section.

(2) "Limited production tire" means a tire meeting all of the following criteria, as applicable:

(i) The annual production by the tire's manufacturer of tires of the same design and size as the tire does not exceed 15,000 tires;

(ii) In the case of a tire marketed under a brand name, the annual purchase by a brand name owner of tires of the same design and size as the tire does not exceed 15,000 tires;

(iii) The tire's size was not listed as a vehicle manufacturer's recommended tire size designation for a new motor vehicle produced or imported into the United States in quantities greater than 10,000 during the calendar year preceding the year of the tire's manufacture; and

(iv) The total annual production by the tire's manufacturer, or in the case of a tire marketed under a brand name, the total annual purchase by the tire's brand name owner, of tires meeting the criteria of subparagraphs (c)(2) (i), (ii), and (iii) of this section, does not exceed 35,000 tires.

Tire design is the combination of general structural characteristics, materials, and tread pattern, but does not include cosmetic, identifying or other minor variations among tires.

Interested persons are invited to submit comments on the proposal. It is

requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a succinct and concise fashion.

Those persons desiring to be notified upon receipt of their comments in the rulemaking docket should enclose, in the envelope with their comments, a self-addressed, stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

In the case of comments that contain materials for which confidential treatment is requested, those materials should be deleted from the copies submitted to the docket. A copy of the complete comments should be submitted to the Office of Chief Counsel at the above address, with an indication of which portions of the comments are the subject of the request for confidentiality.

In order to avoid the possibility of extended interruption in the manufacture of limited production tires pending the outcome of this proceeding, the comment period for this notice has been limited to thirty days.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available to the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

The principal authors of this proposal are Dr. F. Cecil Brenner of the Office of Automotive Ratings and Richard J. Hipolit of the Office of Chief Counsel.

(Sec. 103, 112, 119, 201, 203; Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407, 1421, 1423); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: December 21, 1979.

Michael M. Finkelstein,
Associate Administrator for Rulemaking.

[FR Doc. 79-38902 Filed 12-27-79; 1:00 pm]

BILLING CODE 4910-59-M

**INTERSTATE COMMERCE
COMMISSION****49 CFR Parts 1201, and 1241****[No. 37203]****Cost Center Accounting and Reporting
System for Class I Railroads****AGENCY:** Interstate Commerce
Commission.**ACTION:** Proposed Rule; Extension of
Time.

SUMMARY: The Notice of Proposed Rulemaking in this proceeding was published in the Federal Register on October 30, 1979 (44 FR 62312). The notice proposed an effective date of January 1, 1980 and sought comments by December 31, 1979. The Association of American Railroads has requested that the proposed effective date be postponed until January 1, 1981, and the comment date be extended until February 29, 1980. We believe the changes are warranted and are revising the dates as shown below.

DATES: Proposed Effective Date: January 1, 1981. Comments: Comments should be filed by February 29, 1980.

ADDRESSES: Send comments with 10 copies, if possible, to: Office of Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr., (202) 275-7448.

Decided: December 17, 1979.

By the Commission, Chairman O'Neal.

Agatha L. Mergenovich.

Secretary.

[FR Doc. 80-214 Filed 1-2-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Parts 13 and 22****Permits To Take Golden Eagle Nests****AGENCY:** Fish and Wildlife Service,
Interior.**ACTION:** Proposed rule.

SUMMARY: Potential conflicts between the prohibitions of the Eagle Protection Act, 16 U.S.C. 668-668d, and resource development and recovery operations throughout the country, particularly future coal mining activities in the western states, resulted in Congress amending the Eagle Protection Act to allow the Secretary of the Interior to promulgate regulations which permit the taking of golden eagle nests which interfere with resource development or

recovery operations. To implement the amendment, the Service proposes to amend Subpart C of 50 CFR 22 to allow and to regulate the otherwise prohibited destruction or removal of golden eagle nests which interfere with resource development or recovery operations, if the nests are not under construction or occupied and the taking is compatible with the preservation of the golden eagle.

DATES: Comments on this proposed rulemaking are due on or before March 3, 1980.

ADDRESSES: Submit comments to Director (FWS/LE), U.S. Fish and Wildlife Service, P.O. Box 19183, Washington, D.C. 20036, and refer to the file number REG 22-02-2. All material received will be available for inspection during normal business hours at the Service's Office in Suite 300, 1375 K Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John T. Webb, Paralegal Specialist, Division of Law Enforcement, U.S. Fish and Wildlife Service, 1375 K Street, N.W., Suite 300, Washington, D.C. telephone: 202-343-9242.

SUPPLEMENTARY INFORMATION:**Background**

Our nation's expanded search for energy resources over the past several years has made the U.S. Fish and Wildlife Service increasingly aware of conflicts that exist between developmental interests and wildlife. One conflict that has become apparent concerns the existence of golden eagle nests in areas proposed for resource development operations such as road or dam construction, or resource recovery operations such as mining or timbering. Section 1 of the Eagle Protection Act (16 U.S.C. 668) prohibits the "taking" of any golden eagle, *Aquila chrysaetos*, or its nest. The definition of "take" in section 4 of the Eagle Protection Act (16 U.S.C. 668c) includes "collect, molest or disturb". In the context of this proposal these terms are synonymous with remove or destroy. If a golden eagle nest is taken during a resource development or recovery operation, a violation of the Eagle Protection Act results, even though the nest is unoccupied or abandoned. This Act has therefore placed a substantial impediment on resource development or recovery operations in areas where golden eagles are abundant.

Compounding the problem is the fact that golden eagles have been drawn to areas that have been disturbed by resource development or recovery operations. Through the removal of ground cover or the reduction of soil

density, these disturbances may increase the availability of prey, and therefore attract golden eagles. This result is readily apparent on sites where surface mining is conducted. The highwalls which are left following excavation are suitable for the construction of nests, and the soft soil which remains after mineral extraction attracts small burrowing animals which are the prey of golden eagles.

Mining plans reviewed by Service officials in certain parts of the western United States have revealed that golden eagle nests are situated on a substantial number of proposed mining sites, or are located sufficiently close to these sites to be taken during mining activities.

A further complication results because golden eagles have shown a propensity to construct a number of alternate nests in any one locale. Frequently three or more of these satellite nests are constructed by a single pair of golden eagles. Although alternate sites may be selected because of early nesting failure, generally only one site is used per year for nesting purposes.

The Eagle Protection Act was amended by the 95th Congress (Pub. L. 95-616, 92 Stat. 3114) to remedy this situation. The amendment authorizes the taking of golden eagle nests which interfere with resource development or recovery operations pursuant to regulations issued by the Secretary.

Description of the Proposed Rulemaking

The proposal establishes a framework for issuing permits to take golden eagle nests. Permits are available to take both active and inactive nests, as defined, only if the nest is not under construction or occupied and the taking is compatible with the preservation of the regional population of golden eagles. To allow the taking of nest which is under construction or occupied would also authorize the taking of one or more golden eagles for purposes for which a permit is not available under the Eagle Protection Act (16 U.S.C. 668a). This Act (16 U.S.C. 668a) also requires an investigation to be conducted to determine whether the taking is compatible with the preservation of the golden eagle before a permit may be issued. The determination required to be made under the proposal focuses on the impact the taking will have on the regional population of golden eagles. This provision accounts for geographic variances in the total golden eagle population and allows a permit to be issued which responds to the needs of a particular regional population.

Applicants for a permit must be engaged in the course of a resource

development or recovery operation, including the planning stages. "Resource development or recovery" is defined to include, but is not limited to, mining, timbering, extracting oil, natural gas, and geothermal energy, constructing roads, dams, reservoirs, powerplants, and pipelines, as well as facilities or access routes essential to these operations, and reclamation following these operations. Anyone planning a resource development or recovery operation is encouraged to involve the Service as early as possible to resolve any potential interference from golden eagle nests. However, any permits issued before the commencement of an operation are contingent upon the performance of the activities which require a permit. If a planned operation fails, the permit is invalid. In addition, even after a permit is issued a nest may not be taken which is under construction or occupied.

Applicants must provide detailed information about the operation and affected golden eagle nests, to include the following: the number of nests proposed to be taken; the location of the nests on the operation site; a description of each activity to be performed during the operation which involves the taking of a golden eagle nest; whether the nest is active or inactive; and proposed mitigation measures, if any, which are compatible with the resource development or recovery operation, including either enhancing the habitat for the long-term benefit of the regional population of golden eagles or constructing artificial nest sites.

Applicants are encouraged to suggest mitigation measures. Habitat enhancement, although not defined, includes any action taken during a resource development or recovery operation which may benefit the regional population of golden eagles. Closing access roads upon completion of the operation to minimize human contact, leaving a source of uncontaminated water, limited reforestation, and removal of unnecessary power lines are all actions which could be taken. In addition, other applicable laws may require an applicant to follow a particular manner of reclamation, which may also act to enhance the habitat.

The construction of artificial nest sites has also been suggested as a mitigation measure. Some operations may be conducted in areas where only one active nest is located, but yet the taking may be compatible with the preservation of the regional population. Whether the construction of artificial nest sites is truly a mitigation measure is

a question on which the Service desires comments from the public. The Service's current position is that an artificial nest site has the potential to be subsequently used by nesting eagles and is therefore a mitigation measure, particularly when no other suitable nest sites exist.

A permit may be issued to take a golden eagle nest only if the taking is compatible with the preservation of the regional population of golden eagles. Whether mitigation measures, which may be suggested by the applicant, are available and appropriate is one of a number of issuance criteria. Other factors must also be considered: whether the applicant can reasonably conduct the operation without the need of a permit, whether the nest is active or inactive, whether other active nests of potential nest sites are available and will remain in the immediate vicinity, and what effect the activities conducted under the permit will have on the regional population of golden eagles. These factors suggest that an applicant who wants to take an inactive nest is more likely to meet the issuance criteria than one who wants to take an active nest when no other active nests or potential nest sites exist in the surrounding area and mitigation measures are not feasible.

Mitigation measures found to be available and appropriate are included as a permit condition. Failure to comply with these measures will place the permittee in violation of the permit. Permittees are also required to submit a report of activities conducted under the permit within ten days of the permit's expiration. If an active nest is taken, the Service must be notified in writing within five days. The latter reporting requirement will allow the Service to maintain a running inventory of active nests taken and to monitor the cumulative effect of this taking. Permits are limited in duration to one year, but are renewable.

Public Comments Invited

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed regulation. Correspondence should be mailed to the address given at the beginning of this rulemaking.

The director will take into consideration the relevant comments, suggestions, or objections which are received. These comments, suggestions, or objections, and any additional information received, may lead the

Director to adopt a final rulemaking that differs from this proposal.

National Environmental Policy Act

An environmental assessment is being prepared by the Service in conjunction with this proposal. Upon completion of the environmental assessment a determination will be made at the time of the final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this proposal is Mr. John T. Webb, Paralegal Specialist, Division of Law Enforcement, 202-343-9242.

Note.—The Department has determined that this rule is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Regulations Promulgation

Accordingly, it is hereby proposed to amend Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 13—GENERAL PERMIT PROCEDURES

§ 13.12 [Amended]

1. Amend § 13.12(b) by adding the following entry in numerical order under "Eagle permits":

| | |
|---------------------------|--------|
| * * * * * | |
| "Golden eagle nests....." | 22.25" |
| * * * * * | |

PART 22—EAGLE PERMITS

Table of Contents [Amended]

2. Amend the Table of Contents by adding the following entry in numerical order under subpart C:

| | |
|---|--|
| * * * * * | |
| 22.25 Permits to take golden eagle nests. | |
| * * * * * | |

Authority [Amended]

3. Amend the authority citation by deleting the word "Bald" and adding "92 Stat. 3114" after "86 Stat. 1065".

§ 22.3 [Amended]

4. Amend § 22.3 by adding the following definitions in alphabetical order:

| |
|---|
| * * * * * |
| "Active golden eagle nest" means a nest that (a) is known to have been used by nesting golden eagles in at least 1 of the 3 preceding years; or (b) is in such condition that prior use by golden eagles can be verified, and little or no repair |

will be required for its subsequent use by golden eagles for nesting purposes.

"Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal government, of any State or political subdivision thereof, or any foreign government.

"Resource development or recovery" includes, but is not limited to, mining, timbering, extracting oil, natural gas and geothermal energy, construction roads, dams, reservoirs, power plants and pipelines, as well as facilities and access routes essential to these operations, and reclamation following these operations.

5. Amend Subpart C to include the following new section:

§ 22.25 Permits to take golden eagle nests.

The Director may, upon receipt of an application and in accordance with the issuance criteria of this section, issue a permit authorizing the taking of golden eagle nests during a resource development or recovery operation, *except* that no permit may be issued to take nests that are under construction or occupied.

(a) Application procedure.

Applications for permits to take golden eagle nests shall be submitted to the appropriate Special Agent in Charge (see: § 13.11(b) of this subchapter). Applications will only be accepted from persons actively engaged in the course of a resource development or recovery operation. Each application must contain the general information and certification required by § 13.12(a) of this subchapter plus the following additional information:

(1) A description of the resource development or recovery operation in which the applicant is engaged;

(2) The number of golden eagle nests proposed to be taken;

(3) A legal description of the property on which the taking is proposed, with reference made to its exact geographic location. Maps or charts should be included, indicating the location of all known golden eagle nests and delineating the area of the resource development or recovery operation;

(4) A description of each activity to be performed during the resource development or recovery operation which involves the taking of a golden eagle nest;

(5) A statement supported by all available evidence indicating whether each golden eagle nest proposed to be taken is active or inactive. For any

determined to be inactive, reference should be made to the last year in which the nest was known to be occupied. Although applicants are not required to do so, they are encouraged to submit statements from ornithologists or other qualified persons who have made on site inspections in order to determine the status of affected nests;

(6) The length of time for which the permit is requested, including dates on which the proposed resource development or recovery operation is to begin and end;

(7) A statement indicating the intended disposition of each nest proposed to be taken. Applicants should state whether they are willing to reserve any nest for scientific or educational purposes; and

(8) A statement indicating proposed mitigation measures, if any, which are compatible with the resource development or recovery operation, to include either enhancing the habitat for the long-term benefit of the regional population of golden eagles or constructing an artificial nest site. If the construction of an artificial nest site is proposed, a description of the materials and methods to be used and the precise location of the artificial nest site must be included.

(b) Additional permit conditions. In addition to the general conditions set forth in Part 13 of this subchapter B, permits to take golden eagle nest shall be subject to the following conditions:

(1) In addition to any reporting requirement set forth in the permit, the permittee shall submit a report of activities conducted under the permit to the Special Agent in Charge within ten (10) days following its expiration. When the taking of an active nest is accomplished under the terms of the permit, the permittee shall notify the Special Agent in Charge in writing within five (5) days of the taking;

(2) The permittee shall comply with any mitigation measures determined by the Director to be available and appropriate;

(3) Permits issued before the commencement of the resource development or recovery operation are contingent upon the performance of the activities which require a permit. The permittee shall notify the Special Agent in Charge in writing within five (5) days of the commencement of the resource development or recovery operation; and

(4) No golden eagle nest may be taken which is under construction or occupied.

(c) Issuance criteria. The Director shall conduct an investigation and not issue a permit to take a golden eagle nest unless he has determined that such

taking is compatible with the preservation of the regional population of golden eagles. In making such determination, the Director shall consider the following:

(1) Whether the applicant can reasonably conduct the resource development or recovery operation in a manner that will avoid the taking of an golden eagle nest;

(2) Whether the golden eagle nest is active or inactive based upon reliable documentary evidence;

(3) Whether other active nests or potential nest sites exist and will remain in the immediate vicinity of any nest to be taken;

(4) Whether mitigation measures compatible with the resource development or recovery operation are available and appropriate, including either enhancing the habitat for the long-term benefit of the regional population of golden eagles or constructing an artificial nest site; and

(5) The direct or indirect effect which issuing the permit is likely to have on the regional population of golden eagles.

(d) Tenure of permits. The tenure of any permit to take golden eagle nests shall be that shown on the face of the permit, and shall in no case be longer than one year from the date of issuance.

Dated: December 20, 1979.

Lynn A. Greenwalt,
Director.

[FR Doc. 80-209 Filed 1-3-80; 8:45 am]
BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 45, No. 2

Thursday, January 3, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Privacy Act Notice of Evaluation Study

This notice is published to inform the public that ACTION will collect data to be used for evaluating the impact of the Senior Companion Program nationwide. Evaluation results will be used to effect change and to improve Senior Companion Programs.

On March 13, 1978, ACTION published in FR 43 at pages 10421 and 10422, a notice effecting a Privacy Act record system entitled, "ACTION Information Gathering System—ACTION AF-32," that covers studies by ACTION relating to its programs and activities and which would include the collection of personal data from or about individuals.

The Senior Companion Program operates under authority of the Domestic Volunteer Service Act of 1973. The Senior Companion Program provides meaningful part-time volunteer opportunities for low-income older persons to render, in a mutually beneficial relationship, supportive person-to-person services to adults (21 years of age and over) with special needs in health-, education-, and welfare-related settings.

The Evaluation Division of ACTION is mandated in the Domestic Volunteer Service Act of 1973, in Public Law 93-113, Section 415(a) to " * * * periodically measure and evaluate the impact of all programs authorized by this Act (The Domestic Volunteer Service Act of 1973)." In line with this mandate, the Evaluation Division will conduct an evaluation to be used to test the impact of the Senior Companion Program. This evaluation calls for collecting data concerning the client and the Senior Companion. Data will be collected in two phases. The second phase data will be matched against the first phase to

measure the effect and impact of the program on the client and the Senior Companion.

Results will be presented in terms of summary statistics and will not be reported in any categorization sufficient to identify data concerning an individual client.

Anyone who wishes more information concerning this study should contact Mr. Melvin Beetle, ACTION Evaluation Division, Room M-207, 806 Connecticut Avenue, N.W., Washington, D.C. 20525, or by telephone on 202-254-7983.

Signed at Washington, D.C., on December 27, 1979.

Robert S. Currie,
Executive Officer.

[FR Doc. 80-13 Filed 1-2-80; 8:45 am]

BILLING CODE 6050-01-M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Requests for Comments on Applicants for Designation in the Burlington, Iowa, Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and request for comments.

SUMMARY: This notice requests comments from interested parties on the applicants for designation as official agencies in the Burlington, Iowa, area.

DATE: Comments to be postmarked on or before February 4, 1980.

ADDRESS: Comments should be submitted to USDA, FGIS, Compliance Division, Comments Section, Rm 2405 Auditors Bldg., 1400 Independence Ave., S.W., Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, (202) 447-8262.

SUPPLEMENTARY INFORMATION: The September 20, 1979, issue of the Federal Register (44 FR 54519) contained a notice from the Federal Grain Inspection Service requesting applications for designation to provide official services under the United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (the "Act"), for the area presently serviced by the Burlington Chamber of Commerce Grain Fund, Inc., Burlington,

Iowa. Applications were to be postmarked by November 5, 1979. A total of five applications were received, all of which appear to meet the criteria for designation specified in Section 7(f)(1)(A) of the Act.

The names of the applicants for designation are as follows: Eldon L. Davis, Fremont Grain Inspection Department, Inc., 603 East Dodge Street, Fremont, Nebraska 68025; Joe P. Jaimes, 9445 Connell Drive, Overland Park, Kansas 66214; James Parrish, 300 South Main Street, Burlington, Iowa 52601; F. E. Polaski, Cedar Rapids Grain Service, Inc., 1831 J Street, S.W., Cedar Rapids, Iowa 52404, and; J. L. Slater, Eastern Iowa Grain Inspection and Weighing Service, Inc., RR #1, Box 588, Blue Grass, Iowa 52728.

In accordance with § 26.98 of the regulations under the Act, this notice provides interested persons the opportunity to submit written comments concerning the applicants. All comments must be submitted to the Compliance Division, Comment Section specified in the address section of this notice and be postmarked not later than February 4, 1980.

A comment period of 30 days is deemed adequate because such a period of time would expedite the designation of an official agency to service the Burlington, Iowa, area. Such a comment period does not impose any undue obligations or requirements on others, and under the circumstances, provides a sufficient period of time for comments.

Consideration will be given to all comments filed and to all other information available to the Administrator of the Federal Grain Inspection Service before a final decision is made with respect to this matter. Notice of the final decision will be published in the Federal Register and the applicants will be informed of the decision in writing.

(Secs. 8, 9, Pub. L. 94-582, 90 Stat. 2870, 2975 (7 U.S.C. 79, 79a); 7 CFR 26.98)

Done in Washington, D.C. on: December 28, 1979.

L. E. Malone,

Acting Administrator.

[FR Doc. 80-157 Filed 1-2-80; 8:45 am]

BILLING CODE 3410-02-M

Forest Service**Ozark-St. Francis National Forest Land Management Plan; Ozark-St. Francis National Forests Russellville, Ark.; Intent to Prepare an Environmental Impact Statement**

Pursuant to the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, will prepare an environmental impact statement for the Ozark-St. Francis National Forests' Land Management Plan. The Ozark National Forest is located in Washington, Benton, Crawford, Franklin, Madison, Newton, Johnson, Pope, Conway, Van Buren, Searcy, Stone, Baxter, Marion, Yell, and Logan Counties in Arkansas, and the St. Francis National Forest is located in Lee and Phillips Counties, Arkansas.

Pub. L. 94-588 (National Forest Management Act of 1976) directs the Secretary of Agriculture to develop land management plans for units of the National Forest System in accordance with regulations promulgated under the act.

The land management plan will provide for multiple use and sustained yield of goods and services from the Ozark-St. Francis National Forests, will guide all natural resource management activities, and will establish management standards and guidelines for the Forests. A reasonable range of alternatives will be developed and considered. One of these alternatives will be a "no-action" alternative which represents continuation of present management direction. Other alternatives will reflect a range of resource outputs and expenditure levels.

A scoping session will be held in February 1980. This session will involve the State of Arkansas, concerned Federal agencies, and interested publics and will be conducted prior to issuance of a draft environmental impact statement. Interested publics will be notified of the date, time, and place of this session. This session will identify significant public and environmental issues to be addressed in the environmental impact statement and plan. The draft environmental impact statement is scheduled for completion by August 1981, with a 3-month review period, and the final environmental impact statement is scheduled for filing in September 1982.

Lawrence M. Whitfield, Regional Forester, Southern Region of the Forest Service, is the responsible official for approval of the environmental impact statement and plan. James R. Crouch, Forest Supervisor, Ozark-St. Francis National Forests will manage

interdisciplinary team that will prepare the statement and plan.

Written comments and suggestions concerning this Notice of Intent or the proposal should be sent to the Forest Supervisor by February 29, 1980.

For further information about the planning project, or the availability of the Environmental Impact Statements, or other documents relevant to the planning process, contact: Jack Fortin, Ozark-St. Francis NFs, 605 West Main, Box 1008, Russellville, Arkansas 72801, (Phone: 501-968-2354).

Dated: December 21, 1979.
James S. Sabin, Jr.,
Acting Deputy Regional Forester.

[FR Doc. 80-27 Filed 1-2-80; 8:45 am]
BILLING CODE 3410-11-M

Office of the Secretary**Meat Import Limitations; First Quarterly Estimate**

Pub. L. 88-482, approved August 22, 1964 (hereinafter referred to as the Act), as amended by the Trade Agreements Act of 1979 and the Meat Import Act of 1979, provides for limiting the quantity of fresh, chilled, or frozen meat of cattle, sheep except lamb, and goats (TSUS 106.10, 106.22, and 106.25), and certain prepared or preserved beef and veal products (TSUS 107.55, 107.61, and 107.62), which may be imported into the United States in any calendar year. Such limitations are to be imposed when it is estimated by the Secretary of Agriculture that imports of such articles, in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated quantity of such articles prescribed by Section 2(c) of the Act.

In accordance with the requirements of the act, the following first quarterly estimates for 1980 are published.

1. The estimated aggregate quantity of such articles prescribed by Section 2(c) of the Act during the calendar year 1980 is 1,516 million pounds.
2. The estimated aggregate quantity of such articles which would, in the absence of limitations under the Act, be imported during calendar year 1979 is 1,650 million pounds.

Since the estimated quantity of imports is less than 110 percent of the estimated quantity prescribed by Section 2(c) of the Act, no limitations for the calendar year 1979 on the importation of fresh, chilled, or frozen meat of cattle, sheep except lamb, and goats (TSUS 106.10, 106.22, and 106.25), and certain prepared or preserved beef and veal products (TSUS 107.55, 107.61 and 107.62), are required under the Act.

Done at Washington, D.C. this 31st day of December 1979.

Dale E. Hathaway,
Under Secretary for International Affairs and
Commodity Programs.

[FR Doc. 80-251 Filed 1-2-80; 8:45 am]
BILLING CODE 3410-01-M

CIVIL AERONAUTICS BOARD

[Order 79-12-158; Docket 36418]

Alaska Airlines, Inc.; Investigation Concerning Acquisition of Control of Wien Air Alaska, Inc.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 21st day of December 1979.

Alaska Airlines, Inc., Alaska Northwest Properties, Inc., Ronald F. Cosgrave, Bruce Kennedy, and Keith J. Kennedy, Investigation pursuant to sections 408(e) and 411 of the Federal Aviation Act concerning the acquisition of control of Wien Air Alaska, Inc.

Order**Background**

By Order 79-8-100, the Board commenced this investigation to determine whether the respondents here (collectively referred to as the Alaska Parties) had acquired control of Wien Air Alaska, Inc. in violation of section 408 of the Federal Aviation Act.¹ We had learned that, between August 1st and August 14th, as much as 20% of Wien's outstanding stock had been purchased by Alaska Northwest Properties, Inc. (ANPI), a company which had been a wholly owned subsidiary of Alaska Airlines until August 14th.² Since Board approval for these transactions had not been obtained, we had reasonable grounds to believe that they constituted an unlawful acquisition of control of Wien by Alaska Airlines. Order 79-8-100, at 5. Accordingly, Order 79-8-100 ordered the Alaska Parties to show cause why the Board should not find that they had violated section 408 of the Act and should not require them to cease purchasing Wien stock, to divest themselves of their holdings in Wien, and to file for Board approval of their acquisition of control. Id. at 6. We also required the Alaska Parties to state why a trial-type hearing was necessary, in

¹ The pertinent text of section 408 states that, absent prior Board approval, "it shall be unlawful . . . for any air carrier . . . to acquire control of any air carrier in any manner whatsoever. . . ." 49 U.S.C. 1378(a)(5).

² These purchases were made during the time that a tender offer for all of Wien's stock made by Household Finance Corporation (HFC) was outstanding. Order 79-8-100, at 1.

the event they sought to dispute our tentative findings. *Id.* at 7.³

The Alaska Parties responded to our show cause order by arguing: (1) that the Board had no jurisdiction over the transactions in question; (2) that the facts set forth in Order 79-8-100 were erroneous, incomplete, and insufficient to establish a violation of the Act; and (3) that a hearing was needed before a final determination of the matter could be reached. However, as we stated in our order resolving these issues:

The Board has carefully evaluated the parties' responses with particular attention to the specific allegations they have made as proffers of the facts that they would develop in a full adjudicative hearing. Assuming the factual allegations of the parties and the uncontested facts set forth in our show cause order to be true, we find that both Alaska and ANPI are under the Board's jurisdiction, are in control of Wien, and, therefore, are in violation of section 408(a) of the Act. Order 79-8-159, at 1-2.

We therefore required the Alaska Parties "(a) to file promptly an application under section 408 for approval of their control of Wien; or (b) to divest promptly a sufficient amount of Wien stock so that they are no longer in violation of section 408." *Id.* at 10.

The Alaska Parties then brought suit in Federal District Court seeking to have Order 79-8-159 declared void. *Alaska Northwest Properties, Inc. v. Civil Aeronautics Board*, No. C79-1060V (W. D. Wash.). The Board moved for the dismissal of this suit and, simultaneously, sought a preliminary injunction compelling compliance with Order 79-8-159. *Civil Aeronautics Board v. Alaska Airlines, Inc.*, No. C79-1113V (W. D. Wash.). On October 3rd, District Judge Donald S. Voorhees granted both Board motions, upholding our earlier order.

On November 2, the Alaska Parties filed a Motion for Approval of a Plan of Divestment to divest themselves of their holdings in Wien (the Motion).⁴ The terms of the plan were supplemented in a Reply dated November 21st (the and in a Motion to Clarify dated November 30.

³ The Alaska Parties were also required to show cause why their activities did not constitute unfair methods of competition under the meaning of Section 411 of the Act, 49 U.S.C. 1381, a question which we did not resolve in finalizing the show cause order. Order 79-8-159, at 2.

⁴ As a technical matter, the Plan has been submitted by ANPI (the record owner of the Wien stock) and Ronald Cosgrave (presently, ANPI's Chairman and President). Alaska Airlines, Bruce Kennedy, and Keith Kennedy merely join in requesting the Board approval of the Plan, alleging that "Alaska did not participate in the formulation of and had no control whatsoever over ANPI's Plan of Divestment. . . ." Response of Alaska Airlines, Inc., et al. (the Response), at 2 (Nov. 3, 1979).

The salient provisions of the Plan of Divestment are as follows:

(A) According to ANPI, preliminary discussions suggest that one or more of the Alaska Native Corporations may be prospective purchasers of some or all of the Alaska Parties' Wien holdings. These corporations are profit-making business entities, established by Congress under the 1971 Alaska Native Claims Settlement Act to take ownership of and administer property and money disbursed to or on behalf of Alaska natives. There are twelve such corporations, all of which, according to the Alaska Parties, "are independent legal entities having no current material or significant business relationships with" the Alaska Parties. Motion, at 8.⁵

(B) As soon as it can be negotiated, an irrevocable option will be issued to one or more of the Alaska Native Corporations and submitted to the Board for approval. (A draft option agreement was submitted for our review by the Alaska Parties together with the Reply but no final option agreement has been submitted.) The options may be exercised at any time prior to March 10, 1980 with the final sale to be completed no later than May 10, 1980. Motion, at 9-10; Reply at 13.

(C) On November 30th and January 15th, a substantial (but, as yet, unspecified) amount of consideration must be paid by the Alaska Native Corporations to retain the right to purchase the Wien stock. Motion, at 10; Reply, Attachment A. (To our knowledge, no consideration has been paid.)

(D) When the option is granted, an irrevocable proxy to vote the Wien stock will be given to the optionees. The proxy will permit the optionees to vote the Wien stock according to their own discretion; provided, however, that on any shareholder vote to merge Wien with HFC or to sell any Wien assets to HFC, the optionees would be required to "take all voting and other action necessary to preserve ANPI's statutory appraisal rights". Motion, at 10; Reply Attachment A, at 4. Under Alaska law, this would require voting against the merger or sale or declining to vote entirely. Alaska Stat. § 10.05.417.

(E) If options to purchase all of API's Wien holdings are not executed by December 15th, ANPI or Cosgrave will submit either a new plan or divestiture or an application to obtain Board approval of their acquisition of control of Wien by December 28th. In that

⁵ These relationships, to the extent they have been disclosed to the Board, are discussed more fully on pages 8 and 9 of the Motion, pages 2-3 of the Response, and in the Amendment to the Response of November 8.

event, the Wien stock would be placed in a voting trust similar to that approved in Order 78-10-100, and the voting rights formerly reserved to the Alaska Native Corporations would be transferred to the trustee with identical qualifications concerning appraisal rights. Motion, at 11.

(F) If options to purchase all of the Alaska Parties' Wien stock have not been exercised by March 10, 1980, the remaining holdings will be placed in trust for a period of six months and voted as prescribed in Paragraph E.⁶ If a purchaser for the stock cannot be found after five months, the Alaska Parties would then file a proposal concerning treatment of the stock at the expiration of the sixth month. Motion, at 16.

On November 14th and December 10th, the other suitor of Wien, HFC, filed an Answer to the Plan (the First Answer) and an Answer to ANPI's November 21st and 30th filings (the Second Answer), raising a number of objections. First, HFC claimed that the plan is "indefinite and speculative," and may permit the Alaska Parties to retain control of their holdings in Wien for another year or, perhaps, for an indefinite period. First Answer, at 3 and 6; Second Answer, at 4 and 6. Second, HFC contended that the Alaska Parties have not made a good faith effort to dispose of their Wien holdings, and that the Board should appoint an independent trustee to sell the stock. First Answer, at 8-19; Second Answer, at 2-4, 6-10. Finally, HFC argued that until the Wien stock is sold, it should be placed in a voting trust similar to that approved in Order 78-10-100. First Answer, at 19-21; Second Answer, at 11-12.⁷

Douglas M. Branson, a Wien shareholder, also commented upon the course of action the Board should take in a Motion for Leave to Intervene, dated October 8th. We will grant this motion, and all other Motions for Leave to File Otherwise Unauthorized Documents which have been filed in this proceeding to date, including the Alaska Parties' advisory filing of December 14 and HFC's Answer filed December 12.

Discussion

We have decided to disapprove the divestment plan proposed by the Alaska Parties because the plan allows them to retain their control over Wien for an

⁶ Motion at 11.

⁷ On September 28th, HFC had moved for a Board order imposing such a trust, a motion which was supplemented on October 19th. Wien also made a similar motion on October 28. We did not dispose of these motions on their own, preferring to rule upon them when we passed upon the merits of the whole Plan.

indefinite period.⁶ As noted earlier, they proposed to require their optionees (or, eventually, a trustee) to vote against every proposed merger between Wien and HFC regardless of its merit to Wien or to its present stockholders. In addition, under numerous contingencies, the period to complete the divestiture, the time for electing to file a section 408 application rather than divest, and the period during which the Alaska Parties would, in effect, retain significant rights to vote their Wien stock, could extend indefinitely.

In order to expedite the final resolution of this matter, while permitting the Alaska Parties to participate in the divestiture and still leaving open the possibility for a merger between Wien and another firm to be effected, we have set forth a divestiture plan based on the Alaska Parties' proposal, but devoid of its objectionable features and containing safeguards to protect the public interest.

The divestiture plan set forth in this order insures prompt termination of any potential for the Alaska Parties to exercise control over Wien: the plan provides for the appointment of an independent trustee who will be responsible for selling the Alaska Parties' holdings to a qualified purchaser; the plan also directs the trustee to effectuate divestiture as promptly as possible while minimizing any adverse effects on Wien or any of its shareholders; and until the stock is disposed of, the trustee will be empowered to vote the Wien stock held by the Alaska Parties in a manner consistent with these obligations.

The basis for rejecting the Alaska Parties' Plan and for adopting the approach outlined above derives from our obligations under section 408 of the Act. As we emphasized in order 79-8-159, section 408 has a prophylactic purpose—to enable the Board to evaluate and prevent any anticompetitive effects resulting from acquisitions of control. Even where an air carrier has filed a timely 408 application and subjected a proposed

acquisition to full Board scrutiny, we have required the acquiring carrier to vote its stock in the target carrier in a manner devoid of adverse effects upon competition, pending our final resolution of the competitive and public interest issues. See *Texas International-National Airlines Case and Enforcement Investigation* *Pan American-National Airlines Case and Enforcement Investigation and Pan American-National Acquisition Case*, Order 78-10-100. In the present situation, the actions of the Alaska Parties have prevented the Board from evaluating the competitive effects of their acquisition of control of Wien; they have failed to file a section 408 application before control was acquired and to file a protective section 408 application pending the outcome of their court challenge. We are mindful that divestiture is a remedial and not a punitive device and we recognize that a full evaluation of any section 408 application—had one been filed—might have revealed no substantial threat to competition. Indeed, the Alaska Parties are well aware of devices designed to insulate the acquiring party from control pending the outcome of the acquisition proceeding. But the Alaska Parties have not chosen to pursue that course. Any such device would have been essential here, since Wien and Alaska Airlines are direct competitors on several routes, including some routes on which they are the sole certificated carriers. Order 79-8-159, at 2.

To fulfill the purposes of section 408 we have determined that the divestiture plan in this case must satisfy the following three criteria: (1) stock ownership must be totally transferred to a purchaser or purchasers completely independent of the Alaska Parties in a transaction raising no substantial competitive problems; (2) the divestiture must be accomplished as promptly as possible; and (3) the competitive viability and independence of Wien must be preserved during the course of the divestiture.

In establishing these criteria, we have followed the Supreme Court's directive: "The key to the whole question of an antitrust remedy is, of course, the discovery of measures effective to restore competition." *United States v. E. I. duPont de Nemours & Co.*, 366 U.S. 316, 326 (1960). A sale to someone subject to the influence of the Alaska Parties or another competitor of Wien would obviously not protect competition, nor would a divestiture plan that compromised Wien's independence during its implementation.

The need for expedition is also quite significant. With HFC holding 56% of

Wien's stock (as a result of its tender offer and a subsequent private placement by Wien), ANPI owning 26%, and some of the remaining shareholders apparently opposed to HFC, ANPI is effectively in a position to block any merger even without voting its shares. In addition, because over half of Wien's capital base is comprised of long-term debt at two percent over prime and its earnings have declined substantially, Wien may not be in a secure financial position and may well have difficulty obtaining substantial additional financing to compete aggressively. See Order 79-11-15, at 6. If the Alaska Parties believed that an HFC-Wien consolidation would create a more powerful competitor for Alaska Airlines, they might simply decide to block the merger by inaction. Moreover, while the stalemate continues, Wien may believe it in its best corporate interest to refrain from aggressive competition with Alaska.

Therefore, even though the Alaska Parties are now under a court order prohibiting them from attempting to exercise control over Wien we cannot ignore the possibility that their stock position itself may significantly influence Wien's competitive viability in ways that cannot be effectively prevented by the Board or "the often cumbersome and time-consuming injunctive remedy." *United States v. E. I. duPont de Nemours & Co.*, 366 U.S. 316, 333-34 (1960). Indeed, the concerns that we have just expressed and others of the same nature have been considered sufficiently serious and the injuries potentially irreparable so as to justify the issuance of preliminary injunctions by federal courts presiding over private antitrust litigation challenging proposed mergers and acquisitions. See, *Allis Chalmers Mfg. Co. v. White Consolidated Industries, Inc.*, 1969 Trade Cases ¶ 72,856 at 87,194 (3 Cir. 1969); *Hamilton Watch Co. v. Benrus Watch Co.*, 114 F. Supp. 307, 314 (D. Conn.), *aff'd* 206 F.2d 738 (2 Cir. 1953).

With these considerations in mind, we have determined that the Alaska Parties' divestiture plan provides inadequate protection of the public interest. The most objectionable feature of the plan is the length of time that may transpire before a final sale is completed. The Alaska Parties seek to reserve the right to solicit a new purchaser for their Wien stock for a six month period beginning March 10, 1980, in the event that the sale to the Alaska Native Corporations cannot be effected. Motion, at 16. No final date for disposing of their Wien stock has been proposed in the event this route must be followed. Similarly,

⁶In deciding whether to approve, modify, or reject the proposed divestment plan, we have taken into account that HFC and the Alaska Parties appear deadlocked in their takeover struggle and that this deadlock may adversely affect the competitive viability of Wien. Under these circumstances, we have endeavored to act in as neutral a manner as possible, consistent with our responsibilities under the Federal Aviation Act. HFC presently owns 56% of Wien stock and ANPI holds 26%; some of the remaining 18% is held by Wien shareholders who are opposed to HFC, including some of Wien's directors. Alaska law requires a two-thirds vote of all outstanding shares to approve a merger. There is no indication in the record to suggest that the Alaska Parties would consider or had discussed the sale of their Wien shares to HFC.

the Alaska Parties wish to reserve the right to submit a section 408 application or to obtain additional time to find a new purchaser if the Alaska Native Corporations indicate that they do not wish to execute option agreements for the entire stockholding. Motion, at 11. Again, no outside date for bringing this matter to a close has been proposed in the event that this course of events is followed, although it is entirely possible that a final order on such an application would not be issued until mid-1980. If divestiture were then necessary, the Alaska Parties might well retain their control into late 1980 or 1981. Thus, under either contingency, a control situation with possible anticompetitive potential may last three times longer than the six month period envisioned by Congress for Board merger proceedings. 49 U.S.C. § 1490.

During this entire period, the Alaska Parties propose to retain voting control over their Wien stock. Although their Plan has been couched in terms of transferring most voting rights to the prospective purchaser or a trustee, the substance of the proposal is quite different. Under the proposed Plan, the proxy holder or trustee would be obligated to vote so as to preserve the Alaska Parties' appraisal rights if a merger with, or sale of assets to, HFC is proposed and to vote against any action that would dilute the Alaska Parties' percentage ownership in Wien. Motion, at 10; Reply, Exhibit at 4. Even in the event that the Alaska Parties' Wien stock were ultimately placed in trust, the trustee would not be free to vote the stock according to his unfettered discretion. Motion, at 11.

While we can fully understand the Alaska Parties' interest in preserving the highest value for their shareholdings, the rights that they seek to retain are the most crucial ones in the present circumstance. A merger between Wien and HFC would be impossible, as a practical matter, without the concurrence of the Alaska Parties. Yet, by directing the optionees or the trustee to vote to preserve the appraisal rights of their Wien stock, the Alaska Parties have required that their stock be voted against any merger regardless of its merit.

In prior decisions we have not permitted parties to vote their stock in air carriers during section 408 review, although we have indicated that, with approval, a vote during the pendency of an application might be permitted. *E.g., Texas International-National Airlines Case and Enforcement Investigation*, and *Pan American-National Acquisition Case*, Order 78-10-100. Indeed, we have

previously stricken trust provisions requiring that all proposed mergers be vetoed. *Id.*, at 14.

In addition to the fact that the proposed timetable is too long, its execution is not proceeding according to the Alaska Parties' own schedule. The dates for execution of the options and the initial payment have already passed without any final agreement having been reached. Indeed, as matters now stand, the Alaska Native Corporations have offered to purchase the option to buy the Alaska Parties' Wien stock only if the option remains open for a much longer time than was originally proposed.

We have concluded, therefore, that appointment of a trustee is necessary to ensure that divestiture will be carried out promptly, fairly, and with due regard for the need to protect Wien. Accordingly, we will require the Alaska Parties to submit by January 10, 1980, the name of a trustee, conforming to the requirements described here, for our approval. If an acceptable trustee is not nominated, we reserve the right to appoint one ourselves. The trustee shall be an institution or firm totally independent of all parties to this proceeding and the Alaska Native Corporations. It shall also be legally qualified to serve as a trustee, have a background in serving as a trustee or in similar capacities, and have experience in corporate finance and investment matters. Any objections to the Alaska Parties' nominee shall be filed within five days of the submission of the information requested in paragraph 2 of our order. Once we approve a choice, we will order that a suitable trust agreement be drafted and submitted for our review. The imposition of a trustee is a procedure which has been followed by the Board and by federal courts in administering divestitures under compelling circumstances. *E.g., United States v. United Foam Corp.*, 565 F.2d 563 (9 Cir. 1977); *REA Air Freight Forwarder Control and Interlocking Relationships Investigation*, Order 74-4-16, at 2; *Executive Jet Aviation, Enforcement Proceeding*, 47 CAB 674 (1967).

We intend to rely heavily on the expertise and advice of the independent trustee in drafting the trust agreement. Without setting forth all the specific terms of the trust, we will, however, direct that the trustee adhere to the following priorities in selling the Wien stock. First, the stock must be sold to a qualified purchaser according to the criteria discussed above. Second, the stock must be disposed of as promptly as possible. In fact, we will require the

stock to be disposed of no later than March 30 1980, unless 14 days prior to then, we are presented with a petition for an extension specifically describing the efforts taken to divest the stock, explaining the reasons why the stock could not be sold, and proposing a new date for final sale. Third, the trustee should endeavor to effect divestiture so as to minimize any adverse effect on Wien and on other shareholders. Finally, the trustee will be instructed to obtain the highest price for the Alaska Parties' stock. This last instruction, however, will be clearly subordinate to the others:

[We] are authorized, indeed required, to decree relief effective to redress the violations, whatever the adverse effect of such a decree on private interests. . . . 'Those who violate the Act may not. . . avoid an undoing of their unlawful project on a plea of hardship. . . . ' *United States v. E. I. duPont de Nemours & Co.*, 366 U.S. 316 at 326-27 (1960) (quoting *United States v. Crescent Amusement Co.*, 323 U.S. 173, 189 (1944)).

While administering the trust, the trustee will be permitted to vote the Alaska Parties' stock on all matters according to his own independent judgment, guided solely by what will best enable him to sell the stock to a qualified purchaser (offering the highest price) as promptly as possible. This will ensure that the Alaska Parties' stock position is voted in a manner devoid of any intent to injure Wien's interests.

In reaching this decision, we are acutely aware that the situation facing us is the outgrowth of a takeover battle between two companies. In this circumstance, we have attempted to remain as neutral as possible and to ensure, if possible, that the regulatory requirements of the Act did not determine the outcome of the contest, since we prefer to see the outcome of takeover battles settled by shareholder preference and the competitive market rather than by regulatory requirements.

We expect that our introduction of an outside trustee will not prevent the Alaska Parties from participating in the stock divestiture. Indeed, we encourage the Alaska Parties to present the trustee with prospective purchasers and divestiture plans for his consideration. Such purchasers may well include one or more of the Alaska Native Corporations. We would also be reluctant to take this measure if we believed that it could substantially delay the divestiture process. On the contrary, we expect that introducing a trustee will ensure that divestiture will proceed promptly and in good faith, and that it will provide us with a ready means to determine that the prospective purchaser selected is acceptable.

The fees and expenses of the trustee will be paid by the Alaska Parties. When private parties' own conduct gives rise to the need for the use of a trust to protect target companies from improper control or anticompetitive influence, the parties (rather than the government) have traditionally borne the accompanying financial burden. Frequently, this burden has been assumed voluntarily, as was the case in the trust we approved in Order 78-10-100. The same result has obtained even where the trust has been imposed by court order. See, *United v. United Foam Corp.*, 565 F.2d 563, at 566 (9 Cir. 1977). Imposing the trustee's fees and expenses in this way is the only practical way of giving full meaning to the Supreme Court's holding that: "[I]t is well settled that once the Government has successfully borne the considerable burden of establishing a violation of law, all doubts as to the remedy are to be resolved in its favor." *United States v. E.I. duPont de Nemours & Co.*, 366 U.S. 316 at 334 (1960). Since the Alaska Parties would have incurred a trustee's cost in processing a Section 408 application, we find nothing anomalous in burdening them with a similar expense here, where our actions have been prompted by their refusal to come to the Board for approval and by their failure to file a substantially adequate divestiture plan.

This order shall be effective immediately upon service. The filing of any petitions for reconsideration or modification of this order, or any application under section 408 of the Act, shall not stay its effectiveness without further order of the Board. All petitions in response to this order must be filed by January 2, 1980.

Further Proceedings

In reviewing the proposed plan, our efforts have been entirely directed toward remedying the situation at hand. In fashioning our divestiture order, we "are not authorized . . . to punish . . . violators and relief must not be punitive." *United States v. E.I. duPont de Nemours & Co.*, 366 U.S. 316 at 326 (1960). It is, however, a matter of public record that by the end of August, we first put the Alaska Parties on notice that their activities probably violated section 408 and then found that they had, in fact, done so. Order 79-8-100 at 5; Order 79-8-159 at 9. We are, therefore, extremely concerned that this matter not be terminated in a way that provides an incentive for parties seeking to acquire control of air carriers to avoid or ignore the requirements of the Federal Aviation Act. Accordingly, we direct the Bureau of Consumer Protection to

conduct an independent inquiry to determine whether, and in what amount, a civil penalty should be sought from the Alaska Parties for their transactions in Wien stock. If BCP should determine that such an assessment is appropriate, we direct it to institute a separate enforcement proceeding. At that time, having completely segregated the remedial aspects of this case from any punitive ones, we will decide whether any penalty should be imposed.

Accordingly

1. We reject the Alaska Parties' proposed Plan of Divestment.
2. We order the Alaska Parties, by January 10, 1980, to submit the name of an institution or firm meeting the criteria set forth on page 9 of this order who will serve as trustee of their Wien holdings. At the time of his nomination, the prospective trustee shall submit a sworn statement stating that it is legally qualified to administer this trust and describing: (1) its experience as a trustee or in similar capacities; (2) its experience in corporate finance and investment matters; (3) the persons and firms with which it might consult on legal, financial or other matters involved in carrying out its responsibilities; and (4) all direct or indirect financial interests or affiliations it has or has had, including all financial transactions it is engaged in or has engaged, in during the past two years with any of the parties to this proceeding and any of the Alaska Native Corporations. All objections to the trustee nominated shall be filed within five days after the information set forth above is submitted.
3. We further order that, no later than ten days after the date of service of an order approving its appointment, the prospective trustee shall submit for our approval a draft trust agreement.
4. We further order that the draft agreement shall, among other matters, direct the trustee to divest the stock according to the following priorities, in order of importance: first, the stock should be sold to a qualified purchaser; second, it should be sold as promptly as possible, but not later than March 30, 1980, without Board approval; third, divestiture should be effected so as to minimize any adverse effect on Wien and on other shareholders; fourth, the sale should be at the highest price and on the most favorable terms. For this purpose, a qualified purchaser means a bona fide purchaser neither affiliated with nor subject to the influence of any of the Alaska Parties, whose acquisition of the Alaska Parties' Wien stock would not (a) tend to lessen competition or (b) lessen the competitive viability of Wien as an air carrier. The trust agreement

shall also direct the trustee to take all steps necessary to obtain all required Board approval prior to consummating any proposed divestiture. The draft agreement shall also direct the trustee to vote the Wien stock according to his own discretion in furtherance of the above priorities.

5. We direct the Bureau of Consumer Protection to conduct an independent inquiry to determine whether, and, if so, in what amount, a civil penalty should be sought from the Alaska Parties for their transactions in Wien stock. We also direct the Bureau of Consumer Protection to take appropriate action if it determines that such an assessment should be made.

6. This order shall be effective immediately upon service. All petitions for reconsideration or modification of this order shall be filed by January 2, 1980.

7. We grant leave to file all the otherwise unauthorized documents submitted to date in this proceeding.

8. We grant the Motion of Douglas M. Branson for leave to intervene.

9. We will serve a copy of this order on Alaska Airlines, Inc., Alaska Northwest Properties, Inc., Ronald F. Cosgrave, Bruce Kennedy, Keith J. Kennedy, Wien Air Alaska, Inc., Household Finance Corporation, the State of Alaska, and Douglas M. Branson.

10. This order shall be published in the Federal Register.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-112 Filed 1-2-80; 8:45 am]

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[Order 79-12-127; Docket 32660 Agreement C.A.B. 28059¹ R-1 through R-9, R-11 through R-17 Docket 35634 Agreement C.A.B. 28061 R-1 through R-34]

International Air Transport Association; Agreements Adopted Relating to Passenger Fares and Cargo Rates

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 20th day of December, 1979.

Agreements adopted by the Traffic Conferences of the International Air Transport Association relating to passenger fares and cargo rates.

¹ We will deal with Agreement CAB 28059, R-10, in a subsequent order. R-10 proposes increases of North Atlantic passenger fares by five percent with allowance for individual carriers to vary this amount by plus or minus two percent.

Order

Agreements between various U.S. and foreign member air carriers of the International Air Transport Association (IATA) have been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations. Adopted at the Composite Meeting of Passenger and Cargo Tariff Coordinating Conferences (Fuel) held in Cannes, October 2-8, 1979, the agreements are proposed for January 1, 1980, effectiveness.

The agreements propose a third round of worldwide fare and rate increases to offset soaring fuel price increases. As they affect passenger transportation to and from the United States, the agreements increase Mid Atlantic fares between the U.K/Ireland and Puerto Rico/U.S. Virgin Islands by four percent; and fares to and from American Samoa/Guam by three to five percent depending upon the market. With respect to cargo transportation, the agreements increase Mid Atlantic rates between Puerto Rico/U.S. Virgin Islands and Europe/Israel/Africa by three percent; North/Central Pacific rates between the U.S. and Japan/Korea by 10 percent and between the U.S. and the South Asian subcontinent by five percent; Western Hemisphere rates between the U.S. and Mexico/Caribbean by over 16 percent and between the U.S. and South/Central America by up to 30 percent in some markets; ² and rates to and from American Samoa/Guam by three to five percent, depending upon the market.

Only two U.S. carriers, Flying Tiger Line (Tigers) and National, are party to the agreements. Tigers, which only provides all-cargo service and is affected by the agreements only insofar as its U.S.-Japan cargo service is concerned, argues the proposed 10 percent increase essentially matches rates previously filed by Pan American for October 1, 1979, effect but, while approved by the Board, were never implemented because of Japanese government policy; while it is not possible to separate all costs for its U.S.-Japan market from its overall transpacific division account, its divisional costs per available ton mile have increased by over 27 percent since September, 1978, while its divisional yield has risen by only one percent; and these poor results have been compounded by a 28 percent decline in

yield in traffic from Japan caused by adverse shifts in value of the dollar *vis a vis* the Japanese yen. Tigers contends the agreement will produce only an additional \$8.4 million in revenue to offset current revenue shortfalls in its transpacific operations totaling \$34 million, including \$20 million in its U.S.-Japan operations; during the first 3 quarters of 1979, its transpacific operations have lost over \$10.3 million and without timely rate increases it cannot avoid an operating loss for 1980; at an average fuel price of 82 cents/gallon it will pay over \$10.3 million more in 1980 for fuel than it would have had prices remained at January 1, 1979, levels;³ and its total transpacific operations will earn only a 1.7 percent return on investment during the forecast year ending December, 1980, under present rates and only 5.4 percent with the increase. Finally, it argues because carriers have been unable to raise rates to offset even a part of the cost increases experienced, U.S. carrier all-cargo service to many Pacific points has already been eliminated and if meaningful rate relief is not forthcoming, further all-cargo service cutbacks, which would fall hardest upon markets beyond Japan because these are the weakest, are inevitable; and because of the presence of three non-IATA carriers in the U.S.-Japan market and the liberal bilateral agreement with Korea, the Board need not fear approval of the agreement will restrict the alternatives of non-IATA competitors.

The Board has determined to approve all of the increases described above.

With regard to the proposed fare and rate increases in Mid Atlantic markets, as well as those proposed to and from Guam/American Samoa, and the proposed rate increases in the U.S.-South Asian subcontinent and U.S.-Mexico/Caribbean markets, no U.S.

carrier party to the agreements operates in these areas. However, the increases do not appear out of line with known fuel price increases and, therefore, appear warranted as do the U.S.-Japan/Korea rate increases, based upon Tiger's submission. Turning to the proposed U.S.-South/Central America rate increases, we have permitted Pan American to unilaterally increase its South/Central American rates by 10 percent and that carrier now proposes an additional 15 percent increase, which we will also allow to become effective, for a cumulative increase of around 27 percent. While the present agreement, reflecting not only fuel but structural increases previously disapproved, provides for overall increases of up to 30 percent in some markets, in view of Pan American's increases, which appear reasonable based on its projected returns on freighter service, the increases proposed in the agreements do not appear out of line.⁴ However, our approvals are not to be taken by non-member U.S. carriers as license to increase their fares and/or rates in these areas without further Board review. We expect any proposals from non-IATA U.S. carriers will be accompanied by thorough tariff justification which we will review on its merits. Moreover, we intend to reimpose the condition we placed on earlier IATA cargo rate agreements that all approved rates shall serve as maximums with all IATA carriers free to file rates below those established in each agreement.⁵

The Board, acting under the Federal Aviation Act of 1958, as amended, and particularly sections 102, 204(a) and 412, makes the following findings:

1. We do not find that the following resolutions, incorporated in Agreement C.A.B. 28059 as indicated, are adverse to the public interest or in violation of the Act:

³ Tiger states that just as preparation of its submission was in final stages, it received notice its fuel price at Tokyo would be increased by 25 cents/gallon to a total per gallon price of \$1.01, effective January 1, 1980. While received too late to revise its forecast results it estimates this increase will offset 40 percent of the revenue gain from the 10 percent increase.

⁴ Pan American's forecast return on investment for its combined South/Central American freighter operations is 7.3 percent for the year ending December, 1980, with the 15 percent increase, as compared with a -6.0 percent return without the increase.

⁵ See, e.g., Orders 78-115, July 21, 1978, and 79-1-74, January 11, 1979.

| Agreement CAB | IATA No. | Title | Application |
|------------------|-------------|---|-------------|
| 28059: | | | |
| R-8..... | 0031 | TC3 General Increase in Passenger Fares..... | 3 |
| R-11..... | 0031 | TC23/TC123 General Increase in Passenger Fares: Europe-South West Pacif-2/3; 1/2/3 1/2/3 ic. | |
| R-15..... | 003w | TC12 General Increase in Passenger Fares Mid Atlantic-Europe..... | 1/2 |
| R-17..... | 003w | TC23 General Increase in Passenger Fares Europe-TC3..... | 2/3 |

2. We do not find that the following resolutions, incorporated in Agreement C.A.B. 28061 as indicated, are adverse to the public interest or in violation of the Act provided that:

² The Western Hemisphere proposals involve multiple increases: the agreements reinstate a previously disapproved 11 percent fuel-related increase as well as South/Central America structural increases and propose still another five percent fuel-related increase.

(a) Notwithstanding any provisions of the following resolutions or any other resolution, all rates and charges established pursuant to these resolutions with respect to any U.S. point as an origin or destination shall be maximums; and

(b) Each and every carrier operating pursuant to the following resolutions shall be permitted to file tariffs incorporating rates and/or charges below those established in the resolutions.

| Agreement CAB | IATA No. | Title | Application |
|------------------|-------------|--|-------------|
| 28061: | | | |
| R-1..... | 003tt | TC1 General Increase in Cargo Rates to/from U.S.A. and U.S. Territories..... | 1 |
| R-8..... | 003tt | TC3 General Increase in Cargo Rates..... | 3 |
| R-15..... | 003tt | TC12 General Increase in Cargo Rates Mid Atlantic-Europe..... | 1/2 |
| R-18..... | 003tt | TC12 General Increase in Cargo Rates Mid Atlantic-Israel..... | 1/2 |
| R-17..... | 003tt | TC12 General Increase in Cargo Rates Mid Atlantic-Africa..... | 1/2 |
| R-21..... | 003tt | TC23 General Increase in Cargo Rates Europe-South West Pacific..... | 2/3 |
| R-22..... | 003tt | TC23 General Increase in Cargo Rates UK/Ireland-South East Asia..... | 2/3 |
| R-24..... | 003tt | TC23 General Increase in Cargo Rates Israel-South West Pacific..... | 2/3 |
| R-26..... | 003tt | TC23 General Increase in Cargo Rates Africa-South East Asia..... | 2/3 |
| R-27..... | 003tt | TC23 General Increase in Cargo Rates Africa-South West Pacific..... | 2/3 |
| R-29..... | 003tt | TC31/123 General Increase in Cargo Rates North and Central Pacific..... | 3/1; 1/2/3 |
| R-30..... | 003vv | TC1 General Increase in Cargo Rates..... | 1 |
| R-34..... | 009a | Special Enabling Resolution..... | 1 |

3. We do not find the following resolutions, which are incorporated in the agreements indicated and have indirect application in air transportation as defined by the Act, are adverse to the public interest or in violation of the Act:

| Agreement CAB | IATA No. | Title | Application |
|------------------|-------------|--|-------------|
| 28059: | | | |
| R-1..... | 002t | Special Revalidation Resolution TC23/TC123 General Increase in Passenger Fares: TC2-Japan/Korea (1 December 1979)..... | 2/3; 1/2/3 |
| R-2..... | 003t | TC1 General Increase in Passenger Fares Canada-Caribbean..... | 1 |
| R-3..... | 003t | TC1 General Increase in Passenger Fares Canada-Mexico..... | 1 |
| R-4..... | 003t | TC2 General Increase in Passenger Fares Europe..... | 2 |
| R-5..... | 003t | TC2 General Increase in Passenger Fares Ireland/UK-Israel..... | 2 |
| R-6..... | 003t | TC2 General Increase in Passenger Fares Europe-Africa..... | 2 |
| R-7..... | 003t | TC2 General Increase in Passenger Fares Israel-Africa..... | 2 |
| R-9..... | 003t | TC12/TCV123 General Increase in Passenger Fares: Canada-Europe/Israel-Africa/TC3..... | 12/; 1/2/3 |
| R-12..... | 003w | TC2 General Increase in Passenger Fares Europe..... | 2 |
| R-13..... | 003w | TC2 General Increase in Passenger Fares Europe-Middle East..... | 2 |
| R-14..... | 003w | TC2 General Increase in Passenger Fares Europe-Africa..... | 2 |
| R-16..... | 003w | TC12 General Increase in Passenger Fares South Atlantic-Europe..... | 1/2 |
| R-2..... | 003tt | TC1 General Increase in Cargo Rates Except to/from U.S.A. and U.S. Territories..... | 1 |
| R-3..... | 003tt | TC2 General Increase in Cargo Rates Europe..... | 2 |
| R-4..... | 003tt | TC2 General Increase in Cargo Rates Europe-Israel..... | 2 |
| R-5..... | 003tt | TC2 General Increase in Cargo Rates Europe-Africa..... | 2 |
| R-6..... | 003tt | TC2 General Increase in Cargo Rates Israel-Africa..... | 2 |
| R-7..... | 003tt | TC2 General Increase in Cargo Rates Africa..... | 2 |
| R-9..... | 003tt | TC12 General Increase in Cargo Rates Canada-Europe..... | 1/2 |
| R-10..... | 003tt | TC12 General Increase in Cargo Rates Canada-Israel..... | 1/2 |
| R-11..... | 003tt | TC12 General Increase in Cargo Rates Canada-Africa..... | 1/2 |
| R-12..... | 003tt | TC12 General Increase in Cargo Rates Mexico-Europe..... | 1/2 |
| R-13..... | 003tt | TC12 General Increase in Cargo Rates Mexico-Israel..... | 1/2 |
| R-14..... | 003tt | TC12 General Increase in Cargo Rates Mexico-Africa..... | 1/2 |
| R-18..... | 003tt | TC12 General Increase in Cargo Rates South Atlantic-Europe..... | 1/2 |
| R-19..... | 003tt | TC12 General Increase in Cargo Rates South Atlantic-Africa..... | 1/2 |
| R-20..... | 003tt | TC23 General Increase in Cargo Rates Europe-South Asian Subcontinent..... | 2/3 |
| R-23..... | 003tt | TC23 General Increase in Cargo Rates Israel-South Asian Subcontinent..... | 2/3 |
| R-25..... | 003tt | TC23 General Increase in Cargo Rates Africa-South Asian Subcontinent..... | 2/3 |
| R-28..... | 003tt | TC23 General Increase in Cargo Rates Africa-Japan/Korea..... | 2/3 |
| R-31..... | 003ww | TC2 General Increase in Cargo Rates Europe..... | 2 |
| R-32..... | 003ww | TC2 General Increase in Cargo Rates Europe-Africa..... | 2 |
| R-33..... | 003ww | TC12 General Increase in Cargo Rates South Atlantic-UK/Ireland..... | 1/2 |

4. We have decided that the public interest requires a grant of antitrust immunity to those portions of Agreements C.A.B. 28059 and C.A.B. 28061 approved herein. These agreements are a product of the IATA rate-setting machinery approved and immunized in Order E-9305, June 15, 1955. In docket 32851, we are reviewing

that machinery to determine whether or not it should continue under our approval and immunization. Pending our decision in that docket, we will continue to consider IATA rate agreements on a case-by-case basis.

Accordingly: 1. We approve those portions of Agreements C.A.B. 28059 and C.A.B. 28061 set forth in finding

paragraphs 1,2, and 3 above, subject to the conditions stated therein;

2. We authorize IATA member carriers to file tariffs implementing the approved IATA resolutions on not less than one day's notice for effectiveness not earlier than January 15, 1980. The authority granted in this paragraph expires February 15, 1980; and

3. Those IATA member carriers filing tariffs implementing the approved portions of the agreements shall mark them to expire not later than March 31, 1980, in the case of Agreement C.A.B. 28059, and September 30, 1980, in the case of Agreement C.A.B. 28061.

We will publish this order in the Federal Register.

By the Civil Aeronautics Board.
Phyllis T. Kaylor,
Secretary.

[FR Doc. 80-114 Filed 1-2-80; 8:45 am]
BILLING CODE 6320-01-M

[Order 79-12-134; Docket 37299]

Seattle-Sacramento/Reno/Fresno/Stockton/Las Vegas/Tucson; Notice of Order to Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (Order 79-12-134) (*Seattle-Sacramento/Reno/Fresno/Stockton/Las Vegas/Tucson Show-Cause Proceeding, Docket 37299*).

SUMMARY: The Board is proposing to grant nonstop authority in the Seattle-Sacramento/Fresno/Reno/Stockton/Las Vegas/Tucson markets to Air California, Continental, PSA and USAir, as well as any other applicant whose fitness can be established by officially noticeable data.

DATES: All interested persons having objections to the Board issuing an order making final the tentative findings and conclusions shall file by February 1, 1980, a statement of objections together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections. Such filings shall be served upon all parties listed below.

ADDRESSES: Objections to issuance of a final order should be filed in the Dockets Section, Civil Aeronautics Board, Washington, D.C. 20428, in Docket 37299, which we have entitled the *Seattle-Sacramento/Fresno/Reno/Stockton/Las Vegas/Tucson Show-Cause Proceeding*.

In addition, copies of such filings should be served on Air California, Alaska Airlines, American Airlines, Braniff Airways, Continental Air Lines,

Delta Air Lines, Eastern Air Lines, National Airlines, Northwest Airlines, Pan American World Airways, Ozark Air Lines, Texas International Airlines, Trans World Airlines, United Air Lines, USAir, Western Air Lines, Wien Air Alaska, Apollo Airways, Swift Air Lines, Tuolumne Air Service, Stol Air, Nevada Airlines, Aviation Services, Air Pacific, the Nevada Public Service Commission, the State of California, the California Public Utilities Commission, the Mayor of Seattle, Washington, and the Manager, Seattle/Tacoma International Airport, the Mayor of Sacramento, California, and the Director-Airports, Sacramento Metro Airport, the Mayor of Stockton, California, and the Manager of Stockton Metropolitan Airport, the Mayor of Las Vegas, Nevada, and the Manager, Las Vegas McCarran Field, the Mayor of Tucson, Arizona, and the Manager, Tucson International Airport, the Mayor of Fresno, California, and the Manager, Fresno Air Terminal, the Mayor of Reno, Nevada, and the Airport Director, Reno International Airport and the County of Orange, California (c/o Civic Center Plaza, P.O. Box 1319, Santa Anna, California).

FOR FURTHER INFORMATION CONTACT: Joseph Bolognesi, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; (202) 673-5057.

SUPPLEMENTARY INFORMATION: The complete text of Order 79-12-134 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, DC. Persons outside the metropolitan area may send a postcard request for Order 79-12-134 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: December 20, 1979.
Phyllis T. Kaylor,
Secretary.

[FR Doc. 80-113 Filed 1-2-80; 8:45 am]
BILLING CODE 6320-01-M

[Order 79-12-181; Docket 37321]

Los Angeles Burbank-Bakersfield Show-Cause Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79-12-181 (Los Angeles/Burbank-Bakersfield Show-Cause Proceeding, Docket 37321).

SUMMARY: The Board is proposing to grant Los Angeles/Burbank-Bakersfield authority to Aspen Airways, Inc. (Docket 36704) and any other fit, willing

able applicants, the fitness of which can be established by officially noticeable material. The complete text of this order is available as noted below.

DATES: All interested persons having objections to the Board issuing the proposed authority shall file, by January 23, 1980 a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections. Such filings shall be served upon all parties listed below.

Interested persons are being asked to file objections within ten days because of the need to assure uninterrupted service in the Los Angeles/Burbank-Bakersfield market and the lack of any objections to Aspen's initial application.

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 January 14, 1980.

ADDRESSES: Objections to issuance of a final order should be filed in the Dockets Section, Civil Aeronautics Board, Washington, D.C., 20428, in docket 37321, which we have entitled the *Los Angeles/Burbank-Bakersfield Show-Cause Proceeding*.

In addition, copies of such filings should be served on the Mayors of Los Angeles, Burbank and Bakersfield, The California Transportation Commission, The California Public Utilities Commission, Aspen Airways, Los Angeles Department of Airports, County of Kern Department of Airports, the Managers of Burbank Airport, Los Angeles Airport and Meadows Field and the County of Kern Board of Supervisors.

FOR FURTHER INFORMATION CONTACT: Don Hainbach, B-72 Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5413.

SUPPLEMENTARY INFORMATION: The complete text of Order 79-12-181 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 79-12-181 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Bureau of Domestic Aviation:
December 27, 1979.

Phillis T. Kaylor,
Secretary.

[FR Doc. 80-111 Filed 1-2-80; 8:45 am]
BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Industry and Trade Administration

Advisory Committee on East-West Trade; Correction of Notice of Determination

An incorrect Notice of Determination for the partially closed meeting of the Advisory Committee on East-West Trade scheduled for January 9, 1980, was published in the *Federal Register* (44 FR 75199) on Wednesday, December 19, 1979. The correct Notice of Determination to close a portion of the January 9, 1980 meeting of the Advisory Committee on East-West Trade is hereby published. The agenda and other information relating to the committee meeting, as published in the *Federal Register* (44 FR 75199), remain unchanged.

Dated: December 28, 1979.

Allen J. Lenz,

Director, Office of East-West Policy and Planning, Bureau of East-West Trade.

U.S. Department of Commerce, Office of the Assistant Secretary for Administration, Advisory Committee on East-West Trade

Notice of Determination

The Secretary of Commerce, having determined that it is in the public interest in connection with the duties imposed on the Department by law, initially established the Advisory Committee on East-West Trade ("the Committee") on February 11, 1974, pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. (1976). In December 1978, with the concurrence of the General Services Administration, the Committee's charter was renewed until December 5, 1980. Authorized membership of the Committee is approximately 20, with a current membership of 22.

The Committee provides advice on ways to promote, facilitate and coordinate the expansion of two-way trade with the Soviet Union, Poland, Hungary, Czechoslovakia, Romania, Bulgaria, the People's Republic of China, and certain other areas of the world with similar economic/political structures, so as to contribute materially to a more positive balance of trade and payments situation.

The Committee may identify and make recommendations concerning current and proposed government policies and programs relating to the promotion and expansion of such trade; advise on the development of future government plans and actions directed at promoting and increasing such trade and improving trading relations; advise on ways U.S. firms could enter this trade or expand existing trade programs and activities; advise on problems encountered by U.S. business in pursuing such trade and recommend solutions; and provide a forum for business, the academic community and government to discuss problems and issues in the field of East-West trade.

The Committee's activities are conducted pursuant to the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), and Office of Management and Budget Circular A-63 (Revised), Advisory Committee Management, effective May 1, 1974. Section 10 of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, provides, among other things, that the meetings of advisory committees are to be open to the public, and to public participation, unless the President, or the head of the agency to which the advisory committee reports, determines that such meetings or portions thereof may be closed to the public in accordance with 5 U.S.C. 552b(c).

5 U.S.C. 552b(c)(9)(B) provides that agency meetings or portions thereof may be closed to the public where the premature disclosure of information discussed at such meetings is likely to significantly frustrate implementation of a proposed agency action.

Portions of the September 28, 1977, September 27, 1978, December 13, 1978, April 18, 1979, June 27, 1979, and October 10, 1979 meetings have previously been closed to the public in accordance with 5 U.S.C. 552b(c)(9)(B) to discuss U.S. Government negotiating positions on (1) the CSCE Review of Basket II negotiating provisions of the Helsinki Final Act, (2) future U.S.-Soviet trade in light of validated licensing controls imposed on exports of oil and gas-related equipment to the U.S.S.R., (3) U.S.-P.R.C. Trade and Economic Agreements, (4) U.S.-Soviet commercial relations, and (5) policy for U.S. commercial relations with the U.S.S.R. and P.R.C. in 1980s.

The U.S. Government is currently developing its negotiating positions on several issues in its commercial relations with Eastern Europe, in preparation for the Spring 1980 meetings of the U.S. Joint Commercial

Commissions with Hungary, Poland and Romania. In order to provide advice to the Department under the terms of its charter, on January 9, 1980, from 2:30 p.m. to 3:30 p.m., the Advisory Committee on East-West Trade will make recommendations on key issues on U.S. commercial relations with Eastern Europe to be addressed in the upcoming Commercial Commission meetings. Advice and information received from the Committee at this meeting will subsequently be used by the Department in formulating and implementing U.S. negotiating positions. Premature public disclosure of this information and advice would be likely to significantly frustrate implementation of effective U.S. Government negotiations on these commercial matters.

Accordingly, I hereby determine, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of Government in the Sunshine Act, Pub. L. 94-409, that the portion of the Committee meeting scheduled from 2:30 p.m.-3:30 p.m. on January 9, 1980 which will address matters discussed in the preceding paragraph, shall be exempt from the provisions of Section 10(a)(1) and (a)(3) relating to open meetings and public participation therein, because the aforementioned Committee discussions will be concerned with information listed in 5 U.S.C. 552b(c)(9)(B) in that the premature disclosure of this information would be likely to significantly frustrate implementation of effective U.S. negotiations. U.S. negotiating positions have not been and are not required to be disclosed to the public prior to negotiations.

Remaining portions of the meeting will be open to the public.

Dated: December 13, 1979.

Guy W. Chamberlin, Jr.

Acting Assistant Secretary for Administration.

Dated: December 10, 1979.

Alfred Meisner,

Assistant General Counsel for Administration.

[FR Doc. 80-91 Filed 1-2-80; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Financial Assistance for Fisheries Development; Availability/Instruction to the Public

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

ACTION: Notice of extension of date for application submission and deadline.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the extension of the closing date for the submission of applications for funding of fisheries development projects from January 15, 1980 to February 8, 1980. NMFS also announces the extension of the closing date for the submission of letters of intent from January 15, 1980 to February 8, 1980. Notice of the availability of funds and instructions to the public concerning applications for funding were published in the *Federal Register* on November 15, 1979 (44 FR 65806).

EFFECTIVE DATE: January 3, 1980.

FOR FURTHER INFORMATION CONTACT: Office of Utilization and Development (F/UD), National Marine Fisheries Service/NOAA, Washington, D.C. 20235, attention: Preston Smith, telephone: (202) 634-7252.

SUPPLEMENTARY INFORMATION: The *Federal Register* notice of November 15, 1979 established certain minimum requirements that fisheries development proposals must satisfy in order to be considered for funding by NMFS. Included among these requirements were general cost-sharing provisions. Section III of that notice stated that specific cost-sharing guidelines to aid applicants in drafting their proposals were to be published in the *Federal Register* at a later date. The development of specific cost-sharing guidelines is requiring more time than was anticipated but these will be published shortly. Consequently, NMFS is extending the deadline for application submissions, as stated in Section X of the November 15 notice, as follows:

(a) Proposals must be received not later than February 8, 1980 for projects to be funded in April 1980 and not later than April 1, 1980 for projects to be funded in July 1980.

(b) Proposals submitted by February 8, 1980 which do not rank high enough to receive funding, will be retained for consideration with those being received by the April 1, 1980 cut-off date or will be returned with a request for additional information.

(c) Any person desiring to submit a proposal on April 1, 1980 may submit a letter of intent by February 8, 1980 briefly describing (including probable funding level) the proposed project(s).

Signed at Washington, D.C., this 28th day of December 1979.

Jack W. Gehring,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 80-215 Filed 1-2-80; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council's Scientific and Statistical Committee and Advisory Panel; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The North Pacific Fishery Management Council was established by Section 302 of the Fishery Conservation and Management Act of 1976 (Public Law 94-265), and the Council has established a Scientific and Statistical Committee (SSC) and an Advisory Panel (AP) to assist in carrying out its responsibilities.

DATES: The SSC meeting will convene on Wednesday, January 9, 1980, at 9:30 a.m. and will adjourn at approximately 5 p.m. at the NPFMC's Conference Room, 333 W. 4th Avenue, Suite 32, Anchorage, Alaska. The AP meeting will convene on Wednesday, January 9, 1980, at 9:30 a.m. and will adjourn at approximately 5 p.m. in the Capt. Cook Hotel Resolution Room, 5th & K Streets, Anchorage, Alaska. The meetings may be extended or shortened depending upon progress of the agendas. The meetings are open to the public. These meetings are a continuation of the December meetings.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council, P.O. Box 3136DT, Anchorage, Alaska 99501, telephone: (907) 274-3463.

PROPOSED AGENDAS FOLLOW: SSC AND AP.

SPECIAL NOTE: Preregistration (except in special and unusual cases) will be required for all public comments which pertain to a specific agenda topic. Preregistration is accomplished by informing the Agenda Clerk as early as possible of the agenda item to be addressed and the time requested. Preregistration and public comment may be scheduled for: *G. Fishery Management Plans (FMP's)* and *H. New Business agenda items. G-3. Draft Herring of the Bering/Chukchi Seas.* Oral and written comments will be received until February 15, 1980. The postponed public hearings on this Draft FMP will be discussed and are tentatively scheduled to be held February 9, 10, and 11, 1980, in Bethel, Toolikook Bay, Hooper Bay, and Togiak. *G-6 Bering Sea/Aleutian Islands Groundfish FMP Amendments.* (a) relax domestic trawl restrictions in the winter

halibut savings area, (b) establish inseason field authority, (c) consider a Bristol Bay pot sanctuary proposal, (d) consider salmon savings time and area closures proposal. *H-5. Review and make recommendations on Joint Venture Applications from Korea, and U.S.S.R.* (a) consider possible conditions and restrictions for ten U.S.S.R. and four Korean Joint Venture Permit Applications, (b) consider as follows: (1) Restrictions on the incidental catch of blackcod; (2) Special herring restrictions; (3) Time and area closures to Joint Ventures, i.e., "window" concept. Any agenda items addressed in the December portion of this Session may be readressed as noticed in *Federal Register* Vol. 44, No. 230 Wednesday, November 28, 1979.

Dated: December 28, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 80-217 Filed 1-2-80; 8:45 am]

BILLING CODE 3510-22-M

Notice of Modification of Permit

Notice is hereby given that pursuant to the provisions of Sections 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Permit No. 214, issued to Dr. Louis M. Herman, Kewalo Basin Dolphin Research Laboratory, Hawaii Institute of Marine Biology, University of Hawaii, on November 25, 1977, is modified by deleting Section B-3 and substituting therefor the following:

"3. This Permit is valid with respect to the taking as authorized herein until December 31, 1981."

This modification is effective January 3, 1980.

The Permit as modified, and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries,
National Marine Fisheries Service, 3300
Whitehaven Street, N.W., Washington,
D.C.; and
Regional Director, National Marine Fisheries
Service, Southwest Region, 300 South Ferry
Street, Terminal Island, California 90731.

Dated: December 28, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 80-218 Filed 1-2-80; 8:45 am]

BILLING CODE 3510-22-M

Notice of Issuance of Permit

On October 19, 1979, Notice was published in the **Federal Register** (44 FR 60351), that an application had been filed with the National Marine Fisheries Service by California Department of Fish and Game, Sacramento, California 95814, for a Scientific Research Permit to collect specimen materials from marine mammals killed inadvertently by commercial fishermen who have certificates of inclusion and to census pinniped populations.

Notice is hereby given that on December 27, 1979, the National Marine Fisheries Service issued a Scientific Research Permit, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) to the California Department of Fish and Game subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries,
National Marine Fisheries Service, 3300
Whitehaven Street, Washington, D.C.; and
Regional Director, National Marine Fisheries
Service, Southwest Region, 300 South Ferry
Street, Terminal Island, California 90731.

Dated: December 27, 1979.

Winfred H. Meibohm,
*Executive Director, National Marine
Fisheries Service.*

[FR Doc. 80-219 Filed 1-2-80; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The South Atlantic Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet to: (1) Review status of ongoing Fishery Management Plan (FMP) activities; (2) Discuss upcoming FMP endeavors; (3) Review foreign fishing permits, if any; and (4) Conduct other Council business.

DATES: The meeting will convene on Tuesday, January 22, 1980, at 1:30 p.m. and will adjourn on Thursday, January 24, 1980, at approximately 12 noon. The meeting is open to the public.

ADDRESS: The meeting will take place at Council Headquarters, 1 Southpark Circle, Charleston, South Carolina.

FOR FURTHER INFORMATION CONTACT: South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, South Carolina 29407, telephone: (803) 571-4366.

Dated: December 28, 1979.

Winfred H. Meibohm,
*Executive Director, National Marine
Fisheries Service.*

[FR Doc. 80-218 Filed 1-2-80; 8:45 am]

BILLING CODE 3510-22-M

Modification of Permits

Notice is hereby given that pursuant to the provisions of Sections 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit Nos. 38 and 42 issued to the Northwest Fisheries Center, National Marine Fisheries Service on August 14, 1974, and September 5, 1974, respectively, are modified by extending the period of validity as follows:

1. Permit No. 38 is modified by deleting Section B-1 and substituting therefor the following: "This Permit is valid with respect to the activities authorized hereunder until December 31, 1984."

2. Permit No. 42, as modified, is further modified by deleting Section B-4 and substituting therefor the following: "This Permit is valid with respect to the taking authorizing hereunder until December 31, 1984."

These modifications became effective on December 28, 1979.

The Permits as modified, and documentation pertaining to the modifications are available for review in the following offices:

Assistant Administrator for Fisheries,
National Marine Fisheries Service, 3300
Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northwest Region, 1700 Westlake Avenue North, Seattle, Washington 98109; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: December 28, 1979.

Winfred H. Meibohm,
*Executive Director, National Marine
Fisheries Service.*

[FR Doc. 80-220 Filed 1-2-80; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE**Department of the Navy**

Intent To File an Environmental Statement for San Clemente Island, California on a Management Plan for Control of Non-Native Feral (Wild, Free-Roaming) Animals on Lands Administered by the Naval Air Station North Island

The Naval Air Station North Island, San Diego, California, will prepare an

Environmental Statement (ES) on a management plan for control of non-native feral (wild, free-roaming) animals on lands administered by the Commanding Officer, Naval Air Station North Island.

The purpose of this action is the development of a long range program of management and control for feral animals on San Clemente Island. Excessively high population of feral goats, pigs, and deer on the island are creating safety hazards on the island roads and in the vicinity of costly test and evaluation equipment. Additionally, the extent of environmental damage caused by these animals is detrimental to the welfare of native vegetation and wildlife. The competition between native species and exotic feral animals for habitat is a matter of serious concern in the exercise of good stewardship over the lands and the resources for which the Naval Air Station is responsible.

The ES will consider the following alternatives: a management and control program compatible with the welfare of native species; total elimination of feral animals from San Clemente Island; other methods of population control; and no control.

A public scoping meeting will be held on the ES to determine the issues of concern and to identify significant issues related to the proposed action. This meeting will be held at 7 p.m. on January 6, 1980, in the City of Coronado Chambers, 1825 Strand Way Street, Coronado, California 92118.

The meeting is open to the public for comment on the proposed action. Comments should summarize the viewpoint of the speaker and will be limited to five (5) minutes per speaker. Detailed comments may be submitted in writing for consideration. Written comments may be sent to the address shown below. For information concerning the proposed ES contact: Naval Air Station North Island, Attention: Public Works Officer, San Diego, California 92135, Telephone No. (714) 437-7747 or 437-7749.

Dated: December 31, 1979.

P. B. Walker,
*Captain, JAGC, U.S. Navy, Deputy Assistant
Judge Advocate General (Administrative
Law).*

[FR Doc. 80-255 Filed 1-2-80; 8:45 am]

BILLING CODE 3810-71-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 61007-9090-22-41]

Applied Energy, Inc.; Temporary Public Interest Exemption

The Economic Regulatory Administration (ERA) of the Department of Energy hereby issues this Decision and Order granting a temporary public interest exemption from the prohibitions of Section 301(a) (2) and (3) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act), 42 U.S.C. 8301 *et seq.* This Decision and Order is issued pursuant to Section 311(e) of FUA, 10 CFR 501.68 and 10 CFR Part 508 to the Applied Energy, Incorporated (petitioner).

The petitioner filed for this temporary public interest exemption pursuant to 10 CFR Part 508 (Exemption for Use of Natural Gas by Existing Powerplants Under the Powerplant and Industrial Fuel Use Act of 1978, April 9, 1979, 44 FR 21230, hereafter referred to as the Special Rule) with ERA on June 22, 1979. Notice of the petition and a proposed order granting this temporary exemption was published in the August 28, 1979, Federal Register (44 FR 50395) with a request for public comments relating to the petition and the proposed order. Upon review of the public comments and the purposes of FUA, ERA has determined to grant the requested temporary public interest exemption.

Based on the information provided by the petitioner, the powerplant listed in the table below is either prohibited by Section 301(a)(2) of FUA from using natural gas as a primary energy source or is prohibited from using natural gas as a primary energy source in excess of the average base year proportion allowed in Section 301(a)(3) of the Act. This temporary exemption will allow this unit to burn natural gas, notwithstanding the prohibitions of Section 301(a) (2) and (3) of FUA, to displace consumption of middle distillate fuel oil. The estimated amount and sulfur content of fuel oil to be displaced on a daily basis are as follows:

| Generating station | Powerplant identification | Middle distillate fuel oil (barrels) | Percent sulfur content |
|---------------------------------|---------------------------|--------------------------------------|------------------------|
| North Island (Coronado, Calif.) | CG 2 | 339.2 | 0.5 |

This powerplant will burn an estimated 718,000 MCF of natural gas annually which will result in an estimated displacement of 339.2 barrels

of middle distillate fuel oil per day (123,800 barrels annually).

Statement of Reasons

Because petroleum products are in short supply, there is an urgent need to use these natural resources wisely.

To the extent that near-term choice of fuels for certain existing powerplants is limited to petroleum or natural gas, the use of natural gas is preferred over petroleum. The use of natural gas in this powerplant will be a significant step toward reducing our short-term oil consumption and will help the United States reduce its dependence on imported petroleum. This increased use of natural gas will also protect the Nation from the effects of any oil shortages, and will cushion the impact of increasing world oil prices, which have a detrimental effect on the Nation's balance of payments and domestic inflation rate.

To the extent that increased use of natural gas will accomplish these goals, it will reduce the importation of petroleum and further the goal of national energy self-sufficiency.

The petitioner has demonstrated that this powerplant, for which it is requesting a temporary exemption, is an existing unit that is either prohibited from using natural gas as a primary energy source by Section 301(a)(2) of FUA, or prohibited from using natural gas in excess of the average base year proportion allowed in Section 301(a)(3) of FUA. The petitioner has also shown that the proposed use of natural gas as a primary energy source, to the extent that such use would be prohibited by Section 301(a) (2) or (3) of FUA, will displace consumption of middle distillate fuel oil, and will not displace the use of coal or any other alternate fuel in any facility of the petitioner's utility system, including the powerplant for which this temporary exemption is issued.

By establishing these facts the petitioner has met the eligibility criteria set out in Section 508.2 of the Special Rule. Since the increased use of natural gas is in keeping with the purposes of FUA and is in the public interest, and since the petitioner has demonstrated that it has met the eligibility criteria, ERA is granting this temporary exemption.

Duration of Temporary Exemption

ERA grants this temporary public interest exemption for a period of five years. The temporary exemption is subject to termination by ERA, upon six months written notice, if ERA determines such termination to be in the public interest.

Effective Date of Decision and Order

This Decision and Order shall become effective on the sixtieth calendar day following its publication in the Federal Register in accordance with Section 702(a) of FUA. However, in accordance with the policy set forth in the notice implementing this Special Rule (44 FR 21230) ERA will take no action with respect to any natural gas used by this exempted powerplant between May 8, 1979, the effective date of FUA, and the date this Decision and Order becomes effective.

Terms and Conditions

Pursuant to Section 314 of FUA and 10 CFR 508.6, the temporary exemption granted under this Decision and Order is conditioned upon, and shall remain in effect so long as the petitioner, its successors and assigns, complies with the following terms and conditions:

(1) Petitioner will report to ERA for the period from May 8, 1979, through December 31, 1979, and for each subsequent six-month period thereafter the actual monthly volumes of natural gas consumed in the exempted powerplant, and an estimate of the number of barrels of each type of fuel oil displaced.

(2) Petitioner will submit to ERA, within one year after the date this Decision and Order is issued, a system-wide fuel conservation plan to include the five year period covered by this temporary exemption, including the means by which the petitioner will measure progress in implementing this plan.

(3) Petitioner will submit annually to ERA, commencing with the calendar year ending December 31, 1980, a report on progress achieved in implementing the five-year system-wide fuel conservation plan.

Issued in Washington, D.C. on December 20, 1979.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-189 Filed 1-2-80; 8:45 am]

BILLING CODE 6450-91-M

[ERA Docket Nos. 51868-2048-21-41, 51868-2049-21-41]

Mississippi Power Co.; Temporary Public Interest Exemptions

The Economic Regulatory Administration (ERA) of the Department of Energy hereby issues this Decision and Order granting temporary public interest exemptions from the prohibitions of Section 301(a) (2) and (3)

of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act), 42 U.S.C. 8301 *et seq.* This Decision and Order is issued pursuant to Section 311(e) of FUA, 10 CFR 501.68 and 10 CFR 508 to the Mississippi Power Company (petitioner).

The petitioner filed for these temporary public interest exemptions pursuant to 10 CFR 508 (Exemption for Use of Natural Gas by Existing Powerplants Under the Powerplant and Industrial Fuel Use Act of 1978, April 9, 1979, 44 FR 21230, hereafter referred to as the Special Rule) with ERA on June 29, 1979. Notice of the petitions and a proposed order granting these temporary exemptions was published in the August 28, 1979 *Federal Register* (44 FR 50395) with a request for public comments relating to the petitions and the proposed order. Upon review of the public comments and the purposes of FUA, ERA has determined to grant the requested temporary public interest exemptions.

Based on the information provided by the petitioner, the powerplants listed in the table below are either prohibited by Section 301(a)(2) of FUA from using natural gas as a primary energy source or are prohibited from using natural gas as a primary energy source in excess of the average base year proportion allowed in Section 301(a)(3) of the Act. These temporary exemptions will allow these units to burn natural gas, notwithstanding the prohibitions of Section 301(a)(2) and (3) of FUA, to displace consumption of middle distillate fuel oil. The estimated amount and sulfur content of fuel oil to be displaced on a daily basis are as follows:

| Generating station | Powerplant identification | Middle distillate fuel oil (barrels) | Percent sulfur content |
|--------------------------|---------------------------|--------------------------------------|------------------------|
| Sweatt (Meridian, Miss.) | CT "A" | 116.2 | 0.5 |
| Watson (Gulfport, Miss.) | CT "A" | 118.1 | 0.5 |

These powerplants will burn an estimated 495,604 MCF of natural gas annually which will result in an estimated displacement of 234.3 barrels of middle distillate fuel oil per day (85,508 barrels annually).

Statement of Reasons

Because petroleum products are in short supply, there is an urgent need to use these natural resources wisely.

To the extent that near-term choice of fuels for certain existing powerplants is limited to petroleum or natural gas, the use of natural gas is preferred over

petroleum, especially middle distillate petroleum. The use of natural gas in these powerplants will be a significant step toward reducing our short-term oil consumption and will help the United States reduce its dependence on imported petroleum. This increased use of natural gas will also protect the Nation from the effects of any oil shortages, and will cushion the impact of increasing world oil prices, which have a detrimental effect on the Nation's balance of payments and domestic inflation rate.

To the extent that increased use of natural gas will accomplish these goals, it will reduce the importation of petroleum and further the goal of national energy self-sufficiency.

The petitioner has demonstrated that these powerplants for which it is requesting temporary exemptions, are existing units that are either prohibited from using natural gas as a primary energy source by Section 301(a)(2) of FUA, or prohibited from using natural gas in excess of the average base year proportion allowed in Section 301(a)(3) of FUA. The petitioner has also shown that the proposed use of natural gas as a primary energy source, to the extent that such use would be prohibited by Section 301(a)(2) or (3) of FUA, will displace consumption of middle distillate fuel oil, and will not displace the use of coal or any other alternate fuel in any facility of the petitioner's utility system, including the powerplants for which these temporary exemptions are issued.

By establishing these facts the petitioner has met the eligibility criteria set out in Section 508.2 of the Special Rule. Since the increased use of natural gas is in keeping with the purposes of FUA and is in the public interest, and since the petitioner has demonstrated that it has met the eligibility criteria, ERA is granting these temporary exemptions.

Duration of Temporary Exemptions

ERA grants these temporary public interest exemptions for a period of five years. The temporary exemptions are subject to termination by ERA, upon six months written notice, if ERA determines such termination to be in the public interest.

Effective Date of Decision and Order

This Decision and Order shall become effective on the sixtieth calendar day following its publication in the *Federal Register* in accordance with Section 702(a) of FUA. However, in accordance with the policy set forth in the notice implementing this Special Rule (44 FR 21230) ERA will take no action with respect to any natural gas used by these

exempted powerplants between May 8, 1979, the effective date of FUA, and the date this Decision and Order becomes effective.

Terms and Conditions

Pursuant to Section 314 of FUA and 10 CFR 508.6, these temporary exemptions granted under this Decision and Order are conditioned upon, and shall remain in effect so long as the petitioner, its successors and assigns, complies with the following terms and conditions:

(1) Petitioner will report to ERA for the period from May 8, 1979, through December 31, 1979, and for each subsequent six-month period thereafter the actual monthly volumes of natural gas consumed in the exempted powerplants, and an estimate of the number of barrels of each type of fuel oil displaced.

(2) Petitioner will submit to ERA, within one year after the date this decision and Order is issued, a systemwide fuel conservation plan to include the five year period covered by these temporary exemptions, including the means by which the petitioner will measure progress in implementing this plan.

(3) Petitioner will submit annually to ERA, commencing with the calendar year ending December 31, 1980, a report on progress achieved in implementing the five-year system-wide fuel conservation plan.

Issued in Washington, D.C. on Dec. 20, 1979.

Robert L. Davies,

Assistant Administrator Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-192 Filed 1-2-80; 8:45 am]

BILLING CODE 6450-01-M

North Division Chevron Service; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to North Division Chevron Service, North 2022 Division Street, Spokane, WA 99207. This Proposed Remedial Order charges North Division Chevron Service with pricing violations in the amount of \$585.28 connected with the resale of motor gasoline during the time period August 1, 1979, through August 13, 1979, in the State of Washington.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Jack L. Wood, District Manager, Office of Enforcement, Western District,

Economic Regulatory Administration, 111 Pine Street, San Francisco, CA 94111. Within 15 days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, NW, Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Washington, D.C. on the 27th day of December, 1979.

Wayne W. Porter,

Deputy Director, Enforcement Program Operations Division, Economic Regulatory Administration.

[FR Doc. 80-196 Filed 1-2-80; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket Nos. 52570-0302-21-41, 52570-0303-21-41, 52570-0303-22-41, 52570-0303-23-41, 52570-0303-24-41, 52570-0303-25-41, 52570-0303-26-41, 52570-0303-27-41, 52570-0303-28-41, 52570-0303-29-41, 52570-0305-21-41, 52570-0305-22-41, 52570-0309-01-41, 52570-0309-02-41, 52570-0309-03-41, and 52570-0309-05-41]

San Diego Gas and Electric Co.; Temporary Public Interest Exemptions

The Economic Regulatory Administration (ERA) of the Department of Energy hereby issues this Decision and Order granting temporary public interest exemptions from the prohibitions of Section 301(a)(2) and (3) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act), 42 U.S.C. 8301 *et seq.* This Decision and Order is issued pursuant to Section 311(e) of FUA, 10 CFR 501.68 and 10 CFR 508 to the San Diego Gas and Electric Company (petitioner).

The petitioner filed for these temporary public interest exemptions pursuant to 10 CFR 508 (Exemption for Use of Natural Gas by Existing Powerplants Under the Powerplant and Industrial Fuel Use Act of 1978, April 9, 1979, 44 FR 21230, hereafter referred to as the Special Rule) with ERA on July 3, 1979. Notice of the petitions and a proposed order granting these temporary exemptions was published in the August 28, 1979 *Federal Register* (44 FR 50395) with a request for public comments relating to the petitions and the proposed order. Upon review of the public comments and the purposes of FUA, ERA has determined to grant the requested temporary public interest exemptions.

Based on the information provided by the petitioner, the powerplants listed in the table below are either prohibited by Section 301(a)(2) of FUA from using natural gas as a primary energy source or are prohibited from using natural gas as a primary energy source in excess of

the average base year proportion allowed in Section 301(a)(3) of the Act. These temporary exemptions will allow these units to burn natural gas, notwithstanding the prohibitions of Section 301(a)(2) and (3) of FUA, to displace consumption of middle distillate fuel oil. The estimated amount and sulfur content of fuel oil to be displaced on a daily basis are as follows:

| Generating station | Powerplant identification | Middle distillate fuel oil (barrels) | Percent sulfur content |
|----------------------------------|---------------------------|--------------------------------------|------------------------|
| Encina (Carlsbad, Calif.). | GT 1..... | 13.7 | 0.5 |
| | GT 1A..... | 24.7 | 0.5 |
| | GT 2A..... | 32.9 | 0.5 |
| | GT 2B..... | 19.2 | 0.5 |
| | GT 2C..... | 11.0 | 0.5 |
| | GT 2D..... | 11.0 | 0.5 |
| Kearny (San Diego, Calif.). | GT 3A..... | 16.4 | 0.5 |
| | GT 3B..... | 13.7 | 0.5 |
| | GT 3C..... | 24.7 | 0.5 |
| | GT 3D..... | 19.2 | 0.5 |
| | GT 1A..... | 35.6 | 0.5 |
| | GT 1B..... | 13.7 | 0.5 |
| Miramar (San Diego, Calif.). | No. 1..... | 79.5 | 0.5 |
| Silver Gate (San Diego, Calif.). | No. 2..... | 126.0 | 0.5 |
| | No. 3..... | 200.0 | 0.5 |
| | No. 4..... | 232.9 | 0.5 |

This powerplant will burn an estimated 1,826,000 MCF of natural gas annually which will result in an estimated displacement of 874.0 barrels of middle distillate fuel oil per day (319,000 barrels annually).

Statement of Reasons

Because petroleum products are in short supply, there is an urgent need to use these natural resources wisely.

To the extent that near-term choice of fuels for certain existing powerplants is limited to petroleum or natural gas, the use of natural gas is preferred over petroleum, especially middle distillate petroleum. The use of natural gas in these powerplants will be a significant step toward reducing our short-term oil consumption and will help the United States reduce its dependence on imported petroleum. This increased use of natural gas will also protect the Nation from the effects of any oil shortages, and will cushion the impact of increasing world oil prices, which have a detrimental effect on the Nation's balance of payments and domestic inflation rate.

To the extent that increased use of natural gas will accomplish these goals, it will reduce the importation of petroleum and further the goal of national energy self-sufficiency.

The petitioner has demonstrated that these powerplants, for which it is requesting temporary exemptions, are existing units that are either prohibited from using natural gas as a primary energy source by Section 301(a)(2) of

FUA, or prohibited from using natural gas in excess of the average base year proportion allowed in Section 301(a)(3) of FUA.

The petitioner has also shown that the proposed use of natural gas as a primary energy source, to the extent that such use would be prohibited by Section 301(a)(2) or (3) of FUA, will displace consumption of middle distillate fuel oil, and will not displace the use of coal or any other alternate fuel in any facility of the petitioner's utility system, including the powerplants for which these temporary exemptions are issued.

By establishing these facts the petitioner has met the eligibility criteria set out in Section 508.2 of the Special Rule. Since the increased use of natural gas is in keeping with the purposes of FUA and is in the public interest, and since the petitioner has demonstrated that it has met the eligibility criteria, ERA is granting these temporary exemptions.

Duration of Temporary Exemptions

ERA grants these temporary public interest exemptions for a period of five years. The temporary exemptions are subject to termination by ERA, upon six months written notice, if ERA determines such termination to be in the public interest.

Effective Date of Decision and Order

This Decision and Order shall become effective on the sixtieth calendar day following its publication in the *Federal Register* in accordance with Section 702(a) of FUA. However, in accordance with the policy set forth in the notice implementing this Special Rule (44 FR 21230) ERA will take no action with respect to any natural gas used by these exempted powerplants between May 8, 1979, the effective date of FUA, and the date this Decision and Order becomes effective.

Terms and Conditions

Pursuant to Section 314 of FUA and 10 CFR 508.6, these temporary exemptions granted under this Decision and Order are conditioned upon, and shall remain in effect so long as the petitioner, its successors and assigns, complies with the following terms and conditions:

(1) Petitioner will report to ERA for the period from May 8, 1979, through December 31, 1979, and for each subsequent six-month period thereafter the actual monthly volumes of natural gas consumed in the exempted powerplants, and an estimate of the number of barrels of each type of fuel oil displaced.

(2) Petitioner will submit to ERA, within one year after the date this

Decision and Order is issued, a system-wide fuel conservation plan to include the five year period covered by these temporary exemptions, including the means by which the petitioner will measure progress in implementing this plan.

(3) Petitioner will submit annually to ERA, commencing with the calendar year ending December 31, 1980, a report on progress achieved in implementing the five-year system-wide fuel conservation plan.

Issued in Washington, D.C. on December 20, 1979.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-191 Filed 1-2-80; 8:45 am]

BILLING CODE 8450-01-M

[ERA Docket No. 52693-3320-22-41]

South Carolina Public Service Authority; Temporary Public Interest Exemption

The Economic Regulatory Administration (ERA) of the Department of Energy hereby issues this Decision and Order granting a temporary public interest exemption from the prohibitions of Section 301(a) (2) and (3) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act), 42 U.S.C. 8301 *et seq.* This Decision and Order is issued pursuant to Section 311(e) of FUA, 10 CFR 501.68 and 10 CFR 508 to the South Carolina Public Service Authority (petitioner).

The petitioner filed for this temporary public interest exemption pursuant to 10 CFR 508 (Exemption for Use of Natural Gas by Existing Powerplants Under the Powerplant and Industrial Fuel Use Act of 1978, April 9, 1979, 44 FR 21230, hereafter referred to as the Special Rule) with ERA on July 2, 1979. Notice of the petition and a proposed order granting this temporary exemption was published in the August 28, 1979, Federal Register (44 FR 50395) with a request for public comments relating to the petition and the proposed order. Upon review of the public comments and the purposes of FUA, ERA has determined to grant the requested temporary public interest exemption.

Based on the information provided by the petitioner, the powerplant listed in the table below is either prohibited by Section 301(a)(2) of FUA from using natural gas as a primary energy source or is prohibited from using natural gas as a primary energy source in excess of the average base year proportion allowed in Section 301(a)(3) of the Act. This temporary exemption will allow

this unit to burn natural gas, notwithstanding the prohibitions of Section 301(a) (2) and (3) of FUA, to displace consumption of middle distillate fuel oil. The estimated amount and sulfur content of fuel oil to be displaced on a daily basis are as follows:

| Generating station | Powerplant identification | Middle distillate fuel oil (barrels) | Percent sulfur content |
|------------------------------------|---------------------------|--------------------------------------|------------------------|
| Myrtle Beach (Moncks Corner, S.C.) | GT 2..... | 14.7 | 0.3 |

This powerplant will burn an estimated 31,617 MCF of natural gas annually which will result in an estimated displacement of 14.7 barrels of middle distillate fuel oil per day (5,366 barrels annually).

Statement of Reasons

Because petroleum products are in short supply, there is an urgent need to use these natural resources wisely.

To the extent that near-term choice of fuels for certain existing powerplants is limited to petroleum or natural gas, the use of natural gas is preferred over petroleum. The use of natural gas in this powerplant will be a significant step toward reducing our short-term oil consumption and will help the United States reduce its dependence on imported petroleum. This increased use of natural gas will also protect the Nation from the effects of any oil shortages, and will cushion the impact of increasing world oil prices, which have a detrimental effect on the Nation's balance of payments and domestic inflation rate.

To the extent that increased use of natural gas will accomplish these goals, it will reduce the importation of petroleum and further the goal of national energy self-sufficiency.

The petitioner has demonstrated that this powerplant, for which it is requesting a temporary exemption, is an existing unit that is either prohibited from using natural gas as a primary energy source by Section 301(a)(2) of FUA, or prohibited from using natural gas in excess of the average base year proportion allowed in Section 301(a)(3) of FUA.

The petitioner has also shown that the proposed use of natural gas as a primary energy source, to the extent that such use would be prohibited by Section 301(a)(2) or (3) of FUA, will displace consumption of middle distillate fuel oil, and will not displace the use of coal or any other alternate fuel in any facility of the petitioner's utility system, including

the powerplant for which this temporary exemption is issued.

By establishing these facts the petitioner has met the eligibility criteria set out in Section 508.2 of the Special Rule. Since the increased use of natural gas is in keeping with the purposes of FUA and is in the public interest, and since the petitioner has demonstrated that it has met the eligibility criteria, ERA is granting this temporary exemption.

Duration of Temporary Exemption

ERA grants this temporary public interest exemption for a period of five years. The temporary exemption is subject to termination by ERA, upon six months written notice, if ERA determines such termination to be in the public interest.

Effective Date of Decision and Order

This Decision and Order shall become effective on the Sixtieth calendar day following its publication in the Federal Register in accordance with Section 702(a) of FUA. However, in accordance with the policy set forth in the notice implementing this Special Rule (44 FR 21230) ERA will take no action with respect to any natural gas used by this exempted powerplant between May 8, 1979, the effective date of FUA, and the date this Decision and Order becomes effective.

Terms and Conditions

Pursuant to Section 314 of FUA and 10 CFR 508.6, the temporary exemption granted under this Decision and Order is conditioned upon, and shall remain in effect so long as the petitioner, its successors and assigns, complies with the following terms and conditions:

(1) Petitioner will report to ERA for the period from May 8, 1979, through December 31, 1979, and for each subsequent six-month period thereafter the actual monthly volumes of natural gas consumed in the exempted powerplant, and an estimate of the number of barrels of each type of fuel oil displaced.

(2) Petitioner will submit to ERA, within one year after the date this Decision and Order is issued, a system-wide fuel conservation plan to include the five year period covered by this temporary exemption, including the means by which the petitioner will measure progress in implementing this plan.

(3) Petitioner will submit annually to ERA, commencing with the calendar year ending December 31, 1980, a report on progress achieved in implementing the five-year system-wide fuel conservation plan.

Issued in Washington, D.C. on December 20, 1979.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-190 Filed 1-2-80; 8:45 am]

BILLING CODE 6450-01-M

Powerplant and Industrial Fuel Use Act; Issuance of Orders Granting Temporary Public Interest Exemptions

The Economic Regulatory Administration (ERA) of the Department

of Energy hereby gives notice that on December 20, 1979, it issued orders granting temporary public interest exemptions, pursuant to the authorities granted it by Section 311(e) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act), 42 U.S.C. 8301 *et seq.*, and 10 CFR 501.68 and 10 CFR 508, from the prohibitions of Section 301(a) (2) and (3) of the Act to the following powerplants:

available. The Allied Chemical Corporation comment did not refer to any specific region nor did it specify impacts resulting from any particular petition or proposed order.

The State of Florida Department of Environmental Regulation "strongly supports the use of clean burning natural gas by the State's various utility companies to protect the air quality in the state and reduce dependence on oil."

The Louisiana Air Control Commission is in favor of using natural gas as a primary fuel. It "will enable Louisiana's oil industry to provide more distillate and residuum to other parts of the country."

These temporary exemptions will allow the above-named units to burn an estimated total of 17,860,607 MCF of natural gas annually, notwithstanding the prohibitions of Section 301(a)(2) and (3) of FUA, displacing an estimated 4,912.3 barrels per day (1,792,987.2 barrels annually) of middle distillate fuel oil. The orders granting these temporary exemptions shall become effective March 3, 1980, in accordance with Section 702(a) of FUA. All of the above-named powerplants have received Decisions and Orders granting these temporary exemptions by certified mail. The individual orders are set forth following the notice. These temporary exemptions shall be in effect for an initial period of five years and are subject to termination by ERA, upon six months written notice, if ERA determines such termination to be in the public interest.

Copies of all comments received during the public comment period will be available for public inspection and copying in the Public Information Office located in Room B-110, 2000 M Street, N.W., Washington, D.C. 20461.

Any questions regarding these temporary exemptions should be directed to Mr. James W. Workman, Acting Director, Existing Facilities Conversion Division, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, Room 3128, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254-7442.

Issued in Washington, D.C., on December 20, 1979.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-41 Filed 1-2-80; 8:45 am]

BILLING CODE 6450-01-M

| Docket No. | Owner | Generating station location | Power-plant identification | Daily middle distillate displacement (barrels) |
|------------------|--|------------------------------------|----------------------------|--|
| 50099-0181-51-41 | Arizona Electric Power Cooperative, Inc. | Apache (Cochise, Ariz.) | CC-1 | 622.2 |
| 51998-2322-24-41 | Nevada Power Co. | Clark (East Las Vegas, Nev.) | CT-4 | 67.4 |
| 51998-2326-22-41 | | Sunrise (Las Vegas, Nev.) | CT-2 | 343.9 |
| 52204-1316-55-41 | City of Ottawa | Ottawa (Ottawa, Kans.) | CC-5 | 7.7 |
| 61007-9090-22-41 | Applied Energy, Inc. | North Island (Coronado, Calif.) | CC-2 | 339.2 |
| 52693-3320-22-41 | South Carolina Public Service Authority | Myrtle Beach (Moncks Corner, S.C.) | GT-2 | 14.7 |
| 52570-0302-21-41 | San Diego Gas & Electric Co. | Encina (Carlsbad, Calif.) | GT-1 | 13.7 |
| 52570-0303-21-41 | | Kearny (San Diego, Calif.) | GT-1A | 24.7 |
| 52570-0303-22-41 | | | GT-2A | 32.9 |
| 52570-0303-23-41 | | | GT-2B | 19.2 |
| 52570-0303-24-41 | | | GT-2C | 11.0 |
| 52570-0303-25-41 | | | GT-2D | 11.0 |
| 52570-0303-26-41 | | | GT-3A | 16.4 |
| 52570-0303-27-41 | | | GT-3B | 13.7 |
| 52570-0303-28-41 | | | GT-3C | 24.7 |
| 52570-0303-29-41 | | | GT-3D | 19.2 |
| 52570-0305-21-41 | | Miramar (San Diego, Calif.) | GT-1A | 35.6 |
| 52570-0305-22-41 | | | GT-1B | 13.7 |
| 52570-0309-01-41 | | Silver Gate (San Diego, Calif.) | No. 1 | 79.5 |
| 52570-0309-02-41 | | | No. 2 | 128.0 |
| 52570-0309-03-41 | | | No. 3 | 200.0 |
| 52570-0309-04-41 | | | No. 4 | 232.9 |
| 51694-1404-57-41 | Louisiana Power & Light Co. | Sterlington (Sterlington, La.) | CC-7 | 10.3 |
| 51888-2048-21-41 | Mississippi Power Co. | Sweatt (Meridian, Miss.) | CT-A | 116.2 |
| 51888-2049-21-41 | | Watson (Gulfport, Miss.) | CT-A | 118.1 |
| 50441-9063-01-41 | Carolina Power & Light Co. | H. B. Robinson (Hartsville, S.C.) | No. 1 | 58.9 |
| 50441-9063-21-41 | | | GT-1 | 58.5 |
| 52172-2290-11-41 | Omaha Public Power District | Jones Street (Omaha, Nebr.) | No. 11 | 52.1 |
| 52172-2290-12-41 | | | No. 12 | 52.1 |
| 52172-2292-21-41 | | Sarpy County (Omaha, Nebr.) | GT-1 | 65.5 |
| 52172-2292-22-41 | | | GT-2 | 65.5 |
| 51150-2241-21-41 | City of Grand Island | Burdick (Grand Island, Nebr.) | CT 1 | 2.8 |
| 52875-0688-21-41 | City of Tallahassee | Purdum (St. Marks, Fla.) | GT 1 | 11.6 |
| 52875-0688-21-41 | | | GT 2 | 2.8 |
| 52875-0689-21-41 | | Hopkins (Tallahassee, Fla.) | GT 1 | 11.6 |
| 52875-0689-22-41 | | | GT 2 | 20.5 |
| 51575-0676-01-41 | City of Lakeland | Larsen (Lakeland, Fla.) | GT 1 | 7.5 |
| 52721-0341-08-41 | Southern California Edison Co. | Long Beach (Long Beach, Calif.) | CC 8 | 799.9 |
| 52721-0341-08-41 | | | CC 9 | 1,173.6 |
| 52721-0345-03-41 | | Mandalay (Oxnard, Calif.) | No. 3 | 15.7 |

Petitions were received and filed pursuant to 10 CFR 508 (Exemption for Use of Natural Gas by Existing Powerplants Under the Powerplant and Industrial Fuel Use Act of 1978, April 9, 1979, 44 FR 21230) with ERA for temporary public interest exemptions for the use of natural gas as a primary energy source. Notices of the petitions and the proposed orders granting these temporary exemptions were published in the Federal Register on May 11, June 1, July 20, and August 28, 1979, (44 FR

27668, 44 FR 31677, 44 FR 42756, and 44 FR 50395). Written comments were requested on the proposed orders. All comments were considered by ERA.

A general comment from Allied Chemical Corporation expressed concern that the chemical industry has experienced production curtailments and plant shutdowns due to inadequate gas supplies for nonsubstitutable feedstock and process needs at the same time that DOE has concluded that exceed supplies of natural gas are

Powerplant and Industrial Fuel Use Act; Issuance of Orders Granting Temporary Public Interest Exemptions

The Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice that on December 20, 1979, it issued orders granting temporary public interest

exemptions, pursuant to the authorities granted it by section 311(e) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act), 42 U.S.C. 8301 *et seq.*, and 10 CFR 501.68 and 10 CFR 508, from the prohibitions of section 301(a)(2) and (3) of the Act to the following powerplants:

| Docket No. | Owner | Generating station location | Power-plant identification | Daily low-sulfur residual displacement (barrels) |
|------------------|--------------------------------|--|----------------------------|--|
| 51998-2322-01-41 | Nevada Power Co | Clark (East Las Vegas, Nev.) | No.1 | 598.6 |
| 51998-2322-02-41 | | | No.2 | 2,029.4 |
| 51998-2322-03-41 | | | No.3 | 1,072.9 |
| 51998-2326-01-41 | | Sunrise (Las Vegas, Nev.) | No.1 | 2,172.1 |
| 52570-0310-01-41 | San Diego Gas & Electric Co. | South Bay (Chula Vista, Calif.) | No.1 | 4,005.5 |
| 52570-0310-02-41 | | | No.2 | 4,317.8 |
| 52570-0310-03-41 | | | No.3 | 4,863.0 |
| 52570-0310-04-41 | | | No.4 | 1,728.8 |
| 52570-0302-01-41 | | Encina (Carlsbad, Calif.) | No.1 | 2,317.8 |
| 52570-0302-02-41 | | | No.2 | 2,797.3 |
| 52570-0302-03-41 | | | No.3 | 2,597.3 |
| 52570-0302-04-41 | | | No.4 | 4,186.3 |
| 52721-0315-01-41 | Southern California Edison Co. | Alamitos (Long Beach, Calif.) | No.1 | 2,203.8 |
| 52721-0315-02-41 | | | No.2 | 2,169.9 |
| 52721-0315-03-41 | | | No.3 | 5,511.4 |
| 52721-0315-04-41 | | | No.4 | 5,571.3 |
| 52721-0315-05-41 | | | No.5 | 7,218.1 |
| 52721-0315-06-41 | | | No.6 | 8,810.4 |
| 52721-0329-01-41 | | Coolwater (Daggett, Calif.) | No.1 | 390.8 |
| 52721-0329-02-41 | | | No.2 | 573.3 |
| 52721-0330-01-41 | | El Segundo (El Segundo, Calif.) | No.1 | 2,763.9 |
| 52721-0330-02-41 | | | No.2 | 2,873.4 |
| 52721-0330-03-41 | | | No.3 | 5,292.1 |
| 52721-0330-04-41 | | | No.4 | 5,416.2 |
| 52721-0331-01-41 | | Etiwanda (Etiwanda, Calif.) | No.1 | 2,521.2 |
| 52721-0331-02-41 | | | No.2 | 2,797.2 |
| 52721-0331-03-41 | | | No.3 | 5,292.2 |
| 52721-0331-04-41 | | | No.4 | 5,416.3 |
| 52721-0334-01-41 | | Highgrove (Colton, Calif.) | No.1 | 26.1 |
| 52721-0334-02-41 | | | No.2 | 28.7 |
| 52721-0334-03-41 | | | No.3 | 56.3 |
| 52721-0334-04-41 | | | No.4 | 162.5 |
| 52721-0335-01-41 | | Huntington Beach, (Huntington Beach, Calif.) | No.1 | 271.7 |
| 52721-0335-02-41 | | | No.2 | 2,880.2 |
| 52721-0335-03-41 | | | No.3 | 3,516.4 |
| 52721-0335-04-41 | | | No.4 | 3,601.4 |
| 52721-0341-10-41 | | Long Beach (Long Beach, Calif.) | No.10 | 137.0 |
| 52721-0341-11-41 | | | No.11 | 137.0 |
| 52721-0345-01-41 | | Mandalay (Oxnard, Calif.) | No.1 | 2,277.7 |
| 52721-0345-02-41 | | | No.2 | 2,816.1 |
| 52721-0350-01-41 | | Ormond Beach, (Oxnard, Calif.) | No.1 | 12,528.4 |
| 52721-0350-02-41 | | | No.2 | 12,904.8 |
| 52721-0356-01-41 | | Redondo (Redondo Beach, Calif.) | No.1 | 460.8 |
| 52721-0356-02-41 | | | No.2 | 460.8 |
| 52721-0356-03-41 | | | No.3 | 460.8 |
| 52721-0356-04-41 | | | No.4 | 460.8 |
| 52721-0356-05-41 | | | No.5 | 2,398.9 |
| 52721-0356-06-41 | | | No.6 | 3,060.2 |
| 52721-0356-07-41 | | | No.7 | 7,102.7 |
| 52721-0356-08-41 | | | No.8 | 6,179.6 |
| 52721-0358-01-41 | | San Bernardino (San Bernardino, Calif.) | No.1 | 1,135.2 |
| 52721-0358-02-41 | | | No.2 | 952.5 |

Petitions were received and filed pursuant to 10 CFR 508 (Exemption for Use of Natural Gas by Existing Powerplants Under the Powerplant and Industrial Fuel Use Act of 1978, April 9, 1979, 44 FR 21230) with ERA for temporary public interest exemptions

for the use of natural gas as a primary energy source. Notices of the petitions and the proposed orders granting these temporary exemptions were published in the Federal Register on May 11, July 20, and August 28, 1979, (44 FR 27688, 44 FR 42756 and 44 FR 50395). Written

comments were requested on the proposed orders. All comments were considered by ERA.

A general comment from Allied Chemical Corporation expressed concern that the chemical industry has experienced production curtailments and plant shutdowns due to inadequate gas supplies for nonsubstitutable feedstock and process needs at the same time that DOE has concluded that excess supplies of natural gas are available. The Allied Chemical Corporation comment did not refer to any specific region nor did it specify impacts resulting from any particular petition or proposed order.

These temporary exemptions will allow the above-named units to burn an estimated total of 354,190,095 MCF of natural gas annually, notwithstanding the prohibitions of section 301(a) (2) and (3) of FUA, displacing an estimated 161,524.8 barrels of low sulfur residual fuel oil per day (58,956,555 barrels annually).

The orders granting these temporary exemptions shall become effective sixty days following their publication in the Federal Register in accordance with Section 702(a) of FUA. Owners of the above-named powerplants have each received the Decision and Order by certified mail. The individual orders are set forth following this notice. These temporary exemptions shall be in effect, subject to the terms and conditions stated in each order, for an initial period ending December 31, 1981 and may be terminated by ERA, upon six months written notice, if ERA determines such termination to be in the public interest. The temporary exemptions may be extended for an additional period of three years upon written acceptance by ERA of a system wide fuel conservation plan. Copies of all comments received during the public comment period will be available for public inspection and copying in the Public Information Office located in Room B-110, 2000 M Street, N.W., Washington, D.C. 20461.

Any questions regarding these temporary exemptions should be directed to Mr. James W. Workman, Acting Director, Existing Facilities Conversion Division, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, Room 3128, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254-7442.

Issued in Washington, D.C., on December 20, 1979.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administration.

[FR Doc. 80-43 Filed 1-2-80; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 349]

Alabama Power Co.; Application for Approval of Conveyance of Project Lands

December 27, 1979.

Take notice that an application was filed on September 28, 1979, under the Federal Power Act [16 U.S.C. 791(a)-825(r)] by the Alabama Power Company (Applicant) for approval of the conveyance of project lands.

Correspondence concerning the application should be addressed to: Mr. R. P. McDonald, Vice President, Alabama Power Company, P.O. Box 2641, Birmingham, Alabama 35291.

Alabama Power Company requests Commission approval of the issuance of temporary and permanent easements to Alexander City (City), Alabama, which would allow the City to construct a raw water intake facility within the boundary of Martin Dam Project No. 349. The lands involved are located in R. 22 E., T. 22 N., Sec. 8 SW ¼, Tallapoosa County, Alabama. Flowage rights over the lands to be conveyed are reserved to the Applicant.

Under the temporary easement, the City proposes to construct a cofferdam, excavate approximately 1,400 cubic yards of river bottom, and, upon completion of construction, deposit the excavated materials over a 32-acre area of Lake Martin.

Under the permanent easement, the City proposes to construct a raw water intake facility which would support a platform and bridge connecting the facility to the shoreline. The area involved is about 35 by 36 feet. Initially, the raw water facility would pump approximately 8 million gallons per day from Lake Martin (starting in 1981) and ultimately the facility would increase pumping to 24 mgd by 1995.

The City was issued a water quality certificate by the Alabama Water Improvement Commission on August 3, 1979.

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 and 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments 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 comments, protest, or petition to intervene must be filed on or before February 11, 1980. The Commission's address is: 825 North Capitol Street, N.W., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-56 Filed 1-2-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP80-33]

Columbia LNG Corp., Consolidated System LNG Co.; Amendment to Application

December 27, 1979.

Take notice that on December 13, 1979, Columbia LNG Corporation (Columbia), 20 Montchanin Road, Wilmington, Delaware 19807, and Consolidated System LNG Company (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP80-33 an amendment to their application filed in said docket pursuant to section 7(C) of the Natural Gas Act, by which amendment applicants revise Part V of the application and make other changes consistent therewith, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicants state that by Commission letter order dated November 29, 1979, they were given temporary authorization to increase their allowable service to 500,000 Mcf of gas per day and to construct replacement facilities at their liquefied natural gas facilities at Cove Point, Maryland. It is stated that the original application also sought authorization to construct and operate permanent replacement facilities for those destroyed on October 6, 1979.

Applicants amend their application by revising Part V to state that Applicants submit that the replacement of the destroyed Cove Point facilities does not

require recertification pursuant to section 7(c) of the Natural Gas Act because it involves replacement facilities with substantially equivalent designed delivery capacity and operations essentially the same as those authorized under outstanding certificates, with only minor modifications. Further, Applicants delete the reference to "Sections 7(c) and 16 of" in the application and proposed notice.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before January 15, 1980, 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. 80-52 Filed 1-2-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP80-127]

El Paso Natural Gas Co.; Application

December 27, 1979.

Take notice that on December 7, 1979, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP80-127 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commissions Regulations under the Natural Gas Policy Act of 1978 (NGPA) for a certificate of public convenience and necessity for blanket authorization to transport natural gas for other interstate pipeline companies, all as more fully set forth in the application which is on file with the Commission and open to the public inspection.

Applicant requests blanket authorization to transport gas for other interstate pipeline companies for periods of up to two years. It states that it would comply with § 284.221(d) of the Commission's regulations under the NGPA.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 10, 1980, 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 (18 CFR 157.10)). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-65 Filed 1-2-80; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. RE80-36]

Idaho Power Co.; Application for Exemption

December 27, 1979.

Take notice that Idaho Power Company (Idaho Power), on December 3, 1979, filed an application for exemption from certain requirements of Part 290 of the Commission's regulations (Order 48, 44 FR 58687). Exemption is sought from the requirement to file, on or before November 1, 1980, information on the costs of providing electric service as specified in

- (a) Section 290.401(b)(1);
- (b) Section 290.403(a)(1)(2)(4);
- (c) Section 290.403(b)(c)(d); and

(d) Section 290.404, as it relates to the exemption requested in items (b) and (c) above.

of Part 290 of the Commission's regulations issued pursuant to Section 133 of PURPA.

In its application for exemption, Idaho Power states that it should not be required to file the specified data because:

Nevada represents approximately 0.34% of the Company's customers and 0.23% of the Company's annual energy sales. Load research in the Nevada retail jurisdiction would require considerable expense at little benefit to the Company's total load research effort.

Copies of the application for exemption are on file with the Commission and are available for public inspection. The Commission's regulations require that said utility also apply to any State regulatory authority having jurisdiction over it to have the application published in any official State publication in which electric rate change applications are usually noticed, and that a summary of the application be published in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before February 13, 1980.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-62 Filed 1-2-80; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. CP79-223]

Michigan Wisconsin Pipe Line Co.; Petition To Amend

December 27, 1979.

Take notice that on December 6, 1979, Michigan Wisconsin Pipe Line Company (Petitioner), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP79-223 a petition to amend the Commission's order issued June 8, 1979, in said docket pursuant to section 7(c) of the Natural Gas Act and § 157.7(b) of the regulations thereunder (18 CFR 157.7(b)) so as to authorize a single onshore project limitation of \$2,500,000 for gas supply facility construction, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that on June 8, 1979, it was authorized to construct and operate gas supply facilities for a twelve-month

period beginning on July 13, 1979, under the condition that no single onshore project would cost in excess of \$2,250,000. Petitioner proposes to increase this limit to the \$2,500,000 limit placed on single onshore projects by the Commission's regulations for budget-type certificates for gas purchase facilities under § 157.7(b)(1)(ii) as promulgated by the Commission in Order No. 56 issued November 1, 1979.

It is stated that Petitioner has no currently planned projects which require this increase, but it seeks the increase to be in a position to act with reasonable dispatch should such a project materialize.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 21, 1980, 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.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-60 Filed 1-2-80; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. CP80-138]

Midwestern Gas Transmission Co.; Application

December 27, 1979.

Take notice that on December 14, 1979, Midwestern Gas Transmission Company (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP80-138 an application pursuant to section 7(c) of the Natural Gas Act and Section 284.221 of the Commission's Regulations under the Natural Gas Policy Act of 1978 (NGPA) for a certificate of public convenience and necessity for blanket authorization to transport natural gas on behalf of other interstate pipeline companies, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests blanket authorization to transport natural gas for other interstate pipeline companies

for periods of up to two years. It states that it would comply with § 284.221(d) of the Commission's regulations under the NGPA.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 10, 1980, 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.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-63 Filed 1-2-80; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ST80-14]

Montana Power Co.; Petition for Approval of Transportation Charges

December 27, 1979.

Take notice that on November 30, 1979, The Montana Power Company (Petitioner), 40 East Broadway, Butte, Montana 59701, filed in Docket No. ST80-14 a petition pursuant to Subpart F of Part 284 of the Commission's

regulations under the Natural Gas Policy Act of 1978 (NGPA) for an order approving rates for an oil displacement sale of gas made pursuant to Subpart F to Georgia-Pacific Corporation (Georgia Pacific), a direct sale end user, and for the approval of the rate calculation to be broad enough to include the same kind of future service, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioner states that it commenced sale to Georgia-Pacific on October 29, 1979, under a contract which contains a transportation charge of 11.6 cents per Mcf plus the adjusted average acquisition cost of gas and an allowance of 4.267 percent of the Canadian border price of gas for compressor fuel.

Petitioner contemplates additional sales to other direct sales users, which sales would be made in the same manner as the sale to Georgia-Pacific, by delivery of gas to Montana-Dakota Utilities Company at a rate calculated in the same manner as the Georgia-Pacific rate. Petitioner proposes to use the same rate calculation method in the future if approved for Georgia-Pacific.

Petitioner states that in light of recent Commission orders, it appears that it may be necessary that sellers to end users under Order No. 30, as amended, must seek approval of the transportation portion of the rate charged to the end user in order to make the sale. Petitioner states that it has made the subject filing to assure that it is not in violation of the Commission's regulations.

Any person desiring to be heard or to make any protest with reference to said petition should on or before January 21, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-53 Filed 1-2-80; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ER80-138]

Montana Power Co.; Notice of Filing

December 27, 1979.

The filing Company submits the following:

Take notice that on December 17, 1979, The Montana Power Company tendered for filing in compliance with the Federal Power Commission's Order of May 6, 1977, a summary of sales made under the Company's FPC Electric Tariff M-1 during November, 1979, along with cost justification for the rate charged.

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 §§ 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 January 14, 1980. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-60 Filed 1-2-80; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. CP80-112]

Northern Natural Gas Co.; Application

December 27, 1979.

Take notice that on November 30, 1979, Northern Natural Gas Company (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP80-112 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of 62 small volume sales measuring stations and the sale and delivery of additional volumes of natural gas in the states of Montana, South Dakota, Minnesota, Iowa, Nebraska, Oklahoma and Texas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to provide service to right-of-way grantors whose easements provide for the contractual right to gas service as partial consideration for the easement to construct and operate pipeline facilities across their property. It is stated that such service would be made to small

volume industrial, commercial and residential customers.

Specifically, Applicant proposes to install and operate, 54 delivery stations in South Dakota, Minnesota, Iowa, Nebraska, Kansas and Texas for which resale would be made by Peoples Natural Gas Division of Northern Natural Gas (Peoples) from Peoples' presently authorized contract demand.

Applicant proposes to install and operate 4 delivery stations in Oklahoma. It is stated that Applicant would sell and deliver gas to Southern Union Gas Company (So. Union) for resale to these small volume customers, which would result in an increase in annual sales to So. Union under Applicant's Rate Schedule X-46 of 14,010 Mcf.

Applicant proposes to install and operate one delivery station in Texas, and would sell and deliver natural gas to West Texas Gas, Incorporated (WTG), for resale under its Rate Schedule X-40. It is stated that this would result in an increase in annual sales of 5,300 Mcf, resulting in total annual authorized sales of 2,229,707 Mcf to WTG.

Applicant proposes to install and operate three delivery stations and make direct sale and delivery of natural gas to these three Montana customers pursuant to terms of farm tap service contracts between Applicant and the new customers.

Applicant more fully describes the 62 proposed small volume sales measuring stations in the Appendix attached hereto.²

The total estimated cost of all facilities is \$74,170, which cost applicant proposes to finance from cash on hand.

Any person desiring to be heard or to make any protests with reference to said application should on or before January 21, 1980, 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.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-54 Filed 1-2-80; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ER80-137]

Pennsylvania-New Jersey-Maryland Interconnection; Notice of Filing

December 27, 1979.

The filing Company submits the following:

Take notice that on December 18, 1979, the Office of Pennsylvania-New Jersey-Maryland Interconnection filed on behalf of the above listed utilities Schedules 5.03, 7.04, 8.03, and 9.02 to the Interconnection Agreement between the APS Group and the PJM Group dated April 26, 1965.

The schedules provide for replacing the traditional percentage adders used in pricing Emergency, Extended Emergency, and Short Term Energy and Operating Capacity transactions, as well as for Conservation and Non-Replacement Energy transactions, with cost justified fixed adders based upon identifiable costs for the PJM Group rates. The APS Group rates retain the percentage adder, but apply a cap or maximum limit of 2.0 mills per kilowatthour. The demand rates for Extended Emergency transactions are changed from a daily to an hourly basis.

The Schedules also provide for increasing the demand rate for supply of Short Term Power from \$700 to \$800 per megawatt per week. The demand rate for transmitting Short Term Power purchased from another system is

increased from \$175 to \$200 per megawatt per week.

No new facilities will be installed nor will existing facilities be modified in connection with the Schedules. The filing party has requested a waiver of any otherwise applicable Rules and Regulations not already complied with and has requested an effective date of April 1, 1980.

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. All such petitions or protests should be filed on or before January 14, 1980. 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. 80-61 Filed 1-2-80; 8:45 am]
BILLING CODE 6450-01-M

[Docket of SA80-47]

Pennzoil Co.; Notice of Application for Adjustment and Request for Interim Relief

Issued December 27, 1979.

Take notice that on December 5, 1979, Pennzoil Company (Pennzoil) filed with the Federal Energy Regulatory Commission (Commission) in Docket No. SA80-47 an application for an adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301 *et seq.* to sections 270.202 and 271.1104 of the Commission's regulations (18 CFR 270.202, 271.1104).

Specifically, Pennzoil requests an adjustment to authorize collection of a gathering allowance of 47 cents per Mcf on gas which Pennzoil purchases from small producers in West Virginia and resells to Consolidated Gas Supply Corporation under Pennzoil's FERC Gas Rate Schedule No. 10. Furthermore, Pennzoil requests interim relief to collect a 47 cents per Mcf gathering allowance, subject to refund, pending the outcome to this adjustment proceeding.

The procedures applicable to the conduct of this adjustment proceeding are found in § 1.41 of the Commission's

¹ As defined in Applicant's Gas Tariff, customers with maximum day gas requirements under 200 Mcf are considered small volume customers.

² The Appendix is filed with the Office of the Federal Register as part of the original document. Copies may be obtained from the Commission, 825 No. Capitol St., NE., Washington, D.C. 20426.

rules of practice and procedure, Order No. 24 Issued March 22, 1979.

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of § 1.41. All petitions to intervene must be filed on or before January 18, 1980.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-56 Filed 1-2-80; 8:45 am]

BILLING CODE 6450-01-M

[Project No. 2937]

Quincy Columbia Basin Irrigation District; Application for Preliminary Permit

December 27, 1979.

Take notice that on July 23, 1979, Quincy Columbia Basin Irrigation District (Applicant) filed an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. section 791(a) 825(r)] for a proposed water power project to be known as the Quincy Chute Power Plant Project, FERC No. 2937. The project would be located at the base of the U.S. Bureau of Reclamation's (USBR) Quincy Chute, a drop structure at mile 37.7 of the West Canal of the USBR's Columbia Basin Project in Grant County, Washington. Lands of the United States administered by USBR would be affected by the proposed project. Correspondence with Applicant should be directed to: Mr. Thomas Cotton, Manager, Quincy Columbia Basin Irrigation District, Post Office Box 188, Quincy, Washington 99848.

The Columbia Basin Project (a system of pumping plants, reservoirs and canals) distributes water from the reservoir impounded by USBR's Grand Coulee Dam, on the Columbia River, to irrigate about 1.1 million acres of land in eastern Washington.

Project Description: The proposed project would consist of: (1) a powerhouse with a 3750-kW turbine-generator that would utilize flows in the canal, thereby developing energy that would otherwise be dissipated in the chute; (2) a 3,700-foot-long, 13.2-kV transmission line to be constructed between the powerhouse switchyard and Grant County Public Utility District's existing 13.2-kV transmission line; and (3) bypass and spillway structures. The proposed development would require modification to the chute section, upstream of the proposed plant, for a length of approximately 1,300 feet.

Proposed Study Plan and Cost Under Permit: The Applicant seeks issuance of a preliminary permit for a period of

three years, during which it would carry out the following studies and investigations: (a) preliminary design including subsurface investigation, review of available flow records, topographic survey of the project site, selections of optimum configuration for the project, and availability of suitable turbines and generators; and (b) economic feasibility of the project, including comparative studies of cost and energy output of alternative sites, estimates of power value, and expected revenues from sale of project power. The costs of the above activities, including the preparation of an environmental report, negotiating agreements with various Federal, State, and local agencies, and preparing a FERC license application, are estimated by the Applicant to be about \$125,000.

Proposed Source of Financing and Market for Power: The proposed studies would be financed through Department of Energy loans, advance funding from a power purchaser, and/or from available funds. Applicant proposes to sell project power to the Bonneville Power Administration, the Cities of Seattle and Tacoma, Grant County Public Utility District, or to investor owned electric utilities.

Purpose of Preliminary Permit: A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other necessary information for inclusion in an application for a license.

Agency Comments: Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications: Anyone desiring to file a competing application must submit to the Commission, on or before March 3, 1980 either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the

competing application no later than May 2, 1980. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), (as amended 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR 4.33(a) and (d), (as amended, 44 FR 61328, October 25, 1979).

Comments, Protests, or Petitions to Intervene: 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 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments 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 comments, protest, or petition to intervene must be filed on or before March 3, 1980. The Commission's address is: 825 North 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. 80-55 Filed 1-2-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP80-128]

Southern Natural Gas Co.; Application

December 27, 1979.

Take notice that on December 10, 1979, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP80-128 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for permission and approval (1) to abandon by sale to Alabama Gas Company (Alagasco) certain pipeline facilities, (2) to abandon direct sale transportation authorization, (3) to abandon by removal and relocation a meter station, and (4) to abandon by removal certain portions of pipeline not sold hereunder, and for a certificate of public convenience and necessity authorizing the construction and operation of a new meter station, all as more fully set forth in the application

which is on file with the Commission and open to public inspection.

Applicant proposes to abandon approximately 14,000 feet of 4½-inch pipeline with appurtenances, known as the Pelham Line, by sale to Alagasco, under a June 4, 1979, agreement between the parties at a cost of \$4,050.11. The Pelham Line is said to run from mile post 23.742 on Applicant's Calera Line to the present location of its Pelham Meter Station in Shelby County, Alabama.

Applicant requests authority to abandon transportation authorization for direct sales to Dixie Lime and Rock Wool Company and Pelham Lime Company. It is stated that these are the only direct sale customers on the Pelham Line, and they have terminated their plant operations.

It is proposed that Applicant be permitted to abandon, remove and relocate its Pelham Meter Station and to construct, and operate a new meter station in the vicinity of mile post 23.332 on Applicant's Calera Line.

Applicant further requests authority to abandon and remove the portion of the Pelham Line in the right-of-way of its Calera Line, not sold to Alagasco. It is stated that these facilities are no longer necessary.

It is further stated that approval of Applicant's proposals would not result in termination of service to Alagasco nor would they reduce the salable capacity of Applicant's system.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 21, 1980, 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 157.70). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if

the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-51 Filed 1-2-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP80-137]

United Gas Pipe Line Co.; Application

December 27, 1979.

Take notice that on December 14, 1979, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP80-137 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's regulations under the Natural Gas Policy Act of 1978 (NGPA) for a certificate of public convenience and necessity for blanket authorization to transport natural gas on behalf of other interstate pipeline companies, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests blanket authorization to transport natural gas for other interstate pipeline companies for periods of up to two years. It states it would comply with § 284.221(d) of the Commission's regulations under the NGPA.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 10, 1980, filed 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.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-64 Filed 1-2-80; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER80-139]

Western Massachusetts Electric Co.; Amendment to Purchase Agreement

December 27, 1979.

The following Company submits:
Take notice that on December 17, 1979, Western Massachusetts Electric Company (WMECO) tendered for filing a proposed Amendment to Purchase Agreement With Respect to Various Gas Turbine Units (Amendment) dated February 16, 1979 between (1) WMECO, and (2) Reading Municipal Light Department (Reading).

WMECO states that the Amendment provides for a change of percentage of capability available to Reading from Silver Lake Unit Nos. 10, 11, 12 and 13, due to the rerating of Silver Lake Unit No. 11 to zero capacity as of March 1, 1979. WMECO, therefore, requests that the Commission permit the Amendment filed herewith to become effective on March 1, 1979.

WMECO states that copies of this rate schedule have been mailed or delivered to WMECO, West Springfield, Massachusetts and Reading, Reading, Massachusetts.

WMECO also states that no facilities are to be installed or modified in order to supply the service to be furnished under the Amendment.

WMECO further states that the filing is in accordance with Part 35 of the Commission's Regulations.

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 Procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 16, 1980. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-59 Filed 1-2-80; 8:45 am]
BILLING CODE 6450-01-M

[Project No. 2131]

Wisconsin Electric Power Co.; Application for Approval of a Change in Land Rights

December 27, 1979.

Take notice that on September 12, 1979, Wisconsin Electric Power Company, Licensee of the Kingsford hydroelectric project, FERC No. 2131, filed an application for Commission approval of a change in land rights at the project. The project is located on the Menominee River in Florence County, Wisconsin. Correspondence should be addressed to: J. L. Ellefson, Division Manager, Wisconsin Electric Power Company, 807 South Oneida Street, Appleton, Wisconsin 54913.

Wisconsin Electric Power Company wishes to sell 9.62 acres of project land to the State of Wisconsin in order to permit the construction of a new bridge and its approaches to carry U.S. Highway 2 across the Menominee River. The new bridge, a 44 foot wide, 3-span, 315 foot long prestressed concrete structure, would be constructed adjacent to an existing 46-year-old bridge and would be located about 5 miles east of the town of Spread Eagle, Wisconsin. The old bridge, which is rapidly deteriorating, would be removed following completion of the new bridge. The lands to be conveyed are adjacent to the right-of-way for the existing bridge. The licensee would retain flowage rights on the land. Minimum clearance of the new bridge above the river would be 23 feet.

Comments, Protests, or Petitions to Intervene—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 and § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments 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 comments, protest, or petition to intervene must be filed on or before February 11, 1980. The Commission's address is: 825 North 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. 80-57 Filed 1-2-80; 8:45 am]
BILLING CODE 6450-01-M

Office of the Secretary

National Petroleum Council; Renewal

This notice is published in accordance with the provisions of Section 7 of the Office of Management and Budget Circular A-63, as amended. Pursuant to Section 14 of the Federal Advisory Committee Act, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the National Petroleum Council has been renewed for a 24-month period ending on December 31, 1981.

The renewal of the National Petroleum Council has been determined necessary and in the public interest. The Council will operate in accordance with the Provisions of the Federal Advisory Committee Act (Pub. L. 92-463), the Department of Energy Organization Act (Pub. L. 95-91), OMB Circular A-63 (Revised), and other directives and instructions issued in implementation of those Acts.

Further information regarding this Council may be obtained from the Department of Energy Advisory Committee Management Office (202-252-5187).

Issued at Washington, D.C. on December 26, 1979.

Charles W. Duncan, Jr.,
Secretary.

[FR Doc. 80-202 Filed 1-2-80; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1383-4]

Notice of Intent To Prepare a Draft Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of Intent to prepare a draft environmental impact statement (EIS).

PURPOSE: To fulfill the requirements of section 102(2)(C) of the National Environmental Policy Act, EPA has identified a need to prepare an EIS and therefore issues this Notice of Intent pursuant to 40 CFR 1501.7.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Taylor, Montana Office, U.S. Environmental Protection Agency, Region VIII, Federal Building, Drawer 10096, 301 South Park, Helena, Montana 59601.

Telephone: (Commercial) 406-449-5432 (FTS) 8-585-5432.

SUMMARY: 1. Description of proposed action: The EPA proposes the acceptance of a facilities plan and the issuance of grant monies pursuant to section 201 of the Clean Water Act. The proposed construction of wastewater treatment facilities is located in the Missoula area, Missoula County, Southwestern Montana.

2. Public and Private Participation in the EIS Process: Full participation by interested Federal, State and local agencies as well as other interested private organizations and parties is invited. The public will be involved to the maximum extent possible and is encouraged to participate in the planning process.

3. Scoping: The EPA Region VIII will be holding meetings to discuss the alternatives relating to the scope of the draft EIS. For additional information, contact the person indicated above. Public notice will be given prior to all subsequent meetings.

4. Timing: EPA estimates the draft EIS will be available for public review and comment around July 1980.

5. Requests for Copies of Draft EIS: All interested parties are encouraged to submit their name and address to the person indicated above for inclusion on

the distribution list for the draft EIS and related public notices.

William N. Hedeman,

Director, Office of Environmental Review.

Dated: December 26, 1979.

[FR Doc. 80-101 Filed 1-2-80; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

Radio Technical Commission for Marine Services; Meetings

In accordance with Pub. L. 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Note.—Because of the holiday season, it has not been possible to confirm the room assignments. In the event that the listed room is not available, the alternate location will be posted at the room numbers listed in the meeting notices.

Executive Committee Meeting. Notice of January Meeting, Thursday, January 17, 1980—9:30 a.m., Conference Room 7200, Nassif (D.O.T.) Building, 400 Seventh Street, S.W., at D Street, Washington, D.C.

Agenda

1. Administrative Matters.
2. Acceptance of FY-1979 Audit Report.
3. Report of Nominating Committee for RTCM Officers.

Special Committee No. 74, "Digital Selective Calling," Notice of 9th Meeting, Tuesday, January 22, 1980—9:30 a.m., Wednesday, January 23, 1980—8:00 a.m., (Full-day meetings), Conference Room 7202/7204, Nassif (DOT) Building, 400 Seventh Street, S.W. (at D Street), Washington, D.C.

Agenda

January 22, 1980

1. Call to Order; Chairman's Report.
2. Administrative Matters.
3. Meeting of Ship Station Working Group and Coast Station Working Group.

January 23, 1980

1. Administrative Matters.
2. Working Group Reports.

CDR J.G. Williams, Chairman, SC-74, U.S. Coast Guard Headquarters, Washington, D.C., Phone: (202) 426-1345.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: (202) 632-6490).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-129 Filed 1-2-80; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

United States Fire Administration

Board of Visitors for the National Fire 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 committee meeting:

Name: Board of Visitors for the National Fire Academy (Board).

Date of Meeting: January 23, 1980.

Place: Hilton Hotel, New Orleans, Louisiana.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: Preparation for Annual Report Submission and Update of Activities on the National Fire Academy.

The meeting will be open to the public with approximately 30 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact Ms. Denise Fair, National Fire Academy, Route 1, Box 10A, Emmitsburg, Maryland 21727 (301/447-6117) on or before January 16, 1980.

Minutes of the meeting will be prepared by the Board and will be available for public viewing at the National Fire Academy, Emmitsburg, Maryland. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: December 26, 1979.

Gordon Vickery,

Administrator, United States Fire Administration.

[FR Doc. 80-39 Filed 1-2-80; 8:45 am]

BILLING CODE 6718-04-M

FEDERAL MARITIME COMMISSION

[Docket No. 79-103; Agreements Nos. LM-28, et al.]

International Longshoremen's and Warehousemen's Union (ILWU) and the Pacific Maritime Association; Order of Conditional Approval and Investigation and Hearing

Agreements between the International Longshoremen's and Warehousemen's Union (ILWU) and the Pacific Maritime Association (PMA) have been filed for review under section 15 of the Shipping Act, 1916. In addition, an agreement between the members of PMA has been filed for approval pursuant to section 15.

The ILWU-PMA Agreement concerning longshoremen and clerks has been assigned Federal Maritime Commission Agreement No. LM-4, as amended and supplemented; the Agreement concerning watchmen has been assigned Federal Maritime Commission Agreement No. LM-23, as amended and supplemented; and the Agreement concerning walking bosses and foremen has been assigned Federal Maritime Commission Agreement No. LM-24, as amended.

The agreement between the members of the PMA providing for an assessment method to supersede that utilized under Agreements Nos. LM-4, LM-23, and LM-24, as well as the assessment methods heretofore utilized under Agreements Nos. T-2635 and LM-7¹ has been assigned Federal Maritime Commission Agreement No. LM-28.

PMA has requested that Agreements Nos. LM-4, LM-23 and LM-24 be exempted from the filing and approval requirements of section 15 of the Shipping Act, 1916 (hereinafter "section 15"), in accordance with our *Interim Policy Statement—Collective Bargaining Agreements* (46 CFR 530.9), issued June 12, 1978, and that Agreement No. LM-28 be granted interim approval.

Background

On July 27, 1978, we granted interim approval to sections 21.23 through 21.25 of Agreement No. LM-4 (which relate to assessments on LASH cargo handled at non-ILWU facilities), and we issued the balance of that Agreement, as amended and supplemented, a temporary exemption. On August 4, 1978, we granted temporary exemptions to Agreements Nos. LM-4-A-1, LM-4-A-2, LM-4-B-1, LM-4-C-1. On October 3, 1978, we granted Agreement No. LM-23, as amended and supplemented, a 100-day temporary exemption, and on October 18, 1978, Agreement No. LM-24, as amended, received a 100-day exemption.

The above described actions were taken, pending Federal Register notice; opportunity for comment; and subsequent determinations by the Commission that the Agreements (or any specific provisions thereof) should be permanently exempted from the filing and approval requirements of section 15; or should be approved, disapproved, or

¹ Agreement No. T-2635, which provides for the finding of the ILWU-PMA longshore pay guarantee plan, was approved by the Commission on June 25, 1975. Agreement No. LM-7 which provides for the funding of the ILWU-PMA voluntary travel system, was approved by the Commission on September 13, 1978.

modified pursuant to that section.² Agreement No. LM-28 was filed for interim approval on November 1, 1978.

Protests

Two requests for investigation and hearing on the matter of the man-hour fringe benefit funding method under Agreements Nos. LM-4, LM-23 and LM-24, together with other issues, have been filed.³ The requests were filed by: (1) the Master Contracting Stevedore Association of the Pacific Coast, Inc. (MCSA);⁴ and (2) Standard Fruit and Steamship Co. (Standard), United Brands, Inc. (United), and Salen Shipping Agencies, Inc. (Salen) (collectively Standard, *et al.*).⁵ Statements on the matter of Agreement No. LM-28 have been filed by MCSA, Standard, *et al.*, and the ILWU. Standard, *et al.*, have also filed complaints seeking reparations arising from the man-hour assessments under Agreements Nos. LM-4, LM-23 and LM-24 (FMC Dockets Nos. 78-39 and 78-40),⁶ and have requested that any investigation and hearing on this matter be consolidated with the complaint proceedings. A statement in support of Commission exemption of Agreements Nos. LM-4, LM-23 and LM-24 has been filed on behalf of the Sailors' Union of the Pacific.

MCSA argues that the man-hour assessment method of funding the ILWU-PMA Pension Plan (section 4.01 of Agreement No. LM-4-A) is not fair and equitable and may, under modern-

day shipping and West Coast longshore and equipment conditions, increasingly aggravate discriminatory treatment between various classes of vessel operations, cargoes and shippers. MCSA contends that employee benefit plans, and the ILWU-PMA Pension Plan in particular, should be funded upon the basis of the number of tons worked, rather than the number of man-hours worked, by each employer-contributor to the plan.

The method of amortizing the Pension Plan's large unfunded liability is one of the root causes of MCSA's objection to the manner in which the plan is funded.⁷ Under ERISA, MCSA members are direct contributors to the Pension Plan, as contrasted to the carriers, who are not direct employers of ILWU longshoremen. As the number of active longshoremen and man-hours worked continues to decrease, MCSA members will be faced with the prospect of continually mounting man-hour assessments in order to fund the plan, a matter of concern to them due to the plan's large unfunded liability and their contingent liabilities under ERISA. MCSA wishes to amortize this liability in the shortest time legally possible, i.e., 10 years. However, according to MCSA, the carrier members of PMA wish to amortize this liability over the longest time available, i.e., 40 years, and when this matter was placed before a special PMA meeting, the 40-year term for amortizing the unfunded liability was approved.

MCSA does not, however, oppose PMA's request that Agreement No. LM-28 be implemented on an interim basis, provided that MCSA preserves its right to contest the modified assessment formula thereunder.

Standard, *et al.*, protest what they allege to be the unlawful and discriminatory burden of PMA assessments which are placed upon them as compared to others under the Agreements. In support of their position, Standard, *et al.*, state that the handling of fruit at their terminals is a modified, labor intensive, break-bulk operation in comparison to the terminal operations of containerized vessel operators who, they claim, control negotiations with the ILWU and the mode of assessing PMA members to fund fringe benefits. Standard, *et al.*, estimate that PMA's man-hour funding method results in an assessment per ton against Standard of

approximately \$5.84 while the assessment against container operators is less than \$0.46 per ton. Standard, *et al.*, allege that further unfairness results from the disproportionate assignment of casual, rather than regular, ILWU labor to their operations in comparison to the proportion assigned to containerized operations. In this regard, they state that even though the productivity of casual labor is below that of regular labor and casual labor does not receive the benefits funded, casual labor assessments are the same as for regular labor.

Standard, *et al.*, however, urge interim approval for Agreement No. LM-28 (subject to retroactive adjustments) prior to December 31, 1979. Agreement No. LM-28 is estimated to reduce the allegedly excessive assessment burden on them by over \$300,000 per year and, if the agreement is not approved by year's end, the delay will cause substantial losses to these companies, as the agreement could not then be put into effect until April 1, 1980, at the earliest.

PMA argues that both protests against Agreements Nos. LM-4, LM-23 and LM-24 fail because they do not address the threshold issues of whether the ILWU-PMA Agreements in question are labor exempt from the filing and approval requirements of section 15. PMA submits that the man-hour method of funding fringe benefits meets every criterion for labor exemption. It compares man-hour fringe benefit funding to man-hour based wage costs and suggests that provisions for funding benefits should be exempt just as are wage provisions.

It is PMA's position that the issues raised by MCSA in connection with the amortization of the Pension Plan's unfunded liability are not within the Commission's jurisdiction. With reference to MCSA's objection to the control of PMA and the labor bargaining position that PMA takes, PMA states that this is also an intra-bargaining unit objection by employers who have the right, insofar as PMA is concerned, to leave PMA if they so choose. In any event, PMA believes that there are no infirmities in its voting structure on labor policy or Shipping Act grounds.

With respect to Standard's and United's allegations of disproportionate assignment of casual ILWU labor to their operations, PMA states that, if this were indeed true, it would be the result of operational practice and not the result of any provision in a PMA-ILWU agreement. PMA contends that this is not an issue in determining labor exemption or approval of an agreement. Further, PMA argues that any disadvantages to Standard, *et al.*, caused by the assessment of casual

² On December 27, 1978, the Commission granted interim approval to the fringe benefit assessment provisions of Agreements Nos. LM-23 and LM-24, subject to retroactive adjustments in the event that they are ultimately determined to be subject to the filing and approval requirements of section 15, and extended the duration of the temporary exemption of the balance of Agreements Nos. LM-23, as amended and supplemented, and LM-24, as amended.

³ The protests have been effectively modified to include related provisions in Agreement No. LM-28 as well.

⁴ MCSA is a trade association of stevedore and terminal firms operating at ports in the States of California, Oregon and Washington. The group states it is concerned with all matters which affect the economic welfare of its members, with the exception of the negotiation, administration and enforcement of labor agreements with the ILWU, which is the province of the PMA. All members of MCSA are also members of PMA.

⁵ Standard and United operate banana terminals at the Ports of Long Beach and Wilmington, California. They state that they employ Metropolitan Stevedore Company (Metropolitan) to provide stevedoring services at their terminals under contracts which provide that all labor costs, including assessments, are passed on dollar-for-dollar to Standard and United. Salen states that it handles the export of approximately 16 million cases of citrus fruit annually through the Port of Long Beach, California.

⁶ The complaints have been amended to include Agreement No. LM-28.

⁷ MCSA estimates this liability to be presently over \$500 million, exposing MCSA members to liabilities under the Employment Retirement Income Security Act of 1974 (ERISA) of up to 30 percent of their individual net worth in the event that the Pension Plan terminates.

labor are offset by special advantages given to Standard, *et al.*

With regard to the request of Standard, *et al.*, that any proceeding instituted in this matter be consolidated with Dockets Nos. 78-39 and 78-40, PMA argues that the issues in the protest are dissimilar to those in Dockets Nos. 78-39 and 78-40, and therefore the proceedings should not be consolidated. PMA states that the issue before the Commission as to the protest is the question of whether the labor exemption was correctly applied to Agreements Nos. LM-4, LM-23 and LM-24. If the Agreements are labor exempt from section 15, the Agreements themselves are outside of the Commission's jurisdiction to approve or disapprove and the questions of whether the Agreements are reasonable or unreasonable, discriminatory or nondiscriminatory, are therefore not matters for the Commission to decide. However, the complaints in Dockets Nos. 78-39 and 78-40 raise questions of whether PMA's actions or practices are in violation of the provisions of sections 16 and 17, thereby possibly giving a right to reparations. PMA states that these are entirely different issues from whether the Agreements are labor exempt from the filing and approval requirements of section 15.

PMA states that the method of assessing contributions to the ILWU-PMA employee benefit plans under Agreement No. LM-28 substantially alters the prior methods of contributions in a number of respects. The agreement is based on an exhaustive study of PMA assessment matters by an independent consultant, and PMA believes that it properly takes into consideration the benefits and burdens attributable to each category of cargo. PMA characterizes the agreement as a unified approach which is sensible, operational and fully supportable by the reasoning of the independent consultant, and as responding in a major way to past criticisms in a matter that should eliminate or substantially reduce them.

Counsel for ILWU (which is not a signatory to Agreement No. LM-28 at this point) has filed a statement on Agreement No. LM-28. The statement relates that the ILWU is of the view that the method of funding of all ILWU-PMA Employee Benefit programs is a mandatory subject of bargaining and, during the last round of negotiations with the PMA, it demanded a shift from a man-hour basis to a tonnage basis in the assessments used to finance the benefit programs. To the extent that Agreement No. LM-28 constitutes a modification of PMA's past assessment

practice and represents a shift, albeit an incomplete one, toward the ILWU position that the benefit programs should be financed 100 percent by a tonnage assessment, ILWU agrees to an expedited processing of the agreement and to its interim approval. This position is stated, however, as specifically without prejudice to its position that the benefit programs should be funded 100 percent by a tonnage assessment and the ILWU advises, unless the issue is favorably resolved before then, it will undertake further collective bargaining on this issue during the next round of negotiations.

Discussion

With the filing of Agreement No. LM-28, the primary issues before the Commission for resolution in this matter⁸ are: (a) whether the "man-hour" fringe benefit funding provisions under Agreements Nos. LM-23 and LM-24⁹ should be considered labor exempt under section 15 and, if not, whether retroactive adjustments are necessary to conform the provisions to the standards of the Act pursuant to the terms of the Commission's December 27, 1978, order; and (b) whether Agreement No. LM-28 should be approved, modified or disapproved pursuant to section 15, and whether retroactive adjustments are necessary to conform the assessment method to the standards of the Act.

While the criteria for the section 15 labor exemption were established in *United Stevedoring Corp. v. Boston Shipping Association*, 16 F.M.C. 7, 12-13 (1972), hereinafter *BSA*, elaborated on in *New York Shipping Association*, 16 F.M.C. 381, 390 (1973), and recently endorsed by the Supreme Court in *Federal Maritime Commission v. Pacific Maritime Association*, 435 U.S. 40 (1978), the application of this exemption is still evolving. Most collectively-bargained maritime fringe benefit programs are funded on a straight man-hour basis. The issue of whether, in the "final analysis" discussed in *BSA*, *supra*, this method of assessment invariably has a competitive impact which renders it ineligible for labor exemption, even if all other *BSA* criteria are met, has not been settled *per se* by specific Commission or judicial ruling. This would then appear to be the threshold issue with regard to Agreements Nos. LM-23 and LM-24, in view of the Commission's December 27,

1978, order on those agreements and one that we cannot resolve based on the parties' submissions currently before the Commission. Therefore, we are setting down this issue, within the context of Agreements Nos. LM-23 and LM-24, and any subsequent issue, with regard to appropriate retroactive adjustments under Agreements Nos. LM-23 and LM-24, for an investigation and hearing.

While the issue of the labor exempt status of Agreement No. LM-28 is not before the Commission, the issue of the agreement's approvability under section 15 is. While protestants to Agreements Nos. LM-4, LM-23 and LM-24 do not oppose interim approval of Agreement No. LM-28, subject to retroactive adjustments, it is alleged that the modified assessment method under the agreement does not provide adequate relief. Therefore, we are setting down the issue of whether Agreement No. LM-28 should be approved, modified or disapproved for an investigation and hearing.

We will not specifically make the issues of assignment of casual labor or amortization of unfunded liability part of this proceeding as protestants requested, since these matters are not set forth in any of the agreements presently before the Commission.

While certain of the issues before the Commission in Dockets Nos. 78-39 and 78-40 go beyond those issues in the investigation and hearing ordered herein, these issues relate to the section 15 approval and the possible adjustments of the agreements at issue herein. Therefore, we will neither consolidate nor sever these proceedings at this time but rather we are directing that because they are legally and factually related this proceeding and the complaint proceedings in Dockets Nos. 78-39 and 78-40 be heard together to the extent feasible.

Pending the outcome of this proceeding, we believe that public interest and labor policy considerations require interim approval of Agreement No. LM-28 subject to whatever retroactive adjustments as may be determined necessary and appropriate. This type of approval has long been recognized as the proper procedure to follow in cases where labor-related assessment methods have been set down for investigation and hearing, inasmuch as conditional approval maintains maritime labor peace by authorizing employers' uninterrupted funding of fringe benefit programs agreed to by unions as a condition of employment and will adequately protect all interests which may be adversely affected by assessment allocations

⁸By separate Order, the Commission has approved sections 21.23 through 21.25 of Agreement No. LM-4 and, with the exception of the assessment provisions of Agreements Nos. LM-4, LM-23 and LM-24, exempted the balance of the agreements.

⁹Relevant sections of the Agreements include LM-23 §§ 10, 11, 12; LM-23A, § 2 and LM-24, §§ 7, 20, 21.

which ultimately may be found unlawful.

Also, in view of the fact that the interim approval conferred herein to Agreement No. LM-28 will result in an effective date of January 1, 1980, for that agreement, the temporary exemption heretofore granted to the assessment provisions of Agreement No. LM-4 and the interim approval, subject to retroactive adjustments, heretofore granted to the assessment provisions of Agreements Nos. LM-23, as amended and supplemented and LM-24, as amended, will be extended to December 31, 1979, in the interests of avoiding any unnecessary interruption in the PMA assessment process.

Now, therefore *It is ordered*, That pursuant to sections 15 and 22 of the Shipping Act, 1916, an investigation and hearing be instituted to determine: (1) whether the "man-hour" fringe benefit funding provisions under Agreements Nos. LM-23, as amended and supplemented, and LM-24, as amended, should be considered labor-exempt from the filing and approval requirements of section 15; and if not whether and to what extent retroactive adjustments are necessary and appropriate pursuant to our Order of December 27, 1979; and (2) whether Agreement No. LM-28 should be approved, disapproved or modified pursuant to section 15 subject to such retroactive adjustments as are necessary and appropriate;

It is further ordered, That Agreement No. LM-28 is granted interim approval pursuant to section 15, pending the outcome of the proceeding ordered herein, subject to such retroactive adjustments as may be necessary and appropriate;

It is further ordered, That the duration of the temporary exemption heretofore accorded to the fringe benefit funding provisions under Agreement No. LM-4, and the interim approval heretofore granted (subject to retroactive adjustments as necessary and appropriate) to the fringe benefit funding provisions under Agreements Nos. LM-23, as amended and supplemented, and LM-24, as amended, is hereby extended to December 31, 1979;

It is further ordered, That the Pacific Maritime Association and its members, other than those members also members of the Master Contracting Stevedore Association, listed on Appendix A, be made proponents in this proceeding; that in accordance with Rule 42 of the Commission's Rules of Practice and Procedure (46 CFR 502.42), Hearing Counsel be made a party; and that the Master Contracting Stevedore Association, Standard Fruit and Steamship Co., United Brands, Inc. and

Salen Shipping Agencies, Inc. be made protestants in this proceeding;

It is further ordered, That a public hearing be held in this proceeding and that the matter be assigned for hearing and decision by an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Presiding Administrative Law Judge.

The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That notice of this Order be published in the Federal Register, and a copy be served upon all parties of record;

It is further ordered, That any person other than parties of record having an interest and desiring to participate in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72);

It is further ordered, That all future notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be mailed directly to all parties of record; and

It is further ordered, That, except as provided in Rules 159 and 201(a) of the Commission's Rules of Practice and Procedure (46 CFR 502.159, 46 CFR 502.201(a)), all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure (46 CFR 502.118), as well as being mailed directly to all parties of record.

By the Commission.
Francis C. Hurney,
Secretary.

[FR Doc. 80-108 Filed 1-2-80; 8:45 am]
BILLING CODE 6730-01-M

Agreement Filed; Correction

Agreement No. 8090-17.
Filing Party: Jeffrey F. Lawrence, Esq., Billig, Sher & Jones, P.C., Suite 300, 2033 K Street, N.W., Washington, D.C. 20006.
Summary: Agreement No. 8090-17, appeared in the Federal Register on December 26, 1979, page 76406, and was listed incorrectly. It should have read "Agreement No. 8090-18, entered into by the member lines of the Mediterranean North

Pacific Coast Freight Conference, would amend the scope of the basic agreement for the purpose of authorizing intermodal (minibridge) services via U.S. Atlantic and Gulf Coast ports."

By Order of the Federal Maritime Commission.

Dated: December 28, 1979.

Francis C. Hurney,

Secretary.

[FR Doc. 80-109 Filed 1-2-80; 8:45 am]

BILLING CODE 6730-01-M

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before January 23, 1980. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No. 10140-12.
Filing Party: Howard A. Levy, Esq., Suite 727, 17 Battery Place, New York, New York 10004.

Summary: Agreement No. 10140-12 modifies the Gulf/United Kingdom Rate Agreement to provide that the agreement shall remain in effect until terminated by the parties or until final adjudication in Case No. 79-1299 in the U.S. Court of Appeals, D.C. Circuit. It further provides that if the final adjudication of the above described proceeding serves to affirm the Commission's

jurisdiction with respect to this agreement, it shall continue in effect until the Commission acts on an application to further extend its term, provided that such application is filed no later than ninety days after the service of the Order constituting the final adjudication in Case No. 79-1299.

By Order of the Federal Maritime Commission.

Dated: December 27, 1979

Francis C. Hurney,
Secretary

[FR Doc. 80-110 Filed 1-2-80; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Ada Banc Shares, Inc.; Formation of Bank Holding Company

Ada Banc Shares, Inc., Ada, Minnesota, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 93.9 percent of the voting shares of Ada National Bank, Ada, Minnesota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than January 28, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 27, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 80-70 Filed 1-2-80; 8:45 am]

BILLING CODE 6210-01-M

American Bancshares, Inc.; Formation of Bank Holding Company

American Bancshares, Inc., Monroe, Louisiana, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of American Bank and Trust Company in Monroe, Inc., Monroe, Louisiana. The factors that are considered in action on the

application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 28, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 26, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 80-73 Filed 1-2-80; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Notice of Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in

writing and, except as noted, received by the appropriate Federal Reserve Bank not later than January 28, 1980.

Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045;

Manufacturers Hanover Corporation, New York, New York (installment sales finance activities and insurance activities; New Jersey); to engage, through its subsidiary, Ritter Finance Company, Inc., of New Jersey, in purchasing installment sales finance contracts, and in selling credit life insurances, accident and health insurance, and property damage and liability insurance directly related to such finance activity. These activities would be conducted from the offices of Ritter Finance Company, Inc., of New Jersey located in Bridgeton, Flemington, Berlin, Haddonfield, Camden, Hammonton, Cinnaminson, Lambertville, Cherry Hill, Mantua, Moorestown, Sicklerville, Pleasantville, Vineland, Penns Grove, Willingboro, and Riverside, New Jersey and serving the following counties as well as portions of contiguous counties; Camden, Cumberland, Burlington, Hunterdon, Atlantic, Gloucester and Salem Counties.

Federal Reserve Bank of San Francisco, (Henry B. Jamison, Vice President) 400 Sansome Street, San Francisco, California 94120;

Crocker National Corporation, San Francisco, California (mortgage banking and real property leasing activities; throughout United States); to engage, through its subsidiary, Crocker Mortgage Company, Inc., in making, acquiring and servicing loans and other extensions of credit secured by real estate mortgages; issuing, acquiring and transferring mortgage-backed pass-through certificates or other similar instruments; leasing real property in accordance with the Boards' Regulation Y; and acting as agent, broker or advisor in connection with the aforementioned activities. These activities would be conducted from offices in Salt Lake City, Utah, Phoenix, Arizona, San Bernardino, California and Fresno, California, serving all of the United States. Comments on this application must be received by January 22, 1980.

Other Federal Reserve Banks: None.

Board of Governors of the Federal Reserve System, December 27, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 80-77 Filed 1-2-80; 8:45 am]

BILLING CODE 6210-01-M

First Financial Bancorporation, Inc.; Formation of Bank Holding Company

First Financial Bancorporation, Inc., Waco, Texas, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of First Bank & Trust, Bryan, Texas and Sabine Bank, Port Arthur, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

First Financial Bancorporation, Inc., Waco, Texas, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of First Bryan Corporation, Bryan, Texas.

Applicant states that the proposed subsidiary would perform the activities of leasing personal property to First Bank & Trust, Bryan, Texas and to others according to the Board's Regulation Y. These activities would be performed from offices of Applicant's subsidiary in Bryan, Texas, and the geographic area to be served is Brazos County, Texas. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefit to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas.

Any views of requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 21, 1980.

Board of Governors of the Federal Reserve System, December 26, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 80-72 Filed 1-2-80; 8:45 am]

BILLING CODE 6210-01-M

Hawkeye Bancorporation; Acquisition of Bank

Hawkeye Bancorporation, Des Moines, Iowa, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of Hawkeye State Bank, Iowa City, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 28, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 26, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 80-76 Filed 1-2-80; 8:45 am]

BILLING CODE 6210-01-M

Laurens Bancorp. Ltd.; Formation of Bank Holding Company

Laurens Bancorp. Ltd., Laurens, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 81.45 percent or more of the voting shares of Laurens State Bank, Laurens, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 28, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of

fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 27, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 80-71 Filed 1-2-80; 8:45 am]

BILLING CODE 6210-01-M

Royall Financial Corp.; Formation of Bank Holding Company

Royall Financial Corporation, Palestine, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The Royall National Bank of Palestine, Palestine, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than January 24, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 26, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 80-74 Filed 1-2-80; 8:45 am]

BILLING CODE 6210-01-M

Security Financial Services, Inc.; Acquisition of Bank

Security Financial Services, Inc., Sheboygan, Wisconsin, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 88 percent or more of the voting shares of Eldorado State Bank, Eldorado, Wisconsin. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be

received not later than January 25, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 26, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[FR Doc. 80-75 Filed 1-2-80; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[D-79-2]

Delegation of Authority to the Secretary of Transportation

1. *Purpose.* This delegation continues in effect the authority delegated to the Secretary of Transportation by letter of June 28, 1978, from the Administrator of General Services, to perform all functions in connection with the leasing of 17,000 square feet of special purpose and related space at the Transportation Research Center of Ohio (TRCO), East Liberty, Ohio.

2. *Effective date.* This regulation is effective immediately.

3. Delegation.

a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, authority is hereby delegated to the Secretary of Transportation to perform all functions in connection with the leasing of approximately 17,000 square feet of special purpose and related space at the Transportation Research Center of Ohio (TRCO), East Liberty, Ohio.

b. This authority shall extend to leasing space under the authority in section 210(h)(1) of the above-cited act (40 U.S.C. 490(h)(1)) for a lease term not to extend beyond November 8, 1984, at which time the delegation shall expire.

c. The Secretary of Transportation may redelegate this authority to any official or employee of the Department of Transportation.

d. This authority shall be exercised in accordance with the applicable limitations and requirements of the above-cited act, section 322 of the Act of June 30, 1932 (40 U.S.C. 278a), as amended, other applicable statutes and regulations, and policies, procedures, and controls prescribed by the General Services Administration.

Dated: December 20, 1979.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 80-29 Filed 1-2-80; 8:45 am]

BILLING CODE 6820-23-M

[D-79-3]

Delegation of Leasing Authority to the Secretary of Defense

1. *Purpose.* This directive authorizes the reclassification of space for all military recruiting offices to special purpose and delegates authority to the Secretary of Defense for a 5-year period to lease this space for firm term leases of up to 5 years.

2. *Effective date.* This regulation is effective immediately.

3. Delegation.

a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, authority is hereby delegated to the Secretary of Defense to lease space in urban centers as defined in 41 CFR 101-18.102 for recruiting offices.

b. This authority shall extend to leasing space for firm term leases of up to 5 years and all military recruiting offices under authority contained in Section 210(h)(1) of the above-cited act.

c. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

d. This authority shall be exercised in accordance with the requirements of all applicable statutes and regulations and shall remain in force and effect not to extend beyond September 10, 1984.

Dated: December 20, 1979.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 80-30 Filed 1-2-80; 8:45 am]

BILLING CODE 6820-23-M

[F-79-6]

Delegation of Authority to the Secretary of Defense

1. *Purpose.* This delegation authorizes the Secretary of Defense to represent, in conjunction with the Administrator of General Services, the consumer interests of the executive agencies of the Federal Government in proceedings before the Federal Communications Commission involving a petition by the executive agencies to have the United States Government declared an unrestricted authorized user of the international satellite communications facilities and services of the Communications Satellite Corporation (Comsat).

2. *Effective date.* This delegation is effective immediately.

3. Delegation.

a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the Federal executive agencies before the Federal Communications Commission involving a petition of the executive agencies to have the United States Government declared an unrestricted authorized user of Comsat's international satellite communications facilities and services. The authority delegated to the Secretary of Defense shall be exercised concurrently with the Administrator of General Services.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

Dated: December 20, 1979.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 80-33 Filed 1-2-80; 8:45 am]

BILLING CODE 6820-25-M

[D-79-4]

Delegation of Authority to the Secretary of the Interior

1. *Purpose.* This delegation authorizes the Secretary of the Interior to perform all functions in connection with the leasing of 8,000 square feet of space and the land incidental to its use, located on tribal land in the city of Shawnee, Oklahoma, for use by the Bureau of Indian Affairs, Shawnee Agency Office; and reflects the authority granted by the Administrator of General Services to the Secretary of the Interior by letter of March 6, 1978.

2. *Effective date.* This delegation is effective immediately.

3. *Expiration date.* This delegation shall expire 10 years from the effective date of the lease covering the space to be leased or upon termination of the lease, whichever is earlier.

4. Delegation.

a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, authority is

hereby delegated to the Secretary of the Interior to perform all functions in connection with the leasing of approximately 8,000 square feet of space and land incidental to its use, located on tribal land in the city of Shawnee, Oklahoma, for use by the Bureau of Indian Affairs.

b. This delegation shall extend to leasing space under authority contained in section 210(h)(1) of the above-cited act (40 U.S.C. 490(h)(1)), for a firm period not to exceed 10 years.

c. The Secretary of the Interior may redelegate this authority to any official or employee of the Department of the Interior.

d. This authority shall be exercised in accordance with the limitations and requirements of the above-cited act, section 322 of the Act of June 30 1932 (40 U.S.C. 378a), as amended, other applicable statutes and regulations, and the policies, procedures, and controls prescribed by the General Services Administration.

Dated: December 21, 1979.

R.G. Freeman III,
Administrator of General Services.

[FR Doc. 80-31 Filed 1-2-80; 8:45 am]

BILLING CODE 6820-23-M

[D-79-5]

Delegation of Authority to the Secretary of the Interior

1. *Purpose.* This delegation authorizes the Secretary of the Interior to perform all functions in connections with the leasing of a special-purpose facility at the port of Redwood City, California.

2. *Effective date.* This regulation is effective immediately.

3. Delegation.

a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, authority is hereby delegated to the Secretary of the Interior to perform all functions in connection with the leasing of the land and pier site (6.028 acres) together with improvements at the Port of Redwood City, California.

b. This authority shall extend to leasing space under authority in section 210(h)(1) of the above-cited act (40 U.S.C. 490(h)(1)), for a period not to exceed 20-year lease term.

c. The Secretary of the Interior may redelegate this authority to any official or employee of the Department.

d. This authority shall be exercised in accordance with the applicable

limitations and requirements of the above-cited Act, section 322 of the Act of June 30 1932 (40 U.S.C. 278a), as amended, other applicable statutes and regulations, and the policies, procedures, and controls prescribed by the General Services Administration.

Dated: December 21, 1979.

R. G. Freeman III,
Administrator of General Services.

[FR Doc. 80-32 Filed 1-2-80; 8:45 am]

BILLING CODE 6820-23-M

[Intervention Notice 195]

D.C. Public Service Commission and Chesapeake and Potomac Telephone Co.; Proposed Intervention in Rate Increase Proceeding

The General Services Administration seeks to intervene in a proceeding before the D.C. Public Service Commission concerning the application of the Chesapeake and Potomac Telephone Company for an increase in its annual telephone rates. GSA represents the interests of the executive agencies of the U.S. Government as users of utility services.

Persons desiring to make inquiries to GSA concerning this case should submit them in writing to Spence W. Perry, Assistant General Counsel, Regulatory Law Division, General Services Administration, 18th & F Streets, N.W., Washington, DC (mailing address: General Services Administration (LT), Washington, DC 20405), telephone 202-566-0750, on or before February 4, 1980, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding.

(Section 201(a)(4), Federal Property and Administrative Services Act, 40 U.S.C. 481(a)(4))

Dated: December 19, 1979.

R. G. Freeman III,
Administrator of General Services.

[FR Doc. 80-28 Filed 1-2-80; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

Commission on the Review of the Federal Impact Aid Program

AGENCY: Commission on the Review of the Federal Impact Aid Program.

ACTION: Notice of hearings.

SUMMARY: Notice is hereby given that the Commission on the Review of the Federal Impact Aid Program will hold hearings for the purpose of gathering evidence on the operation and administration of the program authorized by Pub. L. 874, Eighty-first Congress. At the hearings, the Commission is to take evidence from the Department of Health, Education, and Welfare and representatives of local educational agencies in Delaware, Maryland, North Carolina, Pennsylvania, Virginia, and West Virginia. The hearings will be open to the general public, and all interested persons are invited to attend. Those interested in presenting their views should submit a request to testify including: the person testifying, their affiliation, their organization's address and telephone number, the subject matter of testimony, preferred time of day for testifying, and need for an English translator or a qualified interpreter and/or signer for the deaf. The request should be received by the Commission no later than January 15, 1980. Those unable to attend the hearings who wish to submit written testimony may do so by forwarding the text to the Commission no later than January 31, 1980. Notice of the hearings is given in accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix 1).

DATE: January 31, 1980 and February 1, 1980. The Commission will meet at 9:00 a.m. and continue until business is completed.

ADDRESS: NASA Auditorium, Room 6104, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Richard Dallas Smith, Executive Director, Commission on the Review of the Federal Impact Aid Program, 1632 M Street, N.W., Suite 837, Washington, D.C. 20036.

AUTHORITY AND FUNCTION: The Commission on the Review of the Federal Impact Aid Program is established under section 1015 of the Education Amendments of 1978 (Pub. L. 95-961). The Commission is to conduct a review and evaluation of the administration and operation of the Impact Aid Program, authorized under the Act of September 30, 1950, (Pub. L. 874, 81st Congress), and report its recommendations on that program to the President and Congress not later than December 1, 1980. Such recommendations are to include

proposed legislation to accomplish the recommendations. Pub. L. 874 requires that the Commissioner make payments to the local educational agencies in accordance with a formula designed to compensate such agencies for the financial burden carried by them by reason of Federal activities—the loss of revenue because of the Federal ownership of real property and provision of education services for federally connected children—or by reason of sudden or substantial increases in the school attendance resulting from Federal activities.

RECORDS: Records of all proceedings of the Commission will be kept in accordance with law and will be available for inspection by the public at the offices of the Commission, located at 1832 M Street, N.W., Suite 837, Washington, D.C. 20036.

Signed at Washington, D.C. on the 28th day of December, 1979.

Richard Dallas Smith,

Executive Director, Commission on the Review of the Federal Impact Aid Program.

[FR Doc. 80-126 Filed 1-2-80; 8:45 am]

BILLING CODE 4110-02-M

Health Care Financing Administration

Statewide Professional Standards Review Council of Louisiana

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Request for Nominations for Public Member Positions on the Council.

SUMMARY: Nominations are being accepted for public member positions on the Louisiana Statewide Professional Standards Review Council. A Statewide Council is being established because there are now four Professional Standards Review Organizations (PSROs) in Louisiana.

PSROs review medical care services paid for under the Medicare, Medicaid, and Maternal and Child Health and Crippled Children Services programs in order to assure that those services are medically necessary, of acceptable quality, and provided at the appropriate level of care.

Statewide Councils are established in States that have three or more PSROs to: (1) help to coordinate PSRO activities and disseminate information among them; (2) assist the Secretary in the development of uniform data gathering and operating procedures; (3) review certain determinations and recommendations made by PSROs as a result of their reviews of medical care; (4) work with doctors and other

practitioners and with medical facilities so that they will assure that medical care provided is necessary, appropriate, and of acceptable quality; and (5) assist the Secretary to carry out several of her responsibilities, including the evaluation of the PSROs' review activities and the designation of replacement PSROs when necessary.

Nominees for public representatives are considered on the basis of whether they are:

(1) Knowledgeable about health care provided in Louisiana under the Medicare, Medicaid, and Maternal and Child Health and Crippled Children Services programs;

(2) Willing and able to represent the interests of the public; and

(3) Willing and able to discharge the responsibilities of membership in the Statewide Council.

Special consideration will be given to qualified individuals who are not affiliated with:

(1) Organizations and groups that must, under law, be represented on the Council (PSROs and physician groups); or

(2) Organizations and groups that are represented on the Council's Advisory Group (hospitals and other health care facilities and health care practitioners other than physicians).

Please include biographical data which demonstrates each nominee's qualifications, particularly their knowledge of health care in the State and their willingness and ability to represent the interests of the public. Persons or organizations may submit nominations to: J. D. Sconce, Regional Administrator, Health Care Financing Administration, 1200 Main Tower Building, Dallas, Texas 75202.

After consideration of all nominations received within 60 days of this Notice, including nominees of the Governor of Louisiana, the Secretary will appoint four public representatives, two of whom will have been recommended by the Governor.

DATE: Nominations accepted through March 3, 1980.

FOR FURTHER INFORMATION CONTACT: J. D. Sconce, Regional Administrator, Health Care Financing Administration, (214) 767-6427.

Dated: December 14, 1979.

Leonard D. Schaeffer,

Administrator, Health Care Financing Administration.

[FR Doc. 80-34 Filed 1-2-80; 8:45 am]

BILLING CODE 4110-35-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-79-967]

Centralization of Fee and Premium Billing

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: The Department intends to require all HUD approved mortgagees to centralize billing of all fees and premiums in conjunction with the new Mortgage Accounting System by January 1983.

COMMENTS: Any institution unable to comply with the above target date is requested to address comments to: James A. Schader, Office of Management, Room 9132, HUD, 451 7th Street, S.W., Washington, D.C. 20410.

COMMENTS DUE: February 15, 1980.

SUPPLEMENTARY INFORMATION: The dramatic reduction in computer processing and storage costs in the last few years have enabled many mortgage banking organizations and other institutions to centralize their cost accounting operations.

Issued at Washington, D.C., December 20, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 80-48 Filed 1-2-80; 8:45 am]

BILLING CODE 4210-01-M

Fish and Wildlife Service

Availability of a Draft Environmental Impact Statement on a Proposed National Wildlife Refuge on the Currituck Outer Banks, Currituck County, N.C.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Draft Environmental Impact Statement on a Proposed National Wildlife Refuge on the Currituck Outer Banks, Currituck County, N.C. is available for public review. Comments and suggestions are requested.

The Statement discusses a Proposed Action by the Fish and Wildlife Service to protect and preserve approximately 15,880 acres of Barrier Beach located in Currituck County, North Carolina.

Addressed in the Draft Environmental Impact Statement are alternatives each involving varying degrees of land acquisition. Acquired lands would become part of the National Wildlife Refuge System. The "No Action" alternative discusses environmental consequences if no Federal Action were initiated. Other alternatives range from acquisition of private conservation land, to acquisition of all tracts located between Corolla, North Carolina and the Virginia State line plus certain wetlands to the south. Discussed in the Environmental Impact Statement are the ecological impacts of present and proposed development along with the projected socioeconomic implications if acquisition were to occur. Also included is a discussion of management plans and mitigation measures to be initiated for each alternative.

DATES: The written comment period has been extended by the Fish and Wildlife Service to April 1, 1980. Public hearings will be held in several locations in Virginia and North Carolina in mid-February, 1980. Exact dates, times and locations of public hearings will be announced under separate Federal Register Notice in the near future.

ADDRESS: Comments should be addressed to:
Howard N. Larsen, Regional Director,
U.S. Fish and Wildlife Service, 1
Gateway Center, Suite 700, Newton
Corner, MA 02158.

FOR FURTHER INFORMATION CONTACT:
Mr. David Janes, U.S. Fish and Wildlife
Service, One Gateway Center, Suite 700,
Newton Corner, MA 02158, (617) 965-
5100 ext. 300.

Individuals wishing copies of the EIS for review should immediately contact the above individual. Copies have been sent to all agencies, organizations and individuals who participated in the scoping process and to all others who already requested copies.

SUPPLEMENTAL INFORMATION: David Janes is the primary author of this document. The FWS has prepared a Draft EIS on its proposal to establish a National Wildlife Refuge on the Currituck Outer Banks Currituck County, N.C.

The proposed action would involve fee purchase of all lands north of the Village of Corolla, North Carolina to the Virginia State Line and all wetlands south of Corolla to the Dare County Line. The action would involve 15,880 acres of beach and marshlands containing 223 improvements and 3,212 platted lots. Estimated acquisition cost would be \$100,000.

The Service has been actively involved in barrier island resource

protection for a number of years and now protects 179 miles of barrier beach on the Atlantic and Gulf Coasts in 31 National Wildlife Refuge Units.

Threats to the fish and wildlife resources of the Virginia-North Carolina outer banks have led the Service to propose protection through acquisition of certain areas of the Outer Banks. These threats have come about as a result of intensive efforts by development interests to develop the Currituck Outer Banks for recreational, second home, or retirement home use.

Service acquisition under the proposed action would provide initial benefits to the biological resource through preservation and protection. Subsequent benefits would accrue to the resource through Service management for species and habitat enhancement.

The environmental consequences of the proposed action and alternatives would, in general, be beneficial in terms of the biological and natural resources and adverse in terms of the human resource currently in residence on the Outer Banks.

The major alternative under consideration and analyzed in planning are:

1. The No Action Alternative which would not involve any Fish and Wildlife Service acquisition and would allow conditions to continue as they are today.

2. The Nature Conservancy Alternative which would involve Service acquisition of the Swan Island and Monkey Island Tracts of the Nature Conservancy along with private ownerships between the two tracts. These areas total 8,408 acres. This alternative would involve 19 improvements and total cost would be \$33,175,000.

3. The third detailed alternative is the Wetlands Alternative and would involve the purchase or easement on 14,356 acres bordering Currituck Sound from the Virginia State Line to the Dare County Line. The alternative would include wetlands with an associated upland buffer zone approximately 100 foot wide and upland portions of The Nature Conservancy tracts. Total cost would be \$40,300,000.

Other alternatives discussed include: full fee purchase of all lands on the Outer Banks in Currituck County; a combination of mixed Service ownership and private inholdings; vehicular access routes in combination with Service ownership; alternative recreational beach sites in Virginia; cooperative programs including state-federal Land and Water Conservation Fund programs; estuarine sanctuaries; and private conservation group purchases.

Background on the planning process and involvement of the public and Government agencies was provided in Notice of Intent, published in the August 30, 1979 Federal Register.

All agencies and individuals are urged to provide comments for improvement of this EIS at the earliest possible date. Comments received by April 1, 1980 will be considered in preparation of the final EIS for this proposed action.

Howard N. Larsen,
Regional Director.

[FR Doc. 80-38 Filed 1-2-80; 8:45 am]
BILLING CODE 4310-55-M

Endangered Species Permit; Amendment to Notice of Receipt of Application

Applicant: National Zoological Park,
Washington, D.C. 20008.

This amends the applicant's "Notice of Receipt of Application" published on December 10, 1979, Federal Register 44 No. 238 to include the import of golden marmoset (*Leontideus rosalia*) carcasses tissue and blood samples, and other bodily parts in unspecified numbers for scientific research and enhancement of propagation and survival.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WFO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-4976.

Dated: December 27, 1979

Fred L. Bolwahn,
Acting Chief, Permit Branch, Federal Wildlife
Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 80-121 Filed 1-2-80; 8:45 am]
BILLING CODE 4310-55-M

Geological Survey

Training and Qualification of Personnel in Well-Control Training

AGENCY: U.S. Geological Survey,
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. 43, No. 246, page 59551, Published by the U.S. Geological Survey on December 21, 1978, set forth the guidelines for implementing 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. Krah, U.S. Geological Survey, National Center, Reston, Virginia 22092 (703-860-7531).

SUPPLEMENTARY 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

USGS Approved Well-Control Schools

Rotary Helper and Derrickman

1. Diamond M Company
2. Dixilyn-Field Drilling Company
3. Global Marine Drilling Company
4. Huthnance Drilling Company
5. Marine Drilling Company
6. Prentice and Records Enterprises, Inc.
7. Reading and Bates Drilling Company
8. Rowan Companies, Inc.
9. Salen Offshore Drilling Company
10. Shell Oil Company
11. Teledyne Mobile Offshore, Inc.
12. Transworld Drilling Company
13. Zapata Offshore Company
14. Marlin Drilling Company, Inc.
15. Progress Drilling & Marine, Inc.
16. Dolphin International, Inc.
17. The Offshore Company
18. Western Oceanic, Inc.
19. Chiles Drilling Company
20. Penrod Drilling Company
21. Scan Drilling Co. (U.S.A.) Inc.
22. Noble Drilling Corp.
23. Houston Offshore International, Inc.
24. O & U Drilling, Inc.
25. Services, Equipment & Engineering Inc.
26. Atwood Oceanics, Inc.
27. Atwood Group, Inc.
28. MUDTECH
29. Nicklos Drilling Company
30. Keydrill Company
31. Phoenix Management Corporation
32. Bokenkamp Drilling Company, Inc.
33. Peter Bawden Drilling Inc.
34. Temple Drilling Company
35. Mayronne Company
36. Ocean Drilling & Exploration Company (ODECO)

Basic Courses

- | | |
|-------------------------------|--------------------|
| 1. Chevron U.S.A. Inc. | DR, TP, OR SUR, SS |
| 2. Conoco Inc. | OR SUR, SS |
| 3. Delta Drilling Company | DR, TP, OR SUR, SS |
| 4. Dresser Industries | DR, TP, OR SUR, SS |
| 5. Exxon | DR, TP, OR SUR, SS |
| 6. IMCO Services | DR, TP, OR SUR, SS |
| 7. Louisiana State University | DR, TP, OR SUR, SS |
| 8. Michem Incorporated | DR, TP, OR SUR, SS |
| 9. Pool Offshore Company | DR, TP, OR SUR |

- | | |
|---|--------------------|
| 10. Reading and Bates Drilling Company | DR, TP, OR SUR |
| 11. Shell Oil Company | DR, TP, OR SUR, SS |
| 12. Texaco | DR, TP, OR SUR, SS |
| 13. University of Southwestern Louisiana | DR, TP, OR SUR, SS |
| 14. Ventura College | DR, TP, OR SUR, SS |
| 15. Petroleum Training and Technical Services | DR, TP, OR SUR, SS |
| 16. Murchison Drilling Schools | DR, TP, OR SUR, SS |
| 17. ODECO | DR, TP, OR SUR, SS |
| 18. Diamond M Company | DR, TP, OR SUR, SS |
| 19. Cities Service Company | OR SUR, SS |
| 20. Shell Oil Company (White Castle) | DR, TP, OR SUR, SS |
| 21. University of Oklahoma | DR, TP, OR SUR, SS |
| 22. NL Petroleum Services | DR, TP, OR SUR, SS |
| 23. University of Texas at Austin (PETEX) | DR, TP, OR SUR, SS |

Refresher Courses

- | | |
|---|--------------------|
| 1. Chevron U.S.A. Inc. | OR SUR, SS |
| 2. Conoco Inc. | OR SUR, SS |
| 3. Delta Drilling Company | DR, TP, OR SUR |
| 4. Michem Incorporated | DR, TP, OR SUR, SS |
| 5. Reading and Bates Drilling Company | DR, TP, OR SUR |
| 6. Shell Oil Company | DR, TP, OR SUR, SS |
| 7. University of Southwestern Louisiana | DR, TP, OR SUR, SS |
| 8. Dresser Industries | DR, TP, OR SUR, SS |
| 9. Murchison Drilling Schools | DR, TP, OR SUR, SS |
| 10. Texaco | DR, TP, OR SUR, SS |
| 11. Diamond M Company | DR, TP, OR SUR, SS |
| 12. ODECO | DR, TP, OR SUR, SS |
| 13. Louisiana State University | DR, TP, OR SUR, SS |
| 14. Ventura College | DR, TP, OR SUR, SS |
| 15. Shell Oil Company (White Castle) | DR, TP, OR SUR, SS |
| 16. University of Oklahoma | DR, TP, OR SUR, SS |
| 17. IMCO Services | 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: December 26, 1979.

Don E. Kash,

Chief, Conservation Division.

[FR Doc. 80-98 Filed 1-2-80; 8:45 am]

BILLING CODE 4310-31-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Mount Tolman Copper-molybdenum Mine; Notice of Intent To Prepare and Consider an Environmental Statement and Notice of Scoping Meeting

The Department of Interior, Bureau of Indian Affairs, Portland Area Office, the lead Federal Agency, will be preparing an environmental impact statement on a proposal to develop a copper and molybdenum mine and processing facilities at Mount Tolman approximately two miles southwest of Keller, Washington, on the Colville Indian Reservation. The Colville Confederated Tribes and AMAX Inc. have been involved in developing the proposal.

The proposed project if initiated will require approval of a mining lease, mine plan, and several governmental permits. Information obtained for the EIS will assist BIA line officials and other

agencies in making decisions concerning the proposal.

Initial issues and concerns were identified through a series of public meetings in each District on the Colville Reservation, with a number of public agencies at a meeting in Spokane, Washington, on January 25, 1979, and a scoping meeting which was held April 26, 1979, at Keller, Washington. District meetings have continued.

The Mount Tolman Project as generally proposed contemplates open pit mining of approximately 900 million tons of low grade copper/molybdenum ore from the Mount Tolman area west of Keller, Washington, over a period estimated to last about 40 years. Production is proposed at approximately 60,000 tons per day of ore material. The ore would be beneficiated by crushing, grinding, and flotation processes to obtain separate copper and molybdenum concentrates. The copper concentrates would be transported to off-site processing facilities. The molybdenum concentrates would be further processed on-site by roasting facilities to produce a molybdenic oxide product. The products would be transported by truck to a nearby railhead in Creston, Washington, via a barging system on Lake Roosevelt from the Sanpoil Arm to Lincoln, Washington.

Tailing from the beneficiation process would be deposited in tailing impoundments near the mill in Last Change Valley and Upper Meadow Creek Valley. Overburden and waste rock would be deposited in disposal areas adjacent to the mine—a considerable portion of which would be used to form the embankments for the tailing impoundments. Selected topsoil would be stored for reclamation purposes. Roaster solid waste would be incorporated with the tailing material for disposal within the tailing impoundments. Miscellaneous solid waste would be incorporated with the waste rock. Fixed sewage facilities would be provided for the mill with effluents incorporated with the tailing wastes and portable sanitary facilities would be provided at the mine site.

Water for the beneficiation process and other project needs would be obtained from the Sanpoil Arm of Lake Roosevelt, pumped via pipelines crossing State Highway No. 21 to the mine/mill site. Water collected from the tailing impoundments would be returned to the mill for reuse. Much of the mine/mill equipment would be powered by electrical energy obtained from Public Utility District No. 1 of Ferry County operating under the Utility's power sales contract with the Bonneville Power Administration and transmitted to the

complex from a nearby substation adjacent to a transmission line from Coulee Dam to Keller. The project contemplates a peak work force of approximately 1200-1500 during the construction period (construction expected to last 2½ years) and a work force of approximately 500-600 during periods of normal mining thereafter. Construction and operational labor force housing is to be accommodated through the utilization of existing capacity and Colville Tribal housing programs on-reservation and through the utilization of existing capacity and housing construction by others off reservation.

Alternatives to be addressed in the environmental statement include:

- (1) *No action*;
- (2) *Mining alternatives*:
 - (a) Underground mining.
 - (b) Mining at different rates of production.
 - (c) Lesser area of mineralization to be mined.
 - (3) *Ore processing alternatives*:
 - (a) No processing at site; direct shipment of low grade ore to remote processing site.
 - (b) On-site beneficiation of ore to produce copper and molybdenum concentrates for shipment off-site for additional processing.
 - (c) On-site processing of copper concentrates to produce blister grade copper product.
 - (d) Ore processing facilities at alternate locations on-site.
 - (4) Product and supply transportation alternatives:
 - (a) Truck to nearby railheads (Republic, Coulee City, Wilbur).
 - (b) Railroad line to site.
 - (5) Waste disposal alternatives:
 - (a) Tailing deposition in Last Chance Valley and Manila Basin.
 - (b) Tailing deposition in other valleys within general project area.
 - (c) Waste rock disposal in off-site areas.
 - (d) Conventional solid waste disposal in off-site areas.
 - (e) Roaster solid waste disposal in on-site sludge ponds.
 - (f) Roaster solid waste disposal in off-site landfill facilities.
 - (6) Water supply alternatives:
 - (a) Groundwater source pumped from on-site wells.
 - (b) Pumping from the Sanpoil River with upstream reservoir for low-flow augmentation.
 - (c) Gravity-flow pipeline from the Sanpoil River with upstream reservoir for low-flow augmentation.
 - (7) Power/Energy alternatives:
 - (a) Off-site generation from private utility supply.
 - (b) On-site electric power generation.

- (8) Employee housing:
 - (a) New Town development on and/or off the Colville Reservation.
 - (b) Dispersed settlement throughout the area.

Pursuant to the council on Environmental Quality National Environmental Policy Act regulations, including 40 CFR 1501.7, 1506.6, and 1508.22, a public meeting will be held for the purpose of obtaining comment on the proposed scope and significant issues to be analyzed in depth in the environmental impact statement. The meeting will be on February 20, 1980, at 10:00 am., in the Nespelem Community Center at Nespelem, Washington. As previously indicated, this final scoping meeting culminates a series of scoping efforts regarding the Mount Tolman EIS. All Federal, state and local agencies, any affected Indian tribe, the proponents of the action and other interested persons (including those who might not be in accord with the action on environmental grounds) are invited to attend this meeting and participate in the scoping process.

The draft EIS will be prepared by late spring, 1980, and will be available for public and agency review following publication.

For further information concerning the meeting, the proposed action, or the EIS, contact: Jack Hunt, Environmental Coordinator, Portland Area Office, Bureau of Indian Affairs, P.O. Box 3785, Portland, Oregon 97208.

December 28, 1979.

Wilford G. Bowker,
Acting Area Director.

[FR Doc. 80-97 Filed 1-2-80; 8:45 am]

BILLING CODE 4310-02-M

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

December 28, 1979

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 54.8(a) notice is hereby given that the United Rappahannock Tribe, Inc., c/o Mr. Alvin R. Winston, Indian Neck, Virginia 23077, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on November 16, 1979. The petition was forwarded and signed by Mr. Alvin R. Winston.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be by mail to the petitioner and other

interested parties at the appropriate time.

Under § 54.8(d) of the Federal regulations, interested parties may submit factual or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs files.

The petition may be examined by appointment in the Division of Tribal Government Services, Bureau of Indian Affairs, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20242.

Rick Lavis,

Assistant Secretary, Indian Affairs.

[FR Doc. 80-96 Filed 1-2-80; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[F-19155-16]

Alaska Native Claims Selection

On December 10, 1979, a Decision to Issue Conveyance (DIC) approving approximately 177,025 acres of land in the vicinity of Galena was issued to Doyon, Limited. The DIC held that Bear Creek and Nikolai Slough were non-navigable.

Subsequently, it has been administratively determined that a portion of Bear Creek and Nikolai Slough are navigable. This determination requires a modification of the DIC.

Therefore, the December 10, 1979, DIC is hereby modified in part as follows:

1. Nikolai Slough from Bear Creek in Sec. 14, T. 7 S., R. 9 E., Kateel River Meridian, northerly to Koyukuk River and Bear Creek from the Yukon River upstream to Nikolai Slough in Sec. 14, T. 7 S., R. 9 E., Kateel River Meridian, are also considered navigable.

2. The land description for T. 7 S., R. 9 E., Kateel River Meridian is modified to read:

T. 7 S., R. 9 E.

- Secs. 1 to 4, inclusive, all;
- Sec. 5, excluding Nikolai Slough;
- Secs. 6 and 7, all;
- Secs. 8 and 9, excluding Nikolai Slough;
- Secs. 10 to 13, inclusive, all;
- Sec. 14, excluding Native allotment F-13338, that portion of Bear Creek from its intersection with Nikolai Slough westerly through the section, and that portion of Nikolai Slough from its intersection with Bear Creek northerly and westerly through the section;
- Sec. 15, excluding Nikolai Slough and Bear Creek;
- Sec. 16, excluding Nikolai Slough;
- Secs. 17, 18 and 19, all;
- Secs. 20 and 21, excluding Native allotment F-14030 and Bear Creek;
- Sec. 22, excluding Bear Creek;

Sec. 23, excluding Native allotment F-13338;
Secs. 26, 27 and 28, all;
Sec. 29, excluding Bear Creek;
Sec. 30, all;
Secs. 31 and 32, excluding Bear Creek;
Secs. 33, 34 and 35, all.

Containing approximately 20,510 acres.

3. The approximate aggregated acreage approved for conveyance is changed from 177,025 acres to 176,785 acres.

4. The total acreage approved for conveyance to Doyon, Limited, to date, is changed from 1,454,488 acres to 1,454,248 acres.

Except as modified by this decision, the DIC of December 10, 1979 stands as written.

Sue A. Wolf,

Chief, Branch of Adjudication.

[FR Doc. 80-66 Filed 1-2-80; 8:45 am]

BILLING CODE 4310-84-M

[F-14852-A and F-14852-B]

Alaska Native Claims Selections

This decision rejects several State selections surrounding Dot Lake, Alaska and approves lands for conveyance to Dot Lake Native Corporation.

On January 15, 1974 and December 4, 1974, Dot Lake Native Corporation, for the Native village of Dot Lake, filed selection applications F-14852-A and F-14852-B under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611 (1976)) (ANCSA), for the surface estate of certain lands in the vicinity of Dot Lake.

I. State Selections Rejected in Part

On June 30, 1961, the State filed general purposes selection applications F-028040, F-028044, F-028046, F-028048, F-028050, F-028052 and F-028056, as amended, pursuant to Sec. 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, Sec. 6(b)), for certain lands in the area of Dot Lake. On November 14, 1978, the State filed general purposes selection application F-43721, as amended, also pursuant to Sec. 6(b).

The village corporation selected lands which were withdrawn by Secs. 11(a)(1) and 11(a)(2) of ANCSA. Section 11(a)(2) specifically withdrew, subject to valid existing rights, all lands within the townships withdrawn by Sec. 11(a)(1) that had been selected by, or tentatively approved to, but not yet patented to the State of Alaska under the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, Sec. 6(b)).

Section 12(a)(1) of ANCSA provides that village selections shall be made

from lands withdrawn by Sec. 11(a). Section 12(a)(1) further provides that no village may select more than 69,120 acres from lands withdrawn by Sec. 11(a)(2).

The following described lands which are State selected and part of which were tentatively approved have been properly selected under village selection applications F-14852-A and F-14852-B. Accordingly, the tentative approvals are hereby rescinded and the State selection applications identified below are rejected as to the following described lands:

Copper River Meridian, Alaska

State Selection F-028040

T. 21 N., R. 8 E. (surveyed): Those portions of Tract A more particularly described as (protracted):
Secs. 7, 18, 19 and 20, all;
Secs. 28 to 33, inclusive, all.
Containing approximately 6,375 acres.

State Selection F-028044, Tentative Approval Granted October 14, 1963, as Modified

T. 23 N., R. 5 E. (surveyed): Those portions of the surveyed township more particularly described as (protracted):
Sec. 4, excluding U.S. Survey 4106B and Lake George;
Secs. 5 to 9, inclusive, excluding Lake George;
Secs. 16, 17 and 18, excluding Lake George;
Secs. 19 and 20, all;
Secs. 25 to 30, inclusive, all;
Secs. 31, 32 and 33, excluding the Tanana River and its interconnecting sloughs;
Secs. 34, 35 and 36, all.
Containing approximately 12,613 acres.

State Selection F-028046, U.S. Survey No. 4292, Alaska, Situated on the East Shore of Sand Lake

Containing 157.14 acres.
T. 23 N., R. 6 E. (surveyed): Those portions of Tract A more particularly described as (protracted):
Secs. 1, 8, 9 and 10, all;
Secs. 11, 12 and 14, all;
Sec. 15, excluding Sand Lake;
Sec. 16, excluding Native allotment F-12599 Parcel A and Sand Lake;
Sec. 17, all;
Sec. 20, excluding U.S. Survey 3617B and Sand Lake;
Sec. 21, excluding U.S. Survey 3617B, U.S. Survey 4292, Native allotments F-12554 Parcel A and F-12599 Parcel A and Sand Lake;
Sec. 22, excluding U.S. Survey 4292, Native allotment F-12554 Parcel A and Sand Lake;
Secs. 23 and 26, all;
Sec. 27, excluding U.S. Survey 4292;
Sec. 28, excluding U.S. Survey 3621, U.S. Survey 4292, Sand Lake and Sand Creek;
Sec. 29, excluding U.S. Survey 3621, Sand Lake and Sand Creek;
Secs. 30 and 31, all;
Sec. 32, excluding the interconnecting slough of the Tanana River and Sand Creek;
Sec. 33, excluding Native allotment F-12528 Parcel B and the interconnecting slough of the Tanana River;

Sec. 34, all;
Secs. 35 and 36, excluding the Tanana River.
Containing approximately 14,623 acres.

State Selection F-028048

T. 23 N., R. 7 E. (surveyed): Those portions of the surveyed township more particularly described as (protracted):
Secs. 31 and 32, all;
Sec. 33, excluding the Tanana River and its interconnecting sloughs;
Sec. 34, excluding Native allotment F-033659 Parcel B and the Tanana River and its interconnecting sloughs.
Containing approximately 2,401 acres.

State Selection F-028050, Tentative Approval Granted March 17, 1966

T. 22 N., R. 6 E. (surveyed): Those portions of Tract A more particularly described as (protracted):
Secs. 1, 2 and 3, excluding the Tanana River and its interconnecting sloughs;
Sec. 4, excluding Native allotment F-12528 Parcel B and the Tanana River and its interconnecting sloughs;
Secs. 5 and 6, excluding the Tanana River and its interconnecting sloughs.
Containing approximately 2,813 acres.

State Selection F-028052, Tentative Approval Granted August 17, 1965

U.S. Survey No. 3619, Alaska, situated 1½ miles southeasterly from the confluence of Billy Creek and the Tanana River.
Containing 160.00 acres.
Lot 6 of U.S. Survey No. 4285, Alaska, situated along the Alaska Highway at Dot Lake, Alaska.
Containing 3.97 acres.

T. 22 N., R. 7 E. (surveyed): Those portions of Tract A more particularly described as (protracted):
Sec. 1, all;
Sec. 2, excluding U.S. Survey 3619;
Secs. 3 to 17, inclusive, excluding the Tanana River and its interconnecting sloughs;
Secs. 18 to 22, inclusive, all;
Secs. 23, 24 and 25, excluding the Tanana River and its interconnecting sloughs;
Sec. 26, all;
Sec. 27, excluding U.S. Survey 4325;
Sec. 28, excluding U.S. Survey 3123, U.S. Survey 3123A, U.S. Survey 3124, U.S. Survey 3124A, U.S. Survey 3217 U.S. Survey 3217A, U.S. Survey 3614 U.S. Survey 4285;
Secs. 29 to 32, inclusive, all;
Sec. 33, excluding U.S. Survey 4290;
Sec. 34, excluding U.S. Survey 4287, U.S. Survey 4325 and Native allotment F-12146;
Sec. 35, excluding U.S. Survey 4287;
Sec. 36, all.
Containing approximately 20,338 acres.

State Selection F-028056, Tentative Approval Granted August 31, 1965

U.S. Survey No. 4283, Alaska, situated on the southwest side of the Alaska Highway.
Containing 160.00 acres.
Lot 2 of U.S. Survey No. 4287, Alaska, situated on the Alaska Highway.
Containing 159.97 acres.
U.S. Survey No. 4300, Alaska, situated along the Alaska Highway four miles southeast of Dot Lake.

Containing 160.00 acres.
 T. 21 N., R. 7 E. (surveyed): Those portions of Tract A more particularly described as (protracted):
 Sec. 1, all;
 Sec. 2, excluding U.S. Survey 4287;
 Sec. 3, excluding U.S. Survey 4287 and Native allotment F-12146;
 Sec. 11, excluding U.S. Survey 4283 and U.S. Survey 4300;
 Secs. 12, 13 and 14, excluding U.S. Survey 4283;
 Secs. 23 and 24, all.
 Containing approximately 5,068 acres.

State Selection F-43721

T. 24 N., R. 5 E. (unsurveyed): Sec. 33, excluding Lake George.
 Containing approximately 595 acres.

The State selected lands rejected above aggregate approximately 65,627 acres; however, 2,189 acres of State selections F-028046, F-028052, F-028056 and F-43721 were not valid selections and will not be charged against the village corporation as State selected lands. Further action on the subject State selection applications as to those lands not rejected herein will be taken at a later date.

The total amount of lands which have been properly selected by the State, including any selection applications previously rejected to permit conveyances to Dot Lake Native Corporation is 63,400 acres, which is less than the 69,120 acres permitted by Sec. 12(a)(1) of ANCSA.

II. Lands Proper for Village Selection Approved for Interim Conveyance or Patent

Dot Lake Native Corporation in its application excluded the following bodies of water:

Moosehead Lake;
 Billy Creek;
 Jan Lake.

Because these bodies have been determined to be nonnavigable, they are considered to be public lands withdrawn under Sec. 11(a)(1) and available for selection by the village pursuant to Sec. 12(a) of the Alaska Native Claims Settlement Act.

Section 12(a) and 43 CFR 2651.4(b) and (c) provide that the village corporation shall select all available lands within the township or townships within which the village is located, and that additional lands selected shall be compact and in whole sections. The regulations also provide that the area selected will not be considered to be reasonably compact if it excludes other lands available for selection within its exterior boundaries.

For these reasons, the water bodies which were improperly excluded in Dot

Lake Native Corporation's application are considered selected.

As to the lands described below, the applications, as amended, are properly filed and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a) of ANCSA, aggregating approximately 65,589 acres, is considered proper for acquisition by Dot Lake Native Corporation and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA:

U.S. Survey No. 3619, Alaska, situated 1 1/2 miles southeasterly from the confluence of Billy Creek and the Tanana River.

Containing 160.00 acres.

U.S. Survey No. 4283, Alaska, situated on the southwest side of the Alaska Highway.

Containing 160.00 acres.

Lot 6 of U.S. Survey No. 4285, Alaska, situated along the Alaska Highway at Dot Lake, Alaska excluding Alaska Native Claims Settlement Act 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143) twenty-five (25) feet each side of the centerline.

Containing approximately 3.87 acres.

Lot 2 of U.S. Survey No. 4287, Alaska, situated on the Alaska Highway.

Containing 159.97 acres.

U.S. Survey No. 4292, Alaska, situated on the east shore of Sand Lake.

Containing 157.14 acres.

U.S. Survey No. 4300, Alaska, situated along the Alaska Highway four miles southeast of Dot Lake excluding Alaska native Claims Settlement Act 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143) twenty-five (25) feet each side of the centerline.

Containing approximately 158.23 acres.

Aggregating approximately 799.21 acres.

Copper River Meridian, Alaska

T. 23 N., R. 5 E. (surveyed): Those portions of the surveyed township more particularly described as (protracted):

Sec. 4, excluding U.S. Survey 4106B and Lake George;
 Secs. 5 to 9, inclusive, excluding Lake George;

Secs. 16, 17 and 18, excluding Lake George;
 Secs. 19 and 20, all;

Secs. 25 to 30, inclusive, all;
 Secs. 31, 32 and 33, excluding the Tanana River and its interconnecting sloughs;

Secs. 34, 35 and 36, all.

Containing approximately 12,614 acres.

T. 24 N., R. 5 E. (unsurveyed)
 Sec. 33, excluding Lake George.

Containing approximately 595 acres.

T. 22 N., R. 6 E. (surveyed): Those portions of Tract A more particularly described as (protracted):
 Secs. 1, 2 and 3, excluding the Tanana River and its interconnecting sloughs;

Sec. 4, excluding Native allotment F-12528 Parcel B and the Tanana River and its interconnecting sloughs;

Secs. 5 and 6, excluding the Tanana River and its interconnecting sloughs.

Containing approximately 2,813 acres.
 T. 23 N., R. 6 E. (surveyed): Those portions of Tract A more particularly described as (protracted):

Secs. 1, 8, 9 and 10, all;
 Secs. 11, 12 and 14, all;

Sec. 15, excluding Sand Lake;
 Sec. 16, excluding Native allotment F-12599 Parcel A and Sand Lake;

Sec. 17, all;
 Sec. 20, excluding U.S. Survey 3617B and Sand Lake;

Sec. 21, excluding U.S. Survey 3617B, U.S. Survey 4292, Native allotments F-12554 Parcel A and F-12599 Parcel A and Sand Lake;

Sec. 22, excluding U.S. Survey 4292, Native allotment F-12554 Parcel A and Sand Lake;

Secs. 23 and 26, all;
 Sec. 27, excluding U.S. Survey 4292;
 Sec. 28, excluding U.S. Survey 3621, U.S. Survey 4292, Sand Lake and Sand Creek;

Sec. 29, excluding U.S. Survey 3621, Sand Lake and Sand Creek;

Secs. 30 and 31, all;
 Sec. 32, excluding the interconnecting slough of the Tanana River and Sand Creek;

Sec. 33, excluding Native allotment F-12528 Parcel B and the interconnecting slough of the Tanana River;

Sec. 34, all;
 Secs. 35 and 36, excluding the Tanana River.

Containing approximately 14,623 acres.
 T. 21 N., R. 7 E. (surveyed): Those portions of Tract A more particularly described as (protracted):

Sec. 1, all;
 Sec. 2, excluding U.S. Survey 4287 and Alaska Native Claims Settlement Act 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143) twenty-five (25) feet each side of the centerline;

Sec. 3, excluding U.S. Survey 4287, Native allotment F-12146 and Alaska Native Claims Settlement Act 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143) twenty-five (25) feet each side of the centerline;

Sec. 11, excluding U.S. Survey 4283, U.S. Survey 4300 and Alaska Native Claims Settlement Act 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143) twenty-five (25) feet each side of the centerline;

Secs. 12 and 13, excluding U.S. Survey 4283 and Alaska Native Claims Settlement Act 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143) twenty-five (25) feet each side of the centerline;

Sec. 14, excluding U.S. Survey 4283;
 Secs. 23 and 24, all.

Containing approximately 5,061 acres.
 T. 22 N., R. 7 E. (surveyed): Those portions of Tract A more particularly described as (protracted):

Sec. 1, all;
 Sec. 3, excluding U.S. Survey 3619;

Secs. 3 to 17, inclusive, excluding the Tanana River and its interconnecting sloughs;

Sec. 18, all;
 Secs. 19 and 20, excluding Alaska Native Claims Settlement Act 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143) twenty-five (25) feet each side of the centerline;
 Secs. 21 and 22, all;
 Secs. 23, 24 and 25, excluding the Tanana River and its interconnecting sloughs;
 Sec. 26, all;
 Sec. 27, excluding U.S. Survey 4325 and Alaska Native Claims Settlement Act 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143) twenty-five (25) feet each side of the centerline;
 Sec. 28, excluding U.S. Survey 3123, U.S. Survey 3123A, U.S. Survey 3124, U.S. Survey 3124A, U.S. Survey 3217, U.S. Survey 3217A, U.S. Survey 3614, U.S. Survey 4285 and Alaska Native Claims Settlement Act 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143) twenty-five (25) feet each side of the centerline;
 Sec. 29, excluding Alaska Native Claims Settlement Act 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143) twenty-five (25) feet each side of the centerline;
 Secs. 30, 31 and 32, all;
 Sec. 33, excluding U.S. Survey 4290;
 Sec. 34, excluding U.S. Survey 4287, U.S. Survey 4325, Native allotment F-12146 and Alaska Native Claims Settlement Act 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143) twenty-five (25) feet each side of the centerline;
 Sec. 35, excluding U.S. Survey 4287;
 Sec. 36, all.
 Containing approximately 20,324 acres.
 T. 23 N., R. 7 E. (surveyed): Those portions of the surveyed township more particularly described as (protracted):
 Secs. 31 and 32, all;
 Sec. 33, excluding the Tanana River and its interconnecting sloughs;
 Sec. 34, excluding Native allotment F-033659 Parcel B and the Tanana River and its interconnecting sloughs.
 Containing approximately 2,401 acres.
 T. 21 N., R. 8 E. (surveyed): Those portions of Tract A more particularly described as (protracted):
 Sec. 7, all;
 Secs. 18, 19 and 20, excluding Alaska Native Claims Settlement Act 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143) twenty-five (25) feet each side of the centerline;
 Sec. 28, all;
 Sec. 29, excluding Alaska Native Claims Settlement Act 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143) twenty-five (25) feet each side of the centerline;
 Secs. 30 and 31, all;
 Secs. 32 and 33, excluding Alaska Native Claims Settlement Act 3(e) application F-60755 for the Haines to Fairbanks pipeline (F-010143) twenty-five (25) feet each side of the centerline.
 Containing approximately 6,360 acres.
 Aggregate approximately 64,790 acres.
 Total aggregated acreage approximately 65,589 acres.

The conveyance issued for the surface estate of the lands described above

shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f)); and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b)), the following public easements, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F-14852-EE, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

One Acre Site.—The uses allowed for a site easement are: vehicle parking (e.g., aircraft, boats, ATVs, snowmobiles, cars, trucks), temporary camping, and loading or unloading. Temporary camping, loading, or unloading shall be limited to 24 hours.

25 Foot Trail.—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

60 Foot Road.—The uses allowed on a sixty (60) foot wide road easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, small and large all-terrain vehicles, track vehicles, four-wheel drive vehicles, automobiles, and trucks.

a. (EIN 1 D9, L) An easement for an existing access trail twenty-five (25) feet in width from the northern shore of Lake George in Sec. 33, T. 24 N., R. 5 E., Copper River Meridian, northerly along George Creek to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

b. (EIN 1a E) A one (1) acre site easement upland of the ordinary high water mark in Sec. 33, T. 24 N., R. 5 E., Copper River Meridian, on the north shore of Lake George near the mouth of George Creek. The uses allowed are those listed above for a one (1) acre site easement.

c. (EIN 9 L) An easement for an existing access trail twenty-five (25) feet in width from road EIN 20 C4 in Sec. 33, T. 22 N., R. 7 E., Copper River Meridian, southwesterly to public lands. The uses allowed are those listed above for a

twenty-five (25) foot wide trail easement.

d. (EIN 20 C4) An easement sixty (60) feet in width for an existing road from the Alaska Highway in Sec. 28, T. 22 N., R. 7 E., Copper River Meridian, southerly to U.S. Survey 4290 in Sec. 33, T. 22 N., R. 7 E., Copper River Meridian. The uses allowed are those listed above for a sixty (60) foot wide road easement.

e. (EIN 27 C5) A one (1) acre site easement in Sec. 33, T. 22 N., R. 7 E., Copper River Meridian, adjacent to road EIN 20 C4 and trail EIN 9 L. The uses allowed are vehicle parking, loading, and unloading. Loading and unloading shall be limited to 24 hours.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the unsurveyed lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. The following third-party interest, if valid, created and identified by the State of Alaska, as provided by Sec. 14(g) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(g)):

Right-of-way permit, ADL 33024, 50 feet in width, to Ralph Late traversing selected lands in protracted Secs. 19, 20, 27, 28, 29, 33 and 34, T. 22 N., R. 7 E., Copper River Meridian.

4. A right-of-way, F-025724, containing approximately 5.67 acres within protracted Sec. 28, T. 22 N., R. 7 E., Copper River Meridian, for a Federal Aid material site. Section 17 of the Act of November 9, 1921, (42 Stat. 216; 23 U.S.C. 18), as amended;

5. A right-of-way, F-025725, containing approximately 4.59 acres within protracted Sec. 29, T. 21 N., R. 8 E., Copper River Meridian, for a Federal Aid material site. Section 17 of the Act of November 9, 1921, (42 Stat. 216; 23 U.S.C. 18), as amended;

6. A right-of-way, F-025776, containing approximately 3.44 acres within protracted Sec. 13, T. 21 N., R. 7 E., Copper River Meridian, for a Federal Aid material site. Section 17 of the Act of November 9, 1921, (42 Stat. 216; 23 U.S.C. 18), as amended;

7. A right-of-way, F-025779, containing approximately 4.13 acres within protracted Sec. 13, T. 21 N., R. 7 E., Copper River Meridian, for a Federal Aid material site. Section 17 of the Act of November 9, 1921, (42 Stat. 216; 23 U.S.C. 18), as amended;

8. A right-of-way, F-025787, containing approximately 3.17 acres within protracted Sec. 19, T. 22 N., R. 7 E., Copper River Meridian, for a Federal Aid material site. Section 17 of the Act of November 9, 1921, (42 Stat. 216; 23 U.S.C. 18), as amended;

9. An easement and right-of-way to operate, maintain, repair and patrol an overhead open wire and underground communication line or lines, and appurtenances thereto, in, on, over and across a strip of land fifty (50) feet in width, lying twenty-five (25) feet on each side of the centerline of the Alaska Communication System's open wire or pole line and/or buried communication cableline, conveyed to RCA Alaska Communications, Inc. by Easement Deed dated January 10, 1971, (F-13508), pursuant to the Alaska Communications Disposal Act (81 Stat. 441; 40 U.S.C. 771, et seq.), located in:

Lot 6 of U.S. Survey 4285; U.S. Survey 4300, Copper River Meridian, Alaska (Protracted) T. 21 N., R. 8 E.,

Sec. 18, S $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 19, SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$;
Sec. 20, SW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 29, SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$;
Sec. 30, E $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$;
Sec. 32, NE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$;
Sec. 33, SW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$.
T. 21 N., R. 7 E.
Sec. 2, W $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$;
Sec. 3, NE $\frac{1}{4}$;
Sec. 11, E $\frac{1}{2}$ E $\frac{1}{2}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$;
Sec. 12, SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 13, E $\frac{1}{2}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 24, NE $\frac{1}{4}$ NE $\frac{1}{4}$.
T. 22 N., R. 7 E.
Sec. 19, N $\frac{1}{2}$ S $\frac{1}{2}$, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$ N $\frac{1}{2}$ N $\frac{1}{2}$;
Sec. 20, SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$;
Sec. 21, SW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 27, SW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 28, SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$;
Sec. 29, NE $\frac{1}{4}$ NE $\frac{1}{4}$;
Sec. 33, NE $\frac{1}{4}$ NE $\frac{1}{4}$;
Sec. 34, SE $\frac{1}{4}$, W $\frac{1}{2}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$.

10. An easement for highway purposes, including appurtenant protective, scenic and service areas, extending 150 feet each side of the

centerline of the Alaska Highway, as established by Public Land Order 1613 (23 F.R. 2376), pursuant to the Act of August 1, 1956, (70 Stat. 898) and transferred to the State of Alaska pursuant to the Alaska Omnibus Act, P.L. 86-70 (73 Stat. 141) as to: U.S. Survey 4283; Lot 6 of U.S. Survey 4285; Lot 2 of U.S. Survey 4287; U.S. Survey 4300; protracted Secs. 2, 3, 11, 12 and 13, T. 21 N., R. 7 E.; protracted Secs. 19, 20, 21, 27, 28, 29 and 34, T. 22 N., R. 7 E.; protracted Secs. 18, 19, 20, 29, 30, 32 and 33, T. 21 N., R. 8 E., Copper River Meridian; and

11. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Dot Lake Native Corporation is entitled to conveyance of 69,120 acres of land selected pursuant to Sec. 12(a) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is approximately 65,589 acres. The remaining entitlement of approximately 3,531 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA, conveyance of the subsurface estate of the lands described above shall be issued to Doyon, Limited when the surface estate is conveyed to Dot Lake Native Corporation, and shall be subject to the same conditions as the surface conveyance.

That portion of temporary use permit, F-44983, issued February 13, 1979, to Alaskan Northwest Natural Gas Transportation Company located in lands herein approved for conveyance, will terminate upon conveyance of these lands in accordance with Stipulation No. 8 of Exhibit A of said permit.

Within the above described lands, only the following inland water bodies are considered to be navigable:

The Tanana River and its interconnecting sloughs;
Lake George;
Sand Lake and Sand Creek (that portion connecting Sand Lake and the Tanana River)

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks, in the TUNDRA TIMES. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510 with a copy served upon both the

Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until February 4, 1980, to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Dot Lake Native Corporation, Dot Lake, Alaska 99737.

Doyon, Limited, First and Hall Streets, Fairbanks, Alaska 99701.

State of Alaska, Department of Natural Resources, Division of Research and Development, 323 East Fourth Avenue, Anchorage, Alaska 99501.

Sue A. Wolf,

Chief, Branch of Adjudication.

[FR Doc. 80-67 Filed 1-2-80; 8:45 am]

BILLING CODE 4310-84-M

[F-14825-A]

Alaska Native Claims Selection

This decision rejects improperly filed Sec. 14(h)(1) applications and approves lands in the area of Alakanuk for conveyance to the Alakanuk Native Corporation.

I. Section 14(h)(1) Applications Rejected in Entirety

Calista Corporation filed the following selection applications pursuant to Sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(h) (1976)) (ANCSA):

Seward Meridian, Alaska (Unsurveyed)

Date of Application Serial No. Land Description

03/25/75, AA-8354, S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 32, T. 30 N., R. 80 W.

03/25/75, AA-9355, frac. N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 28, T. 29 N., R. 81 W.
 03/25/75, AA-9426, SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 13, T. 29 N., R. 81 W.
 07/17/75, AA-9503, frac. N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 13, T. 29 N., R. 81 W.
 07/17/75, AA-9504, frac. E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 27, T. 30 N., R. 80 W.
 09/24/75, AA-9857, frac. NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 27, T. 30 N., R. 80 W.
 09/24/75, AA-9858, frac. S $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 32, T. 30 N., R. 80 W.
 09/24/75, AA-9860, S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 26, T. 30 N., R. 81 W.
 09/24/75, AA-9861, W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 13, T. 30 N., R. 81 W.
 09/24/75, AA-9863, frac. SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 28, T. 29 N., R. 81 W.
 09/24/75, AA-9864, NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 28, T. 29 N., R. 81 W.
 09/24/75, AA-9865, SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, frac. NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 13, T. 29 N., R. 81 W.
 09/24/75, AA-9866, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 28, T. 29 N., R. 81 W.
 09/24/75, AA-9869, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 30, T. 28 N., R. 83 W.
 09/24/75, AA-9870, SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 30, N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 31, T. 28 N., R. 82 W.
 09/24/75, AA-9871, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 29, T. 28 N., R. 82 W.
 10/15/75, AA-9930, S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 23, E $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$, Sec. 26, T. 30 N., R. 81 W.
 10/20/75, AA-10028, frac. SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 14, T. 30 N., R. 82 W.
 10/20/75, AA-10029, E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, frac. SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 32, T. 30 N., R. 82 W.
 10/20/75, AA-10030, frac. S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, frac. N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 7, T. 29 N., R. 82 W.
 10/20/75, AA-10031, frac. E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 31, T. 29 N., R. 81 W. frac. NW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 6, T. 28 N., R. 82 W.
 10/20/75, AA-10032, frac. NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 5, T. 28 N., R. 82 W.
 10/20/75, AA-10033, frac. SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 1, T. 28 N., R. 83 W.
 4/20/76, AA-11244, frac. NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 36, T. 29 N., R. 82 W.
 6/25/76, AA-11770, frac. SW $\frac{1}{4}$ SE $\frac{1}{4}$, frac. E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 22, T. 30 N., R. 83 W.
 6/25/76, AA-11771, frac. SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 35, T. 29 N., R. 82 W.
 6/25/76, AA-11772, frac. SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 5, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 6, T. 29 N., R. 82 W.

Section 14(h) and Departmental regulations issued thereunder authorize the Secretary of the Interior to withdraw and convey only unreserved and unappropriated public lands. Since the lands encompassed in the subject Sec. 14(h)(1) applications have been properly selected by Alakanuk Native Corporation under Sec. 12(a) and Sec. 12(b) of ANCSA and are still withdrawn under Sec. 11, these lands are not unreserved or unappropriated and are not available for selection by Calista Corporation. Therefore the above-described applications must be and are hereby rejected in their entirety.

When this decision becomes final, these applications will be closed of record.

II. Lands Proper For Village Selection, Approved For Interim Conveyance, or Patent

On November 29, 1974, Alakanuk Native Corporation filed selection application F-14825-A, as amended, under the provisions of Sec. 12(a) of ANCSA (85 Stat. 688, 701; 43 U.S.C. 1601, 1611(a) (1976)), for the surface estate of lands located in the Alakanuk area.

Lot 2 of U.S. Survey 4092 and lot 2 of U.S. Survey 4149 lie within the core township of Alakanuk and are available for selection. Since Sec. 12(a) of ANCSA and 43 CFR 2651.4(b) provide that the village corporation shall select all available lands within the township the village is located in, these surveyed lands are considered selected by Alakanuk Native Corporation.

As to the lands described below, the application submitted by Alakanuk Native Corporation, as amended, is properly filed, and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a), aggregating approximately 124,805 acres, is considered proper for acquisition by Alakanuk Native Corporation and is hereby approved for conveyance pursuant to Sec. 14(a) of the Alaska Native Claims Settlement Act:

Lot 2 of U.S. Survey No. 4092, situated at Alakanuk, Alaska.

Containing 16.95 acres.

Lot 2 of U.S. Survey No. 4149, situated on the right bank of Alakanuk Pass Slough, at Alakanuk, Alaska.

Containing 0.98 acre.

Aggregating 17.93 acres.

Seward Meridian Alaska (Unsurveyed)

T. 29 N., R. 80 W.

Sec. 5, excluding Akularak Pass;

Sec. 6, excluding Native allotment F-18604 Parcel B, Kanelik Pass, and Akularak Pass;

Sec. 7, excluding Akularak Pass. Containing approximately 1,587 acres.

T. 30 N., R. 80 W.

Sec. 26, excluding Native allotments F-18460 Parcels B and C, F-18606 Parcel A, and Akogpak Slough;

Sec. 27, excluding Native allotments F-18146 Parcel A, F-18608 Parcel B, F-18460 Parcel A, Akularak Pass and Akogpak Slough;

Secs. 28 and 29, excluding Akularak Pass and Kwimlithla Slough;

Sec. 30, excluding Akularak Pass;

Sec. 31, excluding Native allotments F-18475 Parcel B, F-18606 Parcel C, Kanelik Pass, and Akularak Pass;

Sec. 32, excluding Native allotments F-18458 Parcel A, F-18606 Parcel D, Akularak Pass, and Kwimlithla Slough; Secs. 33 and 34, excluding Kwimlithla Slough.

Containing approximately 4,344 acres.

T. 29 N., R. 81 W.

Sec. 1, excluding Akularak Pass;

Secs. 2 and 3, excluding Kanelik Pass;

Secs. 4, 5 and 6, excluding unnamed

slough and Kanelik Pass;

Sec. 7, excluding Kanelik Pass;

Sec. 8, excluding Native allotment F-18456

Parcel A and Kanelik Pass;

Sec. 9, excluding Native allotment F-18314

Parcel B and Kanelik Pass;

Sec. 10, excluding Kanelik Pass and

Akularak Pass;

Sec. 11, excluding F-18475 Parcel C and

Akularak Pass;

Sec. 12, excluding Native allotments F-

18625 Parcel A, F-18691 Parcel B, and

Akularak Pass;

Sec. 13, excluding Native allotments F-

18354 Parcel B, F-18476 Parcel D, F-18483

Parcel B, F-18629 Parcel D, F-18688

Parcel C, and Akularak Pass;

Sec. 14, excluding Native allotments F-

18476 Parcel D, F-18604 Parcel C, F-18616

Parcel A, and Akularak Pass;

Sec. 15, excluding Native allotment F-18604

Parcel C and Akularak Pass;

Secs. 16 and 17, all;

Sec. 18, excluding Kanelik Pass;

Sec. 19, all;

Sec. 20, excluding Native allotments F-

18712 Parcel B, F-18713 Parcel B, and

Akularak Pass;

Secs. 21 and 22, excluding Akularak Pass;

Secs. 23 and 24, all;

Sec. 26, excluding Native allotment F-18712

Parcel A;

Sec. 27, all;

Sec. 28, excluding Akularak Pass and

unnamed slough;

Secs. 29 and 30, excluding Akularak Pass;

Sec. 31, excluding U.S. Survey 734, Native

allotments F-18323 Parcel A, F-18357

Parcel A, F-18730 Parcel C, and Akularak

Pass;

Sec. 32, excluding Native allotment F-18602

Parcel B, Akularak Pass, and unnamed

slough;

Sec. 33, excluding Native allotment F-18712

Parcel D and unnamed slough;

Sec. 34, excluding Native allotment F-18602

Parcel C;

Sec. 35, excluding Native allotment F-18343

Parcel C.

Containing approximately 17,354 acres.

T. 30 N., R. 81 W.

Sec. 13, excluding Sunshine Bay;

Secs. 14 to 17, inclusive, all;

Sec. 18, excluding Native allotments F-

18454 Parcel C, F-18608 Parcel C, F-18682

Parcel B, and the Yukon River (Kwikluak

Pass);

Secs. 19 to 27, inclusive, all;

Sec. 28, excluding Native allotment F-18327

Parcel C;

Sec. 29, excluding Native allotment F-18360

Parcel B and unnamed slough;

Sec. 30, all;

Secs. 31 and 32, excluding unnamed slough;

Secs. 33 and 34, all;

Secs. 35 and 36, excluding Kanelik Pass.

Containing approximately 14,720 acres.

T. 28 N., R. 82 W.

Sec. 5, excluding Native allotments F-18331 Parcel A, F-18601 Parcel C, F-18712 Parcel C, F-18713 Parcel C, and Akularak Pass;

Sec. 6, excluding U.S. Survey 734 and Akularak Pass;

Sec. 7, excluding excluding Akularak Pass;

Sec. 8, excluding Native allotments F-18331 Parcel A, F-18601 Parcel C, and Akularak Pass;

Sec. 17, excluding Akularak Pass and unnamed slough;

Secs. 18 and 19, excluding Akularak Pass and unnamed slough between Akularak Pass and Kanelik Pass;

Sec. 20, excluding Native allotment F-18315 and unnamed slough;

Sec. 29, excluding Native allotments F-18331 Parcel C, F-18347 Parcel C, and unnamed slough;

Sec. 30, excluding Native allotment F-18331 Parcel C, Akularak Pass, and unnamed slough.

Containing approximately 4,712 acres.

T. 29 N., R. 82 W.

Secs. 1 and 2, excluding unnamed slough;

Sec. 3, excluding Native allotments F-18348 Parcel A, F-18461 Parcel A, F-18598 Parcel C, and Yukon River (Kwikluak Pass);

Sec. 4, excluding Native allotments F-18350 Parcel A, F-18682 Parcel A, and Yukon River (Kwikluak Pass);

Sec. 5, excluding Native allotments F-18457 Parcel A, F-18749 Parcel C, and Yukon River (Kwikluak Pass);

Sec. 6, all;

Sec. 7, excluding Native allotments F-18343 Parcel B, F-18444 Parcel A, and Yukon River (Kwikluak Pass);

Secs. 8 and 9, excluding Yukon River (Kwikluak Pass);

Sec. 10, all;

Sec. 11, excluding unnamed slough;

Sec. 12, all;

Sec. 13, excluding Kanelik Pass;

Sec. 14, excluding Kanelik Pass and unnamed slough;

Sec. 15, excluding unnamed slough;

Sec. 16, all;

Sec. 17, excluding Yukon River (Kwikluak Pass);

Sec. 18, excluding Native allotment F-18601 Parcel A and Yukon River (Kwikluak Pass);

Secs. 19, 20 and 21, all;

Sec. 22, excluding unnamed slough;

Sec. 23, excluding Kanelik Pass and unnamed slough;

Sec. 24, all;

Sec. 25, excluding Kanelik Pass;

Sec. 26, excluding Kanelik Pass and unnamed slough;

Secs. 27 and 28, excluding unnamed slough;

Secs. 29 to 33, inclusive all;

Sec. 34, excluding Native allotment F-18713 Parcel D;

Sec. 35, excluding Native allotment F-18713 Parcel D and Kanelik Pass;

Sec. 36, excluding Native allotments F-18344 Parcel C, F-18730 Parcel C, and Kanelik Pass.

Containing approximately 18,549 acres.

T. 30 N., R. 82 W.

Sec. 1, excluding Native allotment F-18626 Parcel C, Tunuigak Slough, and Yukon River (Kwikluak Pass);

Secs. 2, 3 and 4, all;

Sec. 5, excluding Native allotment F-18598 Parcel A and Alakanuk Pass;

Sec. 6, excluding Native allotment F-18312 and Alakanuk Pass;

Secs. 7 and 8, excluding Alakanuk Pass;

Sec. 9, excluding U.S. Survey 4405 Tracts A and B;

Sec. 10, all;

Sec. 11, excluding Native allotment F-18313 Parcel A and Tunuigak Slough;

Sec. 12, excluding Native allotment F-18313 Parcel A, and Tunuigak Slough, and Yukon River (Kwikluak Pass);

Sec. 13, excluding Yukon River (Kwikluak Pass);

Sec. 14, excluding U.S. Survey 3794, lot 2 of U.S. Survey 4092, Yukon River, and Alakanuk Pass;

Sec. 15, excluding lots 1 (AA-31244 ANCSA Sec. 3(e) Aplan BIA), 2, and 3 of U.S. Survey 4092, lots 1 and 2 of U.S. Survey 4149, U.S. Survey 4405 Tracts A and B, and Alakanuk Pass;

Sec. 16, excluding U.S. Survey 4405 Tracts A and B, and Alakanuk Pass;

Sec. 17, excluding Alakanuk Pass;

Secs. 18, 19 and 20, all;

Sec. 21, excluding U.S. Survey 4405 Tract B;

Sec. 22, excluding Native allotment F-18599 Parcel A and Yukon River (Kwikluak Pass);

Sec. 23, excluding Native allotment F-18454 Parcel D and Yukon River (Kwikluak Pass);

Sec. 24, excluding Native allotment F-18454 Parcel A and Yukon River (Kwikluak Pass);

Sec. 25, excluding Native allotment F-18313 Parcel C;

Sec. 26, excluding Native allotments F-18313 Parcel C, and F-18599 Parcel D, and Yukon River (Kwikluak Pass);

Secs. 27 and 28, excluding Yukon River (Kwikluak Pass);

Secs. 29, 30 and 31, all;

Sec. 32, excluding Native allotment F-18314 Parcel A and Yukon River (Kwikluak Pass);

Sec. 33, excluding Native allotment F-18444 Parcel C and Yukon River (Kwikluak Pass);

Sec. 34, excluding Native allotment F-18461 Parcel A, and Yukon River (Kwikluak Pass);

Sec. 35, excluding Yukon River (Kwikluak Pass);

Sec. 36, all;

Containing approximately 17,129 acres.

T. 31 N., R. 82 W.

Secs. 31 to 36, inclusive, excluding

Elukozuk Slough.

Containing approximately 3,817 acres.

T. 28 N., R. 83 W.

Sec. 1, excluding Native allotment F-18601 Parcel B and Kanelik Pass;

Sec. 2, excluding Native allotments F-18419 Parcel C, F-18601 Parcel B, F-8713 Parcel D, and Kanelik Pass;

Sec. 3, excluding Native allotments F-18419 Parcel C and F-18445 Parcel A;

Sec. 4, all;

Sec. 5, excluding Native allotment F-18411 Parcel B;

Sec. 6, excluding Native allotments F-18340 Parcel C, F-18418 Parcel C, and F-18692 Parcel B;

Sec. 7, excluding Native allotment F-18692 Parcel B;

Secs. 8, 9 and 10, all;

Sec. 11, excluding Kanelik Pass;

Sec. 12, all;

Sec. 13, excluding Kanelik Pass and unnamed slough between Kanelik Pass and Akularak Pass;

Secs. 14 and 15, excluding Kanelik Pass;

Secs. 16 to 20, inclusive, all;

Sec. 21, excluding Native allotment F-18486 Parcel B;

Sec. 22, excluding Native allotment F-18486 Parcel B and Kanelik Pass;

Sec. 23, excluding Native allotment F-18679 Parcel A and Kanelik Pass;

Sec. 24, excluding unnamed slough between Kanelik Pass and Akularak Pass;

Secs. 27 and 28, excluding Kanelik Pass;

Sec. 29, excluding Kwemeluk Pass;

Sec. 30, excluding Native allotments F-18146 Parcel C, F-18343 Parcel D, F-18359 Parcel B, and Kwemeluk Pass;

Sec. 31, excluding Kwemeluk Pass;

Sec. 32, excluding Native allotment F-18416 Parcel A and Kwemeluk Pass;

Sec. 33, excluding Kwemeluk Pass and Kanelik Pass;

Sec. 34, excluding Kanelik Pass.

Containing approximately 16,084 acres.

T. 29 N., R. 83 W.

Sec. 1, all;

Sec. 2, excluding Caseys Channel;

Secs. 3 and 4, excluding Caseys Channel and unnamed slough;

Sec. 5, excluding unnamed slough, Avogon Pass, and Kwikoktuk Pass;

Sec. 6, excluding kwikoktuk Pass and unnamed slough;

Sec. 7, excluding Native allotment F-18682 Parcel D, and unnamed slough;

Sec. 8, excluding Native allotments F-18565 Parcel A, F-18602 Parcel D, F-18714 Parcel D, F-18682 Parcel D, unnamed slough, and Avogon Pass;

Sec. 9, excluding Native allotment F-18711 Parcel A, Avogon Pass, and unnamed slough;

Sec. 10, excluding Caseys Channel;

Sec. 11, excluding Native allotments F-18458 Parcel B, F-18566 Parcel C, and Caseys Channel;

Sec. 12, excluding Native allotment F-18713 Parcel A and Yukon River (Kwikluak Pass);

Secs. 13 and 14, excluding Yukon River (Kwikluak Pass);

Sec. 15, excluding Native allotment F-18304 Parcel D, Yukon River (Kwikluak Pass), Caseys Channel, and unnamed slough;

Sec. 16, excluding Native allotments F-18711 Parcel A, F-18710, F-18730 Parcel D, Yukon River (Kwikluak Pass), Avogon Pass, and unnamed slough;

Sec. 17, excluding Native allotments F-18564 Parcel B, F-18565 Parcel A, F-18714 Parcel D, Yukon River (Kwikluak Pass), and unnamed slough;

Secs. 18 to 21 (fractional), inclusive, all;

Sec. 22, excluding Yukon River (Kwikluak Pass);

Sec. 23, excluding Native allotments F-18455 Parcel A, F-18709 Parcel D, and Yukon River (Kwikluak Pass);

Sec. 24, excluding Yukon River (Kwikluak Pass);

Sec. 25, all;

Sec. 26, excluding unnamed slough;

Sec. 27, excluding Native allotments F-18326 Parcel A, F-18342 Parcel A, F-18365 Parcel B, F-18413 Parcel B, Yukon River (Kwikluak Pass), Taranovokchovik Pass, and unnamed slough;

Sec. 28, excluding Yukon River (Kwikluak Pass), Taranovokchovik Pass, and Kwiklokchun Channel;

Sec. 29, excluding Yukon River (Kwikluak Pass);

Sec. 30 (fractional), all;

Sec. 31 (fractional), excluding Native allotment F-18412 Parcel B;

Sec. 32, excluding Native allotments F-18628 Parcel A, F-18632 Parcel C, Yukon River (Kwikluak Pass), and unnamed slough;

Sec. 33, excluding Native allotments F-18628 Parcel A, F-18632 Parcel C, Yukon River (Kwikluak Pass), Kwiklokchun Channel, and Taranovokchovik Pass;

Sec. 34, excluding Taranovokchovik Pass and unnamed slough;

Sec. 35, excluding Native allotment F-18598 Parcel D and unnamed slough;

Sec. 36, all.

Containing approximately 10,042 acres.

T. 30 N., R. 83 W.

Sec. 1, excluding Native allotment F-18607 Parcel D and Elukozuk Slough;

Sec. 2, excluding Native allotment F-18309 Parcel B and Alakanuk Pass;

Sec. 3, excluding Native allotments F-18311, F-18313 Parcel B, F-18453 Parcel B, F-18565 Parcel D, Alakanuk Pass, and unnamed slough;

Sec. 4 (fractional), excluding Native allotment F-18339 Parcel A;

Sec. 9 (fractional), excluding Native allotments F-18349 Parcel C and F-18599 Parcel B;

Sec. 10, excluding Native allotment F-18453 Parcel B and unnamed slough;

Sec. 11, excluding Alakanuk Pass;

Sec. 12, excluding Native allotments F-18598 Parcel B, F-18607 Parcel B, F-18608 Parcel A, and Alakanuk Pass;

Sec. 13, all;

Sec. 14, excluding Native allotment F-18605 Parcel D;

Sec. 15 (fractional), excluding Native allotment F-18340 Parcel D;

Secs. 16 and 17 (fractional), all;

Secs. 19 to 22 (fractional), inclusive, all;

Sec. 23, excluding unnamed slough;

Sec. 24, all;

Sec. 25, excluding Native allotment F-18305 Parcel C, and unnamed slough;

Sec. 26, excluding unnamed slough;

Sec. 27, excluding unnamed slough and Caseys Channel;

Sec. 28, excluding Blind Slough and Caseys Channel;

Sec. 29, excluding unnamed slough and Blind Slough;

Secs. 30 and 31 (fractional), all;

Sec. 32, excluding Blind Slough;

Secs. 33 and 34, excluding Caseys Channel and unnamed slough;

Secs. 35 and 36, all.

Containing approximately 10,525 acres.

T. 31 N., R. 83 W.

Sec. 21 (fractional), all;

Secs. 22 and 23, excluding Kawokhawik Slough;

Sec. 24, excluding Native allotment F-18605 Parcel B;

Sec. 25, excluding Native allotment F-18455 Parcel B;

Sec. 26, excluding Native allotment F-18602 Parcel A;

Sec. 27, all;

Secs. 28 and 33 (fractional), all;

Sec. 34, excluding Native allotments F-18313 Parcel B, F-18453 Parcel A, F-18456

Parcel B, F-18608 Parcel B, F-18749

Parcel B, and Elukozuk Slough;

Sec. 35, excluding Native allotments F-18602 Parcel A, F-18605 Parcel A, F-18608 Parcel B, and Elukozuk Slough;

Sec. 36, excluding Elukozuk Slough;

Containing approximately 5,490 acres.

T. 29 N., R. 84 W.

Secs. 1, 2 and 3 (fractional), all;

Secs. 10 to 14 (fractional), inclusive, all;

Sec. 15, (fractional), excluding Native allotments F-18600 Parcel B and F-18681 Parcel B;

Sec. 21 (fractional), all;

Sec. 22 (fractional), excluding Native allotment F-18345 Parcel C, F-18679 Parcel C, and F-18750 Parcel C;

Sec. 23 (fractional), excluding Native allotments F-18347 Parcel A and F-18680 Parcel B;

Sec. 24 (fractional), excluding ANCSA Sec. 3(e) application AA-28045;

Secs. 25 and 26 (fractional), all;

Sec. 27 (fractional), excluding Native allotments F-18597 Parcel C and F-18679 Parcel C;

Secs. 28, 29, 35 and 36 (fractional), all;

Containing approximately 415 acres.

T. 30 N., R. 84 W.

Secs. 24, 25 and 36 (fractional), all.

Containing approximately 20 acres.

Aggregating approximately 124,788 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f) (1976)); and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b) (1976)), the following public easement, referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F-14625-EE, is reserved to the United States. The easement is subject to applicable Federal, State, or municipal corporation regulation. The following is a listing of uses allowed for the type of easement identified. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

(EIN 1 D1, D9) An easement for an existing access trail twenty-five (25) feet in width from Hamilton southwesterly toward Seamon Bay. From Alakanuk, southwesterly to Sheldon Point, the trail follows the river ice. The uses allowed are those listed above for a twenty-five

(25) foot wide trail easement. The season of use will be limited to winter use.

The grant of lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g) (1976))), contract, permit, right-of-way or easement, and the right of the lessee, contractee, permittee or grantee to the complete enjoyment or all rights privileges and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688; 43 U.S.C. 1601 (1976)), any valid existing right recognized by said act shall continue to have whatever right of access as is now provided for under existing law;

3. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (1976)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section;

4. Airport lease F-12090, containing 124.87 acres, lying within Secs. 15, 21 and 22, T. 30 N., R. 82 W., Seward Meridian, issued to the State of Alaska, Department of Public Works, Division of Aviation (now the Department of Transportation and Public Facilities), under the provisions of the act of May 24, 1928 (45 Stat. 728-729; 49 U.S.C. 211-214 (1970)).

Alakanuk Native Corporation is entitled to conveyance of 138,240 acres of land selected pursuant to Sec. 12(a) of the Alaska Native Claims Settlement Act. To date approximately 124,805 acres of this entitlement have been approved for conveyance; the remaining entitlement of approximately 13,435 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of the Alaska Native Claims Settlement Act, conveyance of the subsurface estate of the lands described above will be granted to Calista Corporation at the same time conveyance is granted to Alakanuk Native Corporation for the surface estate and shall be subject to the same conditions as the surface conveyance.

Within the above-described lands, only the following inland water bodies are considered to be navigable:

Kawokhawik Slough
Elukozuk Slough
Alakanuk Pass of Yukon River
Yukon River
Tunuigak Slough
Kwemeluk Pass
Taranovokchovik Pass
Kanelik Pass
Kwimlithla Slough
Akogpak Slough
Sunshine Bay
Kwiklokchun Channel

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the *Federal Register* and once a week, for four (4) consecutive weeks, in the *THE TUNDRA DRUMS*. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510, with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until February 4, 1980, to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

If an appeal is taken, the parties to be served are:

Alakanuk Native Corporation
Alakanuk, Alaska 99554
Calista Corporation
516 Denali Street
Anchorage, Alaska 99501

To avoid summary dismissal of the appeal there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

Sue A. Wolf,

Chief, Branch of Adjudication.

[FR Doc. 80-68 Filed 1-2-80; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Land Management

Arizona, Kingman to Mobile Crude Oil Pipeline; Intent To Prepare Environmental Document and Scoping Meetings for Crude Oil Pipeline

The Department of the Interior, Bureau of Land Management, Phoenix District Office, will be preparing an environmental document on a proposal by Provident Energy Company. The proposal is to construct a 16-inch pipeline from a pumping station southwest of Kingman, Arizona to terminate at a refinery near Mobile, Arizona. Alaska crude oil will be transported through the pipeline. The document will consider route alternatives and a no-action alternative.

Two scoping meetings will be held to identify what are and what are not significant issues. Additionally, an opportunity to review the routes tentatively identified for detailed study will be provided. The following meetings will be at 7:30 p.m.

January 22, 1980, Kingman, Arizona, Holiday House Motel, 1225 West Beale Street.

January 23, 1980, Phoenix, Arizona, Quality Inn West, 2420 West Thomas Road.

Interested parties that cannot attend the meetings are encouraged to submit comments and recommendations in writing.

For information concerning the proposed action and the environmental document, contact: Frank Daniels, Bureau of Land Management, 2929 West Clarendon Avenue, Phoenix, Arizona 85017, telephone 602-261-4231.

Dated: December 21, 1979.

Glendon E. Collins,
Acting State Director.

[FR Doc. 80-37 Filed 1-2-80; 8:45 am]

BILLING CODE 4310-84-M

Arizona; Amendment of Harquahala Peak Wilderness Study Area Boundary

January 10, 1980.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On September 12, 1979 a notice appeared in the *Federal Register* establishing Wilderness Study Areas on Crossman Peak and Harquahala Mountains, Arizona, pursuant to Section 603 of the Federal Land Policy and Management Act of 1976. In the 30-day protest period following that notice, additional information was received from the public regarding the Harquahala Wilderness Study Area (inventory unit number W 2-5). For that reason, the earlier decision is hereby

amended, and the exterior boundary of the Wilderness Study Area is modified in the area of Blue Tank Wash. The Amendment and modification are estimated to reduce the Wilderness Study Area from approximately 72,400 acres to approximately 70,100 acres.

This amended decision will become final 30 days from the date of this publication unless amended in writing by the State Director of Arizona.

Detailed information regarding the amended area can be obtained from the District Manager, Bureau of Land Management, 2929 West Clarendon Avenue, Phoenix, Arizona 85017.

Glendon E. Collins,
Acting State Director.

[FR Doc. 80-35 Filed 1-2-80; 8:45 am]

BILLING CODE 4310-84-M

INTERNATIONAL TRADE COMMISSION

[AA1921-211]

Sodium Acetate From Canada; Determination of No Injury or Likelihood Thereof

Determination

On the basis of information developed during the course of its investigation, the Commission has unanimously determined that an industry in the United States is not being injured and is not likely to be injured, and is not prevented from being established, by reason of the importation of sodium acetate from Canada that is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

Procedural history

On October 1, 1979, the United States International Trade Commission received advice from the Department of the Treasury that sodium acetate from Canada is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). Accordingly, on October 12, 1979, the Commission instituted investigation No. AA1921-211 under section 201(a) of said act to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Notice of the institution of the investigation and of the public hearing held in connection therewith was published in the *Federal Register* on October 24, 1979 (44 FR 61272). On November 27, 1979, a hearing was held

in Washington, D.C., at which all interested parties were provided an opportunity to appear by counsel or in person.

The Treasury Department instituted its investigation after receiving a petition filed on March 5, 1979, from counsel on behalf of Niacet Corp. of Niagara Falls, New York. Treasury's notice of withholding of appraisement and determination of sales at less than fair value was published in the *Federal Register* of October 4, 1979 (44 FR 57249).

In arriving at its determination, the Commission gave due consideration to all written submissions from interested parties and information adduced at the hearing as well as information provided by the Department of the Treasury and data obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

Views of Vice Chairman Bill Alberger and Commissioners George M. Moore, Catherine Bedell, and Paula Stern

On the basis of the information in the investigation, we determine that an industry in the United States is not being injured, is not likely to be injured, and is not prevented from being established,¹ by reason of the importation of sodium acetate from Canada which the Department of the Treasury has determined is being, or is likely to be, sold at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended.

Discussion

The Department of Treasury's investigation of LTFV imports of sodium acetate from Canada was confined to exports by Van Waters & Rogers, Ltd. (VWR), Quebec, the sole producer of the chemical in Canada. The commercial market deals almost exclusively with anhydrous sodium acetate, particularly technical and FCC² grades, which accounted for over 98 percent of total U.S. sales during the period under study. During the period under investigation all export shipments were of FCC grade material and all were sold to a single U.S. distributor—American International Chemical, Inc. (AIC). Treasury examined 100 percent of VWR's sales of sodium acetate to AIC during the 6 month period September 1, 1978, through February 28, 1979. A LTFV margin of 34.75 percent of the purchase

price was found on all of the individual sales examined.

No Injury By Reason of LTFV Sales

Sodium acetate, the major commercial salt of acetic acid, is used as an intermediate for dyes and certain chemicals, and as a buffer in textile dyes and printing inks, feed preparation, and food preservatives. In 1978, the relevant U.S. industry consisted of the eight firms producing this product. Of these, two firms, Niacet and Mallinckrodt, supplied over half of domestic production.

From 1976 through 1978, when imports of sodium acetate from Canada into the U.S. were at their highest levels, capacity utilization for the industry increased by more than 5 percentage points, or from 73.2 to 78.4 percent. Capacity utilization declined sharply in the period January–September 1979 primarily because of the completion of added capacity by Niacet, the largest U.S. producer. In contrast, capacity utilization among the other producers generally increased during this period.

From 1976 to 1978, U.S. producers' shipments of sodium acetate increased by nearly 18 percent in terms of quantity and 29 percent in terms of value. U.S. producers' shipments increased again in January–September 1979 over the same period in the previous year both in terms of quantity and value. This trend held despite the decline in Niacet's shipments between the first nine months of 1978 and the corresponding period in 1979. In addition, a new U.S. company began marketing sodium acetate in 1978.

During the period 1976 to 1978, the average number of all employees in U.S. establishments producing sodium acetate remained relatively stable, while the average number of production and related workers engaged in the manufacture of sodium acetate increased by 6 percent. Man-hours worked by these production and related workers increased by nearly 14 percent during the same period.

The combined inventories of the two largest commercial producers of sodium acetate, Niacet and Mallinckrodt, declined by 70 percent from December 31, 1976 to September 30, 1979. Similarly, the ratio of these producers' combined inventories to shipments also declined during this period.

From 1976 to 1978, when imports of sodium acetate from Canada were at their highest levels, the aggregate net operating profit for the two largest commercial producers of sodium acetate increased, while their ratio of net operating profit to net sales declined only slightly. Sharp declines in

profitability occurred in January–June 1979 even though imports from Canada were virtually nonexistent. This decline was largely due to a substantial increase in cost of goods sold because of a sharp rise in raw material and energy costs.

The ratio of imports of Canadian-produced sodium acetate to total U.S. consumption decreased slightly from 1976 to 1978. This ratio dropped sharply in January–September 1979. The ratio of imports from Canada to apparent U.S. open-market consumption followed the same trend.

Only one producer alleged that sales of sodium acetate had been lost to imports during the period from 1976 to September 1979. The Commission was able to verify 1.8 million pounds of lost sodium acetate sales out of alleged lost sales of 3.2 million pounds. Of the 5 firms cited for lost sales, two firms stated that a combination of price and service offered by AIC (the sole distributor of the Canadian-produced sodium acetate in the U.S.) won AIC the sales.

Although imports of sodium acetate from Canada were sold by VWR at substantially lower prices than the domestic product during the period 1977–78 we could find no injury or threat of injury to the domestic sodium acetate industry. The major producer, Niacet, may have suffered injury, but the information developed during the investigation indicates such injury was due to competitive conditions within the domestic industry and to the underutilization of its recently expanded capacity.

Conclusion

Based on the foregoing information, we conclude that an industry in the United States is not being injured, and is not likely to be injured by reason of importation of sodium acetate from Canada sold at LTFV within the meaning of the Antidumping Act, 1921, as amended.

Concurring Views of Chairman Joseph O. Parker

I concur in the determination of the Commission in investigation No. AA1921–211 that an industry in the United States is not being injured, is not likely to be injured, and is not prevented from being established by reason of sales of sodium acetate from Canada at less than fair value (LTFV). Although investigations by the Department of the Treasury and the Commission clearly established the willingness and the ability of the sole Canadian exporter of

¹ Prevention of establishment of an industry is not an issue in this investigation and will not be discussed further in this view.

² Food Chemicals Codex.

sodium acetate, Van Waters & Rogers (VWR), to sell at LTFV, in my judgment the requirement of the statute that there be a clear indication of injury or likelihood of injury by reason of such sales has not been fulfilled.¹

The Department of the Treasury's investigation established that virtually all the sodium acetate sold by VWR during the period September 1978–February 1979 was sold at LTFV at a margin of 34.75 percent. The Commission's investigation established that such merchandise was sold at prices below those of domestic producers, and as a result domestic producers lost sales. Pricing comparisons also revealed indications that domestic producer's prices were suppressed as a result of these sales. However, in my judgment, these factors do not establish injury or likelihood thereof within the meaning of the statute.

In 1978, imports of sodium acetate from VWR declined by almost 40 percent. In the same year, apparent domestic consumption increased by about 10 percent and apparent open-market consumption also increased. As a result, the ratios of imports from Canada to total consumption and open-market consumption both declined between 40 and 50 percent. In the same year, domestic production and shipments increased by more than 10 percent, and inventories declined by more than 40 percent. Available data indicate that gross profit and the ratio of net operating profit to net sales for the domestic industry increased by more than one-third.

Imports of sodium acetate from VWR ceased almost completely in 1979, principally as a result of an equipment failure at VWR. Although the equipment has now been repaired, exports have not been resumed. This equipment can be used in the production of other chemical products. No new capacity has been added, and VWR has allowed an important raw-material-supply agreement to lapse.

In view of these factors, I have determined that there is no injury or likelihood of injury within the meaning of the Antidumping Act. Should exports of sodium acetate from Canada to the United States at LTFV prices resume, petitioners are free to petition for a new investigation, presumably under the new and faster time requirements of the Trade Agreements Act of 1979.

¹ See *Trade Reform Act of 1974: Report of the Committee on Finance*, S. Rept. No. 93-1298 (93d Cong., 2d sess.), 1974, p. 179.

By order of the Commission:

Issued: December 21, 1979.

Kenneth R. Mason,
Secretary.

[FR Doc. 80-119 Filed 1-2-80; 8:45 am]

BILLING CODE 7020-02-M

[AA1921-214]

Spun Acrylic Yarn From Italy; Investigation and Hearing

Having received advice from the Department of the Treasury on December 17, 1979, that spun acrylic yarn from Italy is being, or is likely to be, sold at less than fair value, the United States International Trade Commission, on December 27, 1979, instituted investigation No. AA1921-214 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. For purposes of the Treasury Department's determination, "spun acrylic yarn" means spun yarn of acrylic classified under item 310.50 of the Tariff Schedules of the United States.

This investigation will be conducted in conjunction with investigation No. AA1921-212, Spun Acrylic Yarn from Japan, which was instituted on November 21, 1979 (44 FR 68040, November 28, 1979).

Conduct of the Investigation Under the Trade Agreements Act of 1979.

Under the Antidumping Act, 1921, the Commission is required to notify the Treasury Department of its determination in this investigation not later than March 17, 1980. However, under section 102 of the Trade Agreements Act of 1979 (Pub. L. 96-39, 93 Stat. 144, July 26, 1979), the Commission would be required to terminate this investigation on January 1, 1980, and initiate an investigation under subtitle B of title VII of the Tariff Act of 1930, as added by the Trade Agreements Act of 1979, if the conditions set forth in sections 2 and 107 of the Trade Agreements Act are fulfilled by January 1, 1980. In the event that the Trade Agreements Act becomes effective on January 1, 1980, this present investigation will be terminated and a new investigation will be instituted which will be conducted under the provisions of sections 101 and 102 of the Trade Agreements Act. That act requires this new investigation to be completed within 75 days after January 1, 1980. On the assumption that the new

law will become effective, the procedures described below will be followed in the present investigation.

After January 1, 1980, however, the rules adopted by the Commission on December 19, 1979, to govern 75 days investigations will be applicable, except where they require a date for submission of prehearing statements different from the date set out in this notice. The rules will become Part 207, subpart C of the Commission's Rules of Practice and Procedure and appear in the Federal Register of December 26, 1979.

Hearing. A public hearing in connection with this investigation, and investigation No. AA1921-212, Spun Acrylic Yarn from Japan, will be held on Tuesday, January 22, 1980, in the Commission's Hearing Room, U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436, beginning at 10 a.m., e.s.t. Requests to appear at the public hearing should be filed in writing with the Secretary to the Commission not later than close of business (5:15 p.m., e.s.t.), Tuesday, January 15, 1980. (If it appears that the dumping provisions of the Trade Agreements Act will not be effective on January 1, 1980, a notice rescheduling the hearing (and related prehearing report and statements) for an earlier date will be issued.)

Prehearing statements. The Commission will prepare and place on the record by January 8, 1980, a staff report containing preliminary findings of fact. Parties to the investigation will submit to the Commission a prehearing statement by January 28, 1980. Such statement should include the following:

- (a) Exceptions, if any, to the preliminary findings of fact contained in the staff report,
- (b) Any additional or proposed alternative findings of fact,
- (c) Proposed conclusions of law, and
- (d) Any other information and arguments which a party believes relevant to the Commission's determination in this investigation.

Collection and confidentiality of information. Requests for confidential treatment of information submitted to the Commission should be directed to the attention of the Secretary. Requests must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

Information submitted to or gathered by the Commission in conjunction with this proceeding under section 201(a) of the Antidumping Act will be placed in the record of the proceeding instituted under title VII of the Tariff Act of 1930, as added by the Trade Agreements Act, if and when that law becomes effective.

That information will be subject to the new antidumping provisions regarding access to information set forth in title VII. Those provisions relate to the collection and retention of information by the Commission and the maintenance of confidentiality or the disclosure of information. The provisions of section 777 of title VII will require the following:

(a) A record of all ex parte meetings between interested parties or persons providing factual information in connection with an investigation and the Commissioners, their staffs, or any person charged with making a final recommendation in an investigation;

(b) Disclosure of nonconfidential information or nonconfidential summaries of confidential information which is not in a form that can be associated with or used to identify the operations of a particular person;

(c) Preventing disclosure of confidential information unless the party submitting the information consents to the disclosure; and

(d) Limited disclosure of certain confidential information under protective order or by an order of the U.S. Customs Court.

Section 516A of the Tariff Act of 1930, as amended by the Trade Agreements Act, will require that all information in the record before the Commission in the title VII investigation, whether confidential or nonconfidential in nature, become part of the record before the U.S. Customs Court in any action under section 516A regarding a Commission determination. Section 771 provides definitions applicable to title VII.

The Commission is prescribing these procedures pursuant to section 335 of the Tariff Act of 1930, as amended (19 U.S.C. 1335), which authorizes the Commission to adopt such reasonable procedures as are necessary to carry out its functions and duties.

By order of the Commission.

Issued: December 28, 1979.

Kenneth R. Mason,
Secretary.

[FR Doc. 80-120 Filed 1-2-80; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 79-18]

Francis J. Jones, D.O.; Revocation of Registration

On August 15, 1979, the Administrator of the Drug Enforcement Administration [DEA] issued to Francis J. Jones, D.O. [Respondent], Orders to Show cause as to why the Respondent's DEA registrations in Kansas City, Kansas,

and Riverside, Missouri, should not be revoked. On August 29, 1979, the Respondent, through counsel, requested a hearing on the issues raised by the Orders to Show Cause. The hearing in this matter was scheduled to commence on November 14, 1979, in Kansas City, Missouri.

Prior to the scheduled hearing, counsel for the government and counsel for the Respondent advised the Administrative Law Judge that they had reached agreement on terms pursuant to which they believed that this matter could be disposed of without a formal hearing. Accordingly, the hearing was cancelled and, on November 26, 1979, a Memorandum of Understanding was submitted to the Administrative Law Judge for his approval. This document was accepted by the Administrative Law Judge who, on November 27, 1979, submitted this matter to the Administrator together with a recommendation that a Final Order be issued as contemplated by the Memorandum of Understanding.

The Administrator has considered the Memorandum of Understanding and the accompanying report of the Administrative Law Judge and, pursuant to 21 CFR 1316.67, hereby issues his Final Order in this matter.

The Administrator finds, as the parties have stipulated, that on July 16, 1979, in the United States District Court for the District of Kansas, the Respondent was convicted, *inter alia*, of violating Title 21, United States Code, section 841(a)(1), a felony offense relating to controlled substances. It is noted that the Respondent is prosecuting an appeal of this conviction.

The Administrator concludes that there is a statutory basis for the revocation of the Respondent's DEA registrations pursuant to 21 U.S.C. 824(a)(2). The Respondent has consented to the revocation of these registrations. Accordingly, the Administrator concludes that DEA Certificates of Registration AJ7998640, issued to the Respondent at Kansas City, Kansas, and AJ3779432, issued to him at Riverside, Missouri, should be, and they are hereby, revoked, effective immediately.

The parties have agreed that on August 15, 1982, or as soon thereafter as the Respondent may apply for such registration(s), the Drug Enforcement Administration will give favorable consideration to the Respondent's application(s) for registration, provided that: (1) the Respondent has not, in the interim, been involved in any further violation of Federal or State laws relating to controlled substances, and (2) the Respondent is, at the time of his

application(s) for registration, licensed to practice his profession and authorized to handle controlled substances under the laws of the State(s) from which he is then applying. The Administrator concurs in this disposition.

It is understood that during the approximately three year period in which the Respondent will be without a Federal controlled substance registration, he may retain his privileges in various hospitals and may continue to admit and treat his patients in such hospitals. It is further understood that to the extent that it is consistent with the policies of such hospitals, the Drug Enforcement Administration will have no objection to the Respondent's use of a hospital's DEA registration for the purpose of ordering the administration of controlled substances to his hospitalized patients. To facilitate this understanding, the Administrator hereby waives the provisions of 21 CFR 1301.76(a) with respect to the employment of the Respondent by such hospitals.

Dated: December 27, 1979.

Peter B. Bensinger,
Administrator, Drug Enforcement
Administration.

[FR Doc. 80-95 Filed 1-2-80; 8:45 am]

BILLING CODE 4110-09-M

Law Enforcement Assistance Administration

National Minority Advisory Council on Criminal Justice; Meeting

This is to provide notice that the National Minority Advisory Council on Criminal Justice, Executive Committee will meet on January 19, 1980. The Meeting will be held in the Conference Room of A. L. Nellum and Associates, Inc., located at 1930 M Street, NW, Suite 200, Washington, DC and will begin at 10:00 a.m.

This meeting will focus on the planned results conference; publication of the Council's research on crime and criminal justice; receive the report by the sub-committee on collective violence; publication of the position paper on political prisoners; review Council policies and procedures; develop an agenda for the Council's first quarterly meeting for 1980; and a briefing on LEAA/OJARS transition plan. This meeting will be open to the public.

Anyone wishing additional information should contact either Ms. Peggy Triplett, LEAA-NMACCJ Coordinator at 633 Indiana Avenue, NW, Washington, DC 20531, (202) 724-5933 or Mr. Alan G. Boyd, NMACCJ

Staff Director, 1990 M Street, NW, Suite 200, Washington, DC 20036, (202) 862-9348.

Thomas J. Madden,
Assistant Administrator, General Counsel.
[FR Doc. 80-94 Filed 1-2-80; 8:45 am]
BILLING CODE 4410-18-M

Variations In The Use of Prison Confinement; Announcement of Competitive Research Grant/Cooperative Agreement Solicitation

The National Institute of Law Enforcement and Criminal Justice announces a competitive research grant/cooperative agreement solicitation to support a study of variations in the use of prison confinement. The major objective of this research is to acquire greater understanding of the various reasons for differences and similarities in the use of incarceration both across jurisdictions and over time.

The solicitation requests submissions of draft proposals rather than full, formal proposals. Full proposals will be requested from those applicants receiving favorable review by a peer review panel. In order to be considered, a draft proposal must be received by the National Institute no later than March 1, 1980. One grant/cooperative agreement is expected to be awarded under this announcement. A maximum of \$300,000 will be awarded for a project with an expected duration of 24 months.

Additional information and copies of the solicitation may be obtained by contacting: Lawrence A. Greenfeld, Corrections Division, Office of Research Programs, National Institute of Law Enforcement and Criminal Justice, 633 Indiana Avenue NW., Washington, D.C. 20531, (301) 492-9118.

Dated: December 21, 1979.

Harry M. Bratt,
Acting Director, National Institute of Law Enforcement and Criminal Justice.
[FR Doc. 80-99 Filed 1-2-80; 8:45 am]
BILLING CODE 4410-18-M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Office For Partnership Panel (Partnership Coordination); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Office for Partnership (Partnership Coordination) Panel to the National Council on the Arts will be held January 31, 1980, from 8:30 a.m.-5:00 p.m. and February 1, 1980, from 8:30

a.m.-5:00 p.m. in Room 1422, Columbia Plaza Office Building, 2401 E St., NW., Washington, D.C.

This meeting will be open to the public on a space available basis. The topic for discussion will be policy and planning.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,
Director, Office of Council and Panel Operations National Endowment for the Arts.
[FR Doc. 80-100 Filed 1-2-80; 8:45 am]
BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-528A, STN 50-529A and STN 50-530A]

Arizona Public Service Company, Et Al;¹ Receipt of Operating License Application and Request for Antitrust Information

Arizona Public Service Company, et al,¹ acting for itself and the four other owners of the Palo Verde Nuclear Generating Station, Units 1, 2 and 3, filed the general information portion and antitrust information of an application for operating licenses. This information was filed pursuant to Part 2.101 of the Commission Rules and Regulations and is in connection with the owners' plans to operate three pressurized water reactors in Maricopa County, Arizona. The portion of the application filed contains antitrust information for review pursuant to NRC Regulatory Guide 9.3 to determine whether there have been any significant changes since the completion of the antitrust review at the construction permit stage.

On completion of staff antitrust review of the above-named application, the Director of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under section 105c(2) of the Act. A copy of this finding will be published in the Federal Register and will be sent to the Washington and local public document rooms and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, request for reevaluation may be

¹ Salt River Project Agricultural Improvement and Power District Southern California Edison Company El Paso Electric Company Public Service Company of New Mexico

submitted for a period of 60 days after the date of the Federal Register notice. The results of any reevaluations that are requested will also be published in the Federal Register and copies sent to the Washington and local public document rooms.

A copy of the general information portion of the application for operating licenses and the antitrust information submitted is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, N.W. Washington, D.C. 20555 and in the local public document room at the Phoenix Public Library, Science and Industry Section, 12 East McDowell Road, Phoenix, Arizona.

Any person who desires additional information regarding the matter covered by this notice or who wishes to have his views considered with respect to significant changes related to antitrust matters which have occurred in the licensees' activities since the construction permit antitrust reviews for the above-named plant should submit such requests for information or views to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation, on or before March 3, 1980.

Dated at Bethesda, Maryland, this 17th day of December, 1979.
For the Nuclear Regulatory Commission,
Olan D. Parr,
Chief, Light Water Reactors, Branch No. 3,
Division of Project Management.

[FR Doc. 80-3 Filed 1-2-80; 8:45 am]
BILLING CODE 7590-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 80-1]

Aviation Safety Recommendations; Availability

The National Transportation Safety Board on December 21 completed its determination of probable cause and final report on investigation of the American Airlines McDonnell Douglas DC-10 accident which occurred last May 25 near Chicago-O'Hare International Airport. Also on December 21 the Safety Board forwarded to the Federal Aviation Administration a formal recommendation letter containing eight additional safety recommendations, Nos. A-79-98 through 105, developed as a result of investigation of the Nation's worst aviation disaster.

In all, 273 persons—258 passengers and 13 crewmembers and two persons

on the ground—were killed as a result of the crash of the DC-10. The Board found that the DC-10 stalled, rolled, and crashed after takeoff because of partial left wing slat retraction and the loss of two cockpit warning systems—all the end result of maintenance damage which caused separation of the left engine and pylon. The separation, at a critical point in takeoff, resulted from damage by improper maintenance procedures which led to failure of the pylon structure.

In determining the probable cause of the crash, the Safety Board emphasized that the flightcrew had inadequate information and opportunity to recognize and avoid the impending aerodynamic stall. Factors cited by the Board as contributing to the accident were:

- The vulnerability of the design of the pylon attach points to maintenance damage.
- The vulnerability of the design of the leading edge slat system to the damage which produced asymmetry.
- Deficiencies in the FAA surveillance and reporting systems which failed to detect and prevent the use of improper maintenance procedures.
- Deficiencies in the practices and communications among operators, McDonnell Douglas, and FAA which failed to detect and make known previous maintenance damage incidents.
- The intolerance of prescribed operational procedures for takeoff to this unique emergency.

The wide-body jetliner was taking from O'Hare's Runway 32 Right. It was rotating—its nose rising for liftoff—when the left pylon and engine tore loose from the wing, passed over it, and fell to the runway. The aircraft lifted off the runway and maintained a steady climb and heading for 20 seconds. It then began a left turn and continued rolling to the left until its wings passed the vertical. Out of control, the DC-10 nosed down, crashed, and exploded on impact in an open field.

Safety Board investigation showed that separation of the pylon from the wing had damaged hydraulic and flight control components located there. This caused uncommanded retraction of the left wing's six outboard leading edge slats—aerodynamic lift enhancement surfaces, eight of which extend from each wing. Two cockpit warning systems were disabled by the loss of that portion of the electrical system powered by the left engine. One was a slat disagreement system which alerts the crew when the slats are not in the selected position. The second, a stall warning device, shakes the control wheel when airspeed is dropping too close to an aerodynamic stall. The Safety Board concluded that the

uncommanded slat retraction, which induced an asymmetric stall, and the loss of the two systems which could have warned of it, caused the flightcrew to lose control. Investigation showed that the American flightcrew had followed prescribed engine-out procedure during the climbout.

Examination of the separated pylon showed there had been a pre-existing 10-inch crack in the forward flange of the pylon aft bulkhead—rearmost of the three DC-10 pylon-to-wing attach points. A crescent-shaped deformation on the fracture surface was determined to have been produced when the pylon was installed or removed from the wing, not by the crash. The Safety Board held that the pylon had separated by a complete failure of the forward flange of the aft bulkhead after its residual strength had been critically reduced by a maintenance-induced crack which was lengthened by service loads.

In issuing its December 21 recommendation letter, the Safety Board stated that its analyses of the evidence, and recommendations submitted to the Board by the other parties who participated in the investigation and public hearing, have identified several areas which require FAA's early attention. The Board recognizes that the independent studies conducted by FAA following the accident also have identified needed specific actions, and the Board is aware that several actions have already been taken or are anticipated as a direct result of those studies. The Board also stated that while the Secretary of Transportation's current overview of FAA's safety processes and the FAA's institution of a National Resource Specialist Program should generally enhance aviation safety, further attention must be directed specifically toward fairly immediate solutions to some of the apparent deficiencies which led to this accident.

The Safety Board views the DC-10 accident with particular concern because the identified deficiencies touch almost every phase of aviation. First, the deficiencies raise concern about aircraft design and certification. Putting aside any issue of whether or not the design of the DC-10 engine pylon assembly satisfied all of the structural requirements of the applicable regulations, its vulnerability to critical damage during maintenance apparently was not considered by either the manufacturer's design personnel or the FAA's certification review team. Additionally, the design of the aircraft's systems apparently failed to account for the possibility that a single event could

simultaneously render critical portions of the flight control, hydraulic, and electrical systems inoperative. Although singularly, any one of these failures would probably have had little effect on the pilot's ability to fly the aircraft safely, in combination, they presented all but insuperable problems.

Secondly, the Safety Board is concerned that discrepancies in fabrication unrelated to the Chicago accident found in a number of engine pylons on other DC-10 aircraft can be attributed to deficiencies in the manufacturing and quality control processes of a major airframe manufacturer. That the deficiencies were not detected by the manufacturer shows weaknesses in their quality assurance program and FAA's surveillance of that program. Furthermore, the DC-10 maintenance program established by the Maintenance Review Board permitted these discrepancies to escape detection even after the aircraft had been in commercial service for many years.

Another key problem uncovered in the investigation of this accident is the method through which operators could establish and introduce procedures to conduct major maintenance. Two major U.S. air carriers with extensive maintenance and engineering capabilities were able to introduce the maintenance procedure which led to damage of critical structural elements of DC-10 aircraft. Even though the procedure deviated from that recommended by the airframe manufacturer, apparently neither carrier performed or was required to perform a sufficiently comprehensive review of the procedure to allow it to foresee that the procedure could lead to hazardous damage. Furthermore, the FAA's maintenance inspection program contains no mechanism requiring review and analysis of the operator's maintenance procedures to assure that optimum safety levels are maintained.

It is of special concern that one of the air carriers persisted in using the variant maintenance procedure despite the fact that, on two separate occasions before the Chicago accident, it had discovered damage to the pylon assembly which had been introduced during maintenance. Had more comprehensive communication taken place between the carrier, the manufacturer, and the FAA regarding the damage and how it was being inflicted, action might have been taken which could have prevented the Chicago accident; however, neither incident was brought to the attention of the FAA (nor was it clearly required to be). The manufacturer was notified of

the problem because a structural repair was required for which the carrier requested engineering assistance from the manufacturer. While the manufacturer, in a report to other DC-10 operators, included information concerning these incidents, the report which was distributed failed to place any emphasis on the significance of the event. As a result the information was treated routinely by carriers and none sufficiently analyzed the variant maintenance practice to ascertain its potential for causing damage which would affect the structural integrity of the aircraft.

Finally, the Safety Board believes that the operational aspects of this accident involved limitations in the prescribed engine failure procedure. Flight simulation conducted as part of the accident investigation disclosed that the aircraft could have continued to fly if sufficient airspeed had been maintained, notwithstanding the extensive damage caused by the structural failure of the engine pylon assembly. Successfully flying the aircraft was, however, contingent upon immediate recognition of the need to maintain an airspeed above the procedurally prescribed airspeed schedule—recognition which was inhibited in this accident by the damage itself because it rendered the asymmetric slat and stall warning systems inoperable. The Safety Board questions whether the prescribed procedures were optimal for all conditions and whether they could not have provided for a safer speed margin of cope with unforeseen emergencies without producing intolerable effects on other aspects of the aircraft's performance.

In this accident, the flightcrew was adhering to the prescribed engine failure procedure and corresponding flight director logic which required a climb at the takeoff safety speed (V_2). This speed was approximately 6 knots below the stall speed of the wing on which the leading edge slats had retracted. The aircraft had attained a speed more than 10 knots higher than V_2 when it first became airborne; however, as it decelerated to the target V_2 speed, the left wing stalled without warning, resulting in a roll and impact. The Safety Board notes that approved flight manuals for some other aircraft prescribe an engine failure procedure wherein the speed attained in excess of V_2 , up to V_2+10 knots, is maintained during the climb. The Safety Board believes that the FAA should evaluate and determine the acceptability of the latter procedure as a standard for the industry.

While the overall safety record of the current generation of jet aircraft clearly indicates a basically sound foundation for the regulatory oversight of U.S. commercial aviation and the commitment of the industry to safety, the Safety Board is concerned that this accident may be indicative of a climate of complacency. Although the accident in Chicago on May 25 involved only one manufacturer and one airline, the Safety Board is concerned that the nature of the identified deficiencies in design, manufacturing, quality control, and maintenance and operational procedures may reflect an environment which could involve the safe operation of other aircraft by other carriers. Accordingly, on December 21 the Safety Board recommended that the FAA:

Incorporate in type certification procedures full consideration of: (a) factors which affect maintainability, such as accessibility for inspection, positive or redundant retention of connecting hardware and the clearances of interconnecting parts in the design of critical structural elements; and (b) possible failure combinations which can result from primary structural damage in areas through which essential systems are routed. (A-79-98)

Insure that the design of transport category aircraft provides positive protection against asymmetry of lift devices during critical phases of flight; or, if certification is based upon demonstrated controllability of the aircraft under condition of asymmetry, insure that asymmetric warning systems, stall warning systems, or other critical systems needed to provide the pilot with information essential to safe flight are completely redundant. (A-79-99)

Initiate and continue strict and comprehensive surveillance efforts in the following areas: (a) manufacturer's quality control programs to assure full compliance with approved manufacturing and process specifications; and (b) manufacturer's service difficulty and service information collection and dissemination systems to assure that all reported service problems are properly analyzed and disseminated to users of the equipment, and that appropriate and timely corrective actions are effected. This program should include full review and specific FAA approval of service bulletins which may affect safety of flight. (A-79-100)

Assure that the Maintenance Review Board fully considers the following elements when it approves an Airline/Manufacturer Maintenance Program: (a) hazard analysis of maintenance procedures which involve removal, installation, or work in the vicinity of structurally significant (as defined in Appendix 1 of Advisory Circular 120-17A—"Maintenance Control by Reliability Methods") components in order to identify and eliminate the risk of damage to those components; (b) special inspections of structurally significant components following maintenance affecting these components; and (c) the appropriateness of permitting "on condition" maintenance and, in particular, the validity of sampling inspection as it relates to the detection of damage which

could result from undetected flaws or damage to structurally significant elements during manufacture or maintenance. (A-79-101)

Require that air carrier maintenance facilities and other designated repair stations: (a) make a hazard analysis evaluation of proposed maintenance procedures which deviate from those in the manufacturer's maintenance manual and which involve removal, installation, or work in the vicinity of structurally significant components; and (b) submit proposed procedures and analysis to the appropriate representative of the Administrator, FAA, for approval. (A-79-102)

Revise 14 CFR 121.707 to more clearly define "major" and "minor" repair categories to insure that the reporting requirement will include any repair of damage to a component identified as "structurally significant." (A-79-103)

Expand the scope of surveillance of air carrier maintenance by: (a) revising 14 CFR Part 121 to require that operators investigate and report to a representative of the Administrator the circumstances of any incident wherein damage is inflicted upon a component identified as "structurally significant" regardless of the phase of flight, ground operation, or maintenance in which the incident occurred; and (b) requiring that damage reports be evaluated by appropriate FAA personnel to determine whether the damage cause is indicative of an unsafe practice and assuring that proper actions are taken to disseminate relevant safety information to other operators and maintenance facilities. (A-79-104)

Revise operational procedures and instrumentation to increase stall margin during secondary emergencies by: (a) evaluating the takeoff-climb airspeed schedules prescribed for an engine failure to determine whether a continued climb at speeds attained in excess of V_2 . Up to V_2+10 Knots, is an acceptable means of increasing stall margin without significantly degrading obstacle clearance; (b) amending applicable regulations and approved flight manuals to prescribe optimum takeoff-climb airspeed schedules; and (c) evaluating and modifying as necessary the logic of flight director systems to insure that pitch commands in the takeoff and go-around modes correspond to optimum airspeed schedules as determined by (a) and (b) above. (A-79-105)

Each of the above recommendations is designated "Class II—Priority Action." Last June, early in the investigation of the Chicago accident, the Safety Board issued to FAA four "Class I—Urgent Action" safety recommendations, each dealing with inspection of DC-10 aircraft. These recommendations were reported in the Federal Register—No. A-79-41 at 44 FR 32756, June 7, 1979; Nos. A-79-45 and 46 at 44 FR 34222, June 14, 1979; and No. A-79-52 at 44 FR 39319, July 5, 1979.

Copies of the Safety Board's recommendation letters to FAA are available free of charge. All requests for

copies must be in writing, identified by recommendation number. Address inquiries to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. The Board's formal report on the investigation of this accident is now being processed for distribution and copies will be available in approximately three weeks. Announcement of availability will be made in the Federal Register at the time of release.

(49 U.S.C. 1903(a)(2), 1906)

Margaret L. Fisher,
Federal Register Liaison Officer.

December 27, 1979.

[FR Doc. 80-32 Filed 1-2-80; 8:45 am]

BILLING CODE 4910-58-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-16449; File No. SR-DTC-79-6]

Depository Trust Co.; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 4, 1979, the above mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change permits a corporation which acts as its own transfer agent and which does not maintain insurance analogous to Bankers Blanket Bond Standard Form 24 with respect to its transfer agent function to participate in the Fast Automated Securities Transfer (FAST) program of The Depository Trust Company (DTC). The proposed rule change is reflected in the revisions to the standard forms of Balance Certificate Agreement which are attached as Exhibit 2 to DTC's filing on Form 19b-4A, File No. SR-DTC-79-6.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change are as follows:

The purpose of the proposed rule change is to permit participation in the FAST program by a corporation which acts as its own transfer agent (a corporate agent) and which does not maintain insurance analogous to Bankers Blanket Bond Standard Form 24 with respect to its transfer agent function. In regard to a corporate agent

which does not maintain insurance analogous to Bankers Blanket Bond Standard Form 24, DTC will satisfy itself that the financial ability of the corporate agent appears adequate to protect the transactions contemplated between DTC and the corporate agent in the FAST program. If securities are lost on the premises of such a corporate agent, the responsibility of the corporate agent is primary, and, in the view of DTC and its insurance brokers, DTC's insurance would cover any loss in excess of the amount recovered from the corporate agent, up to the limits of DTC's insurance. DTC anticipates no impact on its present insurance policies by reason of participation in the FAST program by corporate agents which do not maintain insurance analogous to Bankers Blanket Bond Standard Form 24.

Permitting participation in the FAST program by corporate agents which do not maintain insurance analogous to Bankers Blanket Bond Standard Form 24 is, in DTC's judgment, a reasonable and realistic approach that coordinates the needs of the FAST program with general practices among corporate agents. Certain types of insurance are available only to bank transfer agents. The insurance programs of corporate agents are based on their analysis of the risks they face and vary with the particular situation of the corporate agent. As stated above, DTC's own insurance provides secondary coverage for losses on the premises of corporate agents.

Upon the effectiveness of the proposed rule change, DTC's undertaking, set forth in DTC's letter dated March 4, 1977 to the staff of the Division of Market Regulation of the Securities and Exchange Commission submitted in connection with DTC's filing on Form 19b-4A, File No. SR-DTC-76-3, will be superseded by the proposed rule change, and therefore DTC will not seek approval of the Securities and Exchange Commission for admission into the FAST program of each corporate agent which does not maintain insurance analogous to Bankers Blanket Bond Standard Form 24.

The proposed rule change relates to DTC's carrying out the purposes of Section 17A of the Securities Exchange Act of 1934 by enabling more corporate agents to participate in the FAST program, which reduces the number of certificate movements between DTC and the corporate agent.

Written comments on the proposed rule change have not been solicited or received.

DTC perceives no burden on competition by reason of the proposed rule change.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the public reference room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within 21 days of the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

December 26, 1979.

[FR Doc. 80-208 Filed 1-2-80; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 21348; 70-6383]

Gulf Power Co.; Proposed Issuance and Sale of First Mortgage Bonds and Preferred Stock at Competitive Bidding

December 21, 1979.

In the matter of Gulf Power Company, 75 North Pace Boulevard, P.O. Box 1151, Pensacola, Florida 32520 (70-6383). Notice is hereby given that Gulf Power Company ("Gulf"), an electric utility subsidiary of The Southern Company, 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 \$50,000,000 aggregate principal amount of its first mortgage bonds ("Bonds"). 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 101% of the principal amount thereof, plus accrued interest. The 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 and to be further supplemented by a Supplemental Indenture to be dated as of February 1, 1980.

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 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 market for long-term debt securities when and as they occur in order to obtain the best possible price, interest rate, and term for its Bonds. Gulf intends, therefore, to decide on the term of the Bonds after the date of the public invitation for proposals and then notify prospective bidders.

Gulf also proposes to issue up to 100,000 shares of its preferred stock, par value \$100 per share, ("Preferred Stock") and to sell such securities at competitive bidding for the best price obtainable but for a price of Gulf of not less than \$100 per share nor more than \$102.75 per share, which shall also be the public offering price per share. In addition, Gulf proposes to pay to the purchasers of the Preferred Stock compensation for their services in purchasing and making a public offering of such 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 the sales of the Bonds and Preferred Stock, along with other funds, in financing business as an electric utility company, including the repayment of outstanding short-term indebtedness, the payment of costs incurred in its on-going construction program and the discharges

of other general corporate obligations. Gulf's construction program is estimated at \$146,779,000 for 1980.

Statements of the fees and expenses to be incurred in connection with the proposed transactions will be filed by amendment. The Florida Public Service Commission has jurisdiction over the proposed transactions. 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 person may, not later than January 18, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by 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.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 80-204 Filed 1-2-80; 8:45]

BILLING CODE 8010-01-M

[Rel. No. 21362; 70-6392]

**New Orleans Public Service, Inc.;
Proposed Amendments to Articles of
Incorporation; Order Authorizing
Solicitation of Stockholder's Consent**

December 27, 1979.

In the matter of New Orleans Public Service Inc., 317 Baronne Street, New Orleans, Louisiana 70160 (70-6392). Notice is hereby given that New Orleans

Public Service Inc. ("NOPSI"), a subsidiary of Middle South Utilities, Inc. ("Middle South"), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7 and 12(e) of the Act and Rules 23, 24, and 62 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration which is summarized below, for a complete statement of the proposed transactions.

NOPSI proposes to amend the Restated Articles of Incorporation under which the company is constituted ("the Charter") so as to raise the fixed ceiling on the amount to which the capital stock of the Company may be increased from \$100,000,000 to \$200,000,000.

The provision of the Charter limiting the total amount of capital stock of NOPSI to \$100,000,000 has been contained in the Charter and has remained essentially unchanged since 1922. Since that time NOPSI has grown and the company believes, on the basis of current projections of its financing needs, that the present \$100,000,000 ceiling would severely limit its ability in the future to obtain outside capital funds. Currently, NOPSI's construction program contemplates expenditures of approximately \$30,400,000 in 1980 and \$26,100,000 in 1981. The Company is planning sales of an aggregate of \$25,000,000 of its capital stock, consisting of \$15,000,000 of Preferred Stock and \$10,000,000 of Common Stock, to finance a portion of its 1980 construction expenditures. In view of the fact that as of September 30, 1979 the NOPSI total capital stock outstanding amounted to \$79,138,800, the current \$100,000,000 ceiling on capital stock would effectively prohibit the company from completing its planned financing program. In order to permit NOPSI to finance an appropriate portion of its future construction program through sales of capital stock, it is necessary that the fixed ceiling limitation be raised.

Moreover, in addition to the fixed ceiling limitation on the total amount of capital stock, the Charter contains various earnings and capitalization restrictions for the protection of the company's stockholders in connection with the issuance of additional preferred stocks. In contrast to the latter restrictions, the fixed ceiling limitation on the total amount of capital stock takes no account of the growth of the Company or its financial strength, and makes no provision once the ceiling is

reached for the meeting of future financing requirements.

Accordingly, NOPSI proposes to raise the capital stock limitation from the present \$100,000,000 to \$200,000,000, a figure believed by the company to be sufficiently high, after giving effect to the currently planned financing program, to obviate the necessary for further increases in the ceiling for the foreseeable future. The other restrictions on the issuance of additional preferred stocks contained in the Charter will not be affected by the proposed amendment.

The Company also proposes to amend its Charter so as to permit the Company to establish sinking fund requirements for the purchase or redemption of shares of any new series of its Preferred Stock. NOPSI plans to raise a major portion of funds during the next few years to finance its continuing construction program through the issuance and sale of additional securities, including additional shares of its Preferred Stock. While the exact nature and amount of each such security issue will depend upon NOPSI's earnings and capital requirements and the market conditions existing at the time, NOPSI is presently planning to issue and sell through an underwritten public offering 150,000 shares of new series of its Preferred Stock in the first quarter of 1980, and is also planning to issue and sell to Middle South during 1980 an additional 1,000,000 shares of Common Stock. These proposed sales will be the subject of a separate filing with this Commission under the Act. The proceeds from these securities sales, expected to approximate \$15,000,000 and \$10,000,000, respectively, will be applied by NOPSI to its construction program and to other corporate purposes.

With respect to the planned issuance and sale of the new series of Preferred Stock, NOPSI has noted that other electric utilities have under present market conditions been able to sell shares of preferred stock at favorable dividend rates (if at all) only with the benefit of sinking funds. The Charter presently does not permit NOPSI to issue any series of Preferred Stock containing a sinking fund.

Under the provisions of the Charter as currently in effect, authorized but unissued shares of the Preferred Stock may be issued by NOPSI from time to time in one or more series. Except in certain respects as to which there may be variations among series, the shares of each series have the same rank and are identical with each other. The respects in which there may be variations among separate series consists of (1) the number of shares constituting each series and the distinctive designation

thereof, (2) the dividend rate, dividend payment dates and the date from which dividends shall be cumulative and (3) the amount or amounts payable upon redemption. When a new series of the Preferred Stock is issued, those characteristics thereof as to which there may be variations among series are stated and expressed in an appropriate amendment of the Charter creating such series.

In order to allow NOPSI to issue shares of any future series of its Preferred Stock with the benefit of a sinking fund and thus to enable it to sell securities when it might not otherwise be able to do so on acceptable terms, NOPSI proposes to effect certain amendments of its Charter so as to afford the company, in dividing authorized but unissued shares of the Preferred Stock into series and establishing the characteristics as to which there may be variations among series, the right to include in the amendment creating any future series of its Preferred Stock the terms and amount of sinking fund requirements for the purchase or redemption of shares of any such series. These amendments will also provide in effect that if at any time dividends payable upon the Preferred Stock are in default, NOPSI may not make any payment, or set aside any funds for payment, into any sinking fund for the purchase or redemption of any shares of the Preferred Stock unless approval is obtained under the Act. Under present laws, no additional shares of the Preferred Stock can be issued without prior approval of the Council of the City of New Orleans and the Commission, including, among other things, approval by the Commission of the terms and amount of sinking fund requirements for the purchase or redemption thereof.

With respect to the planned issuance and sale of the new series of Preferred Stock, NOPSI has noted that the Charter presently does not permit NOPSI to issue any series of Preferred Stock containing a sinking fund. In furtherance of these proposals NOPSI proposes to solicit proxies from the holders of its outstanding stock in connection with its special meeting of shareholders at which the shareholders will take action upon the proposed amendments to the Charter. In connection with the solicitation of shareholder consent, NOPSI has filed the relevant proxy materials with the Commission and requests accelerated Commission action thereon pursuant to Rule 62.

A statement of the fees, commissions, and expenses to be incurred in connection with the proposed

transaction will be filed by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than January 24, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by 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 further 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 thereon 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.

It appearing to the Commission that the declaration, insofar as it proposes the solicitation of the consents of NOPSI stockholders, should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered that the declaration regarding the proposed solicitation of the consents of NOPSI stockholders be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 80-207 Filed 1-2-80; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 16444; SR-OCC-79-7]

Options Clearing Corp.; Order Approving Proposed Rule Change

December 21, 1979.

On December 2, 1979, the Options Clearing Corporation ("OCC") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, a proposed rule change amending the timeframes during which members may submit instructions to OCC dealing with segregation of long positions.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 16337 (November 13, 1979) and by publication in the Federal Register (44 FR 66718, November 20, 1979)). No written comments were received by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, and in particular, the requirements of Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 80-206 Filed 1-2-80; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 10993; 812-4560]

Osborne Estates Co.; Filing of Application for Order Pursuant to Section 6(c) of the Act Exempting Applicant From All Provisions of the Act

December 21, 1979.

In the matter of The Osborne Estates Company, 4614 Prospect Avenue, Cleveland, Ohio 44103 (812-4560). Notice is hereby given that The Osborne Estates Company ("Applicant"), an Ohio corporation, filed an application on November 1, 1979, and an amendment thereto on November 29, 1979, for an order, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations

contained therein, which are summarized below.

According to the application, Applicant was organized in 1921 pursuant to a direction in the will of Francis M. Osborne, who died in 1911, that assets in his estate not distributed within 10 years of his death be contributed to a corporation for management purposes. The application further states that from Applicant's inception in 1921 until 1957 it was engaged primarily in the management of real estate assets that it owned. The initial shareholders of Applicant were the nine children of Francis Osborne.

As stated in the application, in 1956 and 1957 Applicant's principal real estate assets were sold and the proceeds were reinvested in securities, with the result that Applicant became primarily engaged in the management of a portfolio of marketable securities. Applicant states that it has only one class of securities outstanding, common stock without par value, and that there are presently 10,000 shares of such stock issued and outstanding. Applicant also states that as of June 30, 1979, the value of its total assets, determined in accordance with the provisions of Section 2(a)(41) of the Act, was approximately \$35,000,000. Applicant represents that 86% of the value of these assets consists of shares of common stock of Panhandle Eastern Pipeline Company ("Panhandle"); that 9% of the value of these assets consists of other marketable stocks and bonds; and that the remainder of Applicant's assets consists of one real estate asset and cash.

In pertinent part, Section 3(a)(3) of the Act defines an "investment company" as any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of its total assets. Applicant states that because more than 40% of its non-cash items have, since 1957, consisted of investment securities, it may technically have been an investment company since 1957. However, Applicant believes it is not the type of organization intended by Congress to be subject to regulation under the Act, for the following reasons: (1) The families of the children of Francis Osborne continue to own 89.9% of the outstanding shares of Applicant; (2) the remaining 10.1% of the outstanding shares of Applicant is held by F. E. Gibson & Co. ("Gibson") as nominee of AmeriTrust Company ("AmeriTrust") (formerly The Cleveland Trust Company), a wholly owned

subsidiary of AmeriTrust Corporation, which in turn is a publicly owned bank holding company; (3) the shares held by Gibson were acquired as the result of the foreclosure of certain "Depression-era" loans which were made to certain Osborne family members and are held for AmeriTrust's own account; (4) with the exception of shares held by AmeriTrust, all of the outstanding shares of Applicant are, and since Applicant's inception have been, held solely by descendants of Francis Osborne and their spouses; and (5) Applicant is internally managed by its directors and officers, each of whom is a descendant of Francis Osborne.

Section 3(c)(1) of the Act, excludes from the definition of an "investment company" any issuer whose outstanding securities are beneficially owned by not more than 100 persons and which is not making and does not propose to make a public offering. That Section further states that where any company owns 10% or more of the outstanding voting securities of the issuer, the holders of such company's outstanding securities shall be deemed to be the beneficial owners of the issuer's securities. In this regard, Applicant states that it has never offered any of its securities to members of the public; that it has no intention of making any such offer in the future; and that no public market has ever existed for Applicant's stock. Applicant further states that only two companies, Gibson and Gray Horse Inc. ("Gray Horse"), own more than 10% of Applicant's stock. As noted above, the shares held by Gibson were acquired through a foreclosure. According to the application, Gray Horse, an Ohio Corporation organized in 1976, owns 12.5% of Applicant's stock and has only 18 shareholders, consisting of James Osborne (a shareholder of Applicant), his spouse, their descendants, and spouses of such descendants. Based upon information contained in the application, Applicant presently has 82 shareholders, excluding the ownership attributable to Gibson and Gray Horse.

Applicant includes as a part of its application a proposed Agreement and Plan of Reorganization ("Agreement") between itself and Panhandle, whereby Panhandle would acquire all of Applicant's securities and cash in exchange for Panhandle stock. Applicant states that it currently holds 618,113 shares (3.4%) of Panhandle common stock, which was acquired in 1976 in connection with the acquisition by Panhandle of the Youghiogheny and Ohio Coal Company, in which Applicant had been the largest shareholder (Applicant owned 28%). Applicant also

states that William M. Osborne, Jr., Vice President, director and shareholder of Applicant, is also a director and shareholder of Panhandle, but owns, directly and indirectly, less than 1% of the outstanding shares of Panhandle. Applicant further states that under the terms of the agreement, it will take steps to dissolve under Ohio law, as soon as practicable after completion of the proposed transaction with Panhandle.

Section 8(c) of the Act provides, in part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant states that it believes the required order should be granted for the following reasons: (1) Applicant is not and never has been the type of organization that Congress intended be subject to regulation under the Act; (2) since its inception, Applicant has been essentially a family corporation organized for the purpose of managing family investments; (3) submission of Applicant to regulation under the Act would not provide significant benefits to the shareholders of Applicant, which is the group that the Act primarily is designed to protect and the additional costs of operating subject to the provisions of the Act would, it is believed, be deemed a detriment by those shareholders; and (4) if the Agreement is entered into and carried out, Applicant will be liquidated and dissolved within a relatively short period of time. Applicant states that any order granted by the Commission in response to this application may be subject to the following conditions:

(1) That such order shall not be effective for a period of more than one year from the date thereof unless the Commission, upon further application, shall grant a further order extending such period;

(2) That no registered broker-dealer initiates any regular trading market in any securities issued by Applicant;

(3) That the information statement delivered to shareholders of Applicant concerning the Agreement contain a paragraph substantially as follows:

Since about 1957, more than 40% of the noncash assets of [Applicant] have consisted of investment securities. For that reason, [Applicant] may have been an

"investment company" as defined in the Investment Company Act of 1940 (the "1940 Act") from 1957 until the present time, although it has never registered under the 1940 Act. [Applicant] believes, however, that since it is a closely held family corporation which has never offered its securities to the public, it is not the type of organization which the 1940 Act was intended to regulate. Accordingly, [Applicant] has applied to the Securities and Exchange Commission for an order under Section 8(c) of the 1940 Act exempting [Applicant] from all of the provisions of the 1940 Act. Such an order would have no retroactive application. Receipt of such an order is a condition upon the obligations of both [Applicant] and Panhandle to complete the transactions contemplated by the Agreement.

and,

(4) That no transfer of shares of Applicant will be made except to other family members, or to Applicant in connection with its liquidation.

Notice is further given that any interested person may, not later than January 14, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 80-203 Filed 1-2-80; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 11002; File No. 812-4587]

Clark Joseph Winslow; Filing of Application and Order of Temporary Exemption Pending Determination of the Application

December 27, 1979.

Clark Joseph Winslow, 16 Bobolink Lane, Greenwich, Connecticut; File No. 812-4587. Notice is hereby given that Clark Joseph Winslow ("Winslow") has filed an application pursuant to Section 9(c) of the Investment Company Act of 1940 (the "Act") for an order exempting him and any company with which he is presently or in the future may become an affiliated person, from the provisions of Section 9(a) of the Act and, without prejudice to the Commission's consideration of such application, has requested that the Commission grant a temporary exemption from Section 9(a) pending the Commission's determination of the application for permanent exemption. All interested persons are referred to the application on file with the Commission for a statement of the representations therein which are summarized below.

Winslow is an employee of Glickenhau & Co., a partnership registered with the Commission as a broker-dealer and investment adviser, with offices at 522 Fifth Ave., New York, New York. Winslow was formerly a vice president and director of Campbell Advisers, Inc., a registered investment adviser, also with offices in New York, New York. Glickenhau & Co., among other things, acts as an investment adviser, depositor and principal underwriter for investment companies.

On December 27, 1979, the Commission commenced an action, pursuant to Sections 21 (d) and (e) of the Securities Exchange Act of 1934, against Winslow, alleging that he engaged in acts and practices which constitute violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. During the period covered by the complaint, Winslow was a vice president and director of Campbell Advisers, Inc.

Simultaneously with the commencement of the action, and without admitting or denying any of the allegations of the Complaint, Winslow consented to the entry of a Final Order by the United States District Court for the Southern District of New York prohibiting him directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange in connection with the purchase or sale for his own

account, for the account of any member of his family or for any account in which he has a beneficial interest of any security, from making any untrue statements of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

Section 9(a) of the Act, insofar as is pertinent here, makes it unlawful for any person, or any company with which such person is affiliated, to act in the capacity of employee, officer, director, member of any advisory board, investment adviser, or depositor for any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company if such person is by reason of any misconduct enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security.

Section 9(c) provides that upon application the Commission shall grant an exemption from the provisions of Section 9(a) either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of Section 9(a), as applied to the applicant, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

Winslow submits pursuant to Section 9(c) that the prohibitions of Section 9(a) of the Act, to the extent applicable by virtue of the entry of the Final Order, would be unduly and disproportionately severe as applied to Winslow and that his conduct has not been such as to make it against the public interest or protection of investors to grant this exemption. In support thereof, Winslow represents that:

(1) The prohibitions of Section 9(a) would deprive Glickenhau & Co. of the services of Winslow.

(2) The activities of Winslow with regard to the purchase and sale of Fairchild common stock did not relate to his activities as an investment adviser.

(3) All personnel of Glickenhau & Co. including Winslow are supervised by management personnel so as to assure compliance with applicable federal, state other applicable laws, rules and regulations.

(4) Winslow has never before been required to apply for an exemption from the provisions of Section 9(a) of the Act.

(5) The prohibitions of Section 9(a) would deprive Winslow of his ability to

be employed as an employee of Glickenhau & Co., thereby potentially jeopardizing his livelihood.

(6) The application of the law regarding the activities complained of by the Commission in the Complaint is complex and uncertain and was a case of first impression. Winslow had no intention to violate the federal securities laws and believes he has been punished sufficiently.

The Commission has considered the matter and finds that:

(1) The prohibitions of Section 9(a) may be unduly, or disproportionately severe as applied to Winslow in that his conduct has been such as not to make it against the public interest or protection of investors to grant the application for a temporary exemption from Section 9(a) pending determination of the application; and

(2) In order to maintain the uninterrupted services provided by Winslow and Glickenhau & Co. to the regulated investment companies involved, it is necessary and 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 that the temporary order be issued forthwith.

Accordingly, it is ordered, pursuant to Section 9(c) of the Act, that Winslow and any company with which he presently is or in the future may become an affiliated person be and they are hereby temporarily exempted from the provisions of Section 9(a) of the Act operative as a result of the entry of the Final Order against Winslow, pending final determination by the Commission of Winslow's application for an order exempting him and any company with which he presently is or in the future may become an affiliated person from the provisions of Section 9(a) operative as a result of the entry of such Final Order.

Notice is further given that any interested person may not later than January 27, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues 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 (air mail if the person being served is located more than 500 miles from the point of mailing) upon John F. X. Peloso, Esq., Sage Gray Todd & Sims, 140 Broadway, New York,

New York 10005. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided in Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued 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 notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 80-205 Filed 1-2-80; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Consultative Planning Conference; FAA Response to New Engineering and Development Initiatives Recommendations

The purpose of this Notice is to announce a Consultative Planning Conference on FAA Response to New Engineering and Development Initiatives Recommendations. This two day conference will commence at 9:00 a.m. on January 29, 1980, at the Sheraton National Hotel, Columbia Pike and Washington Boulevard, Arlington, Virginia 22204.

The purpose of this conference is for the Federal Aviation Administration to discuss its initial response to the aviation community's recommendations for a future course of action for the agency's engineering and development program.

On March 22-23, 1978, the FAA held a conference on New Engineering and Development Initiatives—Policy and Technology Choices, to solicit views from the aviation community and the general public on a number of critical questions. That conference was the beginning of a major effort to involve the aviation community and the public in the FAA decision making process relative to the future development of the airport and airways system. Public participation in this process was strongly endorsed by the House Science and Technology Subcommittee on Transportation, Aviation and Weather

in a November 1977 report on the "Future Needs and Opportunities in the Air Traffic Control System."

Following that initial conference, approximately 260 experts of the aviation community, representing 60 organizations, organized into five topic groups, held 60 meetings over a seven month period. These experts recommended, in a report published March 1, 1979, a future course of action for the agency's engineering and development program. The FAA publicly asked for comment on this report and at this conference will report to the aviation industry and the user community, on FAA's initial response to the user/aviation industry experts' recommendations and the user community comments thereon.

Prior to the forthcoming conference, FAA will distribute a document entitled, "FAA Response to User Consensus Views and Recommendations, New Engineering and Development Initiatives—Policy and Technology Choices." This document presents FAA's understanding of the consensus views of the user/aviation industry experts and the comments subsequently solicited and received from individual users and user organizations, and classifies them into nine categories—General Recommendations, Productivity and Automation, Terminal Capacity, Freedom of Airspace, Safety, Weather, FAA Response and Implementation, Environment, and Economic Incentives, as well as FAA's initial responses to these views and comments.

The following topics will be discussed at the conference:

1. Shape of the System of the Future
2. Automation and Productivity
3. Facilities Consolidation and Systems Maintenance
4. Response to Freedom of the Airspace
5. Response to Safety Recommendations
6. The Human Being in the System
7. FAA Weather Programs
8. Environment and Economic Issues and Activities
9. Plans for Future Interaction with the Users
10. Human Factors Design in the ATC System
11. Progress Report on Capacity and Delay

The conference is open to the public (space permitting). An opportunity will be provided to permit participation and response by the user community.

Further information concerning the conference may be obtained from the Federal Aviation Administration, Office of Aviation System Plans, ASP-10, 800 Independence Avenue, S.W.,

Washington, D.C. 20591, telephone 202-426-3912.

Issued in Washington, D.C., December 18, 1979.

A. P. Albrecht,

Associate Administrator for Engineering and Development.

[FR Doc. 80-7 Filed 1-2-80; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Midas Series 2000 Motorhomes; Public Proceeding Scheduled

Pursuant to section 152 of the National Traffic and Motor Vehicle Safety Act of 1966 as amended (Pub. L. 93-492, 88 Stat. 1470; October 27, 1974), 15 U.S.C. Part 1412, the Administrator, National Highway Traffic Safety Administration, had made an initial determination that Series 2000 motorhomes manufactured by Midas-International Corp. of Chicago, Illinois, fail to comply with Federal Motor Vehicle Safety Standard Nos. 207 Seating Systems, 208 Occupant Restraint Systems, and 210 Seat Belt Assembly Anchorages.

A public proceeding will be held at 10 a.m. on January 30, 1980, in room 2230, Department of Transportation Building, 400 Seventh Street, SW., Washington, D.C., at which Midas-International Corp. will be afforded an opportunity to present data, views and arguments to establish that there is no failure to comply in the Series 2000 motorhomes.

Interested persons are invited to participate through written or oral presentations. Persons wishing to make oral presentations are requested to notify Mrs. Gail Willis, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, room 6113, Nassif Building, 400 7th Street, S.W., Washington, D.C. 20590, telephone 202-426-2832, before close of business on January 28, 1980.

The agency's investigative file in this matter is available for public inspection during working hours (7:45 a.m. to 4:15 p.m.) in the Technical Reference Library, room 5108, 400 Seventh Street SW., Washington, D.C.

(Sec. 152, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1412); delegation of authority at 49 CFR 1.51 and 49 CFR 501.8)

Issued on December 26, 1979.

Lynn L. Bradford,

Associate Administrator for Enforcement.

[FR Doc. 80-42 Filed 1-2-80; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular Public Debt Series No. 32-79]

Treasury Bonds of 1995

December 28, 1979.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately \$1,500,000,000 of United States securities, designated Treasury Bonds of 1995 (CUSIP No. 912810 CL 0). The securities will be sold at auction with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated January 10, 1980, and will bear interest from that date, payable on a semiannual basis on August 15, 1980, and each subsequent 6 months on February 15 and August 15, until the principal becomes payable. They will mature February 15, 1995, and will not be subject to call for redemption prior to maturity.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued to denominations of \$1,000, \$5,000, \$10,000, \$100,000, and \$1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Standard time, Thursday, January 3, 1980. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, January 2, 1980.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is \$1,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender and the amount may not exceed \$1,000,000.

3.3. All bidders must certify that they have not made and will not make any agreements for the sale or purchase of any securities of this issue prior to the deadline established in Section 3.1. for receipt of tenders. Those authorized to submit tenders for the account of customers will be required to certify that such tenders are submitted under the same conditions, agreements, and certifications as tenders submitted directly by bidders for their own account.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federal-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds

membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by a deposit of 5% of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a $\frac{1}{8}$ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 96.250. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage

allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made or completed on or before Thursday, January 10, 1980, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Tuesday, January 8, 1980, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Monday, January 7, 1980, if the check is drawn on a bank in another Federal Reserve District.

Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities

presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. as fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplement or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Gerald Murphy,
Acting Fiscal Assistant Secretary.

Treasury Securities—Treasury announces auction of Bonds of 1995

Supplementary Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental

procedures applicable to such regulations.

[FR Doc. 79-39968 Filed 1-2-80; 8:45 am]

BILLING CODE 4910-40-M

TENNESSEE VALLEY AUTHORITY

Proposed Development of a 200-MW Atmospheric Fluidized Bed Combustion (AFBC) Demonstration Plant; Intent To Prepare an Environmental Impact Statement and Invitation for Public Comment on the Scope of the Document

AGENCY: Tennessee Valley Authority.

ACTION: TVA intends to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act of 1969 (NEPA) on the proposed development of a 200-MW atmospheric fluidized bed combustion (AFBC) demonstration plant. The site that appears to be preferable for the AFBC facility is on TVA's Shawnee Steam Plant Reservation located in McCracken County, Kentucky (Ohio River Mile 945), approximately 10 miles northwest of Paducah. Other candidate sites include Valentine Branch, located in Benton County, Tennessee; Little Cypress, located in Marshall County, Kentucky; and TVA's Paradise Steam Plant Reservation, located in Muhlenburg County, Kentucky. The proposal could impact floodplain or wetland areas at Valentine Branch, Little Cypress, and Shawnee Steam Plant Reservation.

ADDRESS: Comments should be sent to Dr. Mohamed T. El-Ashry, Director of the Environmental Quality Staff, Office of Natural Resources, Forestry Building, Norris, Tennessee 37828, by February 15, 1980.

PUBLIC MEETING: A public meeting to solicit comments on the scope of the document is scheduled for January 17, 1980, at 7 p.m., Central Standard Time, at the Jaycee Civic Center, 2700 Park Avenue, in Paducah, Kentucky.

POTENTIAL COOPERATING AGENCIES: Potential cooperating agencies are the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers.

FOR FURTHER INFORMATION CONTACT: Dr. Mohamed T. El-Ashry, Director of the Environmental Quality Staff, Office of Natural Resources, Forestry Building, Norris, Tennessee, or call TVA's Citizen Action Office toll free: 1-800-362-9250 (in Tennessee) or 1-800-251-9242 (in Alabama, Georgia, Kentucky, Mississippi, North Carolina, Virginia, Missouri, and Arkansas).

SUPPLEMENTARY INFORMATION: TVA operates a power system supplying the

power requirements for an area of approximately 80,000 square miles containing about seven million people. In carrying out its responsibilities under the TVA Act, TVA is investigating a wide range of options to meet the need for future electrical generating capacity in a manner that maintains and enhances a quality environment. To that end, TVA is pursuing the development of new technologies which could have significant application in the TVA system. Research into and demonstration of atmospheric fluidized bed combustion (AFBC) is part of this overall scheme.

AFBC is a process of burning coal in a bed of limestone that is suspended (fluidized) by air flowing up through the bed. The burning of coal with limestone results in an approximate 90 percent reduction in sulfur dioxide emissions. Reduced nitrogen oxide generation and emission occur because of the lower combustion temperature. The AFBC system produces a dry residue which is more easily handled than the sludge produced in a scrubber. Preliminary tests indicate that the residual material is potentially useable for agricultural application, road base material, scrubber sludge fixation, cement additives, and acid neutralization. Studies have indicated that AFBC may produce electricity more economically than conventional steam plants equipped with flue gas desulfurization systems.

Because of AFBC's inherent heat transfer efficiency and its ability to meet air pollution control standards, it is considered an excellent near-term alternative to conventional coal-fired plants. AFBC can burn high sulfur coal—an energy resource that is found in abundance in the Tennessee Valley area. While TVA intends for the development of the AFBC demonstration to be directed toward future application on the TVA system, this technology, if proven successful, could be expanded to utilities nationwide.

TVA is proposing to design, construct, and operate a 200-MW AFBC demonstration plant. The 200-MW AFBC demonstration facility consists of a main plant area (includes the power house, office building, bunker building, switchyard, coal and limestone storage areas, pump station, cooling tower, particulate removal equipment, on-site railroads, etc.) requiring approximately 75 acres. The maximum waste storage area requirements are approximately 460 acres for the life of the plant. If a significant market develops for the AFBC residuals, the waste storage area

requirements would be substantially reduced. Waterfront area, coal conveyors, and intake/discharge structures will require another 25 acres.

A review of potential locations in the TVA electric service area based upon available information resulted in the identification of four sites which are considered viable candidate locations for an AFBC demonstration facility. The sites identified are Valentine Branch, located in Benton County, Tennessee, approximately sixteen miles east of Paris, Tennessee, and five miles northeast of Big Sandy, Tennessee; Little Cypress, located in Marshall County, Kentucky, approximately nine miles east of Paducah and nine miles west of Calvert City, Kentucky; Shawnee Steam Plant Reservation, located in McCracken County, Kentucky, approximately ten miles northwest of Paducah, Kentucky, and three miles west of Metropolis, Illinois, and Paradise Steam Plant Reservation, located in Muhlenburg, Kentucky, approximately five miles northeast of Drakesboro, Kentucky, and nine miles southwest of Central City, Kentucky.

Through an interdisciplinary evaluation process TVA has identified the Shawnee Steam Plant Reservation as the site that appears to be preferable for location of the AFBC facility. Development of this site would require the use of approximately 435 acres of land which TVA owns and has under lease to the State of Kentucky for wildlife management purposes. It is anticipated that an additional 125 acres would have to be acquired.

The first step in the preparation of the EIS will be the determination of the scope of the document. Since the purpose of the project is to demonstrate the feasibility of the AFBC process for application in the TVA system, TVA does not plan to discuss alternate developing and innovative technologies in detail. Therefore, it is anticipated that the scope of the document will focus primarily on the discussion of the no-action alternative (not building the facility) and the construction alternative (building a 200-MW facility). Alternative sites and alternative site-independent plant options will be discussed as part of the construction alternative. Site dependent plant design alternatives will be discussed in the context of environmental consequences of alternative sites. Preliminary evaluations of the candidate locations and the development of the project have identified the following potentially significant issues for discussion in the EIS:

(1) Potential socioeconomic, and cultural impacts from facility construction and operation.

(2) Potential impacts to terrestrial and aquatic biota from facility construction and operation.

(3) Potential impacts to floodplains and wetlands.

(4) Potential discharge of pollutants to the air and water from facility construction and operation.

(5) Generation, use, and disposal of solid wastes.

(6) Potential land use conflicts.

A public scoping meeting is scheduled for January 17, 1980, at 7 p.m., Central Standard Time at the Jaycee Civic Center, 2700 Park Avenue in Paducah, Kentucky. The purpose of the meeting is to exchange information concerning the project and to solicit comments and suggestions on the scope of issues to be discussed in the EIS. TVA invites all interested persons to attend. Should a speaker desire to provide additional information for the record, it may be submitted in writing within 10 days subsequent to the meeting. A transcript of the meeting will be made by TVA and will be available at the following libraries:

Metropolis Public Library, 317 Metropolis Street, Metropolis, Illinois; Marshall County Public Library, 1003 Poplar, Benton, Kentucky; Muhlenburg County Library, Greenville, Kentucky; Paducah Public Library, 555 Washington Street, Paducah, Kentucky; Paris-Henry County Library, West Washington, Box 456, Paris, Tennessee.

Written comments or suggestions may be submitted in lieu of or in addition to participation at the scoping meeting. Written comments will be considered and given equal weight to oral comments.

Comments or suggestions on the scope of the issues to be discussed in the draft EIS should be sent to Dr. Mohamed T. El-Ashry, Director of the Environmental Quality Staff, Office of Natural Resources, Forestry Building, Norris, Tennessee 37828, by February 15, 1980.

After the scoping process and the initial environmental analysis are completed, TVA will prepare a draft EIS. A Notice of Availability will be published in the *Federal Register* and area newspapers and public comments will again be solicited. Those not desiring to submit comments or suggestions at this time but who would like to receive a copy of the draft EIS for review and comments when it is issued may notify TVA. TVA will consider all comments made on the draft EIS in preparing the final EIS.

Dated: December 28, 1979.

Kenneth E. Gray,
Washington Representative.

[FR Doc. 80-78 Filed 1-2-80; 8:45 am]

BILLING CODE 8120-01-M

UNITED STATES RAILWAY ASSOCIATION

[Docket 211-23]

Consolidated Rail Corporation; Application for a Loan

Subsection (h) of Section 211 of the Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. Part 721) (the Act), authorizes the United States Railway Association (Association) to enter into loan agreements with the Consolidated Rail Corporation (Conrail), the National Railroad Passenger Corporation, and any profitable railroad to which rail properties are transferred or conveyed pursuant to Section 303(b)(1) of the Act under conditions and for purposes set forth in this Subsection. Subsection (b) of Section 211 requires that the Association publish notice of the receipt of any application thereunder in the *Federal Register* and afford interested parties an opportunity to comment thereon.

Conrail submitted a Borrowing Application dated December 21, 1979, requesting new borrowings of \$4,129,918.10. Conrail states that it will use \$3,000,000.00 to pay Federal Employer's Liability Act (FELA) Claims of the Penn Central Transportation Company, \$429,918.10 to pay FELA Claims of the Central Railroad Company of New Jersey, and \$700,000.00 to pay FELA Claims of the Erie Lackawanna Railroad Company.

The Borrowing Application includes the certification and exhibits required by the Loan Procedures.

Interested parties are invited to submit written comments relevant to this application. Any such submissions must identify, by its Docket No., the application to which it relates, and must be filed with the Office of General Counsel, United States Railway Association, 955 L'Enfant Plaza North S.W., Washington, D.C. 20595, on or before January 15, 1980, to enable timely consideration by USRA. The docket containing the original application shall be available for public inspection at that address Monday through Friday (holidays excepted) between 8:30 a.m. and 5 p.m.

Dated at Washington, D.C. this 28th day of December 1979.

David Kleypas,

Assistant Secretary, United States Railway Association.

[FR Doc. 80-25 Filed 1-2-80; 8:45 am]

BILLING CODE 8240-01-M

INTERSTATE COMMERCE COMMISSION

[Notice No. 157]

Assignment of Hearings

December 28, 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.

MC 11967 (Sub-350F), Beaver Transport Co., now assigned for hearing on January 8, 1980 at Chicago, IL in Room No. 1669, Everett McKinley Dirksen Bldg., 219 South Dearborn Street.

MC 97345 (Sub-4F), Duffy Storage & Moving, Co., now assigned for hearing on January 22, 1980 at Denver, CO in Room C-503, Federal Courthouse, 1961 Stout Street, and also on January 28, 1980 at Denver, CO in the Division No. 2, Federal Courthouse, 1961 Stout St.

MC 87103 (Sub-32F), Miller Transfer and Giggling Co., now assigned for hearing on February 4, 1980 (1 week) at Chicago, IL in Room No. 350, 230 South Dearborn St.

MC-F-13826F, H & W Motor Express Company Purchase (Portion)—The Rock Island Motor Transit CO., now assigned for hearing on January 30, 1980 (3 days) at Chicago, IL in Room No. 350, 230 South Dearborn St.

MC 76993 (Sub-28F), Express Freight Lines, Inc., now assigned for continued hearing on February 26, 1980 at the Offices of the Interstate Commerce Commission in Washington, DC.

AB 43 (Sub-58F), Illinois Central Gulf Railroad Company Abandonment Near New Holland and Havana in Logan and Mason Counties, IL, now assigned for hearing on February 4, 1980 at Havana, IL, is postponed to March 10, 1980 (1 week), at Havana, IL, in a hearing room to be designated later.

MC 73165 (Sub-479F), Eagle Motor Lines, Inc., now being assigned for Prehearing Conference on January 29, 1980 at the Offices of the Interstate Commerce Commission in Washington, DC.

MC 107012 (Sub-274F), North American Van Lines, Inc., now being assigned for hearing on February 13, 1980 at the Offices of the Interstate Commerce Commission in Washington, DC.

MC 59583 (Sub-171F), The Mason and Dixon Lines, Inc., now being assigned for Prehearing Conference on February 21, 1980 at the Offices of the Interstate Commerce Commission in Washington, DC.

MC 135082 (Sub-76F), Roadrunner Trucking, Inc., now assigned for hearing on January 15, 1980 will be held at the Sheraton Old Town, 800 Rio Grande Blvd., Albuquerque, NM.

MC 143702 (Sub-5F), All Freight Systems, Inc., now assigned for hearing on January 21, 1980 will be held in Room 600, Federal Building, 911 Walnut Street, Kansas City, MO.

MC 29555 (Sub-96F), Briggs Transportation Company, A Corporation, is transferred to Modified Procedure.

MC 61788 (Sub-37F), Georgia-Florida-Alabama Transportation Company, now being assigned for hearing on February 4, 1980 (10 Days), at Birmingham, AL, in a hearing room to be designated later.

MC 120364 (Sub-18F), A & B Freight Line, Inc., now being assigned for hearing on March 10, 1980 (1 Week), at Madison, WI, in a hearing room to be designated later.

MC 143230 (Sub-2F), Luck Trucking, Inc., now being assigned for continued hearing on January 22, 1980 (2 Days), at Chicago, IL, in a hearing room to be designated later.

MC 112801 (Sub-226F), Transport Service Company, now being assigned for hearing on January 24, 1980 (1 Day), at Chicago, IL, in a hearing room to be designated later.

MC 110563 (Sub-270F), Coldway Food Express, Inc., now being assigned for hearing on January 25, 1980 (1 Day), at Chicago, IL, in a hearing room to be designated later. No. 37166, Detention Charges on Coal From Oklahoma to Missouri, VIA SLSF, now assigned for hearing on January 8, 1980 will be held in the Conference Room 322, 1114 Market Street, St. Louis, MO.

MC 125433 (Sub-207F), F-B Truck Line Company, A Corp., now being assigned for hearing on March 4, 1980 (2 Days), at San Francisco, CA, in a hearing room to be designated later.

MC 112908 (Sub-9F), Kingsway Transports Limited, now assigned for hearing on January 21, 1980 (3 days) at Detroit, MI in Room No. 1194, McNamara Federal Bldg., 770 Michigan Avenue.

MC 112991 (Sub-4F), Livingston Transportation Limited, now assigned for hearing on January 15, 1980 (2 days) at Detroit, MI in Room 1090, McNamara Federal Bldg., 770 Michigan Avenue.

MC 117169 (Sub-5F), Beasley Trucking Inc., now being assigned for hearing at Denver, CO, location of hearing room will be designated later.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-89 Filed 1-2-80; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-No. 70F)]

Burlington Northern, Inc., Abandonment Between Warwick and Devils Lake, N. Dak.; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a Certificate and Decision decided December 5, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to (1) the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.-Abandonment Goshen*, 360 I.C.C. 91(1979); (2) that applicant shall keep intact all of the right-of-way underlying the track, including all of the bridges and culverts for a period of 120 days from the effective date of the certificate and decision to permit any state or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way; and (3) that applicant continue to allow the North Dakota State Mill and Elevator to retain its transit privileges on traffic moving from points on the line between and including Warwick and Nolan, ND, and via Fargo and Grand Forks, ND, the present and future public convenience and necessity permit the abandonment by the Burlington Northern, Inc. of a line of railroad known as the Devils Lake to Warwick line extending from railroad milepost 103.92 near Warwick, ND, and railroad milepost 125.01 near Devils Lake, ND, a distance of 21.09 miles in Ramsey and Benson Counties, ND. A certificate of public convenience and necessity permitting abandonment was issued to the Burlington Northern, Inc. Since no investigation was instituted, the requirement of Section 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 January 18, 1980. 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 February 19, 1980.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-86 Filed 1-2-80; 9:45 am]
BILLING CODE 7035-01-M

Fourth Section Applications for Relief

December 28, 1979.

These applications for long-and-short-haul relief have been filed with the ICC.

Protests are due at the ICC on or before January 18, 1980.

FSA No. 43780, Southwestern Freight Bureau, Agent No. B-44, iron or steel pipe and related articles, in carloads, from Milwaukee, WI to Indpark, TX, in supp. 209 to its Tariff ICC SWFB 4853, effective January 20, 1980. Grounds for relief—rate relationship.

FSA No. 43781, Farrell Lines Incorporated No. 2, intermodal rates on general commodities, in containers, between rail terminals on the United States Gulf and Pacific Coasts, on the one hand, and on the other, ports in Africa and Europe, by way of rail/water interchange points on the United States Atlantic Coast, in its Tariff ICC FRLN 600, FMC No. 102, effective January 24, 1980. Grounds for relief—water competition.

FSA No. 43782, Far Eastern Shipping Company No. 14, intermodal rates on general commodities, in containers between/from rail terminals on the United States Atlantic and Gulf Coasts, and/to ports in Australia and the Far East, by way of rail/ocean interchange points on the United States Pacific Coast, in its Tariff ICC FACU 600, FMC No. 42, effective January 24, 1980. Grounds for relief—water competition.

By the Commission.
Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-87 Filed 1-2-80; 9:45 am]
BILLING CODE 7035-01-M

[Service Order No. 1344; Order No. 57,
Amdt. No. 2]

Rerouting Traffic

To: ALL RAILROADS.

Upon further consideration of Revised ICC Order No. 57, and good cause appearing therefor:

It is ordered,

Revised ICC Order No. 57 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., December 12, 1979, unless otherwise modified, changed or suspended.

Effective date. This amendment shall become effective at 11:59 p.m., December 10, 1979.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 10, 1979.

Interstate Commerce Commission.

Joel E. Burns,
Agent.

[FR Doc. 80-86 Filed 1-2-80; 9:45 am]
BILLING CODE 7035-01-M

Decision-Notice

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR § 1100.240). These rules provide, among other things, that opposition 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 seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. Opposition under these rules should comply with Rule 240(c) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, and specify with particularity the facts, matters and things relied upon, but shall not include issues or allegations phrased generally. Opposition not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of any protest shall be filed with the Commission, and a copy shall also be served upon applicant's representative or applicant if no representative is named. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 240(c)(4) of the special rules and shall include the certification required.

Section 240(e) further provides, in part, that an applicant who does not intend timely to prosecute its

application shall promptly request its dismissal.

Further processing steps will be by Commission notice or order 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.*

Any authority granted may reflect administratively acceptable restrictive amendments to the transaction proposed. Some of the applications may have been modified to conform with Commission policy.

We find with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings, containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a protestant, that the proposed dual operations are consistent with the public interest and the national transportation policy subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930.

In the absence of legally sufficient protests as to the finance application or any application directly related thereto filed within 30 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of

effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: December 11, 1979.

By the Commission, Review Board Number 5, Members Krock, Pohost and Taylor.

Agatha Mergenovich,
Secretary.

MC-F-14223F, filed November 23, 1979, JAMES V. PALMER (9730 Derby Drive, Missoula, MT 59801)—PURCHASE (PORTION)—INTERNATIONAL CONTRACT CARRIERS, INC. (P.O. Box 1218, Freeport Center, Clearfield, VT 84016). Applicants' Representative: Sten K. Kuhlman, 717—17th Street, Suite 2600, Denver, CO 80202. James V. Palmer doing business as Jim Palmer Trucking (Palmer) purchasing a portion of the operating rights of International Contract Carriers, Inc. (International), which are temporarily being leased by Utah Carriers, Inc., of P.O. Box 1218, Salt Lake City, UT 84119, as approved by order in No. MC-F-13866 dated April 9, 1979, until a decision on the transaction proposed under 49 U.S.C. 11344 has been made. The interstate operating rights to be acquired by Palmer are contained in International's permit No. MC-139468 (Sub-No. 16), authorizing the transportation over irregular routes, by motor vehicle, in interstate or foreign commerce, as a contract carrier of *lumber*, from Kooskia and Princeton, ID, and Clarkston, WA, to points in IL, IN, IA, KS, MI, MN, MO, NE, ND, OH, PA, SD, and WI. The operations are restricted to traffic originating at (1) the facilities utilized by Bennett Sales Co., at Kooskia, ID, (2) the facilities of Bennett Lumber Products, Inc. at Princeton, ID, and (3) the facilities of Guy Bennett Lumber Co., at Clarkston, WA. The operations authorized herein are limited to a transportation service to be performed under a continuing contract, or contracts with Bennett Sales Co. Palmer is authorized to operate in interstate or foreign commerce, as a contract carrier pursuant to its permit No. MC-134201 and subs thereunder. (Hearing site: Denver, CO.)

Note.—Application for temporary authority has been filed.

MC-F-14215F, filed November 9, 1979, WESTERN TANK LINE, INC. (2222 N. 11th Street, Omaha, NE 68110)—MERGER—UNITED CORP. AND SIMANEK, INC. (Both of same address). Applicants' Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. United Corp. (United) and Simanek, Inc. (Simanek), merging their operating rights and property into Western Tank Line, Inc. (Western), for ownership, management, and operation.

Donald Wynne and Donald Swerczek control Western a non-carrier, which was granted emergency temporary authority in No. MC-148512-R on October 30, 1979. As approved in No. MC-F-12664, they also control United, a non-carrier, which, in turn, controls Simanek through sole stock ownership. Donald Wynne controls Wynne Transport Service, Inc. (Wynne), which is a motor common carrier, operating in interstate or foreign commerce pursuant to certificates in No. MC-114725 and sub-numbers thereunder. Subject a non-severability clause, the holding of duplicating operating rights by Simanek and Wynne were also approved in No. MC-F-12664. The operating rights to be acquired by Western are contained in Simanek's certificates issued in No. MC-119400 and sub-numbers thereunder which authorize the transportation as follows: (1) *refined petroleum products*, from refining and distributing points in Kansas to Naper and Spalding, NE, and points Saunders County, NE; (2) *refined petroleum products*, in bulk, in tank trucks, (a) from Council Bluffs, IA, and points in IA within 10 miles of Council Bluffs, to Roger and Schuyler, NE, and to points in Saunders County, NE; and (b) from Arkansas City, El Dorado and McPherson, KS, to Arlington, NE; (3) *Fertilizers, insecticides, fungicides, and herbicides, and materials and ingredients thereof*, in bulk, from the facilities of the Agrico Chemical Company at or near Blair, NE, to points in WI, MN, IA, MO, KS, IL, IN, MI, CO, SD, ND, WY, MT, and NE, restricted to the transportation of shipments which originate at the facilities of the Agrico Chemical Company at or near Blair, NE, and destined to points in the named destination states; (4) *Chemicals and fertilizer and fertilizer materials derived from petroleum and petroleum products*, in bulk, from the facilities of Terra Chemical International, Inc., Air Park West, Lincoln, NE, to points in CO, IA, KS, MO (except St. Louis), SD, and WY, restricted to traffic originating at the facilities of Terra Chemical International, Inc., Air Park West, Lincoln, NE, and destined to the named destination states; (5) *Anhydrous ammonia, urea, and fertilizer* (except anhydrous ammonia and urea), from Omaha, NE, to points in IA, KS, MN, MO (except St. Louis), NE, ND, and SD; (6) *Liquid fertilizer solutions*, in bulk, in tank vehicles, (a) from Doniphan, NE and Kansas City, Mo, to points in KS; and (b) from Kansas City, MO, to points in NE; (7) *Anhydrous ammonia*, in bulk, in tank vehicles, from the Mapco Pipeline terminal, located at or near Clay Center, KS, to points in IA, NE and

MO; (8) *Liquid fertilizer solution*, in bulk, in tank vehicles, from the terminal site of Agrico Chemical Co. located at or near Falls City, Ne, to points in IA, MO (except St. Louis, MO, and those in its commercial zone), and KS; (9) *Anhydrous ammonia*, in bulk, in tank vehicles, (a) from the plant site of Hill Chemicals, Inc., located at or near Borger, TX, to points in CO, KS, and OK, restricted to traffic originating at the plant site of Hill Chemicals, Inc., located at or near Borger, TX, and destined to points in the named destination states; (b) from the terminal located on the ammonia pipeline of Mapco, Inc., located at or near Conway, KS, to points in CO, KS, MO, and NE, restricted to traffic originating at the terminal located on the ammonia pipeline of Mapco, Inc., located at or near Conway, KS, and destined to points in the named destination states; (c) from the terminal located on the ammonia pipeline of Mapco, Inc. located at or near Greenwood, NE, to points in CO, IA, KS, MO, NE, SD, and WY, restricted to traffic originating at the terminal located on the ammonia pipeline of Mapco, Inc. located at or near Greenwood, NE, and destined to points in the named destination states; and (d) from the terminals located on the ammonia pipeline of Mapco, Inc., located at or near Whiting, Early, and Garner, IA, to points in IL, IA, MN, NE, ND, SD, and WI, restricted to traffic originating at the terminals located on the ammonia pipeline of Mapco, located at or near Whiting, Early, and Garner, IA, and destined to points in the named destination states; (10) *Anhydrous ammonia*, in bulk, in tank vehicles, from the plant site of Agrico Chemical Company, located at or near Blair, NE, to points in CO, KS, IL, IN, IA, MI, MN, MO, MT, NE, ND, SD, WI and WY; and (11) *Fertilizer and fertilizer ingredients*, from the facilities of Terra Chemicals International, Inc., at or near Sioux City, IA, to points in CO, IL, IA, KS, MO (except St. Louis and points in its commercial zone, as defined by the Commission), NE, MN, ND, OK, SD, WI and WY, restricted against the tacking or combining with any other authority held by applicant for the purpose of providing a through service. (Hearing site: Omaha, NE.)

MC-F-14214F, filed November 5, 1979 Meat Dispatch, Inc. (2103-17th Street East, P.O. Box 1058, Palmetto, FL 33561)—PURCHASE (PORTION)—REFRIGERATED FOODS, INC. (1420—33rd Street, P.O. Box 1018, Denver, CO 80201). Applicants' Representative: Robert D. Gunderman, 710 Statler Bldg, Buffalo, NY. 14202. Meat Dispatch, Inc.

(Dispatch), purchasing a portion of the operating rights of Refrigerated Foods, Inc. (Refrigerated). Charles D. White, the sole stockholder of Dispatch, also of 2103—17th Street East, P.O. Box 1058, Palmetto, FL 33561 and acquiring control the rights of Refrigerated. The interstate operating rights Transferee is purchasing are contained in Refrigerated's certificates which authorize operations, in interstate or foreign commerce, over irregular routes, as follows: MC-138018 (Sub-No. 23), transporting filters and cleaning, polishing and scouring compounds (except in bulk, in tank vehicles), from Denver, CO, to points in AZ, CA, ID, MT, NV, OR, UT, and WA, restricted to the transportation of traffic originating at the above-described origins and destined to the above-named destination points, and MC-138018 (Sub-No. 26), transporting filters from points in Dade County, FL, to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, and WA. Meat Dispatch, Inc., holds authority to operate as a motor contract carrier under authority issued in No. MC-128555 and sub-numbers thereunder, and has been granted authority to operate as a motor common carrier in MC-136123 and sub-numbers thereunder.

CONDITION: to eliminate the retention of duplicating operating authority, authorization and approval of this transaction is conditioned upon the modification of Refrigerated's retained certificate in MC-138018 (Sub-No. 36), by inserting the following restriction: Restricted in (3) above against the transportation of cleaning, polishing and scouring compounds (except in bulk, in tank vehicles), from Denver, CO, to points in AZ, CA, ID, MT, NV, OR, UT, and WA. (Hearing site: Denver, CO.)

Note.—Dual operations are involved.

MC-F-14213, filed November 6, 1979, KENNETH D. RUDY, DAVID A. WEYHRICH, AND VICTORINE B. RUDY—CONTINUANCE IN CONTROL—CENTURY MOTOR LINES, INC. (Address of all: P.O. Box 15246, 1720 East Garry Avenue, Santa Ana, CA 92705.) Applicants' Representatives: Charles J. Kimball, 350 Capital Life Center, 1600 Sherman Street, Denver, CO 80203. Kenneth D. Rudy, David A. Weyhrich, and Victorine B. Rudy, continuing in common control and management of Columbine Carriers, Inc. (Columbine), same address, and Century Motor Lines, Inc. (Century), upon the institution by Century of operations, in interstate or foreign commerce, as a motor common carrier. Kenneth D. Rudy is the sole stockholder of Columbine and the majority stockholder of Century.

Columbine and Century also share common officers and directors. Columbine holds authority pursuant to its Permits in MC-135185 and sub-numbers thereunder, to operate as a motor contract carrier, in interstate or foreign commerce, servicing eight shippers. Century, pursuant to the approval conditionally granted in MC-144621 and sub-numbers thereunder, was authorized to receive certificates to operate, in interstate or foreign commerce, as a motor common carrier, over irregular routes, in the transportation of (a) foods, food products and food ingredients, from the facilities of Archer Daniels Midland Co., at or near Decatur, IL, to points in CT, DE, ME, MD, MA, NH, NY, OH, NC, NJ, PA, RI, TN, VT, VA, WV, and DC, (b) commodities dealt in by manufacturers and distributors of surgical, medical and health care supplies from the facilities of Parke Davis Co., at or near Greenwood, SC, to points in AZ, CA, CO, ID, NV, NM, OR, TX, UT, and WA, and (c) commodities dealt in by variety and discount stores from the facilities of Chicago Shipper's Association and U. S. Packing and Shipping, Inc., at or near Jersey City, NJ, to Sparks, NV, and points in CA, OR, and WA. (Hearing site: Los Angeles, CA.)

Note.—Dual operations are involved.

BILLING CODE 7035-01-M

[Docket No. AB-2 (Sub-No. 26F)]

Louisville and Nashville Railroad Co. Abandonment Between Paulsen and Olcott, KY; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a Certificate and Decision decided November 15, 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*, 360 I.C.C. 91 (1979), and further that applicant shall keep intact all of the right-of-way underlying the track, including all of the bridges and culverts for a period of 120 days from the effective date of the certificate and decision to permit any state or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way, the present and future public convenience and necessity permit the abandonment by the Louisville and Nashville Railroad Company of a line of railroad known as the Chenoa Branch, Corbin Division, extending from railroad milepost CT

204.41 near Carrigan (Paulsen), KY, to milepost CT 204.72 at Olcott, KY, a distance of 10.31 miles, in Bell County, KY. A certificate of public convenience and necessity permitting abandonment was issued to the Louisville and Nashville Railroad Company. Since no investigation was instituted, the requirements of Section 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 or 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 15 days after publication of this Notice. The offer, as filed, shall contain information required pursuant to Section 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.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-85 Filed 1-2-80; 8:45 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register

Vol. 45, No. 2

Thursday, January 3, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

[M-262, Dec. 28, 1979]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 9:30 a.m., January 4, 1980.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.
2. Docket 31400—*Colorado Ski Points Investigation* (OGC).
3. Docket 35046—NACA petition to revise prior authorization procedures for charters by foreign air carriers (Memo 9370, OGC, BIA).
4. Draft notice of proposed rulemaking to revise the insurance requirement for all U.S. and foreign direct air carriers (OGC, BIA).
5. Docket 29110, *East African Airways Corporation* (Memo 9387, OGC).
6. Dockets 30789, 33964, 35373 and 33651, *Transatlantic Cargo Service Case*, and Applications of Jet Executive International, Inc., and Southeast Airlines, Inc., Order on review (Memo 9388, OGC).
7. Dockets 33985, 35462, 36100, 36611; InterState Airlines, Inc., InterContinental Airways, Inc.; Coleman Air Transport Corporation; and Frontier Airlines, Inc.—certification as section 418 all-cargo air carriers (BDA, OGC, BCP).
8. Dockets 36145 and 36444, Airwest Airlines Ltd.'s applications to renew and amend its foreign air carrier permit to operate scheduled services between Victoria (Harbour) and Vancouver (Harbour), British Columbia, Canada and Seattle (Lake Union), Washington (Memo 9382, BIA, OGC, BLJ).
9. Docket 32379, Caribwest Airways Limited application for renewal of foreign air carrier permit to provide nonscheduled transportation of property and mail between points in the United States and points in the Caribbean, and amendment of its permit to add New York as a coterminal point (BIA, OGC, BLJ).

10. Docket 34402, application of Klondike Air, Inc., for certificate authority for passenger, mail and cargo authority between Anchorage and Sparrevohn, Alaska (Memo 9383, BDA).

11. Docket 36440, Denver-Minneapolis Show-Cause Proceeding (Memo 9050-A, BDA).

12. Docket 35852, Service to Ontario Show-Cause Proceeding, applications of Air California in Docket 36099, American in Docket 36043, Continental in Docket 36099, Continental in Docket 36098, Hughes Airwest in Docket 36094, Ozark in Docket 36087, Pacific Southwest in Docket 36101, Republic in Docket 36097, TWA in Docket 36104, United in Docket 36092, USAir in Docket 36090, Western in Docket 36086 and World in Docket 36096 for authority in 88 Ontario and beyond domestic markets (Memo 8901-A, BDA).

13. Amendment of final rule delegating authority to Director, BDA, to issue show-cause orders and final orders granting unopposed applications for interstate or overseas certificate authority to include applications requesting expedited procedures under Subpart Q. (BDA, OGC).

14. Docket 36694, *Swift Air Lines, Inc., Fitness Investigation* Swift Air Lines, Inc., application for certificate of public convenience and necessity under section 401 of the Act (Memo 9389, BDA, OGC, BLJ).

15. Amendment of the delegation of authority of the Chief of the Essential Air Services Division, (OGC, BDA).

16. Docket 36633—United's notice to terminate service at Muskegon, Michigan (BDA, OCCR).

17. Dockets 34203 and 34666, Notices of USAir and Ransome to terminate service at Catskill/Sullivan County (BDA, OCCR, OGC, OC).

18. Docket 36861, Notice of Intent of Western Airlines to terminate air service at Helena, Montana (Memo 9390, BDA, OCCR).

19. Docket 36864; Western's 90-day Notice to Suspend Service at West Yellowstone, Montana (Memo 9392, BDA, OCCR).

20. Docket 37098, American's 60-day & 90-day notices of suspension of all service at Oakland, California (Memo 9386, BDA, OCCR).

21. Dockets 34751, 37236—Piedmont's notice of intent to suspend service at Danville, Virginia; Cardinal/Air Virginia's notice to intent to suspend service at Danville (Memo 8575-C, BDA).

22. Docket 37190—Ozark Air Lines' notice of intent to suspend nonstop and single-plane service in 21 markets (Memo 9393, BDA, OCCR).

23. Docket 36863, notice of Western Air Lines of intent to terminate service at Sheridan, Wyoming (BDA).

24. Docket 37183, Super Bowl Charters (OGC, BDA, BCP).

25. Docket 37109, Limitation of Excess Baggage Allowance Proposed by Eastern

Airlines, Inc., in Certain Caribbean Markets—report of an informal conference of interested persons (Memo 9286-B, BDA).

26. Docket 26487, Transatlantic, Transpacific and Latin American Service Mail Rates Investigation, orders establishing mail rates (Memo 4395-L, BDA, OGC).

27. Docket 32660, IATA agreement proposing fuel-related North Atlantic fare increases (BIA).

28. Dockets 37100, 37107, and 37148, Pan American's proposed Group Contractor Fares in the U.S.-Germany and Los Angeles-London markets, and National's proposed Contract Bulk Fares in the Miami/Ft. Lauderdale-New York/Newark markets (OGC, BDA).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-2509-79 Filed 12-31-79; 3:25 pm]

BILLING CODE 6320-01-M

2

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., Friday, January 4, 1980.

PLACE: 2033 K Street, N.W., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-2053-79 Filed 12-31-79; 9:59 am]

BILLING CODE 6351-01-M

3

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., Friday, January 11, 1980.

PLACE: 2033 K Street, N.W., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-2504 Filed 12-31-79; 9:59 am]

BILLING CODE 6351-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5

U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2 p.m. on Monday, January 7, 1980, to consider the following matters:

Disposition of minutes of previous meetings.

Memorandum and Resolution re: Revision of Authorization Relating to Adjustment of Assessments.

Reports of committees and officers:

Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.

Reports of the Director of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Audit Report: Review of Electronic Data Processing Services Provided to the Division of Bank Supervision by the Division of Management Systems and Financial Statistics, dated September 10, 1979.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: December 31, 1979.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-2507-79 Filed 12-31-79; 3:25 pm]

BILLING CODE 6714-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, January 7, 1980, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session by vote of the Board of Directors pursuant to sections 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of title 5, United States Code, to consider the following matters:

Recommendations with respect to the initiation or termination of cease-and-desist proceedings, termination-of-insurance proceedings, or suspension or removal proceedings against certain insured banks or officers or directors thereof.

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the

provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: December 31, 1979.

FEDERAL DEPOSIT INSURANCE CORPORATION.

Hoyle L. Robinson

Executive Secretary.

[S-2508-79 Filed 12-31-79; 3:25 pm]

BILLING CODE 6714-01-M

6

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Week of December 31, 1979.

PLACE: Commissioners conference room, 1717 H Street, NW., Washington, D.C.

STATUS: Open/closed.

MATTERS TO CONSIDERED:

Wednesday, January 2 (As Announced)

1:30 p.m.—Discussion of Management-Organization and Internal Personnel Matters (approximately 2 hours, closed—exemptions 2 and 6).

Thursday, January 3 (Revised)

9:30 a.m.—1. Affirmation Session (approximately 5 minutes, public meeting). a. Amendment to Part 50 to Require Periodic Update of FSAR's.

2. Discussion of Management-Organization and Internal Personnel Matters (continued from January 2) (approximately 2 hours, closed—exemptions 2 and 6).

ADDITIONAL INFORMATION: The meeting previously scheduled for 1/3/80 "Commission's Decision-Making Role in Emergency Planning" is *Cancelled*.

CONTACT PERSON FOR MORE

INFORMATION: Walter Magee (202) 634-1410.

Roger M. Tweed,

Office of the Secretary.

[S-2506-79 Filed 12-31-79; 1:43 pm]

BILLING CODE 7590-01-M

7

UNITED STATES RAILWAY ASSOCIATION.

TIME AND DATE: 9 a.m., January 10, 1980.

PLACE: 955 L'Enfant Plaza North, SW., Board Room, room 2-500, fifth floor, Washington, D.C.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: By the Board of Directors:

Portions closed to the public (9 a.m.)

1. Consideration of internal personnel matters.

2. Review of ConRail proprietary and financial information for monitoring and investment purposes.

3. Litigation report.

Portions open to the public (1 p.m.)

4. Approval of minutes of the December 6, 1979 Board of Directors meeting.

5. Legislative report.

6. Report on ConRail monitoring.

7. Consideration of ConRail drawdown request for January.

8. Consideration of 211(h) loan program.

9. Contract Actions (extensions and approvals).

CONTACT PERSON FOR MORE

INFORMATION: Alex Bialnow (202) 426-4250.

[S-2505-79 Filed 12-31-79; 1:43 pm]

BILLING CODE 8240-01-M

Legal Alert

Thursday
January 3, 1980

Part II

Environmental Protection Agency

**Paint Formulating—Point Source
Category; Effluent Limitations Guidelines,
Pretreatment Standards, and New Source
Performance Standards**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 446

[FRL 1309-1]

Paint Formulating—Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Regulation.

SUMMARY: EPA proposes a regulation to eliminate effluent discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from facilities engaged in manufacturing paint. The purpose of this proposal is to provide effluent limitations guidelines for "best available technology," and to establish new source performance standards and pretreatment standards, under the Clean Water Act. After considering comments received in response to this proposal, EPA will promulgate a final rule.

The supplementary information section of this preamble describes the legal authority and background, the technical and economic bases, and other aspects of the proposed regulations. That section also summarizes comments on a draft technical document circulated on January 29, 1979, and solicits comments on specific areas of interest. The abbreviations, acronyms, and other terms used in the supplementary information section are defined in Appendix A to this notice.

These proposed regulations are supported by three major documents available from EPA. Analytical methods are discussed in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants*. EPA's technical conclusions are detailed in the *Development Document for Proposed Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Paint Formulation Point Source Category*. The Agency's economic analysis is found in *Economic Analysis of Proposed Revised Effluent Standards and Limitations for the Paint Manufacturing Industry*.

DATES: Comments on this proposal must be submitted on or before March 3, 1980.

ADDRESS: Send comments to: Mr. James R. Berlow, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460, Attention: Docket Clerk,

Paint. The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (REAR) PM-213, (EPA Library). The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Technical information and copies of technical documents may be obtained from Mr. James R. Berlow, at the address listed above, or call (202) 426-2554. The economic analysis may be obtained from Mr. John Kukulka, Water Economics Branch (WH-586), Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460, or call (202) 755-7733.

SUPPLEMENTARY INFORMATION:

Organization of This Notice

I. Legal Authority

II. Background

- A. The Clean Water Act
- B. Prior EPA Regulations
- C. Overview of the Industry

III. Scope of this Rulemaking and Summary of Methodology

IV. Data Gathering Efforts

V. Sampling and Analytical Program

VI. Industry Subcategorization

VII. Available Waste Water Control and Treatment Technology

- A. Status of In-Place Technology
 - B. Control Technologies Considered
- ##### VIII. Best Available Technology (BAT) Effluent Limitations

IX. New Source Performance Standards (NSPS)

X. Pretreatment Standards for Existing Sources (PSES)

XI. Pretreatment Standards for New Sources (PSNS)

XII. Pollutants and Subcategories Not Regulated

XIII. Costs, Effluent Reduction Benefits, and Economic Impacts

XIV. Nonwater Quality Aspects

XV. Upset and Bypass Provisions

XVI. Variance and Modifications

XVII. Relationship to NPDES Permits

XVIII. Small Business Administration Financial Assistance

XIX. Summary of Public Participation

XX. Solicitation of Comments

XXI. Appendices:

- A—Abbreviations, Acronyms and Terms Used in This Notice
- B—Toxic Pollutants Detected in Paint Waste Waters
- C—Information on Small Business Administration Loans

I. Legal Authority

EPA is proposing this regulation under authority of Sections 301, 304, 306, 307, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1251 *et seq.*, as amended by the Clean Water Act of 1977, Pub. L. 95-217) (the "Act"). These regulations are also proposed in

response to the Settlement Agreement in *Natural Resources Defense Council, Inc. v. Train*, 8 ERC 2120 (D.D.C. 1976), modified 12 ERC 1833 (D.D.C. 1979).

II. Background

A. The Clean Water Act

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Section 101(a). By July 1, 1977, the Act required existing industrial dischargers to achieve "effluent limitations requiring the application of the best practicable control technology currently available" (BPT), Section 301(b)(1)(A); by July 1, 1983, these dischargers were required to achieve "Effluent limitations requiring the application of the best available technology economically achievable . . . which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants" (BAT), Section 301(b)(2)(A). New industrial direct dischargers were required to comply with Section 306 new source performance standards (NSPS), based on best available demonstrated technology; and new and existing dischargers to publicly owned treatment works (POTW) were subject to pretreatment standards under Sections 307 (b) and (c) of the Act. While the requirements for direct dischargers were to be incorporated into National Pollutant Discharge Elimination System (NPDES) permits issued under Section 402 of the Act, pretreatment standards were made enforceable directly against dischargers to POTW (indirect dischargers).

Although section 402(a)(1) of the 1972 Act authorized the setting of requirements for direct dischargers on a case-by-case basis, Congress intended that, for the most part, control requirements would be based on regulations promulgated by the Administrator of EPA. Section 304(b) of the Act required the Administrator to promulgate regulations providing guidelines for effluent limitations setting forth the degree of effluent reduction attainable through the application of BPT and BAT. Sections 304(c) and 306 of the Act required promulgation of regulations for NSPS, and Sections 304(f), 307(b), and 307(c) required promulgation of regulations for pretreatment standards. In addition to these regulations for designated industry categories, Section 307(a) of the Act required the Administrator to promulgate effluent standards applicable to all dischargers of toxic

pollutants. Finally, Section 501(a) of the Act authorized the Administrator to prescribe any additional regulations "necessary to carry out his functions" under the Act.

The EPA was unable to promulgate many of these regulations by the dates specified in the Act, and in 1976, was sued by several environmental groups. In settlement of this lawsuit EPA and the plaintiffs executed a "Settlement Agreement," which was approved by the Court. This Agreement required EPA to develop a program and adhere to a schedule for promulgating for 21 major industries BAT effluent limitations guidelines, pretreatment standards, and new source performance standards for 65 "priority" pollutants and classes of pollutants. See *Natural Resources Defense Council, Inc. v. Train*, 8 ERC 2120 (D.D.C. 1976), modified 12 ERC 1833 (D.D.C. 1979).

On December 27, 1977, the President signed into law the Clean Water Act of 1977. Although this law makes several important changes in the federal water pollution control program, its most significant feature is its incorporation into the Act of several of the basic elements of the Settlement Agreement program for toxic pollution control. Sections 301(b)(2)(A) and 301(b)(2)(C) of the Act now require the achievement by July 1, 1984, of effluent limitations requiring application of BAT for "toxic" pollutants, including the 65 "priority" pollutants and classes of pollutants which Congress declared "toxic" under Section 307(a) of the Act. Likewise, EPA's programs for new source performance standards and pretreatment standards are now aimed principally at toxic pollutant controls. Moreover, to strengthen the toxics control program, Section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" (BMPs) to prevent the release of toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with, or ancillary to, the manufacturing or treatment process.

In keeping with its emphasis on toxic pollutants, the Clean Water Act of 1977 also revises the control program for non-toxic pollutants. Instead of BAT for "conventional" pollutants identified under Section 304(a)(4) (including biochemical oxygen demand, suspended solids, fecal coliform and pH), the new Section 301(b)(2)(E) requires achievement by July 1, 1984, of "effluent limitations requiring the application of the best conventional pollutant control technology" (BCT). The factors

considered in assessing BCT for an industry include the costs of attaining a reduction in effluents and the effluent reduction benefits derived compared to the costs and effluent reduction benefits from the discharge of publicly owned treatment works (Section 304(b)(4)(B)). For non-toxic, nonconventional pollutants, Sections 301(b)(2)(A) and (b)(2)(F) require achievement of BAT effluent limitations within three years after their establishment or July 1, 1984, whichever is later, but not later than July 1, 1987.

The purpose of these proposed regulations is to provide effluent limitations guidelines for BAT, and to establish NSPS, pretreatment standards for existing sources (PSES), and pretreatment standards for new sources (PSNS), under Sections 301, 304, 306, 307, and 501 of the Clean Water Act.

B. Prior EPA Regulations

EPA promulgated BPT, BAT, NSPS, and PSNS for the oil-base solvent-wash subcategory of the paint formulating point source category on July 28, 1975 (40 FR 31724; 40 CFR Part 446, Subpart A). These regulations, requiring no discharge of process wastewater pollutants, were not challenged and are currently in effect. For the purpose of clarifying the coverage of this subcategory, EPA is retitling this subcategory the solvent-wash subcategory. This does not change the substance or applicability of the regulations.

The regulations proposed in this notice include PSES for Subpart A (renamed the solvent-wash subcategory). Additionally, this proposal includes BAT, NSPS, PSES and PSNS for Subpart B, the caustic or water-wash subcategory, which was not covered by the prior regulations.

C. Overview of the Industry

The paint formulation industry is included within the U.S. Department of Commerce, Bureau of the Census Standard Industrial Classification (SIC) 2851. The major products of the paint industry are (1) trade sales paints, also called architectural coatings, which are primarily off-the-shelf exterior and interior paints for buildings and other structures; and (2) industrial sales paints, also called chemical coatings, sold to manufacturers for factory application to such products as automobiles, aircraft, furniture, machinery, etc.

In addition to paints, the industry produces varnishes and lacquers, which consist of film-forming binders (resins or drying oils) dissolved in volatile solvents or dispersed in water. The

industry also produces such allied products as putty, caulking compounds, sealants, paint and varnish removers, and thinners. These items are part of the "Allied Products" segment of SIC 2851.

Paints are either solvent-base or water-base but there is little difference in the production processes. The major production difference is in the carrying agent; solvent-base paints are dispersed in an oil mixture, while water-base paints are dispersed in water with a surfactant used as the dispersing agent.

There are three major steps in the solvent-base paint manufacturing process: (1) mixing and grinding of raw materials; (2) tinting and thinning; and (3) filling operations. Most plants mix and grind raw materials for solvent-base paints in one production step. For high gloss paints, the pigments and a portion of the binder and vehicle are mixed into a paste of a specified consistency. This paste is fed to a grinder, which disperses the pigments by breaking down particle aggregates rather than by reducing the particle size.

Next, the paint is transferred to tinting and thinning tanks, occasionally by means of portable transfer tanks but more commonly by gravity feed or pumping. Here, the remaining binder and liquid, as well as various additives and tinting colors, are incorporated. The paint is then analyzed and the composition adjusted to obtain the correct formulation. The finished product is then transferred to a filling operation where it is filtered, packaged, and labeled.

Water-base paints formulation follows a slightly different process. The pigments and extending agents already are the proper particle size, and a saw-toothed high-speed disperser distributes the pigment, surfactant, and binder into the vehicle. In small plants, the paint is thinned and tinted in the same tank; larger plants transfer the paint to special tanks for final thinning and tinting. Once the formulation is correct, the paint is transferred to a filling operation where it is filtered, packaged, and labeled in the same manner as solvent-base paints.

Water is essential to paint manufacture and tank cleaning operations. Tank cleaning between manufacture of paint batches generates the bulk of wastewater discharged by the industry. In solvent-base paint manufacture, paint remaining on the sides of the tanks usually drains naturally and the "clingage" on the sides is cleaned with a squeegee during the filling operation until only a small quantity of paint remains. The final cleanup generally consists of flushing the tanks with an organic solvent. Some plants clean solvent-base paint tanks

and equipment with hot caustic, either on a regular or periodic basis. The caustic-wash is generally recycled, and is followed by a water rinse.

In water-base paint manufacture, paint tanks are cleaned by simply washing the sides with a garden hose or a more sophisticated washing device following clingage removal. Some plants use an installed caustic washing system for small portable tanks (tote bins) and clean fixed tanks with caustic when paint residue builds up. Caustic generally is recycled until spent. After caustic cleaning, tanks are either rinsed with water or the residual caustic is allowed to evaporate. Some plants discharge spent caustic to the sewer.

Wastewaters generated by this industry contain high average concentrations of BOD₅ (9,900 mg/l), TSS (20,000 mg/l), and oil and grease (1,100 mg/l), as well as high average concentrations of the following toxic pollutants (based only on samples where detected): Chromium—3,100 µg/l; Copper—2,500 µg/l; Nickel—1,400 µg/l; Lead—6,300 µg/l; Zinc—75,000 µg/l; Mercury—5,200 µg/l; Benzene—1,900 µg/l; Carbon Tetrachloride—3,800 µg/l; Ethylbenzene—7,600 µg/l; Naphthalene—3,000 µg/l; Di(2-ethylhexyl) Phthalate—400 µg/l; Di-n-butyl Phthalate—5,700 µg/l; Tetrachloroethylene—600 µg/l; Toluene—18,000 µg/l.

EPA estimates there are 1,500 paint plants in the United States, clustered primarily around large population centers. About 46 percent of all paint manufacturers are located in California, New Jersey, New York, Illinois, and Ohio. Nearly two-thirds of the industry consists of single location manufacturing companies. About one-fifth are publicly held, with the remainder falling under other forms of organization. Although approximately 41 percent of all paint companies have less than ten employees, these plants account for only 5 percent of industry sales. Conversely, the four largest paint companies account for about 30 percent of overall paint sales. On an industry-wide basis, more than 30 percent of all paint plants are more than 30 years old. Among larger operations (more than 100 employees) over 50 percent of the plants are more than 30 years old.

III. Scope of This Rulemaking and Summary of Methodology

These proposed regulations open a new chapter in water pollution control requirements for the paint manufacturing industry. EPA's 1973-1976 round of rulemakings, emphasized the achievement of best practicable technology (BPT) by July 1, 1977. In

general, this technology level represented the average of the best existing performances of well known technologies for control of familiar (i.e., "classical") pollutants.

This round of rulemaking directs EPA's efforts toward insuring the achievement by July 1, 1984, of the best available technology economically achievable (BAT), which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants. At a minimum, this technology level represents the very best economically achievable performance in any industrial category or subcategory. Moreover, as a result of the Clean Water Act of 1977, the emphasis of EPA's program has shifted from "classical" pollutants to the control of a lengthy list of toxic substances.

In the 1977 legislation, Congress recognized that it was dealing with areas of scientific uncertainty when it declared the 65 "priority" pollutants and classes of pollutants "toxic" under Section 307(a) of the Act. Except for the metals and a small number of organics, the "priority" pollutants have been relatively unknown outside of the scientific community, and those engaged in wastewater sampling and control have had little experience dealing with these pollutants. Additionally, these pollutants, primarily the organic pollutants, often appear and have toxic effects at concentrations which severely tax current analytical techniques. Even though Congress was aware of the state-of-the-art difficulties and expense of "toxics" control and detection, it directed EPA to act quickly and decisively to detect, measure, and regulate these substances.

EPA's implementation of the Act required a complex development program, described in this section and succeeding sections of this notice. The lack of established analytical methods forced EPA and its consultants to develop new techniques for organic toxic pollutant detection and measurement. These are discussed under Sampling and Analytical Program. EPA also gathered technical and financial data about the industry, which are summarized under Data Gathering Efforts. This information allowed the Agency to develop these proposed regulations.

EPA first studied the paint formulation industry to determine whether differences in raw materials, final products, manufacturing processes, equipment, age and size of plants, water usage, wastewater constituents, or other factors required the development of separate effluent limitations and

standards for different segments of the industry. This study included the identification of untreated waste and treated effluent characteristics, including: (1) the sources and volume of water used, the processes employed, and the sources of pollutants and wastewaters in the plant, and (2) the constituents of wastewaters, including toxic pollutants. EPA then identified the constituents of wastewaters which should be considered for effluent limitations guidelines and standards of performance, and statistically analyzed raw waste constituents, as discussed in detail in Section V of the Development Document.

EPA next identified several distinct control and treatment technologies which are either in use or which are capable of being used in the paint formulation industry. These include both in-plant and end-of-process technologies. The Agency compiled and analyzed historical data and newly generated data on the effluent quality resulting from the application of these technologies. The long term performance, operational limitations, and reliability of each of the treatment and control technologies also were identified, along with their nonwater quality environmental impacts, including impacts on air quality, solid waste generation, and energy requirements.

The Agency then estimated the costs of each control and treatment technology from unit costs developed by standard engineering analysis as applied to paint formulation wastewater characteristics. EPA derived unit process costs from model plant characteristics (production and flow) applied to each treatment process unit cost curve (i.e., precipitation and settling, recycle, biological oxidation, etc.). These unit process costs were then added to yield total cost at each treatment level. Comparison of EPA's cost estimates with costs supplied by the industry confirmed the soundness of this methodology and established a basis for the Agency's evaluation of the economic impacts of these costs. (Costs and economic impacts are discussed in detail under the various technology options, and in the section of this notice entitled Costs, Effluent Reduction Benefits, and Economic Impacts).

After considering these factors, as more fully described below, EPA identified various control and treatment technologies as BAT, PSES, PSNS, and NSPS. The proposed regulations, however, do not require the installation of any particular technology. Rather, they require achievement of effluent

limitations representative of the proper operation of these technologies or equivalent technologies. As discussed below, the effluent limitations proposed in this notice are no discharge of process wastewater pollutants.

IV. Data Gathering Efforts

Section III of the Development Document describes the data gathering program in detail. Before beginning the study that established the basis for these proposed regulations, EPA had completed several studies of the paint industry. Review of these studies indicated the need for additional information to profile the paint industry.

To this end, EPA developed a Data Collection Portfolio (DCP), which was reviewed by the National Paints and Coatings Association (NPCA) Water Quality Task Force prior to industry-wide distribution to a total of 2,778 possible paint manufacturing sites. One thousand three hundred and seventy-eight operating paint plants returned completed DCP forms; 892 uncompleted DCPs were returned by sites not manufacturing paint; and 508 forms were not returned. A telephone follow-up of the non-respondents indicated that at least 30 percent of this group operate paint plants. The remaining 70 percent were sites not manufacturing paint.

EPA and its contractors visited approximately 40 facilities representative of different sizes, ages, physical configurations, and urban or rural locales. Sampling was performed at 22 of these paint plants.

Data for the economic analysis was collected in the DCP and additional information was provided by the National Paints and Coatings Association. This data updated and supplemented economic studies of the paint industry completed by EPA in 1974 and 1979.

In addition to the foregoing data sources, supplementary data were obtained from NPDES permit files in EPA regional offices, and contacts with state and municipal pollution control offices. The Agency also reviewed over 40 articles, documents and publications in developing the technical and economic analyses. The data gathering effort solicited all known sources of data and all available pertinent data were used in developing these regulations.

V. Sampling and Analytical Program

As Congress recognized in enacting the Clean Water Act of 1977, the state-of-the-art ability to monitor and detect toxic pollutants is limited. Except for the metals and a small number of organics, many of the toxic pollutants were

relatively unknown until a few years ago, and only on rare occasions has EPA regulated or has industry monitored or even developed methods to monitor for most of these pollutants. As a result, the Agency has not yet promulgated analytical methods for many toxic pollutants under Section 304(h) of the Act. Moreover, state-of-the-art techniques involve the use of highly expensive, sophisticated equipment, with costs ranging as high as \$200,000 per unit of equipment.

Faced with these problems, EPA scientists conducted a literature search and initiated a laboratory program to develop analytical protocols. The analytical techniques used in this rulemaking are described in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants*, revised April 1977.

Because Section 304(h) methods were available for most toxic metals, pesticides, cyanide, and phenol, the analytical effort focused on developing methods for sampling and analyses of organic toxic pollutants. The three basic analytical approaches considered by EPA were infra-red spectroscopy, gas chromatography (GC) with multiple detectors, and gas chromatography/mass spectrometry (GC/MS). In selecting among these alternatives, EPA considered their sensitivity, laboratory availability, costs, applicability to diverse waste streams from numerous industries, and potential for implementation within the statutory and court-ordered time constraints of EPA's program. The Agency concluded that infra-red spectroscopy was not sufficiently sensitive or specific for application in water. GC with multiple detectors was rejected because it would require multiple runs, incompatible with program time constraints. Moreover, because this method would use several detectors, each applicable to a narrow range of substances, GC with multiple detectors possibly would fail to detect certain toxic pollutants. EPA chose GC/MS because it was the only available technique that could identify a wide variety of pollutants in many different waste streams, in the presence of interfering compounds, and within the time constraints of the program. In EPA's judgment, GC/MS and the other analytical methods for toxics used in this rulemaking represent the best state-of-the-art methods for toxic pollutant analyses available when this study was begun.

EPA has continued to refine its sampling and analytical protocols as the technology has improved. Resource constraints, however, prevent EPA from

reworking completed sampling and analyses to keep up with the evolution of analytical methods. As a result, the analytical techniques in some rulemakings may differ slightly from those in other rulemaking efforts. In each case, however, the analytical methods represent the best state-of-the-art available for a given industry study. One of the goals of EPA's analytical program is the proposal and promulgation of additional Section 304(h) analytical methods for toxic pollutants, scheduled to be done within the next several months.

Before proceeding to analyze paint formulating, EPA concluded that it had to define specific waste toxic pollutants for analyses. The list of 65 pollutants and classes of pollutants potentially includes thousands of specific pollutants; the expenditure of resources would overwhelm government and private laboratories if analyses were attempted for all of these pollutants. Therefore, in order to make the task more manageable, EPA selected 129 specific toxic pollutants for study in this rulemaking and other industry rulemakings. The criteria for selection of these 129 pollutants included frequency of occurrence in water, chemical stability and structure, amount of the chemical produced, availability of chemical standards for measurement, and other factors.

EPA ascertained the presence and magnitude of the 129 specific toxic pollutants in paint manufacturing wastewaters in a sampling and analysis program involving 22 paint plants. The selected plants were representative of the manufacturing processes, the prevalent mix of production among plants, and the current treatment technology in the industry. With the exception of one plant, the plants selected for sampling were indirect dischargers practicing pretreatment of wastewater generated by water or caustic tank washing operations. The one exception was a plant that discharged no wastewater.

The primary objective of the field sampling program was to produce samples of wastewater from which concentrations of toxic pollutants could be ascertained. Untreated wastewater samples were taken before treatment. Treated effluent samples were taken following application of treatment technologies. EPA also sampled intake water to determine the presence of toxic pollutants prior to contamination by paint manufacturing operations, as well as sludges produced during treatment.

Seventeen of the 22 sampled plants operated batch type treatment systems. At these plants, single grab samples of

untreated and treated wastewater (and in some cases sludges), for a particular batch were considered adequate for characterizing the treatment process. The remaining plants operated continuous or semi-continuous wastewater treatment systems. At these plants, time composite samples were collected and related to available flow measurement devices.

Grab samples were taken in specially prepared vials for volatile (purgable) organics. Prior to the plant visits, sample containers were carefully washed and prepared by specific methods, depending upon the type of sample to be taken. EPA took a number of other precautions to minimize potential contamination from sampler components. Samples were kept on ice at 4° Centigrade prior to express shipment in insulated containers.

The analyses for toxic pollutants were performed according to groups of chemicals and associated analytical schemes. Organic toxic pollutants included volatile (purgable), base-neutral and acid (extractable) pollutants, and pesticides. Inorganic toxic pollutants included heavy metals and cyanide.

The primary method used in analysis for the volatiles, base-neutral, and acid organics was gas chromatography with confirmation and quantification on all samples by mass spectrometry (GC/MS). Phenols (total) were analyzed by the 4-aminoantipyrine (4-AAP) method. GC was employed for analysis of pesticides with limited MS confirmation. The Agency analyzed the toxic heavy metals by atomic adsorption spectrometry (AAS), with flame or graphite furnace atomization following appropriate digestion of the sample, and by the inductively coupled argon plasma (ICP) technique. Samples were analyzed for cyanides by a colorimetric method, with sulfide previously removed by distillation. Analyses for conventional pollutants (BOD₅, TSS, pH, and Oil and Grease), and various nonconventional pollutants were accomplished using "Methods for Chemical Analysis of Water and Wastes," (EPA 625/6-74-003) and amendments.

VI. Industry Subcategorization

In developing these regulations, the Agency needed to determine whether different effluent limitations and standards were appropriate for different segments of the industry. The major factors considered in identifying subcategories included: raw materials; final products; production methods; size and age of plants; wastewater characteristics; and tank cleaning techniques. The Agency found that tank

cleaning techniques were the most significant factor, and divided the industry into two subcategories on this basis. Section IV of the Development Document contains a detailed discussion of the factors considered and the rationale for the subcategories.

The subcategories of the paint formulating industry are as follows:

1. Solvent-Wash (formerly oil-base solvent-wash)—applicable to production of paint where organic solvents rinse the tanks between batches.
2. Caustic and/or Water-Wash—applicable to production of paint where caustic solutions and/or water rinses clean the tanks between batches.

VII. Available Waste Water Control and Treatment Technology

A. Status of In-Place Technology

Three hundred and fifty-five plants practice some type of wastewater treatment. The most common treatment methods are settling and clarification, gravity separation (with or without chemical addition), and neutralization. Few plants employ biological treatment, and those that do usually have a combined treatment plant for wastes from other plant operations. No paint plants use wastewater treatment methods such as activated carbon or ultrafiltration. Of the plants that discharge their wastewater to a municipal sewer, approximately 40 percent pretreat their waste prior to disposal. Three hundred and thirty-nine paint plants do not generate or discharge wastewater, while 324 plants completely or partially reuse their wastewater in the product. An estimated 768 to 928 plants do not discharge process wastewater because they solvent wash, recycle, contract haul, or use dry clean-up with squeegees.

B. Control Technologies Considered

The control and treatment technologies available for this industry include:

(1) *In-Plant Controls.* There are two widely used strategies for reducing the amount of wastewater that paint plants discharge to the environment. The first is to reduce the amount of wastewater generated, and the second is to reuse as much wastewater as possible within the plant processes.

(a) *Wastewater Reduction.* The amount of wastewater generated is influenced by the water pressure used for tank and equipment cleaning, the degree of cleaning required, the use of dry cleaning techniques, and other factors. The most significant wastewater reduction results from the use of high-pressure rinses. This technique can

reduce wastewater generation by as much as 90%. Another reduction technique is the sealing of floor drains to encourage dry clean-up of spills. These techniques have enabled many plants to reduce their wastewater generation per liter of water-base paint well below the industry average of 0.2 liters. EPA calculates that 101 plants generate less than 0.04 liters per liter.

(b) *Wastewater Reuse.* Although most paint plants produce a wide variety of paint colors and finishes, many plants produce mostly white and off-white batches. Good practice, already used by some plants, is to segregate white paint production and reuse the wastes from each batch in the subsequent batch. If subsequent batches can use the same tank no wash-down operation is needed, and no wastewater is generated. Plants producing a high ratio of white to color paint having sufficient production equipment and tanks can consider segregating white paint production and reusing the residue in the subsequent batch. This is also practical in insulated cases where a plant makes a large amount of any given color of paint in a short period of time. Even plants which cannot assign tanks to a single product can schedule consecutive batches of the same or similar products in the same tank. The rinse water from the first batch can be held in the tank and used in the next batch as part of the formulation.

Where paint rinse water cannot be reused immediately, there are several methods for eventually reusing this water. For example, some plants collect all paint wastewater in drums or tanks, label it by color and base, and reuse it in the next compatible batch (similar or darker color). This wastewater may need treatment with a biocide, and usually is used as soon as possible.

Tanks cleaned with caustic can recycle the rinse following the caustic soak into caustic solution to make up for losses due to evaporation.

Several plants have demonstrated the ability to reuse up to 100% of their wastewater. EPA estimates that the average plant should be able to eliminate or reuse 80% of the wastewater it generates.

(2) *Physical-Chemical Treatment.* Physical-chemical (P-C) treatment systems in the paint industry are basically enhancements of gravity settling systems. Most plants utilizing P-C systems operate them on a batch basis. The plant's wastewater collects in a holding tank until a sufficient quantity warrants treatment. If necessary, the pH is adjusted to an optimum level, a coagulant (often lime, alum, ferric chloride, or iron salts) and/or a

coagulant aid (polymer) is added and mixed, and the batch is allowed to settle (from 1 to 48 hours). The supernatant is discharged, and the sludge is generally disposed of by contract hauling.

(3) *Biological Treatment.* Several paint plants that are part of large chemical complexes treat their wastewater in biological treatment systems. These plants generally pretreat the paint wastewater and combine it with other more dilute plant wastewater. Because of the exceptionally high solids and metals concentrations in paint wastewater, biological treatment usually follows some kind of preliminary treatment (such as physical-chemical).

(4) *Contract Hauling.* Wastewater which cannot be eliminated or reused through in-plant controls can be stored for removal by a contract hauler. The contract hauler will transport the wastewater and arrange for disposal at a hazardous waste disposal facility.

In-plant controls, physical-chemical treatment and physical-chemical treatment followed by biological treatment have been demonstrated within the paint formulating industry. Biological treatment for paint manufacturing wastes without physical-chemical pretreatment or dilution has not been demonstrated. Other end-of-pipe technologies more sophisticated than P-C or biological treatment, such as activated carbon or ultrafiltration, have not been demonstrated in this industry.

VIII. BAT Effluent Limitations

The factors considered in assessing best available technology economically achievable (BAT) include the age of equipment and facilities involved, the process employed, process changes, nonwater quality environmental impacts (including energy requirements), and the costs of application of such technology (Section 304(b)(2)(B)). At a minimum, the BAT technology level represents the best economically achievable performance of plants of various ages, sizes, processes, or other shared characteristics. BAT may include process changes or internal controls, even when not common industry practice.

The statutory assessment of BAT "considers" costs, but does not require a balancing of costs against effluent reduction benefits. See *Weyerhaeuser v. Costle*, 590 F. 2d 1011 (D.C. Cir. 1978). In developing the proposed BAT, however, EPA has given substantial weight to the reasonableness of costs. The Agency has considered the volume and nature of discharges, the volume and nature of discharges expected after application of

BAT, the general environmental effects of the pollutants, and the costs and economic impacts of the required pollution control levels. Despite this expanded consideration of costs, the primary determinant of BAT is effluent reduction capability. As a result of the Clean Water Act of 1977, the achievement of BAT has become the principal national means of controlling toxic water pollution. Although direct discharges of paint wastewater are limited to six large chemical complexes with small fractions of wastewater from paint manufacturing operations, the Agency is proposing BAT limitations which would apply to these plants as well as to existing indirect dischargers which might convert to direct discharge.

The caustic and/or water-washed subcategory of the paint formulating industry discharges over 50 different toxic pollutants and EPA has selected among four available BAT technology options which will reduce this toxic pollution by a significant amount. These options (which are described in greater detail in Sections VII and IX of the Development Document) are:

(A) *Option One*—Require effluent limitations based on physical-chemical (P-C) treatment.

This option consists of wastewater coagulation/flocculation using alum, lime, ferric chloride and/or synthetic polymer followed by sedimentation. Using this technology, median removals of greater than 90 percent can be achieved for five toxic pollutants: lead, zinc, ethylhexyl phthalate, butyl phthalate and tetrachloroethylene. EPA estimates that median removals of twenty other toxic pollutants would be between 50 and 90 percent; overall toxic pollutant removal will be 85%. P-C treatment also would remove oil and grease (97 percent median) and total suspended solids (99 percent). Even with these removals, which are variable, concentrations of toxic pollutants remain high. Under this option hazardous waste generation would be approximately 15% of the wastewater volume generated.

All six direct dischargers would incur additional costs to comply with this option. EPA estimates that total capital investment would be \$0.16 million and that annual costs would be \$0.09 million including interest and depreciation. EPA expects no unemployment, plant closures, or changes in industry production capacity as a result of this option.

(B) *Option Two*—Require effluent limitations based on BAT Option One plus biological treatment with aerated lagoons.

In general, aerated lagoons with long detention periods can be expected to reduce organic loadings by 90 percent or more. Based on the limited operating experience utilizing biological treatment of paint wastewater, EPA estimates that this option would result in approximately 98% removal of toxic pollutants. Even with this removal, however, concentrations of toxic pollutants would remain high. Hazardous waste generation for Option Two is equal to the volume of Option One.

All six direct discharges would have to incur additional costs to comply with this option. EPA estimates that total capital investment would be \$0.95 million and that annual costs would be \$0.38 million including interest and depreciation. The Agency expects no unemployment, plant closures, or changes in industry production capacity as a result of this option.

(C) *Option Three*—Require effluent limitations based on 80 percent reduction in wastewater generation beyond the current industry average of 0.2 1/1 of caustic or water-washed product. This would require in-plant controls such as high pressure washing, dry spill clean-up and/or recycle of wastewater. Residual wastewater not reused is treated as described in Option Two. Removal of toxics by 99% will occur for Option Three. The volume of hazardous waste generated by Option Three will be 3% of the wastewater generated.

All six direct discharges will have to incur additional costs to comply with this option. EPA estimates that total capital investment would be \$1.1 million and that annual costs would be \$0.43 million including interest and depreciation. The Agency expects no unemployment, plant closures, or changes in industry production capacity as a result of this option.

(D) *Option Four*—Require effluent limitations based on complete elimination of discharge of pollutants by recycle and contract hauling of nonrecyclable wastes. Under this option as in Option Three, paint wastewaters are used in subsequent batches of compatible paint or eliminated through other in-plant controls. Any wastewater not incorporated into product or eliminated through water conservation would be stored and disposed of by contract hauling. Pollutant reduction under Option Four would be 100%, and hazardous waste generation would equal 20% of the wastewater generated.

All six direct dischargers will have to incur additional costs to comply with this option. EPA estimates that total capital investment would be \$0.18

million and that annual costs would be \$0.12 million including interest and depreciation. The Agency expects no unemployment, plant closures, or changes in industry production capacity as a result of this option.

(E) BAT Section and Decision Criteria: EPA has selected Option Four as the basis for proposed BAT effluent limitations for the caustic and/or water-wash subcategory. The technical and economic analysis of the industry has shown that through the application of Option Four, paint plants in the caustic and/or water-wash subcategory can completely eliminate the discharge of toxic pollutants to surface waters without creating unacceptable economic or nonwater quality impacts. EPA rejected Options One, Two, and Three because of the failure of these options to eliminate the discharge of toxic pollutants. Due to the toxic nature of paint manufacturing wastewater, the Agency has determined that the disposal of these wastes to properly designed hazardous waste disposal sites is preferable to discharge to surface waters.

IX. New Source Performance Standards

The basis for new source performance standards (NSPS) under Section 306 of the Act is the best available demonstrated technology. New plants have the opportunity to design the best and most efficient paint manufacturing processes and wastewater treatment technologies, and, therefore, Congress directed EPA to consider the best demonstrated process changes, in-plant controls, and end-of-pipe treatment technologies which reduce pollution to the maximum extent feasible.

Because the BAT options include all elements of technology available for the reduction of pollutants in the caustic and/or water-wash subcategory, the options considered for NSPS are identical to the four options described above under BAT Effluent Limitations. New plants, however, can reduce hazardous waste generation by incorporating in-plant controls into plant design. Such reductions would lessen the nonwater quality impact of NSPS.

At the present time there are only six paint plants throughout the country that practice direct discharge. The majority of new firms that enter the industry are expected to be indirect dischargers. This regulation is not expected to have significant impacts.

NSPS Selection and Decision Criteria: EPA has selected Option Four as the basis for proposed new source performance standards for the caustic and/or water-wash subcategory. The selection of Options One, Two, or Three

would be inconsistent with the definition and intent of NSPS following selection of Option Four as BAT.

X. Pretreatment Standards for Existing Sources

Section 307(b) of the Act requires EPA to promulgate pretreatment standards for existing sources (PSES), which must be achieved within three years of promulgation. PSES are designed to prevent the discharge of pollutants which pass through, interfere with, or are otherwise incompatible with the operation of POTW. The Clean Water Act of 1977 adds a new dimension by requiring pretreatment for pollutants, such as heavy metals, that limit POTW sludge management alternatives, including the beneficial use of sludges on agricultural lands. The legislative history of the 1977 Act indicates that pretreatment standards are to be technology-based, analogous to the best available technology for removal of toxic pollutants. The general pretreatment regulations, which served as the framework for these proposed pretreatment regulations for the paint formulating industry, can be found at 40 CFR Part 403; 43 FR 27736 (June 26, 1978).

EPA considered three options for PSES in the solvent-wash and caustic and/or water-wash subcategories:

(A) *Option One*—Require pretreatment standards based on physical-chemical treatment. This option is identical to Option One presented above under BAT Effluent Limitations. EPA estimates that this option would remove 85 percent of the toxic pollutants, amounting to the removal of 87 tons of toxic pollutants annually from influents to POTW. Hazardous waste generation will average 15% of the wastewater volume generated.

Of the 1500 production plants in the paint industry, 495 caustic and/or water-wash subcategory plants would have to incur additional costs to comply with this option. No additional costs would be incurred by the solvent-wash subcategory. Total capital investment would be approximately \$13.3 million, and annual costs would be \$7.6 million including interest and depreciation. Based on its model plant analysis, the Agency estimates that this option might result in as many as 155 plant closures and 775 job losses (less than one percent of total industry employment). Industry production capacity will not decrease significantly.

(B) *Option Two*—Require pretreatment standards based on 80 percent reduction in wastewater generation (beyond the current industry average 0.2 liters per liter of caustic

and/or water-wash paint). This would require in-plant controls such as high pressure washing, dry spill clean-up, and/or recycle of wastewater. Residual wastewater is treated by P-C treatment as in Option One. EPA estimates that toxic pollutant removal would average 97 percent and that selection of this option would remove 99 tons of toxic pollutants annually from influents to POTW. Sludge generation would be 3% of the volume of wastewater generated.

The Agency expects that 706 of the 1500 paint plants would incur additional costs to comply with this option. EPA estimates total capital investment would be \$9.7 million and annual costs would be \$9.5 million including interest and depreciation. Based on its model plant analysis, the Agency estimates that selection of this option may cause 232 closures and 1160 job losses, which is less than two percent of the total industry employment.

(C) *Option Three*—Require effluent limitations based on complete elimination of discharge. This would require in-plant controls such as water conservation and recycle with contract hauling of nonrecyclable wastes. This option is identical to Option Four presented above under BAT Effluent Limitations.

The Agency expects that 742 of the 1500 paint plants would incur additional costs to comply with this option. EPA estimates total capital investment would be \$10.8 million and annual costs would be \$11.0 million including interest and depreciation. Based on its model plant analysis, the Agency estimates that selection of this option may cause 232 closures and 1160 job losses, which is less than two percent of total industry employment. Industry production capacity should not be reduced to any significant extent.

Selection of this option would result in 100% removal of toxic pollutants (or 102 tons annually from POTW influents).

(D) Selection of Pretreatment Technology and Decision Criteria: EPA has selected Option Three, complete elimination of discharge of pollutants by in-plant controls and contract hauling of residual wastes, as the basis for pretreatment standards for existing sources for the solvent-wash subcategory. This option will prevent the discharge of high concentrations of toxic solvents to POTW. These solvents have an economic value and can be sold to scavengers or reclaimed on-site and reused. EPA rejected Options One and Two because of the toxicity of these wastes and the economic advantage in solvent reclamation.

EPA also has selected Option Three as the basis for proposed PSES for the

caustic and/or water-wash subcategory. Option Three technology can completely eliminate the discharge of toxic pollutants to POTW from this subcategory without creating unacceptable economic or nonwater quality impacts. EPA has rejected Options One and Two because they fail to provide consistent removal of toxic pollutants to the level necessary to prevent interference with POTW performance and contamination of POTW sludges. The Agency has determined that disposal of these toxic wastes to properly designed hazardous waste disposal sites is preferable to discharge to POTW.

XI. Pretreatment Standards for New Sources

Section 307(c) of the Act requires EPA to promulgate pretreatment standards for new sources (PSNS) at the same time that it promulgates NSPS. New indirect dischargers, like new direct dischargers, have the opportunity to incorporate the best available demonstrated technologies including process changes, in-plant controls, and end-of-pipe treatment technologies, and to use plant site selection to ensure adequate treatment system installation. The PSNS options for the caustic and/or water-wash subcategory are the same as those for PSES, presented in the preceding section of this preamble.

The paint industry has been characterized by two major factors: high rates of entry and exit of firms into the industry and a relative stability in the total number of plants producing paint. The effects on the competitive nature of the paint industry may reduce the traditional turnover rate within the industry. Higher costs of investment required for entry into the industry may include greater investment in production for new and existing firms. Under Option One, the average increase in production costs may reach 2.4 cents per gallon. Production costs under Option Two could increase 2.6 cents per gallon. Production costs under Option Three may increase by 3.1 cents per gallon.

PSNS Selection and Decision Criteria—EPA has selected Option Three as the technology basis for proposed pretreatment standards for new sources for the caustic and/or water-wash subcategory. Selection of Options One or Two would be inconsistent with the intent and definition of PSNS following selection of Option Three for PSES.

XII. Pollutants and Subcategories Not Regulated

While the Settlement Agreement required EPA to regulate the entire paint

formulating industry listed under the U.S. Department of Commerce, Bureau of the Census, Standard Industrial Classification (SIC) code number 2554, Paragraph 8(a)(i) of the Agreement authorizes the Administrator to exclude from regulation toxic pollutants and industry categories or subcategories for which equal or more stringent protection is already provided by an existing effluent limitation, new source performance standard, or pretreatment standard.

On July 28, 1975, EPA promulgated no discharge BPT, BAT, NSPS, and PSNS limitations for the Solvent-Wash Subcategory of the Paint Formulating Point Source Category, 40 CFR 446. Therefore, under Paragraph 8(a)(i) of the Settlement Agreement, EPA proposes no further BAT, NSPS, or PSNS limitations for the solvent-wash subcategory.

No BPT or BCT limitation is established for any subcategory in the paint industry. The no discharge limitations promulgated or currently proposed for BAT incidentally eliminate the discharge of conventional pollutants. Therefore, BPT or BCT limitations are unnecessary.

XIII. Costs, Effluent Reduction Benefits, and Economic Impact

Executive Order 12044 requires EPA and other agencies to perform Regulatory Analyses of certain regulations. 43 FR 12661 (March 23, 1978). EPA's plan for implementing Executive Order 12044 requires a Regulatory Analysis for major significant regulations involving annual compliance costs of \$100 million or meeting other specified criteria. 44 FR 30988 (May 29, 1979). Where these criteria are met, EPA's implementation plan requires a formal Regulatory Analysis, including an economic impact analysis and evaluation of regulatory alternatives. The proposed regulations for the paint industry do not meet the criteria for a formal Regulatory Analysis. Nonetheless, this proposed rulemaking satisfies the formal Regulatory Analysis requirements.

EPA's economic impact assessment is set forth in *Economic Analysis of Proposed Revised Effluent Standards and Limitations for the Paint Industry*, 1979, EPA. This report details the investment and annual costs for the industry as a whole and for individual plants covered by the proposed paint regulations. The report also assesses the impact of compliance costs in terms of plant closures, production changes, price changes, employment changes, local community impacts, and balance of trade effects.

The economic analysis divides the industry by volume of production. For each segment, EPA developed a model plant based upon specific financial information. After a screening analysis, EPA determined that the major economic impacts would fall on the smallest segments. Because of the financial situation of these small producers, EPA conducted a more detailed analysis which sought to estimate the potential industry-wide price increase that would occur due to the additional costs of pollution control. After estimating these price increases the Agency analyzed the model plants with respect to return on investment and capital availability. For the small producers, the Agency supplemented this analysis with a detailed investigation of loan terms, prices, disposal costs of solid waste, and the value of plant assets. In general, the conclusions are relatively insensitive to these factors.

BAT/PSES—of the 1500 production plants in the paint industry, EPA estimates that 748 will incur additional costs to comply with the proposed no discharge regulations. Total industry investment would be \$11.0 million, and annual costs will be \$11.1 million including depreciation and interest. The relatively high annual costs compared to investment are due to the use of contract hauling of the nonrecycled effluent at \$30 per gallon. The regulation will eliminate the discharge of an estimated 102 metric tons of toxic pollutants annually.

Due to the nature and composition of the paint industry, the proposed regulations will have a disproportionate effect upon the very small and small plants while having a relatively minor effect on the larger plants. Small plants are defined as plants having sales between \$250,000 to \$1 million annually; very small plants are those with average annual sales of less than \$250,000. EPA estimates that as many as 232 plants may close as a result of these regulations (15.4 percent of all plants), with 100 percent of all closures occurring in the very small sector. The effects of compliance may cause 1160 persons (less than two percent of the total industry employment), to lose their jobs. The model also indicates a total price increase of less than 4 cents per gallon, without a significant reduction in the supply of paints.

NSPS/PSNS—The paint industry has been characterized by high rates of entry and exit of firms into the industry and a relative stability in the total number of plants producing paint. The effects on the competitive nature of the

paint industry would include a reduction in the traditional turnover rate within the industry. Higher costs of investment required for entry into the industry will result in greater investment in production for new and existing firms. Production costs may increase by 3.1 cents per gallon.

XIV. Nonwater Quality Aspects of Pollution Control

The elimination or reduction of one form of pollution may aggravate other environmental problems. Therefore, Sections 304(b) and 306 of the Act require EPA to consider the nonwater quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, EPA has considered the effect of these regulations on air pollution, solid waste generation, and energy consumption. This proposal was circulated to and reviewed by EPA personnel responsible for nonwater quality environmental programs. While it is difficult to balance pollution problems against each other and against energy utilization, EPA is proposing regulations which it believes best serve often competing national goals.

The following are the nonwater quality environmental impacts (including energy requirements) associated with the proposed regulations:

A. Air Pollution—Imposition of BAT, NSPS, PSES, and PSNS will not create any substantial air pollution problems.

B. Solid Waste—A study by EPA's Office of Solid Waste Management (1976) estimates that the paint manufacturing industry generated 436,000 metric tons of solid waste (wet basis) in 1974, of which 105,000 tons were potentially hazardous. Almost all of the potentially hazardous wastes were from process cleaning operations, spoiled batches and spills. Most of the nonhazardous wastes were composed of raw materials packaging. The EPA study also found that the industry employed private contractors to dispose most of these wastes in off-site landfills.

EPA estimates that the proposed BAT and PSES limitations will contribute an additional 150,000 to 300,000 metric tons (wet basis) per year of solid wastes. Virtually all of this amount comes from waste generated by proposed PSES because almost all paint manufacturing plants currently discharge to POTW.

On the other hand EPA estimates that the proposed pretreatment standards will lessen commensurately both the quantities and concentrations of toxic pollutants in POTW sludges. POTW sludges will become more amenable to a wider range of disposal alternatives,

possibly including beneficial use on agricultural lands. Moreover, disposal of great quantities of adulterated POTW sludges is significantly more difficult and costly than disposal of smaller quantities of wastes generated at individual plant sites. Implementation of the recommended in-plant controls will conserve water and recover valuable raw materials.

Regulations proposed by EPA under Section 3001 of the Resource Conservation and Recovery Act (RCRA) list paint wastewater and solid wastes as "hazardous." 43 FR 58946, 58959 (Dec. 18, 1978). These wastes, therefore, will be subject to handling, transportation and treatment, storage, and disposal requirements, under Sections 3002-3004 of RCRA. EPA's proposed generator standards would require generators of paint wastes to meet containerization, labeling, and reporting requirements, and, if they dispose of wastes off-site, to prepare a manifest which would track the movement of the wastes from the generator's premises to a permitted off-site treatment, storage, or disposal facility. See 43 FR 58946, 58969 (Dec. 18, 1978). The proposed transporter regulations would require transporters of paint wastes to comply with the manifest and assure that the wastes are delivered to a permitted facility. See 43 FR 18506, (April 28, 1978). Finally the proposed treater, storer, and disposer standards would establish technical design and performance standards for paint waste storage facilities, and for landfills, basins, surface impoundments, incinerators, and other facilities where such wastes would be treated or disposed, as well as security, contingency plan, employee training, recordkeeping, reporting, inspection, monitoring and financial liability requirements for all such facilities. See 43 FR 58946, 58982 (Dec. 18, 1978).

C. Energy Requirements—EPA estimates that the achievement of proposed BAT and PSES limitations will increase energy use by the industry. The Agency estimates that the additional energy use associated with recycle of wastewater will be 12 million kilowatt-hours per year, primarily for mixing and pumping.

XV. Upset and Bypass Provisions

An issue of recurrent concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion," is unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee. It has been argued that an

upset provision in EPA's effluent limitations guidelines is necessary because such upsets will inevitably occur due to limitations in even properly operated control equipment. Because technology-based limitations are to require only what technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have been divided on the question of whether an explicit upset or excursion exemption is necessary or whether upset or excursion incidents may be handled through EPA's exercise of enforcement discretion. Compare *Marathon Oil Co. v. EPA*, 564 F.2d 1253 (9th Cir. 1977) with *Weyerhaeuser v. Costle*, *supra* and *Corn Refiners Association, et al. v. Costle*, No. 78-1069 (8th Cir., April 2, 1979). See also *American Petroleum Institute v. EPA*, 540 F.2d 1023 (10th Cir. 1976); *CPC International, Inc. v. Train*, 540 F.2d 1320 (8th Cir. 1976); *FMC Corp. v. Train*, 539 F.2d 973 (4th Cir. 1976).

While an upset is an unintentional episode during which effluent limits are exceeded, a bypass is an act of intentional noncompliance during which waste treatment facilities are circumvented in emergency situations. Bypass provisions have, in the past, been included in NPDES permits.

EPA has determined that both upset and bypass provisions should be included in NPDES permits, and has recently promulgated NPDES regulations which include upset and bypass permit provisions. See 44 FR 32854 (June 7, 1979). The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes by bypassing to prevent loss of life, personal injury or severe property damage. Consequently, although permittees in the paint formulation industry will be entitled to upset and bypass provisions in NPDES permits, these proposed regulations do not address these issues.

XVI. Variances and Modifications

Upon the promulgation of final regulations, the effluent limitations for the appropriate subcategory must be applied in all federal and state NPDES permits thereafter issued to paint formulation direct dischargers. In addition, on promulgation, the pretreatment limitations apply directly to indirect dischargers.

The BAT effluent limitations are subject to EPA's "fundamentally different factors" variance. See *E. I. du Pont de Nemours and Co. v. Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co. v. Costle*, *supra*. This variance recognizes factors concerning a particular

discharger which are fundamentally different from the factors considered in this rulemaking. Although this variance clause was set forth in EPA's 1973-1976 industry regulations, it now is included in NPDES regulations and will not be included in the paint formulation or other industry regulations. See the NPDES regulations at 44 FR 32854 (June 7, 1979) for the text and explanation of the "fundamentally different factors" variance.

In addition, BAT limitations for nonconventional pollutants are subject to modifications under Sections 301(c) and 301(g) of the Act. According to Section 301(j)(1)(B), applications for these modifications must be filed within 270 days after promulgation of final effluent limitations guidelines. See 43 FR 40859 (Sept. 13, 1978). Under section 301(1) of the Act, these statutory modifications are not applicable to "toxic" pollutants.

Pretreatment standards for existing sources are subject to the "fundamentally different factors" variance and credits for pollutants removed by POTW. See 40 CFR §§ 403.7, 403.13; 43 FR 27736 (June 26, 1978). Pretreatment standards for new sources are subject only to the credits provision in 40 CFR § 403.7. New source performance standards are not subject to EPA's "fundamentally different factors" variance or any statutory or regulatory modifications. See *duPont v. Train*, *supra*.

XVII. Relationship to NPDES Permits

The BAT, and NSPS limitations in these regulations will be applied to individual paint formulation plants through NPDES permits issued by EPA or approved state agencies, under Section 402 of the Act. The preceding section of this preamble discussed the binding effect of these regulations on NPDES permits, except to the extent that variances and modifications are expressly authorized. This section describes several other aspects of the interaction of these regulations and NPDES permits.

First, one matter which has been subject to different judicial views is the scope of NPDES permit proceedings in the absence of effluent limitations guidelines and standards. Under currently applicable EPA regulations, states and EPA Regions issuing NPDES permits prior to promulgation of these regulations must include a "reopener clause," providing for permits to be modified to incorporate "toxics" regulations when they are promulgated. See 43 FR 22159 (May 23, 1978). To avoid cumbersome modification procedures, EPA has adopted a policy of issuing

short-term permits, with a view toward issuing long-term permits only after promulgation of these and other BAT regulations. The Agency has published rules designed to encourage states to do the same. See 43 FR 58066 (Dec. 11, 1978). However, in the event that EPA finds it necessary to issue long term permits prior to promulgation of BAT regulations, EPA and states will follow essentially the same procedures utilized in many cases of initial permit issuance. The appropriate technology levels and limitations will be assessed by the permit issuer on a case-by-case basis, on consideration of the statutory factors. See *U.S. Steel Corp. v. Train*, 556 F.2d 822, 844, 854 (7th Cir. 1977). In these situations, EPA documents and draft documents (including these proposed regulations and supporting documents) are relevant evidence, but not binding, in NPDES permit proceedings. See 44 FR 32854 (June 7, 1979).

One additional topic that warrant discussion is the operation of EPA's NPDES enforcement program, many aspects of which have been considered in developing these regulations. The Agency wishes to emphasize that, although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary. EPA has exercised and intends to exercise that discretion in a manner which recognizes and promotes good faith compliance efforts and conserves enforcement resources for those who fail to make good faith efforts to comply with the Act.

XVIII. Small Business Administration Financial Assistance

There are two Small Business Administration (SBA) programs that may be important sources of funding for the Paint Formulation Point Source Category. They are the SBA's Economic Injury Loan Program and Pollution Control Financing Guarantees.

Section 8 of the Clean Water Act authorizes the SBA through its Economic Injury Loan Program, to make loans to assist any small business concern in effecting additions to or alterations in equipment, facilities, or methods of operation in order to meet water pollution control requirements under the Act if the concern is likely to suffer a substantial economic injury without such assistance. This program is open to small business firms as defined by the Small Business Administration. Loans can be made either directly by SBA or through a bank using an SBA guarantee. The interest on direct loans depends on the cost of money to the federal government and is currently set at 7% percent. Loan repayment periods may

extend up to thirty years depending on the ability of the firm to repay the loan and the useful life of the equipment. SBA loans made through banks are at somewhat higher interest rates. Additional information on SBA loans is provided in Appendix C to this notice.

In addition to the Economic Injury Loan Program, the Small Business Investment Act, as amended by Public Law 94-305, authorizes SBA to guarantee the payments on qualified contracts entered into by eligible small business to acquire needed pollution facilities when the financing is provided through taxable and tax-exempt revenue or pollution control bonds. This program is open to all eligible small businesses. Bond financing with SBA's guarantee of the payments makes available long term (20-25 years), low interest (usually 5 to 7 percent) financing to small businesses on the same basis as that available to larger national or international companies. For further details on this program write to the SBA, Pollution Control Financing Division, Office of Special Guarantees, 1815 North Lynn St., Magazine Bldg., Rosslyn, VA 22209 (703) 235-2900.

XIX. Summary of Public Participation

On January 29, 1979, EPA circulated a draft technical development document to a number of interested parties, including the National Paints and Coatings Association and member firms, and affected state and municipal authorities. This document did not include recommendations for effluent limitations guidelines, pretreatment standards, or new source performance standards, but rather presented the technical basis for these proposed regulations. A meeting was held in Washington, D.C. on March 14, 1979, for public presentation and discussion of comments on this document. A brief summary of the comments presented at that meeting follows.

1. Comment: Two commenters expressed concern about the apparent omission of drum reconditioning operations from the study.

Response: Based on the plants visited and the survey responses, EPA concluded that drum reconditioning is not practiced to any significant extent. Consequently, the paint industry study did not evaluate the impact of drum reconditioning on wastewater quality. These practices may require consideration in the context of "fundamentally different factors" variances.

2. Comment: One commenter expressed the view that the overall effect of paint industry effluents is insignificant, and that regulation of paint

industry discharges would consequently represent a waste of resources. The basis for this comment was that the industry-wide mass loading is very small.

Response: Although the total pollutant mass loading (including 100 metric tons of toxics per year) may be small compared to some industries, the high concentrations of toxic pollutants in paint wastewater are very significant. On the basis of an in-depth economic evaluation of this industry, EPA has found that the resources needed to alleviate these environmental problems are not excessive.

3. Comment: One participant requested that dates of sample collection and analysis be included in the paint industry development document.

Response: The dates of sample collection and analysis can be obtained from the paint industry project officer; Mr. James R. Berlow.

4. Comment: One commenter stated that the draft technical report implied that reducing the volume of wastewater generated per volume of paint manufactured would reduce the mass loading for the industry. The commenter stated further that this was not the case and that pollutant mass loading would remain the same.

Response: EPA agrees that reduced wastewater generation rates will have no impact on a plant's wastewater mass loading. Instead, the Agency is encouraging water conservation to reduce wastewater volume and decrease the cost of wastewater handling and disposal. For example, if a paint plant uses a wastewater recycle system, water conservation will permit the use of smaller holding tanks and consequently lower capital expenditures. Likewise, water conservation will yield lower contract hauling costs because most contract haulers charge on a volume basis only.

5. Comment: One commenter stated that the draft technical report did not sufficiently address the subject of toxic pollutants in paint wastewater due to trace contaminants of raw materials. As an example, the commenter cited the presence of toluene and ethylbenzene in latex wastewater where they are not latex paint raw materials.

Response: Significant concentrations of these two toxic pollutants were found in latex paint wastewaters. The fact that these pollutants may be present as contaminants of ethylene glycol or other raw materials does not lessen the paint industry's responsibility for discharge of these pollutants.

6. Comment: Several commenters expressed concern with various aspects

of the model plants used for cost development and economic impact analyses.

Response: The model plants and the costs developed using these model plants were based on the best engineering judgement of EPA's technical and economic contractors. The Agency understands that certain assumptions may not be ideal for all cases, and may appear high or low in specific instances. Nonetheless, EPA maintains that the approach and assumptions used provide a workable methodology and yield useful, meaningful costs that are comparable to the economic profile of the industry.

7. Comment: A number of commenters expressed concern over the impact of upcoming RCRA regulations on contract hauling of paint industry wastes. These concerns fell into two categories: (1) Strict limitations on landfills will make the availability of disposal sites scarce or nonexistent and (2) RCRA requirements will drive the cost of contract disposal out of reach for most plants in the future.

Response: The developmental work for these proposed regulations was coordinated with EPA's Office of Solid Waste (OSW). Based on their current best estimates, OSW concurred with the evaluations of contract hauling feasibility and costs. In the economic evaluation, EPA used a contract hauling cost of about \$0.08 per liter (\$0.30 per gallon). This value is higher than all but one reported contract hauling cost and therefore represents a fairly conservative number. The Agency also evaluated the economic impact of increasing contract hauling costs by incrementally increasing contract hauling cost to a maximum of about \$0.24 per liter (\$0.90 per gallon). At this upper limit, the number of plant closures resulting from a lack of profitability could reach 486, representing about 6 percent of industry employment. EPA is soliciting comments on this matter and will include any revised best estimates at promulgation.

8. Comment: One participant commented that the economic impact analysis does not address the increasing costs due to inflation.

Response: All costs are presented in 1976 dollars to assure comparability. Naturally, future inflation will also impact prices and profits in the industry. The Agency uses economic data currently available and does not attempt to predict the inflationary trends in the paint industry.

9. Comment: Three commenters pointed out apparent discrepancies in the analytical data presented in the draft technical report. These apparent

inconsistencies concerned treated effluent pollutant concentrations being higher than corresponding influent concentrations, or tap water pollutant concentrations being higher than corresponding untreated wastewater concentrations.

Response: Two situations can account for the types of data discrepancies outlined by the commenters. In the case of analyses which are at or near the detection limit for the pollutant, the sensitivity of the analytical tests may be limited to the extent that apparent discrepancies appear. Because of the uncertainty with such analyses, these pollutant concentrations were not used in the decision-making process. Second, it is likely that for certain nonconventional pollutants, P-C treatment will cause concentrations to increase. For example, although coagulation processes are designed to aid in removal of suspended solids, addition of chemicals to the untreated wastewater can result in increased dissolved solids and increased concentrations of materials such as aluminum. In any event, all treatment efficiencies are based on industry averages which tend to mitigate these discrepancies, and decision-making for toxic pollutants was based on analyses that were significantly above the detection limits.

10. Comment: One commenter stated that ancillary operations such as paint testing facilities and ambient pigment dust collection systems can account for significant wasteload contributions not addressed in the development document.

Response: Numerous ancillary operations that might contribute to a paint plant's wasteload were included in the industry questionnaire. Responses showed that none of the listed ancillary operations, including the two cited by the commenter, are significant operations across the paint industry. Allowances for discharges from these operations may be included by the responsible permit authorities.

11. Comment: One commenter stated that the draft technical document concluded that age and size had little bearing on waste categorization, yet a full range of paint plants was not visited or sampled.

Response: EPA sampled few very small plants because of the lack of sufficient wastewater generation to facilitate sample collection. Though not sampled as extensively as larger plants, some smaller plants were sampled and a number were visited by EPA staff and the technical contractor. Both new and old plants were sampled and visited. Based on information from the industry

questionnaires, sampling program, and plant visits, EPA concludes that size or age does not provide a basis for subcategorization.

12. Comment: A commenter expressed concern that the scope of the industry study appears to be limited to water-base operations. As a result, the report may not accurately reflect correlation of pollutant parameters to production, differences in treatment processes as related to production, or the impact on treatment costs of combined water-base/solvent-base operations.

Response: The development document addresses the solvent-wash subcategory with respect to production processes, waste handling procedures, general characteristics, and costs and economics of solvent reclaiming operations. However, because solvent washing operations should generate no wastewater, wastewater sampling at such plants is impossible. Furthermore, existing BPT, BAT, NSPS, and PSNS for this subcategory require no discharge of pollutants. For the currently unregulated existing indirect dischargers, discharge of spent solvent to the sewer is rare because of the value of spent solvent and the fact that most, if not all, municipal ordinances, as well as the general pretreatment regulations (40 CFR 403) prohibit discharge of explosive material, such as solvents, to sewers. With regard to the impact of combined solvent-base and water-base operations on treatment costs, the approach used by EPA is to apply the building block method. That is, the allowable discharge from a paint plant, if any, would be prorated according to the proportion of a plant's production in various industrial categories.

13. Comment: One commenter stated that the draft technical document failed to adequately discuss "primary" treatment as a viable alternative for achieving effluent limitations or pretreatment standards.

Response: The study concentrated on physical-chemical (P-C) treatment operations primarily because P-C represents the state-of-the-art for paint wastewater end-of-pipe treatment. No gravity settling systems were evaluated. However, because P-C treatment can be characterized as an enhancement of gravity settling alone, EPA believes that gravity settling would not give better overall performance than P-C.

14. Comment: One commenter stated that the draft technical document did not address product mix changes at individual plants. These mix changes could cause fluctuations in wasteload and consequent variation in treatment requirements and costs.

Response: The sampled paint plants represented a cross-section of operations and product lines. A number of larger paint plants producing broad product lines were also sampled and several plants were sampled more than once. On the basis of these factors, EPA concluded that the sampling program produced data representative of typical product mix variations and that those variations did not significantly increase or decrease the concentrations of any pollutants to the extent that treatment requirements would be altered.

15. Comment: One commenter stated that the draft technical report did not identify the plants included in averages of raw wastewater data or the operational/process characteristics of those plants. An additional comment was that non-protocol sampling should be excluded from these averages.

Response: The untreated wastewater data for the paint industry is based on all data available from plants with an isolated paint process wastewater stream. The data are grouped according to the source of that data, i.e., NFIC study, 1976 Burns and Roe study, 1977 Sampling Program, etc. The draft technical report does discuss operational/process characteristics where that information was available to the Agency.

Although some laboratory extractions of organic toxic pollutants were not completed within the preferred time period due to analytical lab work loads, no violations of the analytical protocol occurred for samples used in the data base.

XX. Solicitation of Comments

EPA invited and encourages public participation in this rulemaking. The Agency asks that any deficiencies in the record of this proposal be addressed specifically and that suggested revisions or corrections be supported by data.

EPA is particularly interested in receiving additional comments and information on the following issues:

(1) The Agency is reviewing the sampling and analytical methods used to determine the presence and magnitude of toxic pollutants, and solicits comments on the data produced by these methods, and the methods themselves.

(2) In order to provide a more extensive data base for this rulemaking, EPA requests that paint manufacturers voluntarily sample and analyze for the toxic, conventional and nonconventional pollutants found during its technical study. Samples should be taken, at a minimum, from intake water, raw wastewater, and pretreated or final effluent where treatment is in place.

Voluntary sampling and analyses must be conducted by the same methods used by EPA; plants which intend to participate in this effort should contact Mr. James R. Berlow at the address listed above for further assistance. Sampling and analysis protocols will be available to plants wishing to participate in this program.

(3) Characterization of the nature and amount of sludges generated by paint formulation plants and the costs of hazardous waste handling and disposal is important to these regulations and regulations being developed by EPA's Office of Solid Waste, under the Resource Conservation and Recovery Act (RCRA). The Agency solicits additional data concerning the quantities, pollutant content, and handling and disposal costs for all solid wastes. In addition, EPA requests comment on the capacity of hazardous waste disposal sites to accept the wastes which will be generated by compliance with this proposed regulation.

(4) EPA has concluded that the environmental benefits of no discharge regulations appear to outweigh the disadvantages of increased hazardous waste generation and disposal. Comments on this issue are requested.

(5) EPA's economic impact analysis indicates that up to 232 plant closings may result from the proposed regulations; all of these closures are predicted among the smallest paint formulation plants with indirect discharges. The Agency is considering either adjusting or eliminating limitations for small paint formulation plants (those discharging up to 150 gallons per day to POTW) in order to minimize closures. Comments on this issue are invited.

(6) EPA has obtained a substantial data base for the control and treatment technologies which serve as the basis for the proposed regulations. Plants which have not submitted data, or which have compiled more recent data or engineering studies than already submitted, are requested to forward these data to EPA. These data should be individual data points, not averages or other summary data, including flow, production, and all pollutant parameters for which analyses were run. Please submit any qualifications to the data, such as descriptions of facility design, operating procedures, and upset problems during specified periods.

(7) EPA requests that POTW which receive wastewaters from paint formulation plants submit data which would document the occurrence of interference with collection system and treatment plant operations, permit

violations, sludge disposal difficulties, or other incidents attributable to the pollutants contained in POTW influent.

(8) The model plants and industry profile utilized for the Agency's economic impact analysis are based upon industry data from the mid-1960's to late 1977. The Agency requests comments and data on the industry's present and expected condition.

(9) EPA is considering the possibility of promulgating final pretreatment standards which allow discharges. In this event, the Agency may establish numerical pretreatment standards (in mass units) for six toxic metals and eight toxic organic compounds. The numerical standards and basis for these standards are presented in Sections XI and XII of the development document. Comment is requested on these numerical limitations.

Dated: December 14, 1979.

Douglas M. Costle,
Administrator.

Appendix A

Abbreviations, Acronyms and Other Terms Used in This Notice

Act—The Clean Water Act
Agency—The U.S. Environmental Protection Agency
BAT—The best available technology economically achievable, under Section 304(b)(2)(B) of the Act
BCT—The best conventional pollutant control technology, under Section 304(b) of the Act
BMP—Best management practices under Section 304(e) of the Act
BPT—The best practicable control technology currently available, under Section 304(b)(1) of the Act
Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), as amended by the Clean Water Act of 1977 (Public Law 95-217)
Direct Discharger—A facility which discharges or may discharge pollutants into waters of the United States
Indirect discharger—A facility which discharges or may discharge pollutants into a publicly owned treatment works
NPDES permit—A National Pollutant Discharge Elimination System permit issued under Section 402 of the Act
NSPS—New source performance standards, under Section 306 of the Act
POTW—Publicly owned treatment works
PSES—Pretreatment standards for existing sources of indirect

discharges, under Section 307(b) of the Act

PSNS—Pretreatment standards for new sources of indirect discharges, under Section 307 (b) and (c) of the Act

RCRA—Resource Conservation and Recovery Act (PL 94-580) of 1976, Amendments to Solid Waste Disposal Act

Appendix B.—Toxic Pollutants Found in Paint Wastewaters

Organics

Acrolein, Benzene, Carbon Tetrachloride, Chlorobenzene, Hexachlorobenzene, 1,2-Dichloroethane, 1,1,1-Trichloroethane, 1,1-Dichloroethane, 1,1,2-Trichloroethane, 1,1,2,2-Tetrachloroethane, 2-Chloronaphthalene, 2,4,6-Trichlorophenol, Chloroform, 3,3'-Dichlorobenzidine, 1,1-Dichloroethylene, 1,2-Trans-dichloroethylene, 2,4-Dichlorophenol, 1,2-Dichloropropane, 1,3-Dichloropropylene, Ethylbenzene, Fluoranthene, 4-Chlorophenyl Phenyl Ether, Di(2-chloroisopropyl) Ether, Di(2-chloroethoxy) Methane, Methylene Chloride, Dichlorobromoethane, Naphthalene, Nitrobenzene, 2,4-Dinitrophenol, 4,6-Dinitro-o-cresol, Pentachlorophenol, Phenol, Di(2-ethylhexyl) Phthalate, Butyl Benzyl Phthalate, Di-n-butyl Phthalate, Diethyl Phthalate, Benzo (A) Pyrene, Anthracene, Tetrachloroethylene, Toluene, Trichloroethylene, Aldrin Dieldrin, 4,4'-DDE, 4,4'-DDD, Beta-Endosulfan, Endrin Aldehyde, Alpha-BHC, Beta-BHC, Gamma-BHC, Delta-BHC.

Inorganics

Antimony, Arsenic, Beryllium, Cadmium, Chromium, Copper, Cyanide, Lead, Mercury, Nickel, Selenium, Silver, Thallium, Zinc.

Appendix C

Firms in the Paint Formulation Point Source Category may be eligible for direct or indirect SBA loans. For further details on this Federal loan program write or telephone any of the following individuals at EPA Headquarters or in the ten EPA Regional offices:

Coordinator—Mr. Sheldon Sacks, Environmental Protection Agency, Financial Assistance Coordinator, Office of Analysis and Evaluation (WH-586), 401 M Street SW.,

Washington, D.C. 20460, telephone: (202) 755-3624.

Region I—Mr. Ted Landry or Gerald DeGaetno, Environmental Protection Agency, J. F. Kennedy Federal Office Building, Room 2203, Boston, Massachusetts 02203, telephone: (617) 223-5061.

Region II—Mr. Kenneth Eng, Chief, Air and Environmental Applications Section, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10007, telephone: (212) 264-4711.

Region III—Mr. Chuck Sapp, Environmental Protection Agency, Curtis Building, 3EN40, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, telephone: (215) 597-9433.

Region IV—Mr. John Hurlebaus, Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30308, telephone: (404) 881-4793.

Region V—Mr. Chester Marcyn, Contingency, Plan Coordinator, Surveillance and Analysis Branch, Enforcement Division, Environmental Protection Agency, 536 South Clark Street, Chicago, Illinois 60605, AC (213) 353-2316.

Region VI—Ms. Jan Horn, Attorney, Water Enforcement Division, Water Program Branch, Environmental Protection Agency, 1st International Building, 1201 Elm Street, Dallas, Texas 75270, telephone: (214) 767-2760.

Region VII—Mr. Donald Sandifer, Sanitary Engineer, Water Division, Engineering Branch, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106, telephone: (816) 374-2725.

Region VIII—Mr. Gerald Burke, Sanitary Engineer, Office of Grants, Water Division, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80203, telephone: (303) 837-3961.

Region IX—Mr. Stan Leibowitz or Ray Seid, Permits Branch, Enforcement Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94111, telephone: (415) 556-3450.

Region X—Mr. Dan Bodien, Special Technical Advisor, Enforcement Division, Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington 98101, telephone: (206) 442-1270.

Headquarters—Mr. Donnel Nantkes, Legal Counsel, Grants Contracts and General Administration Division, Environmental Protection Agency, 401 M Street SW.,

Washington, D.C. 20460, telephone: (202) 426-8830.

Interested persons may also contact the Assistant Regional Administrators for Finance and Investment in the Small Business Administration Regional offices for more details on federal loan assistance programs. For further information, write or telephone any of the following individuals:

- Region I—Mr. Russell Berry, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 60 Battery March, 10th Floor, Boston, Massachusetts 02203, telephone: (617) 223-3891.
- Region II—Mr. John Axiotakis, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 26 Federal Plaza, New York, New York 10007, telephone: (212) 264-1452.
- Region III—Mr. David Malone, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 231 St. Asapas Road, West Lobby, Suite 646, Bala Cynwyd, Pennsylvania 19004, telephone: (215) 596-5908.
- Region IV—Mr. Merritt Scoggins, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 1401 Peachtree Street, N.E., Atlanta, Georgia 30309, telephone: (404) 881-2009.
- Region V—Mr. Larry Cherry, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 219 South Dearborn Street, Chicago, Illinois 60604, telephone: (312) 353-4533.
- Region VI—Mr. Donald Beaver, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 1720 Regal Row, Suite 230, Dallas, Texas 75202, telephone: (214) 749-1265.
- Region VII—Mr. Richard Whitley, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 911 Walnut Street, 23rd Floor, Kansas City, Missouri 64106, telephone: (816) 374-3927.
- Region VIII—Mr. James Chuculate, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 1405 Curtis Street, Executive Tower Building—22nd Floor, Denver, Colorado 80202, telephone: (303) 327-3988.
- Region IX—Mr. Charles Hertzberg, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 450 Golden Gate Avenue, San

Francisco, California 94102, telephone: (415) 556-7782.

Region X—Mr. Jack Welles, Regional Administrator for Finance and Investment, Small Business Administration, 710 2d Avenue, Dexter Horton Bldg.—5th floor, Seattle, Washington 98104, telephone: (206) 399-5679.

Revision of Part 446 of Chapter 1 of Title 40 is proposed to read as follows:

PART 446—PAINT FORMULATING INDUSTRY POINT SOURCE CATEGORY

General Provisions

Sec.

446.10 Applicability

446.11 General Definitions

Subpart A—Solvent-Wash Subcategory

Sec.

446.20 Applicability; description of the solvent-wash subcategory.

446.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

446.22 [Reserved]

446.23 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

446.24 New source performance standards (NSPS).

446.25 Pretreatment standards for existing sources (PSES).

446.26 Pretreatment standards for new sources (PSNS).

Subpart B—Caustic and/or Water-Wash Subcategory

Sec.

446.30 Applicability; description of the caustic and/or water-wash subcategory.

446.31 [Reserved]

446.32 [Reserved]

446.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

446.34 New source performance standards (NSPS).

446.35 Pretreatment standards for existing sources (PSES).

446.36 Pretreatment standards for new sources (PSNS).

Authority

Sec. 301, 304(b), (c), (e), and (g), 306(b) and (c), 307(b) and (c), and 501 of the Clean Water Act [the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977] (the "Act"); 33 U.S.C. 1311, 1314(b), (c), (e), and (g), 1316(b) and (c), 1317(b) and (c), and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

General Provisions

§ 446.10 Applicability.

This applies to any paint formulating plant which discharges or may discharge pollutants to waters of the United States or which introduces or may introduce pollutants into a publicly owned treatment works.

§ 446.11 General definitions.

The definitions set forth in 40 CFR Part 401 apply to this part.

Subpart A—Solvent-Wash Subcategory

§ 446.20 Applicability; Description of the solvent-wash subcategory.

This subpart applies to discharges to waters of the United States and to introductions of pollutants into publicly owned treatment works from any paint formulating plant which, either exclusively or in addition to other operations, produces solvent-base or oil-base paints where equipment cleaning is performed using organic solvents.

§ 446.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR §§ 125.30-32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 446.22 [Reserved]

§ 446.23 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available control technology economically achievable (BAT).

Except as provided in 40 CFR §§ 125.30-32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 446.24 New source performance standards (NSPS).

Any new point source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process

wastewater pollutants to navigable waters.

§ 446.25 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES): There shall be no discharge of process wastewater pollutants to a publicly owned treatment works.

§ 446.26 Pretreatment standards for new sources (PSNS).

Any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): There shall be no discharge of process wastewater pollutants to navigable waters.

Subpart B—Caustic and/or Water-Wash Subcategory

§ 446.30 Applicability; description of the caustic and/or water-wash subcategory.

This subpart applies to discharges to waters of the United States and to introductions of pollutants into publicly owned treatment works from any paint formulating plant which, either exclusively or in addition to other operations, produces water-base or solvent-base paints where equipment cleaning is performed using water or caustic solution.

§ 446.31 [Reserved]

§ 446.32 [Reserved]

§ 446.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR §§ 125.30-.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 446.34 New source performance standards (NSPS).

Any new point source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process

wastewater pollutants to navigable waters.

§ 446.35 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES): There shall be no discharge of process wastewater pollutants to a publicly owned treatment works.

§ 446.36 Pretreatment standards for new sources (PSNS).

Any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): There shall be no discharge of process wastewater pollutants to a publicly owned treatment works.

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Thursday
January 3, 1980

Estuaries

Part III

Environmental Protection Agency

**Ink Formulating—Point Source Category;
Effluent Limitations Guidelines,
Pretreatment Standards, and New Source
Performance Standards**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 447

[FRL 1309-4]

Ink Formulating—Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed regulation.

SUMMARY: EPA proposes a regulation to eliminate effluent discharges to waters of the United States and introductions of pollutants into publicly owned treatment works from facilities engaged in manufacturing ink. The purpose of this proposal is to provide effluent limitations guidelines for "best available technology," and to establish new source performance standards and pretreatment standards, under the Clean Water Act. After considering comments received in response to this proposal, EPA will promulgate a final rule.

The Supplementary Information section of this preamble describes the legal authority and background, the technical and economic bases, and other aspects of the proposed regulations. That section also summarizes comments on a draft technical document circulated on January 29, 1979, and solicits comments on specific areas of interest. The abbreviations, acronyms, and other terms used in the Supplementary Information section are defined in Appendix A to this notice.

These proposed regulations are supported by three major documents available from EPA. Analytical methods are discussed in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants*. EPA's technical conclusions are detailed in the *Development Document for Proposed Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Ink Formulation Point Source Category*. The Agency's economic analysis is found in *Economic Analysis of Proposed Effluent Standards and Limitations for the Ink Manufacturing Industry*.

DATES: Comments on this proposal must be submitted on or before March 3, 1980.

ADDRESS: Send comments to: Mr. James R. Berlow, Effluent Guidelines Division (WH-552), Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460, Attention: Docket Clerk, Ink. The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference

Unit, Room 2404 (Rear) PM-213, (EPA Library). The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT:

Technical information and copies of technical documents may be obtained from Mr. James R. Berlow, at the address listed above, or call (202) 426-2554. The economic analysis may be obtained from Mr. John Kukulka, Water Economics Branch (WH-586), Environmental Protection Agency, 401 M St. S.W., Washington, D.C. 20460, or call (202) 426-7733.

SUPPLEMENTARY INFORMATION:

Organization of This Notice

- I. Legal Authority
- II. Background
 - A. The Clean Water Act
 - B. Prior EPA Regulations
 - C. Overview of the Industry
- III. Scope of This Rulemaking and Summary of Methodology
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- XXI. Appendices:
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 - B—Toxic Pollutants Detected in Ink Waste Waters
 - C—Information on Small Business Administration Loans

I. Legal Authority

EPA is proposing this regulation under authority of Sections 301, 304, 306, 307, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1251 *et seq.*, as amended by the Clean Water Act of 1977, P.L. 95-217) (the "Act"). This regulation also is proposed in response to the Settlement Agreement in *Natural Resources Defense Council, Inc.*

v. Train, 8 ERC 2120 (D.D.C. 1976), modified, 12 ERC 1833 (D.D.C. 1979).

II. Background

A. The Clean Water Act

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Section 101(a). By July 1, 1977, the Act required existing industrial dischargers to achieve "effluent limitations requiring the application of the best practicable control technology currently available" (BPT), Section 301(b)(1)(A); and by July 1, 1983, these dischargers were required to achieve "effluent limitations requiring the application of the best available technology economically achievable . . . which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants" (BAT), Section 301(b)(2)(A). New industrial direct dischargers were required to comply with Section 306 new source performance standards (NSPS), based on best available demonstrated technology; new and existing dischargers to publicly owned treatment works (POTW) were subject to pretreatment standards under Sections 307 (b) and (c) of the Act. While the requirements for direct dischargers were to be incorporated into National Pollutant Discharge Elimination System (NPDES) permits issued under Section 402 of the Act, pretreatment standards were made enforceable directly against dischargers to POTW (indirect dischargers).

Although section 402(a)(1) of the 1972 Act authorized the setting of requirements for direct dischargers on a case-by-case basis, Congress intended for the most part that control requirements would be based on regulations promulgated by the Administrator of EPA. Section 304(b) of the Act required the Administrator to promulgate regulations providing guidelines for effluent limitations setting forth the degree of effluent reduction attainable through the application of BPT and BAT. Sections 304(c) and 306 of the Act required promulgation of regulations for NSPS, and Sections 304(f), 307(b), and 307(c) required promulgation of regulations for pretreatment standards. In addition to these regulations for designated industry categories, Section 307(a) of the Act required the Administrator to promulgate effluent standards applicable to all dischargers of toxic pollutants. Finally, Section 501(a) of the

Act authorized the Administrator to prescribe any additional regulations "necessary to carry out his functions" under the Act.

EPA was unable to promulgate many of these regulations by the dates specified by the Act, and in 1976, was sued by several environmental groups. In settlement of this lawsuit EPA and the plaintiffs executed a "Settlement Agreement," which was approved by the Court. This Agreement required EPA to develop a program and adhere to a schedule for promulgating for 21 major industries BAT effluent limitations guidelines, pretreatment standards, and new source performance standards for 65 "priority" pollutants and classes of pollutants. See *Natural Resources Defense Council, Inc. v. Train*, 8 ERC 2120 (D.D.C. 1976), modified, 12 ERC 1833 (D.D.C. 1979).

On December 27, 1977, the President signed into law the Clean Water Act of 1977. Although this law makes several important changes in the federal water pollution control program, its most significant feature is its incorporation into the Act of several of the basic elements of the Settlement Agreement program for toxic pollution control. Sections 301(b)(2)(A) and 301(b)(2)(C) of the Act now require the achievement by July 1, 1984, of effluent limitations requiring application of BAT for "toxic" pollutants, including the 65 "priority" pollutants and classes of pollutants which Congress declared "toxic" under Section 307(a) of the Act. Likewise, EPA's standards for new sources and pretreaters aim primarily at control of toxic pollutants. Moreover, to strengthen the toxics control program, Section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" (BMPs) to prevent the release of toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with, or ancillary to, the manufacturing or treatment process.

In keeping with its emphasis on toxic pollutants, the Clean Water Act of 1977 also revises the control program for non-toxic pollutants. Instead of BAT for the "conventional" pollutants identified under Section 304(a)(4) (including biochemical oxygen demand, suspended solids, fecal coliform and pH), the new Section 301(b)(2)(E) requires achievement by July 1, 1984, of "effluent limitations requiring the application of the best conventional pollutant control technology" (BCT). The factors considered in assessing BCT for an industry include the costs of attaining a

reduction in effluents and the effluent reduction benefits derived compared to the costs and effluent reduction benefits from the discharge of publicly owned treatment works (Section 304(b)(4)(B)). For nonconventional pollutants, Section 301(b)(2)(A) and (b)(2)(F) require achievement of BAT effluent limitations within three years after their establishment or July 1, 1984, whichever is later, but not later than July 1, 1987.

The purpose of these proposed regulations is to provide effluent limitations guidelines for BAT, and to establish NSPS, pretreatment standards for existing sources (PSES), and pretreatment standards for new sources (PSNS) in the ink formulation industry, under Sections 301, 304, 306, 307, and 501 of the Clean Water Act.

B. Prior EPA Regulations

EPA promulgated BPT, BAT, NSPS, and PSNS for the Oil-Base Solvent-Wash Subcategory of the Ink Formulating Point Source Category on July 28, 1975, (40 FR 31724; 40 CFR Part 446, Subpart A). These regulations, which required no discharge of process wastewater pollutants, were not challenged and are currently in effect. For the purpose of clarifying the coverage of this subcategory, EPA is retitling this subcategory the Solvent-Wash Subcategory. This does not change the substance or applicability of the regulations.

The regulations proposed in this notice include PSES for Subpart A (renamed the Solvent-Wash Subcategory). Additionally, this proposal includes BAT, NSPS, PSES, and PSNS for Subpart B, the Caustic or Water-Wash Subcategory, which was not covered by prior regulations.

C. Overview of the Industry

The ink formulation industry is included within the U.S. Department of Commerce, Bureau of the Census Standard Industrial Classification (SIC) 2893. The variety of inks used today is broad, ranging from ordinary writing inks to specialized magnetic inks. A large volume of inks is specially produced for the printing industry. These inks fall into four major categories: letterpress inks, lithographic inks, flexographic inks, and gravure inks.

Letterpress inks are viscous tacky pastes using oil and varnish based vehicles. They generally contain resins and they dry by the oxidation of the vehicle.

Lithographic or off-set inks are viscous inks with a varnish based vehicle, similar to the letterpress varnishes. The pigment content is higher

than that of letterpress ink because it is applied in thinner films. These inks are formulated to run in the presence of water because water is used to create the non-image areas of the printing plate.

Flexographic inks are liquid inks which dry by evaporation, absorption into the substrate, and decomposition. The two main types of flexographic inks are water and solvent. Water inks are used on absorbent paper and solvent inks are used on nonabsorbent surfaces.

Gravure inks are liquid inks which dry by solvent evaporation. These inks have a variety of uses ranging from publications printing to food package printing.

In the manufacture of inks, the three major ingredients (vehicles, pigments and dryers) are mixed together to form an even dispersion of pigments within the vehicle. The pigments, vehicles and additives are combined in calculated amounts into a mixing tub, and then blended in commonly used high-speed vertical post mixers.

Most inks are made in a batch process in tubs ranging in size from 19 liters (five gallons) to over 3750 liters (1,000 gallons). The number of manufacturing steps depends on the dispersion characteristics of the ingredients. Most inks need only one or two production steps because many pigments come predispersed in a paste or wetted form.

Many inks need further milling operations to meet formulation specifications. A batch of ink may go through the mills several times before the required dispersion is reached.

Process wastewater from ink manufacturing plants results primarily from the rinsing of mixing tubs, roller mills, and other equipment. Some additional wastewater may come from floor and spill cleaning, laboratory and plant sinks, boiler and cooling water blowdown, air pollution control devices using water, and cleanout of raw material supply tank cars or trucks.

Mixing tubs can be cleaned by water rinses, caustic or solvent rinses, dry methods, or some combination of methods. Water rinses usually follow water-base ink batches, while solvent rinsing is used after solvent or oil-base ink batches; caustic rinsing may be used for either. Many plants routinely use caustic rinsing for small portable tubs, and clean fixed tubs with caustic only when a heavy build-up of ink residue makes it necessary. The caustic-wash generally is recycled and followed by a water rinse.

Wastewaters generated by this industry contain high average concentrations of BOD₅ (19,800 mg/l), TSS (1,000 mg/l), and oil and grease (620

mg/l), as well as high average concentrations of the following toxic pollutants (based only on samples where detected): Chromium, 35 mg/l; Copper, 17 mg/l; Lead, 151 mg/l; Zinc, 4 mg/l; 1,1,1-Trichloroethane, 560 µg/l; 1,2-Diphenylhydrazine, 3,800 µg/l; Ethylbenzene, 4,200 µg/l; Methylene Chloride, 950 µg/l; Isophorone, 44,000 µg/l; Pentachlorophenol, 660 µg/l; Di(2-ethylhexyl) Phthalate, 12,500 µg/l; Di-n-octyl Phthalate, 3,800 µg/l; Tetrachloroethylene, 1,250 µg/l; Toluene, 1,600 µg/l; Trichloroethylene, 1,800 µg/l.

EPA estimates that there are 460 ink plants in the United States, clustered primarily around large population centers. California, New Jersey, New York, Illinois, and Ohio contain the most ink operations, and taken together represent about 42% of all ink manufacturers. Nearly 28% of the industry consists of single location manufacturing companies. About 42% of the plants are publicly held, and the remainder fall under other forms of organization. Approximately 42 percent of all ink companies employ ten employees or less.

III. Scope of This Rulemaking and Summary of Methodology

These proposed regulations open a new chapter in water pollution control requirements for the ink manufacturing industry. EPA's 1973-1976 round of rulemakings emphasized the achievement of best practicable technology (BPT) by July 1, 1977. In general, this technology level represented the average of the best existing performances of well known technologies for control of familiar (i.e., "classical") pollutants.

This round of rulemaking, in contrast, directs EPA's efforts toward insuring the achievement by July 1, 1984, of the best available technology economically achievable (BAT), which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants. At a minimum, this technology level represents the very best economically achievable performance in any industrial category or subcategory. Moreover, as a result of the Clean Water Act of 1977, the emphasis of EPA's program has shifted from "classical" pollutants to the control of a lengthy list of toxic substances.

In the 1977 legislation, Congress recognized that it was dealing with areas of scientific uncertainty when it declared the 65 "priority" pollutants and classes of pollutants "toxic" under Section 307(a) of the Act. Except for the metals and a small number of organic

compounds, the "priority" pollutants have been relatively unknown outside of the scientific community, and those engaged in wastewater sampling and control have had little experience dealing with these pollutants.

Additionally, these pollutants, primarily the organic pollutants, often appear and have toxic effects at concentrations which severely tax current analytical techniques. Even though Congress was aware of the state-of-the-art difficulties and expense of "toxics" control and detection, it directed EPA to act quickly and decisively to detect, measure, and regulate these substances.

The lack of established analytical methods forced EPA and its consultants to develop new techniques for organic toxic pollutant detection and measurement. These are discussed under Sampling and Analytical Program. EPA then gathered the technical and financial data about the industry summarized under Data Gathering Efforts. This information enabled the Agency to develop these proposed regulations.

EPA first studied the ink formulation industry to determine whether differences in raw materials, final products, manufacturing processes, equipment, age and size of plants, water usage, wastewater constituents, or other factors required the development of separate effluent limitations and standards for different segments of the industry. This study included the identification of raw waste and treated effluent characteristics, including: 1) the sources and volume of water used, the processes employed, and the sources of pollutants and wastewaters in the plant, and 2) the constituents of wastewaters, including toxic pollutants. EPA then identified the constituents of wastewaters which should be considered for effluent limitations guidelines and standards of performance, and statistically analyzed raw waste constituents. This is discussed in detail in Section V of the Development Document.

The Agency next identified several distinct control and treatment technologies which are either in use, or have the potential for use, in the ink formulation industry. The Agency compiled and analyzed historical data and newly generated data on the effluent quality obtained by application of these technologies. The long term performance, operational limitations, and reliability of each of the treatment and control technologies also were identified. In addition, EPA considered the nonwater quality environmental impacts of these technologies, including

impacts on air quality, solid waste generation, and energy requirements.

The Agency then estimated the costs of each control and treatment technology from unit costs developed by standard engineering analysis as applied to ink formulation wastewater characteristics. EPA derived unit process costs from model plant characteristics (production and flow) applied to each treatment process unit cost curve (i.e., precipitation and settling recycle, etc.). These unit process costs were added together to yield total cost at each treatment level. After confirming the soundness of this methodology, the Agency evaluated the economic impacts of these costs. (Costs and economic impacts are discussed in detail under the various technology options, and in the section of this notice entitled Costs, Effluent Reduction Benefits, and Economic Impacts).

Upon consideration of these factors, as more fully described below, EPA identified various control and treatment technologies as BAT, PSES, PSNS, and NSPS. The proposed regulations, however, do not require the installation of any particular technology. Rather, they require achievement of effluent limitations representative of the proper operation of these technologies or equivalent technologies. As discussed below, this notice proposes no discharge of process wastewater pollutants.

IV. Data Gathering Efforts

The data gathering program is described in detail in Section III of the Development Document. Before beginning the study that established the basis for these proposed regulations, EPA completed several studies of the ink industry. Review of these studies indicated the need for additional information to profile the ink industry.

To this end, EPA developed a Data Collection Portfolio (DCP) which was reviewed by the National Association of Printing Ink Manufacturers (NAPIM) prior to distribution to 598 possible ink manufacturing sites. Completed DCP forms were returned by 460 operating ink plants.

EPA and its contractors visited ten facilities of different sizes, ages, physical configurations, and locales. Sampling was performed at six of these ink plants.

In addition to the foregoing data sources, supplementary data were obtained from NPDES permit files in EPA regional offices, and contacts with state and municipal pollution control offices. EPA also reviewed over 40 articles, documents and publications in developing its technical and economic analyses. The data gathering effort

solicited all known sources of data and all available pertinent data were used in developing these regulations.

Data for the economic analysis was collected in the DCP; and additional information came from NAPIM. This data undated and supplemented economic studies of the ink industry completed by EPA in 1974 and 1979.

V. Sampling and Analytical Program

As Congress recognized in enacting the Clean Water Act of 1977, the state-of-the-art ability to monitor and detect toxic pollutants is limited. Except for the metals and a small number of organics, many of the toxic pollutants were relatively unknown until only a few years ago, and only on rare occasions has EPA regulated or has industry monitored or even developed methods to monitor for most of these pollutants. As a result, the Agency has not yet promulgated analytical methods for many toxic pollutants under Section 304(h) of the Act. Moreover, state-of-the-art techniques involve the use of highly expensive, sophisticated equipment, with costs ranging as high as \$200,000 per unit of equipment.

Faced with these problems, EPA scientists conducted a literature search and initiated a laboratory program to develop analytical protocols. The analytical techniques used in this rulemaking are described in *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants*, revised April 1977.

Because Section 304(h) methods were available for most toxic metals, pesticides, cyanide, and phenol, the analytical effort focused on developing methods for sampling and analyses of organic toxic pollutants. The three basic analytical approaches considered by EPA were infra-red spectroscopy, gas chromatography (GC) with multiple detectors, and gas chromatography/mass spectrometry (GC/MS). In selecting among these alternatives, EPA considered their sensitivity, laboratory availability, costs, applicability to diverse waste streams from numerous industries, and potential for implementation within the statutory and court-ordered time constraints of EPA's program. The Agency concluded that infra-red spectroscopy is not sufficiently sensitive or specific for application in water. GC with multiple detectors was rejected because it requires multiple runs, incompatible with program time constraints. Moreover, because this method uses several detectors, each applicable to a narrow range of substances, it might fail to detect certain toxic pollutants. EPA chose GC/MS because it is the only available

technique that can identify a wide variety of pollutants in many different waste streams, in the presence of interfering compounds, and within the time constraints of the program. In EPA's judgment, GC/MS and the other analytical methods for toxics used in this rulemaking represent the best state-of-the-art methods for toxic pollutant analyses available when this study began.

EPA has continued to refine its sampling and analytical protocols as the technology has improved. Resource constraints, however, prevent EPA from reworking completed sampling and analyses to keep up with the evolution of analytical methods. As a result, the analytical techniques used in some rulemakings may differ slightly from those used in other rulemaking efforts. In each case, however, the analytical methods used represent the best state-of-the-art available for a given industry study. One of the goals of EPA's analytical program is the proposal and promulgation of additional Section 304(h) analytical methods for toxic pollutants, scheduled to be done within the next several months.

Before proceeding to analyze ink formulating wastes, EPA concluded that it has to define specific toxic pollutants for analysis. The list of 65 pollutants and classes of pollutants potentially includes thousands of specific pollutants; the expenditure of resources would overwhelm government and private laboratories if analyses were attempted for all of these pollutants. In order to make the task more manageable, EPA selected 129 specific toxic pollutants for study in this rulemaking and other industry rulemakings. The criteria for selection of these 129 pollutants included frequency of occurrence in water, chemical stability and structure, amount of the chemical produced, availability of chemical standards for measurement, and other factors.

EPA ascertained the presence and magnitude of the 129 specific toxic pollutants in ink manufacturing wastewaters in a sampling and analysis program involving six ink plants. The selected plants were representative of the manufacturing processes, the prevalent mix of production among plants, and the current treatment technology in the industry. All of the plants selected for sampling were indirect dischargers that used caustic and/or water tank washing operations.

The primary goal of the field sampling program was to produce samples of wastewater from which concentrations of toxic pollutants could be ascertained. Untreated wastewater samples were taken at all six plants. Treated effluent

samples were taken at one plant following application of neutralization and settling. EPA also sampled intake water to determine the presence of toxic pollutants prior to contamination by ink manufacturing operations.

The analyses for toxic pollutants were performed according to groups of chemicals and associated analytical schemes. Organic toxic pollutants included volatile (purgable), base-neutral, and acid (extractable) pollutants, and pesticides. Inorganic toxic pollutants included heavy metals and cyanide.

The primary analytical method for the volatiles, base-neutral, and acid organics was gas chromatography with confirmation and quantification of all samples by mass spectrometry (GC/MS). Phenols (total) were analyzed by the 4-aminoantipyrine (4-AAP) method. GC was employed for analysis of pesticides with limited MS confirmation. The Agency analyzed the toxic heavy metals by atomic adsorption spectrometry (AAS), with flame or graphite furnace atomization following appropriate digestion of the sample, and by the inductively coupled argon plasma (ICP) technique. Samples were analyzed for cyanides by a colorimetric method, with sulfide previously removed by distillation. Analyses for conventional pollutants (BOD₅, TSS, pH, and Oil and Grease) and various nonconventional pollutants were accomplished using "Methods for Chemical Analysis of Water and Wastes," (EPA 625/6-74-003) and amendments.

VI. Industry Subcategorization

In developing these regulations, the Agency needed to determine whether different effluent limitations and standards were appropriate for different segments of the industry. The Major factors considered in identifying subcategories included: raw materials and products; production methods; size and age; wastewater characteristics; and tub cleaning techniques. The Agency found that tub cleaning techniques were the most significant factor, and divided the industry into two subcategories on this basis. Section IV of the Development Document contains a detailed discussion of the factors considered and the rationale for subcategorization.

The subcategories of the ink formulating industry are:

1. Solvent-Wash (formerly Solvent-Base Solvent-Wash)—applicable to production of ink when an organic solvent is used to rinse the tubs between batches; and
2. Caustic and/or Water-wash—applicable to production of ink when a

caustic solution and/or water are used to rinse the tanks between batches.

VII. Available Wastewater Control and Treatment Technology

A. Status of In-Place Technology

An estimated 237 ink manufacturing plants currently do not discharge process wastewater pollutants. Of these plants, 181 do not generate wastewater at all, 30 plants contract haul wastes and 26 ink plants practice dry tank cleanup methods. Also, 27 plants report partial or complete reuse of wastewater.

The most common methods used by ink plants for treating or pretreating wastewater prior to disposal are gravity separation or settling, and neutralization. Few plants employ physical-chemical treatment or biological treatment and none use wastewater treatment methods such as activated carbon or ultrafiltration.

B. Control Technologies Considered

The control and treatment technologies available for this industry include: (1) *In-Plant Controls*. There are two widely used general strategies for reducing the amount of wastewater that ink plants discharge to the environment. The first is to reduce the amount of wastewater generated, and the second to reuse as much wastewater as possible within plant processes.

(a) *Wastewater Reduction*. The amount of wastewater generated is influenced by the water pressure used for tub and equipment cleaning, the degree of cleaning required and the use of dry cleaning techniques.

The amount of water required to clean large ink tubs can be reduced by cleaning the tub surfaces with a squeegee prior to rinsing. Small tubs can be partially or completely cleaned with rags. The quantity of wastewater from tub cleaning can be reduced also by the use of high pressure water. There are several available commercial systems, consisting of booster pumps, flow regulators and nozzles, which can supply low volume, high pressure water sprays which will clean tubs as well or better than hand-held hoses using city water pressure.

(b) *Wastewater Reuse*. Ink plants show considerable variation in their tub cleaning practices and in their willingness or reluctance to reuse wastewater. Of the plants responding to the ink industry DCP, 158 plants indicated use of a water rinse. Of this group, 11 percent usually reuse their wastewater in subsequent batches of ink. There are no differences in reuse practices between small plants and large plants.

(2) *Effluent Technologies*: There are two technologies available for ink plants which are not able to eliminate the discharge of wastewater through in-plant controls: physical-chemical treatment and contract hauling.

(a) *Physical-Chemical Treatment*. Physical-chemical (P-C) treatment systems are basically enhancements of gravity settling systems. While not currently used in the ink formulating industry, P-C treatment is commonly used in the paint manufacturing industry, which has many similarities to ink manufacturing. Most plants utilizing P-C systems operate them on a batch basis. The plant's wastewater flow collects in a holding tank until a sufficient quantity warrants treatment. If necessary, the pH is adjusted to an optimum level, a coagulant (often lime, alum, ferric chloride, or iron salts) and/or a coagulant aid (polymer) is added, and the batch is agitated and allowed to settle (from 1 to 48 hours). The supernatant is discharged, and the sludge is generally disposed of by contract hauling.

(b) *Contract Hauling*. Wastewater which cannot be eliminated or reused through in-plant controls can be stored for removal by a contract hauler. The contract hauler will transport the wastewater and arrange for disposal at a hazardous waste disposal facility.

VIII. BAT Effluent Limitations

The factors considered in assessing best available technology economically achievable (BAT) include the age of equipment and facilities involved, the process employed, process changes, nonwater quality environmental impacts (including energy requirements) and the costs of application of such technology (Section 304(b)(2)(B)). At a minimum, the BAT technology level represents the best economically achievable performance of plants of various ages, sizes, processes, or other shared characteristics. BAT may include process changes or internal controls, even when not common industry practice.

The statutory assessment of BAT "considers" costs, but does not require a balancing of costs against effluent reduction benefits (see *Weyerhaeuser v. Costle*, 590 F. 2d 1011 (D.C. Cir. 1978)). In developing the proposed BAT, however, EPA has given substantial weight to the reasonableness of costs. The Agency has considered the volume and nature of discharges, the volume and nature of discharges expected after application of BAT, the general environmental effects of the pollutants, and the costs and economic impacts of the required pollution control levels.

Despite this expanded consideration of costs, the primary determinant of BAT is effluent reduction capability. As a result of the Clean Water Act of 1977, the achievement of BAT has become the principal national means of controlling toxic water pollution. Although direct discharges of ink wastewater do not occur at the present time, the Agency is setting BAT limitations which would apply to existing indirect dischargers which might convert to direct discharge. Actual costs and nonwater quality impacts, therefore, do not exist.

EPA considered two options for BAT for the caustic and/or water-wash subcategory of the ink formulating industry. These options (which are described in greater detail in Section VII of the Development Document) are:

(A) *Option One—Require effluent limitations based on physical-chemical (P-C) treatment*.

This option consists of wastewater coagulation/flocculation using alum, lime, ferric chloride, and/or synthetic polymer, followed by sedimentation. P-C treatment removes many conventional, nonconventional, and toxic pollutants. Based on data from paint industry wastewater, EPA believes that this technology can yield median removals of greater than 90 percent for six toxic pollutants: lead, zinc, butyl phthalate, di(2-ethylhexyl) phthalate, carbon tetrachloride, and tetrachloroethylene. Furthermore, EPA estimates that median removals of twenty other toxic pollutants will be between 50 and 90 percent, and that overall toxic pollutant removal will be 85 percent. The conventional and nonconventional pollutant parameters best removed by P-C treatment are oil and grease (97 percent), total suspended solids (99 percent), and total volatile suspended solids (98 percent). Under this option, hazardous waste generation will be approximately 15 percent of the wastewater generated.

No plants in the ink industry practice direct discharge; and therefore no unemployment, plant closures, or changes in industry production capacity should occur.

(B) *Option Two—Require no discharge of process wastewater pollutants based on contract hauling of all wastewater generated*. Some ink plants can reuse wastewater in subsequent batches of ink or utilize rinse water as make-up water for caustic solution. Others may use in-plant controls such as high-pressure rinsing to reduce wastewater generation. However, most plants do not produce sufficient volumes of inks to justify installation of high pressure rinses. Any wastewater that is not

incorporated into product or eliminated through water conservation would be stored and disposed of by contract hauling.

Pollutant reduction under Option Two would be 100%, and hazardous waste generation may equal the wastewater generated.

Because no plants in the ink industry presently practice direct discharge, there are no unemployment, plant closures, or changes in industry production associated with this option.

BAT Selection and Decision Criteria: EPA has selected Option Two as the basis for proposed BAT effluent limitations for the caustic and/or waterwash subcategory. The technical and economic analysis of the industry has shown that the application of Option Two can completely eliminate the discharge of toxic pollutants to surface waters without creating unacceptable economic or nonwater quality impacts. Due to the toxic nature of ink manufacturing wastewater, the Agency has determined that the disposal of these wastes to properly designed hazardous waste disposal sites is preferable to discharge to surface waters.

IX. New Source Performance Standards

The basis for new source performance standards (NSPS) under Section 306 of the Act is the best available demonstrated technology. New plants have the opportunity to design the best and most efficient ink manufacturing processes and wastewater treatment technologies, and Congress therefore directed EPA to consider the best demonstrated process changes, in-plant controls, and end-of-pipe treatment technologies which reduce pollution to the maximum extent feasible.

Because the BAT options include all technology elements available for reduction of pollutants in ink wastewater, the two options considered for NSPS are identical to the options described above under BAT Effluent Limitations for the caustic and/or waterwash subcategory. EPA anticipates no further improvement in technology beyond BAT Option Two in new sources. However, a new plant may reduce hazardous waste generation by incorporating in-plant controls in plant design. Such reductions would lessen the nonwater quality impact of NSPS.

At the present time, 40 percent of all plants in the industry are indirect dischargers; the remaining 60 percent practice no discharge. The Agency expects that the majority of new firms entering the industry will be no dischargers or indirect dischargers. EPA

does not expect this option to have significant impacts.

NSPS Selection and Decision Criteria—EPA has selected Option Two as the basis for proposed new source performance standards for the caustic and/or waterwash subcategory for the same reasons discussed under BAT Effluent Limitations.

X. Pretreatment Standards for Existing Sources

Section 307(b) of the Act requires EPA to promulgate pretreatment standards for existing sources (PSES), which must be achieved within three years of promulgation. PSES are designed to prevent the discharge of pollutants which pass through, interfere with, or are otherwise incompatible with the operation of POTW. The Clean Water Act of 1977 adds a new dimension by requiring pretreatment for pollutants, such as heavy metals, that limit POTW sludge management alternatives, including the beneficial use of sludges on agricultural lands. The legislative history of the 1977 Act indicates that pretreatment standards are to be technology-based, analogous to the best available technology for removal of toxic pollutants. The general pretreatment regulations (40 CFR Part 403), which served as the framework for these proposed pretreatment regulations for the ink formulating industry, can be found at 43 FR 27736 (June 26, 1978).

EPA considered two options for PSES in the solvent-wash and caustic and/or water-wash subcategories:

(A) Option One—Require pretreatment standards based on physical-chemical treatment. This option is identical to Option One presented above under BAT Effluent Limitations. P-C treatment would remove approximately 85 percent of toxic pollutants. EPA estimates that this option would remove 4.5 metric tons of toxic pollutants per year from influents to POTW. Hazardous waste generation would be 15 percent of the total wastewater generated.

Of the 460 production plants in the ink industry, the Agency expects 162 to incur additional costs to comply with this option. EPA estimates that total industry investment necessary would be \$3.2 million and that annual costs could reach \$1.9 million, including interest and depreciation. No unemployment, plant closures or changes in industry production capacity are expected.

(B) Option Two—Require pretreatment standards based on contract hauling of all wastewater generated. In-plant controls such as high pressure washing, dry spill clean-up, and/or reuse of wastewater can reduce

the volume of hazardous waste contract hauled at some plants. This option is identical to Option Two presented above under BAT Effluent Limitations. EPA estimates that this option would remove 5.3 metric tons of toxic pollutants per year from influents to POTW.

Of the 460 production plants in the ink formulating industry, EPA expects that 184 would have to incur additional costs to comply with this option. The Agency estimates that total capital investment will be \$1.5 million and annual costs may reach \$3.0 million including interest and depreciation. No unemployment, plant closures, or changes in industry production capacity are expected.

Selection of Pretreatment Technology and Decision Criteria: EPA has selected Option Two, complete elimination of discharge of pollutants by contract hauling wastes, as the basis for pretreatment standards for existing sources in the solvent-wash subcategory. Not only will this option prevent the discharge of high concentrations of toxic solvents to POTW, but solvents also have an economic value and can either be sold to scavengers or reclaimed on-site and reused. Because this subcategory uses no water in the rinsing of equipment, solvents and off-specification batches make up the entire discharge. EPA rejected Option One because of the toxicity of these wastes and the economic advantage in solvent reclamation.

For the caustic and/or water-wash subcategory, EPA also selected Option Two. The Agency's review of the technical and economic data base has shown that through the application of Option Two, the ink industry can completely eliminate the discharge of toxic pollutants to POTW without creating unacceptable economic or nonwater quality impacts. EPA rejected Option One because it fails to remove toxic pollutants to the level necessary to prevent interference with POTW performance and contamination of sludges. Due to the toxic nature of ink manufacturing wastewater, the Agency has determined that the disposal of these wastes to properly designed hazardous waste disposal sites is preferable to discharge to POTW.

XI. Pretreatment Standards for New Sources

Section 307(c) of the Act requires EPA to promulgate pretreatment standards for new sources (PSNS) at the same time that it promulgates NSPS. New indirect dischargers, like new direct dischargers, have the opportunity to incorporate the best available demonstrated

technologies including process changes, in-plant controls, and end-of-pipe treatment technologies, and to use plant site selection to ensure adequate treatment system installation. The pretreatment options for new caustic and/or water-wash ink plants discharging to POTW are the same as those for PSES, presented in the preceding section of this preamble.

A new ink plant which falls into the large plant model category may require additional investments of \$0.12 million to comply with the no discharge regulation. This may add 0.6 cents per pound to the price of ink. The Agency does not expect that this will inhibit entry into the industry.

Selection of Pretreatment Technology and Decision Criteria—EPA has selected Option Two as the technology basis for pretreatment standards for new plants in the caustic and/or water-wash subcategory.

XII. Pollutants and Subcategories Not Regulated

While the Settlement Agreement required EPA to regulate the entire ink formulating industry listed under the U.S. Department of Commerce, Bureau of the Census, Standard Industrial Classification (SIC) code number 2893 Paragraph 8(a)(i) of the Agreement authorizes the Administrator to exclude from regulation toxic pollutants or industry subcategories for which equal or more stringent protection is already provided by existing effluent limitations guidelines, new source performance standards, or pretreatment standards.

The solvent-wash subcategory of the Ink Formulating Point Source Category was previously studied by EPA. On July 28, 1975, EPA promulgated BPT, BAT, NSPS, and PSNS regulations setting forth no discharge limitations for this subcategory. See 40 CFR Part 447. Therefore, under Paragraph 8(a)(i) of the Settlement Agreement, EPA has determined that it is unnecessary to establish additional BAT, NSPS, or PSNS the solvent-wash subcategory.

No BPT or BCT limitation is established for any subcategory in the ink industry. The no discharge limitations promulgated or currently proposed for BAT incidentally eliminate the discharge of conventional pollutants. Therefore, BPT or BCT limitations are unnecessary.

XIII. Costs, Effluent Reduction Benefits, and Economic Impact

Executive Order 12044 requires EPA and other agencies to perform Regulatory Analyses of certain regulations. 43 FR 12661 (March 23, 1978). EPA's plan for implementing

Executive Order 12044 requires a Regulatory Analysis for major regulations involving annual compliance costs of \$100 million or meeting other specified criteria. 44 FR 30988 (May 29, 1979). The proposed regulations for the ink formulating industry do not meet the criteria for performing a formal Regulatory Analysis. Nonetheless, this proposed rulemaking satisfies the formal Regulatory Analysis requirements.

EPA's economic impact assessment is set forth in *Economic Analysis of Proposed Effluent Standards and Limitations for the Ink Manufacturing Industry*, 1979, EPA. This report details the investment and annual costs for the industry as a whole and for individual plants covered by the proposed ink regulations. The report assesses the impact of compliance costs in terms of plant closures, production changes, price changes, employment changes, local community impacts, and balance of trade effects. The analysis differentiates the industry by volume of production. For each segment, EPA developed a model based upon specific financial information. The data underlying the analysis include information obtained from the industry trade association, publicly available economic information, and data from the Agency survey of the industry.

The ink industry consists of approximately 460 manufacturing plants distributed throughout the United States. A relatively large proportion of companies are printing ink manufacturers with branch plants and a distribution system which sells its product to printers, either directly or through jobbers or merchant wholesalers.

EPA estimates that prices will rise no more than 1.0 cents per pound of ink as plants invest to comply with these proposed regulations. The opportunities for higher productivity to offset these increased costs are questionable, principally because of the small scale of production in most commercial printing ink plants. Even if plants must absorb the full costs of compliance, EPA expects that these regulations will have little impact on the level of competition in the industry and that no closures will result from their promulgation.

BAT/PSES

Of the 460 production plants in the ink industry, EPA expects that 184 will incur additional costs to comply with PSES. The Agency estimates that total investment will be approximately \$1.5 million and that annual costs may reach \$3.0 million (including interest and depreciation). No unemployment, plant closures, or changes in industry

production capacity are expected. EPA estimates that PSES will remove 5.3 metric tons of toxic pollutants per year from influents to POTW. Because all plants in the industry are currently indirect dischargers, BAT will have no independent effects unless conversion to direct discharge occurs.

NSPS/PSNS

A new plant which falls into the large plant model category may be expected to incur additional investment requirements of \$0.12 million to comply with the no discharge regulation. This may add 0.6 cents per pound to the present price of ink. EPA does not consider this to be a significant barrier to entry.

XVI. Nonwater Quality Aspects of Pollution Control

The elimination or reduction of one form of pollution may aggravate other environmental problems. Therefore, Sections 304(b) and 306 of the Act require EPA to consider the nonwater quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, EPA has considered the effect of these regulations on air pollution, solid waste generation, and energy consumption. This proposal was reviewed by EPA personnel responsible for nonwater quality environmental programs. While it is difficult to balance pollution problems against each other and against energy utilization, EPA is proposing regulations which it believes best serve often competing national goals.

The following are the nonwater quality environmental impacts (including energy requirements) associated with the proposed regulations:

A. Air Pollution—Imposition of BAT, NSPS, PSES, and PSNS will not create any substantial air pollution problems.

B. Solid Waste—EPA estimates that compliance with the proposed PSES regulations will contribute up to an additional 23,000 metric tons (wet basis) per year of solid wastes.

On the other hand, implementation of proposed pretreatment standards will result in POTW sludges having commensurately lesser quantities and concentrations of toxic pollutants. POTW sludges will become more amenable to a wider range of disposal alternatives, possibly including beneficial use on agricultural lands. Moreover, disposal of large quantities of adulterated POTW sludges is significantly more difficult and costly than disposal of smaller quantities of wastes generated at individual plant

sites. Implementation of the recommended in-plant controls will conserve water, recycle wastes back into the product, and recover valuable raw materials.

Regulations proposed by EPA under Section 3001 of the Resource Conservation and Recovery Act (RCRA) list ink wastewater and solid wastes as "hazardous." 43 FR 58946, 58959 (Dec. 18, 1978). These wastes, therefore, will be subject to handling, transportation, treatment, storage, and disposal requirements under Sections 3002-3004 of RCRA. EPA's proposed generator standards require generators of ink wastes to meet containerization, labeling, and reporting requirements, and, if they dispose of wastes off-site, to prepare a manifest which will track the movement of the wastes from the generator's premises to a permitted off-site treatment, storage, or disposal facility. See 43 FR 58946, 58969 (Dec. 18, 1978). The proposed transporter regulations would require transporters of ink wastes to comply with the manifest and assure that the wastes are delivered to a permitted facility. See 43 FR 18506 (April 28, 1978). Finally, the proposed treater, storer, and disposer standards would establish technical design and performance standards for ink waste storage facilities, and for landfills, basins, surface impoundments, incinerators, and other facilities where such wastes would be treated or disposed, as well as security, contingency plan, employee training, recordkeeping, reporting, inspection, monitoring and financial liability requirements for all such facilities. See 43 FR 58946, 58982 (Dec. 18, 1978).

XV. Upset and Bypass Provisions

An issue of recurrent concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion," is unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee. It has been argued that an upset provision in EPA's effluent limitations guidelines is necessary because such upsets will inevitably occur due to limitations in even properly operated control equipment. Because technology-based limitations are to require only what technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have been divided on the question of whether an explicit upset or excursion exemption is necessary or whether upset or excursion incidents may be handled

through EPA's exercise of enforcement discretion. Compare *Marathon Oil Co. v. EPA*, 564 F. 2d 1253 (9th Cir. 1977) with *Weyerhaeuser v. Costle*, *supra* and *Corn Refiners Association, et al. v. Costle*, No. 78-1069 (8th Cir., April 2, 1979). See also *American Petroleum Institute v. EPA*, 540 F. 2d 1023 (10th Cir. 1976); *CPC International, Inc. v. Train*, 540 F. 2d 1320 (8th Cir. 1976); *FMC Corp. v. Train*, 539 F. 2d 973 (4th Cir. 1976).

While an upset is an unintentional episode during which effluent limits are exceeded, a bypass is an act of intentional noncompliance during which waste treatment facilities are circumvented in emergency situations. Bypass provisions have, in the past, been included in NPDES permits.

EPA has determined that both upset and bypass provisions should be included in NPDES permits, and has recently promulgated NPDES regulations which include upset and bypass permit provisions. See 44 FR 32854 (June 7, 1979). The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage. Because these provisions are set forth in the NPDES regulations, these proposed regulations for the ink formulating industry do not address these issues.

XVI. Variances and Modifications

Upon the promulgation of final regulations, the effluent limitations for the appropriate subcategory must be applied in all federal and state NPDES permits thereafter issued to ink formulation direct dischargers. In addition, the pretreatment limitations are directly applicable to indirect dischargers.

The BAT effluent limitations, however, are subject to EPA's "fundamentally different factors" variance. See *E. I. du Pont de Nemours and Co. v. Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co. v. Costle*, *supra*. This variance recognizes factors concerning a particular discharger which are fundamentally different from the factors considered in this rulemaking. Although this variance clause was set forth in EPA's 1973-1976 industry regulations, it now is part of the NPDES regulations and will not be included in the ink formulation or other industry regulations. See the NPDES regulations at 44 FR 32854 (June 7, 1979) for the text and explanation of the "fundamentally different factors" variance.

In addition, BAT limitations for nonconventional pollutants are subject to modifications under Sections 301(c)

and 301(g) of the Act. Under Section 301(l) of the Act, these statutory modifications are not applicable to "toxic" pollutants. According to Section 301(j)(1)(B), applications for these modifications must be filed within 270 days after promulgation of final effluent limitations guidelines. See 43 FR 40859 (Sept. 13, 1978).

Pretreatment standards for existing sources are subject to the "fundamentally different factors" variance and credits for pollutants removed by POTW. See 40 CFR §§ 403.7, 403.13; 43 FR 27736 (June 26, 1978). Pretreatment standards for new sources are subject only to the credits provision in 40 CFR § 403.7. New source performance standards are not subject to EPA's "fundamentally different factors" variance or any statutory or regulatory modifications. See *duPont v. Train*, *supra*.

XVII. Relationship to NPDES Permits

The BAT and NSPS limitations in these regulations will be applied to individual ink formulation plants through NPDES permits issued by EPA or approved state agencies, under Section 402 of the Act. The preceding section of this preamble discussed the binding effect of these regulations on NPDES permits, except to the extent that variances and modifications are expressly authorized. This section describes several other aspects of the interaction of these regulations and NPDES permits.

A matter which has been subject to different judicial views is the scope of NPDES permit proceedings in the absence of effluent limitations guidelines and standards. Under currently applicable EPA regulations, states and EPA Regions issuing NPDES permits prior to promulgation of final ink formulating regulations must include a "re-opener clause," providing for permits to be modified to incorporate "toxics" regulations when they are promulgated. See 43 FR 22159 (May 23, 1978). To avoid cumbersome modification procedures, EPA has adopted a policy of issuing short-term permits, with a view toward issuing long-term permits only after promulgation of these and other BAT regulations. The Agency has published rules designed to encourage states to do the same. See 43 FR 58066 (Dec. 11, 1978). However, in the event that EPA finds it necessary to issue long term permits prior to promulgation of final BAT regulations, EPA and states will follow essentially the same procedures utilized in many cases of initial permit issuance. The appropriate technology levels and limitations will be assessed

by the permit issuer on a case-by-case basis, on consideration of the statutory factors. See *U.S. Steel Corp. v. Train*, 556 F. 2d 822, 844, 854 (7th Cir. 1977). In these situations, EPA documents and draft documents (including these proposed regulations and supporting documents) are relevant evidence, but not binding, in NPDES permit proceedings. See 44 FR 32854 (June 7, 1979).

One additional topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which have been considered in developing these regulations. The Agency wishes to emphasize that, although the Clean Water Act is a strict liability statute, the initiation of enforcement proceedings by EPA is discretionary. EPA has exercised and intends to exercise that discretion in a manner which recognizes and promotes good faith compliance efforts and conserves enforcement resources for those who fail to make good faith efforts to comply with the Act.

XVIII. Small Business Administration Financial Assistance

There are two Small Business Administration (SBA) programs that may be important sources of funding for the Ink Formulation Point Source Category. They are the SBA's Economic Injury Loan Program and Pollution Control Financing Guarantees.

The Clean Water Act authorizes the SBA through its Economic Injury Loan Program, to make loans to assist any small business concern in affecting additions to or alterations in equipment, facilities, or methods of operation in order to meet water pollution control requirements under the Act if the concern is likely to suffer a substantial economic injury without such assistance. This program is open to small business firms as defined by the Small Business Administration. Loans can be made either directly by SBA or through a bank using an SBA guarantee. The interest on direct loans depends on the cost of money to the federal government and is currently set at 7% percent. Loan repayment periods may extend up to thirty years depending on the ability of the firm to repay the loan and the useful life of the equipment. SBA loans made through banks are at somewhat higher interest rates. Additional information on SBA loans is provided in Appendix C to this notice.

In addition to the Economic Injury Loan Program, the Small Business Investment Act, as amended by Public Law 94-305, authorizes SBA to guarantee the payments on qualified contracts entered into by eligible small

businesses to acquire needed pollution facilities when the financing is provided through taxable and tax-exempt revenue or pollution control bonds. This program is open to all eligible small businesses. Bond financing with SBA's guarantee of the payments makes available long term (20-25 years), low interest (usually 5 to 7 percent) financing to small businesses on the same basis as that available to larger national or international companies. For further details on this program write to the SBA, Pollution Control Financing Division, Office of Special Guarantees, 1815 North Lynn St., Magazine Bldg., Rosslyn, VA 22209 (703) 235-2900.

XIX. Summary of Public Participation

On February 3, 1979, EPA circulated a draft technical report to a number of interested parties, including the National Association of Printing Ink Manufacturers and member firms, and affected state and municipal authorities. This document did not include recommendations for effluent limitations guidelines, pretreatment standards, or new source performance standards, but rather presented the technical basis for these proposed regulations. A meeting was held in Washington, D.C. on March 14, 1979, for public presentation and discussion of comments on this document. A brief summary of the comments presented at that meeting follows.

1. Comment: One commenter expressed concern that filtration of physical-chemical (P-C) supernatant would be required to "meet the intent of the physical/chemical pretreatment controls" and that dewatering of sludge may be required to reduce sludge volume to 15% of original volume. These costs were not included in the draft technical document.

Response: The option examined for the ink industry was batch physical-chemical treatment as practiced in the paint industry, which has similar wastewater characteristics. Filtration and sludge dewatering are not practiced in the paint industry, and EPA has found no data indicating that they would be required in the ink industry. Therefore, costs for the P-C option do not include filtration of supernatant or sludge dewatering.

2. Comment: Several participants stated that the ink industry should be exempted from regulation because of its low average daily flow.

Response: Although the ink industry total pollutant mass loading (including five tons of toxic pollutants per year) and flow may be small compared to other industries, the high concentrations of toxic pollutants in ink wastewater are

very significant. On the basis of its in-depth economic analysis, EPA believes that the resources needed to eliminate this toxic pollution are not excessive.

Comment: One commenter questioned whether the economic impact of RCRA regulations was included in the contract hauling costs.

Response: The Agency developed these proposed regulations in coordination with the EPA Office of Solid Waste (OSW). OSW concurred with the evaluation of contract hauling feasibility and costs. The economic evaluation is based on a contract hauling cost of \$0.08 per liter (\$0.30 per gallon), which represents a conservative value for 1978 conditions. Moreover, in order to assess the economic impact of increasing contract hauling costs, EPA incrementally increased the contract hauling cost to a maximum of \$0.24 per liter (\$0.90 per gallon). EPA anticipates no significant economic impact as a result of these regulations up to \$0.20 per liter. Above this cost, economic impacts may result. However, the Agency cannot estimate the exact impact of RCRA until final regulations are promulgated.

XX. Solicitation of Comments

EPA invites and encourages public participation in this rulemaking. The Agency asks that any deficiencies in the record of this proposal be addressed specifically and that suggested revisions or corrections be supported by data.

EPA is particularly interested in receiving additional comments and information on the following issues:

(1) The Agency is reviewing the sampling and analytical methods used to determine the presence and magnitude of toxic pollutants, and solicits comments on the data produced by these methods, and the methods themselves.

(2) In order to provide a more extensive data base for this rulemaking, EPA requests that ink formulation plants voluntarily sample and analyze for toxic, conventional and nonconventional pollutants in their waste streams. At a minimum, samples should be taken from intake water, raw wastewater, and pretreated or final effluent where treatment is in place. Voluntary sampling and analyses must follow the same methods used by EPA; plants which intend to participate in this effort should contact Mr. James R. Berlow at the address listed above for further assistance. Sampling and analysis protocols will be available to plants wishing to participate in this program.

(3) Characterization of the nature and amount of sludges generated by ink formulation plants and the costs of

hazardous waste handling and disposal are important to these regulations and to regulations being developed by EPA's Office of Solid Waste, under authority of the Resource Conservation and Recovery Act (RCRA). The Agency solicits additional data concerning the quantities, pollutant content, and handling and disposal costs for all solid wastes. In addition, EPA requests comment on the capacity of hazardous waste disposal sites to accept the wastes which will be generated by this proposed regulation.

(4) In proposing these regulations, EPA has concluded that the environmental benefits of no discharge regulations outweigh the disadvantages of increased hazardous waste generation and disposal. Comment on this issue is requested.

(5) EPA's economic impact analysis indicates that no plant closings will result from the proposed regulations. Comments on this issue are invited.

(6) EPA has obtained from the industry a substantial data base for the control and treatment technologies which serve as the basis for the proposed regulations. Plants which have not submitted data, or which have compiled more recent data or engineering studies than those already submitted, are requested to forward these data to EPA. These data should be individual data points, not averages or other summary data, and should include flow, production, and all pollutant parameters for which analyses were run. Please submit any qualifications to the data, such as descriptions of facility design, operating procedures, and upset problems during specified periods.

(7) EPA requests that POTW which receive wastewaters from ink formulation plants submit data which would document the occurrence of interference with collection system and treatment plant operations, permit violations, sludge disposal difficulties, or other incidents attributable to the pollutants contained in POTW influent.

(8) The model plants and industry profile underlying the Agency's economic impact analysis are based on industry data from the mid-1960's to late 1977. The Agency requests comments and data on the industry's present and projected condition.

(9) EPA is considering the possibility of promulgating final pretreatment standards which allow discharges. In this event, the Agency may establish numerical pretreatment standards (in mass units) for four toxic metals and six toxic organic compounds. The numerical standards and rationale for these standards are presented in Sections XI and XII of the development document.

Comment is requested on these numerical limitations and their technological basis.

Dated: December 14, 1979.

Douglas M. Costle,
Administrator.

Appendix A

Abbreviations, Acronyms and Other Terms Used in this Notice

Act—The Clean Water Act

Agency—The U.S. Environmental Protection Agency

BAT—The best available technology economically achievable, under Section 304(b)(2)(B) of the Act

BCT—The best conventional pollutant control technology, under Section 304(b)(4) of the Act

BMP—Best management practices under Section 304(e) of the Act

BPT—The best practicable control technology currently available, under Section 304(b)(1) of the Act

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), as amended by the Clean Water Act of 1977 (Public Law 95-217)

Direct discharger—A facility which discharges or may discharge pollutants into waters of the United States

Indirect discharger—A facility which discharges or may discharge pollutants into a publicly owned treatment works

NPDES permit—A National Pollutant Discharge Elimination System permit issued under Section 402 of the Act

NSPS—New source performance standards, under Section 306 of the Act

POTW—Publicly owned treatment works

PSES—Pretreatment standards for existing sources of indirect discharges, under Section 307(b) of the Act

PSNS—Pretreatment standards for new sources of indirect discharges, under Section 307 (b) and (c) of the Act

RCRA—Resource Conservation and Recovery Act (PL 94-580) of 1976, Amendments to Solid Waste Disposal Act

Appendix B.—Toxic Pollutants Found in Ink Wastewaters

Organics

Acenaphthene, Benzene, Carbon tetrachloride, Chlorobenzene, 1,2,4-Trichlorobenzene, 1,2-Dichloroethane, 1,1,1-Trichloroethane, 1,1-

Dichloroethane, 1,1,2-Trichloroethane, 2,4,6-Trichlorophenol, Parachlorometacresol, Chloroform, 1,2-Dichlorobenzene, 1,1-Dichloroethylene, 1,2-Trans-dichloroethylene, 1,2-Dichloropropane, 2,4-Dimethylphenol, 2,4-Dinitrotoluene, 2,6-Dinitrotoluene, 1,2-Diphenylhydrazine, Ethylbenzene, Fluoranthene, Di(2-Chloroisopropyl) Ether, Methylene Chloride, Trichlorofluoromethane, Chlorodibromomethane, Isophorone, Naphthalene, N-nitrosodiphenylamine, Pentachlorophenol, Phenol, Di(2-ethylhexyl) Phthalate, Butyl Benzyl Phthalate, Di-n-butyl Phthalate, Di-n-octyl Phthalate, Diethyl Phthalate, Dimethyl Phthalate, Chrysene, Anthracene, Fluorene, Phenanthrene, Pyrene, Tetrachloroethylene, Toluene, Trichloroethylene, Dieldrin.

Inorganics

Antimony, Arsenic, Beryllium, Cadmium, Chromium, Copper, Cyanide, Lead, Mercury, Nickel, Selenium, Silver, Thallium, Zinc.

Appendix C

Firms in the Ink Formulation Point Source Category may be eligible for direct or indirect SBA loans. For further details on this Federal loan program write or telephone any of the following individuals at EPA Headquarters or in the ten EPA Regional offices:

Coordinator—Mr. Sheldon Sacks, Environmental Protection Agency, Financial Assistance Coordinator, Office of Analysis and Evaluation (WH-586), 401 M Street SW., Washington, D.C. 20460. Telephone: (202) 755-3624.

Region I—Mr. Ted Landry or Gerald DeGaetno, Environmental Protection Agency, J. F. Kennedy Federal Office Building, Room 2203, Boston, Massachusetts 02203. Telephone: (617) 223-5061.

Region II—Mr. Kenneth Eng, Chief, Air and Environmental Applications Section, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10007. Telephone: (212) 264-4711.

Region III—Mr. Chuck Sapp, Environmental Protection Agency, Curtis Building, 3EN40, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106. Telephone: (215) 597-9433.

Region IV—Mr. John Hurlebaus, Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30308. Telephone: (404) 881-4793.

Region V—Mr. Chester Marcyn, Contingency, Plan Coordinator, Surveillance and Analysis Branch, Enforcement Division, Environmental Protection Agency, 536

South Clark Street, Chicago, Illinois 60605, AC (213) 353-2316.

Region VI—Ms. Jan Horn, Attorney, Water Enforcement Division, Water Program Branch, Environmental Protection Agency, 1st International Building, 1201 Elm Street, Dallas, Texas 75270, Telephone: (214) 767-2760.

Region VII—Mr. Donald Sandifer, Sanitary Engineer, Water Division, Engineering Branch, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106, Telephone: (816) 374-2725.

Region VIII—Mr. Gerald Burke, Sanitary Engineer, Office of Grants, Water Division, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado, 80203, Telephone: (303) 837-3961.

Region IX—Mr. Stan Leibowitz or Ray Seid, Permits Branch, Enforcement Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94111, Telephone: (415) 556-3450.

Region X—Mr. Dan Bodien, Special Technical Advisor, Enforcement Division, Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington 98101, Telephone: (206) 442-1270.

Headquarters—Mr. Donnel Nantkes, Legal Counsel, Grants Contracts and General Administration Division, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, Telephone: (202) 426-8830.

Interested persons may also contact the Assistant Regional Administrators for Finance and Investment in the Small Business Administration Regional offices for more details on federal loan assistance programs. For further information, write or telephone any of the following individuals:

Region I—Mr. Russell Berry, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 60 Battery March, 10th Floor, Boston, Massachusetts 02203, Telephone: (617) 223-3891.

Region II—Mr. John Axiotakis, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 26 Federal Plaza, New York, New York 10007, Telephone: (212) 284-1452.

Region III—Mr. David Malone, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 231 St. Asapas Road, West Lobby, Suite 646, Bala Cynwyd, Pennsylvania 19004, Telephone: (215) 596-5908.

Region IV—Mr. Merritt Scoggins, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 1401 Peachtree Street NE., Atlanta, Georgia 30309, Telephone: (404) 881-2009.

Region V—Mr. Larry Cherry, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 219 South Dearborn Street, Chicago, Illinois 60604, Telephone: (312) 353-4533.

Region VI—Mr. Donald Beaver, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 1720 Regal Row, Suite 230, Dallas, Texas 75202, Telephone: (214) 749-1265.

Region VII—Mr. Richard Whitley, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 911 Walnut Street, 23rd Floor, Kansas City, Missouri 64106, Telephone: (816) 374-3927.

Region VIII—Mr. James Chuculate, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 1405 Curtis Street, Executive Tower Building, 22nd Floor, Denver, Colorado 80202, Telephone: (303) 327-3988.

Region IX—Mr. Charles Hertzberg, Assistant Regional Administrator for Finance and Investment, Small Business Administration, 450 Golden Gate Avenue, San Francisco, California 94102, Telephone: (415) 556-7782.

Region X—Mr. Jack Welles, Regional Administrator for Finance and Investment, Small Business Administration, 710 2d Avenue, Dexter Horton Bldg., 5th Floor, Seattle, Washington 98104, Telephone: (206) 399-5679.

Revision of Part 447 of Chapter 1 of Title 40 is proposed to read as follows:

PART 447—INK FORMULATING INDUSTRY POINT SOURCE CATEGORY

General Provisions

Sec.

447.10 Applicability.

447.11 General definitions.

Subpart A—Solvent-Wash Subcategory

Sec.

447.20 Applicability; description of the solvent-wash subcategory.

447.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

447.22 [Reserved]

447.23 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

447.24 New source performance standards (NSPS).

447.25 Pretreatment standards for existing sources (PSES).

447.26 Pretreatment standards for new sources (PSNS).

Subpart B—Caustic and/or Water-Wash Subcategory

Sec.

447.30 Applicability; description of the caustic and/or water-wash subcategory.

447.31 [Reserved]

447.32 [Reserved]

447.33 Effluent limitations representing the degree of effluent reduction attainable by

the application of the best available technology economically achievable (BAT).

447.34 New source performance standards (NSPS).

447.35 Pretreatment standards for existing sources (PSES).

447.36 Pretreatment standards for new sources (PSNS).

Authority: Sec. 301, 304(b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

General Provisions

§ 447.10 Applicability.

This part applies to any ink formulating plant which discharges or may discharge pollutants to waters of the United States or which introduces or may introduce pollutants into a publicly owned treatment works.

§ 447.11 General definitions.

The definitions set forth in 40 CFR Part 401 apply to this part.

Subpart A—Solvent-Wash Subcategory

§ 447.20 Applicability description of the solvent-wash subcategory.

This subpart applies to discharges to waters of the United States and to introductions of pollutants into publicly owned treatment works from any ink formulating plant which, either exclusively or in addition to other operations, produces solvent-base or oil base inks where equipment cleaning is performed using organic solvents.

§ 447.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR §§ 125.30-32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 447.22 [Reserved]

§ 447.23 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR §§ 125.30-32, any existing point source

subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 447.24 New source performance standards (NSPS).

Any new point source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 447.25 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES): There shall be no discharge of process wastewater pollutants to a publicly owned treatment works.

§ 447.26 Pretreatment standards for new sources (PSNS).

Any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): There shall be no discharge of process wastewater pollutants to navigable waters.

Subpart B—Caustic and/or Water-Wash Subcategory

§ 447.30 Applicability; description of the caustic and/or water-wash subcategory.

This subpart applies to discharges to waters of the United States and to introductions of pollutants into publicly owned treatment works from any ink formulating plant which, either exclusively or in addition to other operations, produces water-base or solvent-base inks where equipment cleaning is performed using water or caustic solution.

§ 447.31 [Reserved]

§ 447.32 [Reserved]

§ 447.33 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR §§ 125.30–32, any existing point source subject to this subpart must achieve the

following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 447.34 New source performance standards (NSPS).

Any new point source subject to this subpart must achieve the following new source performance standards (NSPS): There shall be no discharge of process wastewater pollutants to navigable waters.

§ 447.35 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR § 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES): There shall be no discharge of process wastewater pollutants to a publicly owned treatment works.

§ 447.36 Pretreatment standards for new sources (PSNS).

Any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS): There shall be no discharge of process wastewater pollutants to a publicly owned treatment works.

[FR Doc. 80-9 Filed 1-2-80; 8:45 am]

BILLING CODE 6560-01-M

Get It Right

Thursday
January 3, 1980

Part IV

Department of Energy

Property Management Regulations

DEPARTMENT OF ENERGY

41 CFR Part 9-7

Procurement; Amendment of Regulations

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: This rule amends the Department of Energy Procurement Regulations (DOE-PR) (44 FR 34424, 41 CFR CH. 9) so as to a) revise the table of contents of part 9, and b) revise and add to the Government property clauses contained in Part 9-7.

These amendments would incorporate 41 CFR Part 109-60, which is that portion of the DOE Property Management Regulations (DOE-PMR) that establishes policy and procedures for the standardization of the administration of Government property provided under certain DOE contracts.

EFFECTIVE DATE: January 3, 1980.

FOR FURTHER INFORMATION CONTACT:

Mr. Francis Roche, Chief, Property and Equipment Management Branch (PR-221), room 1J 030, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. telephone 252-8254.

SUPPLEMENTARY INFORMATION: On October 4, 1979, DOE published proposed amendments to the DOE Procurement Regulations which would add to and revise the Government property clauses contained in Part 9-7. These amendments would incorporate 41 CFR Part 109-60, which is that portion of the DOE Property Management Regulations (DOE-PMR) that establishes policy and procedures for the standardization of the administration of Government property provided under certain DOE contracts. DOE-PMR 109-60 is published elsewhere in this edition of the *Federal Register* as a final rule.

Public comment was invited, but no comments were received. Accordingly, DOE is amending Part 9 of the DOE Procurement Regulations as contained in the notice of proposed rulemaking of October 4, 1979.

Dated: December 21, 1979.

For the Department of Energy.

M. J. Tashjian,

Director, Procurement and Contracts Management Directorate.

(Sec. 644 of the Department of Energy Organization Act (Pub. L. 95-91, 42 U.S.C. 7254)

CHAPTER 9—DEPARTMENT OF ENERGY PROCUREMENT REGULATIONS

PART 9-7—CONTRACT CLAUSES

The Table of contents to Part 9-7 is amended to add the following:

Sec.

9-7.203-21.

9-7.303-7.

9-7.402-25.

9-7.603-60.

Subpart 9-7.1—Fixed-Price Supply Contracts

1. Section 9-7.103 Government property, is amended as follows:

§ 9-7.103-51 Government property.

Insert the applicable Government property clause set forth in FPR 1-7.303-7 modified as set forth in § 9-7.303-7.

Subpart 9-7.2—Cost Reimbursement Type Supply Contracts

2. Section 9-7.203 Clauses to be used where applicable, is amended by adding the following new section:

§ 9-7.203-21 Government property.

Insert the Government property clause set forth in FPR 1-7.203-21(a) modified as set forth below:

(1) Modify the second sentence of paragraph (d) to read as follows:

"The contractor shall establish and maintain a system to control, protect, preserve, and maintain all Government property in accordance with applicable provisions of the DOE Property Management Regulations (DOE-PMR) 41 CFR 109-60 as in effect on the date of the contract."

(2) Modify the first sentence of paragraph (f) to read as follows:

"The contractor shall maintain and administer, in accordance with sound industrial practice and with applicable provisions of DOE-PMR 109-60, a program for the utilization, maintenance, repair, protection, and preservation of Government property so as to assure its full availability and usefulness for the performance of this contract."

Subpart 9-7.3—Fixed-Price Research and Development Contracts

3. Section 9-7.303 Clauses to be used when applicable, is amended by adding the following new section:

§ 9-7.303-7 Government property.

(1) Insert the applicable Government property clause set forth in FPR 1-7.303-7(a) modified as set forth below:

(a) Modify the second sentence of paragraph (d) to read as follows:

"The Contractor shall establish and maintain a system to control, protect, preserve, and maintain all Government property in accordance with applicable provisions of the DOE Property Management Regulations (DOE-PMR) 41 CFR 109-60 as in effect on the date of the contract."

(b) Modify the first sentence of paragraph (f) to read as follows:

"The Contractor shall maintain and administer, in accordance with sound industrial practice and with applicable provisions of DOE-PMR 109-60, a program for the utilization, maintenance, repair, protection, and preservation of Government property so as to assure its full availability and usefulness for the performance of this contract."

(2) When the contract is without profit or fee and is with an educational or nonprofit institution, insert the property clause set forth in FPR 1-7.303-7(d) modified as set forth below:

(a) Modify the second sentence of paragraph (d) to read as follows:

"The Contractor shall establish and maintain a system to control, protect, preserve, and maintain all Government property in accordance with applicable provisions of the DOE Property Management Regulations (DOE-PMR) 41 CFR 109-60 as in effect on the date of this contract."

(b) Modify the first sentence of paragraph (f) to read as follows:

"The Contractor shall maintain and administer, in accordance with sound business practice and with applicable provisions of DOE-PMR 109-60, a program for the utilization, maintenance, repair, protection, and preservation of Government property so as to assure its full availability and usefulness for the performance of this contract."

Subpart 9-7.4—Cost-Reimbursement Type Research and Development Contracts

4. Section 9-7.402 Required clauses, is amended by adding the following new section:

§ 9-7.402-25 Government property.

(1) Insert the clause as set forth in FPR 1-7.203-21(a) modified as set forth in § 9-7.203-21.

(2) If the contract is with an educational or nonprofit institution, insert the clause in FPR 1-7.402-25(b) modified as set forth below:

(a) Modify the second sentence of paragraph (d) to read as follows:

"The Contractor shall establish and maintain a system to control, protect, preserve, and maintain all Government

property in accordance with applicable provisions of the DOE Property Management Regulations (DOE-PMR) 41 CFR 109-60 as in effect on the date of this contract."

(b) Modify the first sentence of paragraph (f) to read as follows:

"The Contractor shall maintain and administer, in accordance with sound business practice and with applicable provisions of DOE-PMR 109-60, a program for the utilization, maintenance, repair, protection, and preservation of Government property so as to assure its full availability and usefulness for the performance of this contract."

Subpart 9-7.6—Fixed-Price Construction Contracts

5. Section 9-7.603 Clauses and notices to be used when applicable, is amended by adding the following new section:

§ 9-7.603-60 Government property.

Insert the applicable clause as set forth in FPR 1-7.303-7 modified as set forth in § 9-7.303-7 (1) and (2).

[FR Doc. 80-12 Filed 1-2-80; 8:45 am]

BILLING CODE 6450-01-M

41 CFR Parts 109-1 and 109-60

Management of Government Property in the Possession of Offsite Contractors

AGENCY: Department of Energy.

ACTION: Final Rule.

SUMMARY: This rule amends the Property Management Regulations (DOE-PMR) (44 FR 986, 41 CFR CH. 109) so as to (a) revise Part 109-1 by adding a definition of an off-site contractor and modifying the applicability of the DOE-PMR, and (b) add a new Part 109-60, "Management of Government Property in the Possession of Offsite Contractors."

These regulations would establish policy and procedures for the administration of Government property provided to DOE off-site contractors.

EFFECTIVE DATE: January 3, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Roche, Chief, Property and Equipment Management Branch (PR-221), Room 1J 030, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., telephone 252-8254.

SUPPLEMENTARY INFORMATION: On October 4, 1979, DOE published proposed amendments to the DOE Property Management Regulations which would establish policy and procedures for the administration of Government property provided to DOE off-site contractors. Public comment was invited. Summaries of the comments

received, the Department's response to these comments, and the changes to the proposed regulations follow:

(1) § 109-1.106 *Applicability, and* § 109-60.000 *Scope and applicability of part.* One suggestion was received to extend the Provisions of this regulation to cooperative agreements. Since cooperative agreements are assistance rather than acquisition instruments, it is considered more appropriate to address property management requirements for cooperative agreements in the DOE Assistance Regulations. In addition, the application of these regulations to cooperative agreements in this phase would not provide adequate opportunity for public comment. Therefore, the suggestion is not adopted.

(2) § 109-60.001 *Definitions.* Two commenters recommended standardization of terms with the Defense Acquisition Regulations (DAR). The terms used in the DOE-PMR's are accounting terms and must conform with the accounting procedures established by the Department's Office of the Controller. The terms cannot be changed to conform with the DAR and therefore the recommendation is not accepted.

Two definitions have been added, (k) "Special test equipment", and (1) "Special tooling".

(3) § 109-60.100 *General.* It was recommended that the requirement to establish and maintain a property management system (§ 109-60.100(a)) should take into consideration that the complexity and formality of the system is a judgment factor based on the dollar value and/or quantities of property involved, and the contractor's way of doing business. Another commenter also recommended that monetary criteria be included. We agree, and therefore have amended the regulations to reflect these factors.

Another commenter suggested that the "risk of loss" clause is not well enough defined, and recommended that the definitions of the DAR (ASPR) 7.402.5(g) would be helpful. The Department of Energy standard "risk of loss" clause is identical with both of the Federal Procurement Regulations and DAR (ASPR) "risk of loss" clauses. DOE-PMR 109-60.100(b) provides that liability of the contractor will be determined to be in accordance with the terms of the contract. No change in the regulation is considered necessary.

(4) § 109-60.101 *Assumption of responsibility.* One commenter noted that the regulations fail to recognize warranty rights that the Government has in acquiring capital equipment. We concur, and have amended this section to reflect warranty rights.

(5) § 109-60.102 *Contractor's liability.* One commenter recommended

that losses believed due to theft should be reported to the property administrator rather than to the local police and/or the FBI and the property administrator (§ 109-60.102(c)). In many instances the off-site contractor is physically located great distances from the property administrator. It is believed that reporting merely to the property administrator would further delay the investigative process. Therefore, the recommendation is not adopted.

(6) § 109-60.103 *Segregation of Government property.* An educational institution was concerned about the administrative burden placed on contractors by the requirement for obtaining advance approval for commingling of Government- and contractor-owned property. The regulation has been changed to authorize commingling of property in cases of research and development contracts with educational institutions, unless physical segregation is required by the contracting officer.

(7) § 109-60.104 *Physical protection of property.* One educational institution recommended that educational institutions be exempted from the provisions of this section. It is agreed that most educational institutions would not find it feasible to institute property pass systems, gate checks, or perimeter fencing as means of preventing theft or misuse of Government property. However, depending upon the conditions at the institution, some of the controls listed in § 109-60.104(a) may be feasible and should be implemented. The DOE-PMR does not state that the above three controls must be implemented but instead states that these are three of the controls which may be used. Other controls which are feasible for educational institutions to use are memorandum records and marking. The intent of this section is to require the contractor to have adequate controls which provide a reasonable degree of protection against theft or misuse of Government property. For these reasons, the recommendation is not adopted.

(8) § 109-60.105 *Control of sensitive items of property.* One commenter is under the impression that this section requires the maintenance of duplicate records on sensitive property. The intent of this section is to require increased controls, not duplicate records, on that property which is more susceptible to misuse or theft. The recommendation is not accepted.

This section has been amended to provide for more frequent inventories of sensitive property under certain conditions.

(9) § 109-60.200 *General.* One contractor questioned the need and

utility for annotating property records as to the status of each line item on the basis of the additional administrative burdens to keep them current. (§ 109-60.200(b)). We concur and have eliminated the requirement.

(10) § 109-60.203 *Records of material maintained in stores.* Two commenters questioned the requirement for maintaining records of materials, as (a) DOE off-site contractors are not authorized to establish financial inventory controls for materials, and (b) most material is issued upon receipt. This requirement does not pertain to either of these situations. Material acquired for and held in stores requires stock records sufficient to maintain adequate control of acquisitions, issues, and dispositions. These controls are not intended for financial records or for material issued upon receipt. The regulation has been revised for clarification by adding a new section 109-60.204.

(11) § 109-60.204 *Financial property control reports.* One respondent questioned the submitting of reports of non-capitalized equipment and material maintained in stores if requested by the property administrator. As this reporting would necessitate establishing records not otherwise required in these regulations, this question is valid. The reference to reporting this information has been deleted from the regulation. (This section is now designated as § 109-60.205).

Another respondent recommended that the financial property control reports be annual instead of semiannual. These reports provide the information necessary for updating the Department's financial records. It also serves to require the contractor to review requisitions, receiving reports, and property records semiannually. It is believed that requiring semiannual reports requires the contractor to devote more attention to the property and thus assures better control. For these reasons the recommendation is not accepted.

A requirement for these reports from subcontractors has been added to this section.

(12) § 109-60.300 *General.* A commenter recommended that fixtures, jigs, tools, and test equipment be required to be appropriately identified. This section has been amended to include identification of special tooling or special test equipment as required by the contracting officer.

(13) § 109-60.400 *General.* One commenter recommended that a basic internal control procedure be required in the conduct of physical inventories to provide that personnel who perform the inventory shall not be the same

individuals who maintain the property records or have custody of the property. This suggestion is adopted.

(14) One commenter recommended that guidance be included in the regulations covering Government property furnished to off-site contractors by DOE operating contractors. As this portion of the DOE-PMR is not applicable to DOE operating contractors, this recommendation is not germane, and cannot be considered.

(15) It was recommended that the provisions of DOE-PMR 109-60 apply only to contracts placed after the effective date of these regulations. The action recommended is provided for in amendments to the DOE Procurement Regulations published elsewhere as a final rule in this issue of the Federal Register which state that property will be controlled in accordance with applicable provisions of DOE-PMR 109-60 as in effect on the date of the contract.

Accordingly, in view of the foregoing, DOE is issuing the following amendments to the DOE Property Management Regulations.

(Sec. 644 of the Department of Energy Organization Act (Pub. L. 95-91, 42 U.S.C. 7254))

Dated: December 21, 1979.

For the Department of Energy.

M. J. Tashjian,

Director, Procurement and Contracts Management Directorate.

CHAPTER 109—DEPARTMENT OF ENERGY PROPERTY MANAGEMENT REGULATIONS

(1) Chapter 109 Table of Contents, is revised to add the following:

SUBCHAPTER K—GOVERNMENT PROPERTY IN THE POSSESSION OF OFFSITE CONTRACTORS

PART 109-60—MANAGEMENT OF GOVERNMENT PROPERTY IN THE POSSESSION OF OFFSITE CONTRACTORS

PART 109-1—INTRODUCTION

(2) Part 109-1 *Introduction*, Subpart 109-1 Regulation System, is amended as follows:

(a) Section 109-1.100-50(d) is revised to read:

§ 109-1.100-50 Definitions.

(d) "Off-site contractor" means any other contractor performing work under a DOE contract.

(b) Section 109-1.106(b) is revised to read as follows; and (c) and (d) have been added:

§ 109-1.106 Applicability.

(b) Unless otherwise provided in the appropriate part or subpart, contracting officers shall assure that the FPMR and DOE-PMR Parts 109-1 through 109-51 are applied to operating and on-site service contractors.

(c) DOE-PMR Part 109-60 shall be applied to all DOE off-site contractors in possession of Government property except that it does not apply to transportation contracts, cooperative agreements, and contracts with state and local governments.

(d) The FPMR and DOE-PMR, as appropriate, shall be used by contracting officers in their review, approval, administration or appraisal of such contractor operations.

(3) Subchapter K, Part 109-60 is added as follows:

PART 109-60—MANAGEMENT OF GOVERNMENT PROPERTY IN THE POSSESSION OF OFF-SITE CONTRACTORS

Sec.

109-60.000 Scope and applicability of part.
109-60.001 Definitions.

Subpart 109-60.1—Contractor's Responsibility

109-60.100 General.
109-60.101 Assumption of responsibility.
109-60.102 Contractor's liability.
109-60.103 Segregation of Government property.
109-60.104 Physical protection of property.
109-60.105 Control of sensitive items of property.
109-60.106 Disposition.
109-60.107 Relief from responsibility.

Subpart 109-60.2—Records and Financial Reports

109-60.200 General.
109-60.201 Unit Cost.
109-60.202 Records of plant and capital equipment.
109-60.203 Records of material maintained in stores.
109-60.204 Records of material issued upon receipt.
109-60.205 Financial property control reports.
109-60.206 DOE plant and equipment asset types.

Subpart 109-60.3—Identification

109-60.300 General.

Subpart 109-60.4—Physical Inventories

109-60.400 General.
109-60.401 Frequency.
109-60.402 Reporting results of inventories.
109-60.403 Records of inventories.
109-60.404 Inventories upon termination or completion.

Subpart 109-60.5—Care and Maintenance

109-60.500 General.
109-60.501 Contractor's maintenance program.

Subpart 109-60.6—Utilization, Disposal, and Retirement**Sec.**

- 109-60.600 General.
- 109-60.601 Maximum use of property.
- 109-60.602 Disposal.
- 109-60.603 Retirement of property.

Subpart 109-60.7—Motor Vehicle and Aircraft Management

- 109-60.700 Scope of subpart.
- 109-60.701 Definition.
- 109-60.702 Policy.
- 109-60.703 Classification of motor vehicles.
- 109-60.704 Acquisition of motor vehicles.
- 109-60.705 Identification of motor vehicles.
- 109-60.706 Use of the GSA Interagency Motor Pool System.
- 109-60.707 Official use of motor vehicles.
- 109-60.708 Maintenance.
- 109-60.709 Disposition of motor vehicles.
- 109-60.710 Required motor vehicle reports.
- 109-60.711 Aircraft.

Subparts 109-60.8—109-60.46 [Reserved]**Subpart 109-60.47—Reports**

- 109-60.4700 Required reports.

Authority: Sec. 644 of the Department of Energy Organization Act (Pub. L. 95-51, 42 U.S.C. 7254).

§ 109-60.000 Scope and applicability of part.

This part sets forth the minimum requirements to be observed by off-site contractors in establishing and maintaining control over Government property provided pursuant to a contract with DOE. This part does not apply to transportation contracts, grants, cooperative agreements, contracts with state and local governments, and to operating and on-site service contractors. To the extent of any inconsistency between this part and the terms of the contract under which the Government property is provided, the terms of the contract shall govern.

§ 109-60.001 Definitions.

As used in this part the following definitions apply:

- (a) "Accessory item" means an item that facilitates or enhances the operation of capitalized equipment but which is not essential for its operation, such as remote control devices.
- (b) "Auxiliary item" means an item without which the basic unit of equipment cannot operate, such as motors for pumps and machine tools.
- (c) "Capital equipment" means personal property items having a unit acquisition cost of generally \$500.00 or more and an anticipated service life in excess of one (1) year, regardless of type of funding, are not properly chargeable

to buildings or utilities, and having the potential for maintaining their integrity as capital items, i.e., not expendable due to use.

(d) "Government personal property" means all property provided at Government expense for performance of the contract, regardless of the method by which it is provided, including rented or leased equipment, except real property, records of the Federal Government, nuclear and special source materials, and atomic weapons and by-product materials.

(1) "Government-furnished property" means property in the possession of or directly acquired by the Government and subsequently made available to the contractor for use in performance of the contract.

(2) "Contractor-acquired Government property" means property acquired or otherwise provided by the contractor for performance of a contract and to which the Government has title or the right to take title under the contract terms.

(e) "Materials" means property which may be incorporated into or attached to an item to be delivered under a contract or which may be consumed or expended in normal use in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, or supplies.

(f) "Property administrator" means an authorized representative of the contracting officer assigned to administer the contract requirements and obligations relative to Government property. If an authorized representative has not been designated as the property administrator, the contracting officer is the property administrator.

(g) "Plant and equipment" means land, land rights, depletable resources, improvements to land, buildings and structures, utilities, and capital equipment having an anticipated service life of 1 year or more, the individual units of which satisfy the monetary and other criteria for capital charges and which therefore justify the maintenance of continuing plant and equipment records.

(h) "Salvage" means that property which has some value in excess of its basic material content but which is in such condition that it has no reasonable prospect of use for any purpose as a unit and its repair or rehabilitation for use is clearly impracticable.

(i) "Scrap" means property that has no value except for the recoverable value of its basic material content.

(j) "Sensitive items" means those items of property which are susceptible to being appropriated for personal use or which can be readily converted to cash. Examples are firearms,

photographic equipment, binoculars, tape recorders, calculators, and power tools.

(k) "Special test equipment" means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in the performance of a contract. It consists of items or assemblies of equipment that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for the installation of special test equipment), and equipment items used for general testing purposes.

(l) "Special tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacement of these items, which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or the performance of particular services. It does not include material, special test equipment, facilities (except foundations and similar improvements necessary for the installation of special tooling), general or special machine tools, or similar capital items.

Subpart 109-60.1—Contractor's Responsibility**§ 109-60.100 General.**

(a) The contractor is directly responsible and accountable for all Government property in his possession or control in accordance with the provisions of the contract, including property provided under such contract which may be in the possession or control of a subcontractor. The contractor shall establish and maintain a system, in accordance with the provisions of this part, to control, protect, preserve and maintain all Government property. If the contractor is expected to acquire and be accountable for, or does acquire Government personal property with an acquisition value of \$500,000 or more, the contractor's property management system shall be in writing. Contractors holding Government personal property with an acquisition value of less than \$500,000 may, at the discretion of the contracting officer, be required to have their property management system in writing. The requirement for written systems may be waived in writing by the contracting officer where the contracting officer determines that

maintenance of a written system is unnecessary. The system shall be reviewed and, if satisfactory, approved in writing by the contracting officer.

(b) The contractor shall maintain and make available such records as are required by subpart 109-60.2 and shall account for all Government property until relieved of that responsibility. Liability for loss, damage, or improper use of property in a given instance will depend upon all the circumstances surrounding the particular case and will be determined in accordance with the provisions of the contract. The contractor shall furnish all data necessary to substantiate any request for discharge from responsibility.

(c) The contractor shall require subcontractors provided Government property under the prime contract to comply with the provisions of this part. Procedures for assuring subcontractor compliance shall be included in the contractor's property control system.

(d) If any portion of the contractor's property control system is found to be inadequate upon review by the property administrator, necessary corrective action will be accomplished by the contractor prior to approval of the system. When agreement as to adequacy of control or corrective action cannot be reached between the contractor and the property administrator, the matter will be referred to the contracting officer.

(e) The property records and the premises where any Government property is located shall be accessible to the property administrator or other authorized representative during contract performance, at contract completion or termination, or at all reasonable times. The contractor's property control system is subject to audit by the Government as often as circumstances warrant during the contract's performance, at its completion or termination, or at any time thereafter while the contractor is required to retain the contract records. All these records, including related correspondence, shall be made available to the auditors.

§ 109-60.101 Assumption of responsibility.

(a) The contractor becomes responsible for Government-furnished property upon its delivery into the contractor's custody or control. For contractor-acquired Government property, the contractor assumes responsibility in accordance with the property provisions of the contract.

(b) All Government-furnished property shall be inspected and checked promptly at the time of receipt. Any

visible or other external evidence of damage or error in quantity should be noted on the waybill with the signature of the carrier's agent. As soon as possible, the contractor shall send the contracting officer a full report of the damage or quantity error, including extent, apparent cause, and the estimated cost of repairs. The contracting officer will advise the contractor of the action to be taken.

(c) It is the contractor's responsibility to inspect, at the time of receipt, all property not furnished by the Government that is acquired in the performance of the contract, and to take any necessary action with the vendor and/or carrier if there should be any damage or error in quantity.

(d) Procedures shall be established to protect any warranty rights which accrue to the Government with the acquisition of Government property.

§ 109-60.102 Contractor's liability.

(a) Subject to the terms of the contract, the contractor may be liable for shortage, loss, damage, or destruction of Government property or when there is evidence of improper or unreasonable use or consumption of Government property.

(b) The contractor shall report promptly to the property administrator any shortage, loss, damage, or destruction of Government property in its possession or control, or in the possession or control of any subcontractor, together with all the facts and circumstances of the case.

(c) Any loss that may be due to theft shall be reported by the contractor immediately to the local police and/or Federal Bureau of Investigation and the property administrator.

§ 109-60.103 Segregation of Government property.

Ordinarily, provisions shall be made by the contractor to keep Government property segregated from contractor-owned property. Commingling of Government and contractor-owned property may be allowed only when the segregation of the property would materially hinder the progress of the work, (e.g., segregation is not feasible for reasons such as quantities, lack of space, or costs caused by additional handling), and where control procedures are adequate, i.e., the Government property is identified as being Government property. Commingling must be approved in advance by the property administrator. In cases of research and development contracts with educational institutions, commingling is authorized without the requirement for advance approval

unless physical segregation is otherwise required by the contracting officer.

§ 109-60.104 Physical protection of property.

(a) Controls such as property pass systems, memorandum records, marking of tools, regular or intermittent gate checks and perimeter fencing shall be implemented, recognizing the value of the property, to prevent loss, theft, or unauthorized movement of Government property from the premises on which such property is located.

(b) Classified Government property will be handled in accordance with instructions of the contracting officer.

§ 109-60.105 Control of sensitive items of property.

(a) The contractor shall assure that effective procedures and practices are established for the administrative and physical control of sensitive property items before and after issuance. Each contractor shall prepare a list of the types of property considered to be sensitive. This list, together with control procedures, shall be provided to the property administrator for review and approval.

(b) At a minimum, controls on sensitive property shall include property records, memorandum receipts, bin or tool check systems or combinations thereof. Procedures shall provide for physical inventories at least once each year, and methods for adjustment of inventory levels due to losses, thefts and damage. More frequent inventories of sensitive property may be necessary where the value of the property, degree of security achieved, or loss experience indicates greater controls are required in order to protect the Government's interest. Such procedures and practices shall be subject to review and approval by the property administrator.

§ 109-60.106 Disposition.

(a) The contractor is responsible for disposing of Government property as provided for in the contract or as directed by the contracting officer. The contractor shall promptly advise the property administrator of any Government property that becomes excess to requirements for contract performance and to take such action for its disposition as directed.

§ 109-60.107 Relief from responsibility.

Subject to instructions of the contracting officer and the terms of the contract, the contractor may be relieved of responsibility for Government property when the property is—

(a) Consumed or expended in contract performance—to the extent the contracting officer has determined that

its consumption or expenditure was for proper purposes and in reasonable quantity for performance of the contract;

(b) Removed from contractor's possession—when removed as directed by the property administrator or contracting officer;

(c) Lost, damaged or destroyed (including property consumed or expended in excess of reasonable requirements, and non-severable Government-owned property which has been connected to contractor-owned property for the performance of the contract and cannot be removed without destroying its serviceability)—when the contracting officer has determined the contractor's liability, if any; the Government has been reimbursed to the extent required by the contracting officer's determination; and, proper disposition has been made of any property rendered unserviceable by damage; or

(d) Retained by the contractor, with approval of the contracting officer, and for which the Government has received adequate consideration.

Subpart 109-60.2—Records and Financial Reports

§ 109-60.200 General.

(a) The contractor shall establish and maintain adequate property control records, either manual or mechanized and consistent with the requirements of this subpart, for all Government property provided under a contract, including property provided under such contract as may be in the possession or control of a subcontractor. Unless otherwise directed by the contracting officer, records of Government property established and maintained by the contractor under the terms of the contract shall be designated and utilized as the official contract records. Duplicate records shall not be furnished to nor be maintained by Government personnel.

(b) If a contractor has multiple contracts with DOE, separate property records for each contract should be maintained. However, if approved by the contracting officer, a consolidated property record may be maintained if it provides the pertinent information set forth in this subpart and the property is identified to the applicable contract.

(c) Property records of the type established for components acquired separately shall be used for serviceable components removed from items of Government property as a result of modification.

(d) The contractor's property control system shall contain a system or technique to locate any item of

Government property with reasonable promptness.

§ 109-60.201 Unit cost.

(a) The unit cost of each item of Government property shall consist of the acquisition cost and the cost of any additional components, and shall be contained in the contractor's property control system. Unless the contractor's quantitative inventory record contains unit cost, the supplementary records containing this information must be identified and recognized as a part of the official property records. For Government-furnished property, copies of documents needed for record purposes, including pricing, will be furnished to the contractor.

(b) For property record purposes, original transportation and installation costs are to be considered as part of the acquisition cost of an item. Subsequent costs incurred in transporting and/or installing transferred or relocated property should not be added to the original acquisition cost.

§ 109-60.202 Records of plant and capital equipment.

(a) For each item of plant and capital equipment (as defined in § 109-60.001), the contractor shall maintain an individual item record containing, at a minimum the—

- (1) Contract number;
- (2) Asset type (Ref. § 109-60.206);
- (3) Nomenclature or description of item;
- (4) U.S. Government identification tag number;
- (5) Manufacturer's name;
- (6) Manufacturer's model number;
- (7) Serial number;
- (8) Acquisition document reference and date;
- (9) Location; and
- (10) Unit cost (including transportation and installation).

(b) Accessory and auxiliary items that are attached to, part of, or acquired for use with a specific item of capital equipment shall be recorded on the record of the associated item of capital equipment. Useable accessory and auxiliary items that are removed from items of Government equipment shall also be separately recorded, and the cost of the basic item reduced proportionally.

§ 109-60.203 Records of materials maintained in stores.

Records of Government-owned materials maintained by the contractor in stores, and held under inventory control, shall contain the—

- (a) Contract number;
- (b) Nomenclature or description of item;

- (c) Quantity received;
- (d) Quantity issued;
- (e) Balance on hand;
- (f) Posting reference and date of transaction;
- (g) Unit price;
- (h) Location; and
- (i) Disposition.

Subpart 109-60.2—Records and Financial Reports

§ 109-60.204 Records of materials issued upon receipt.

(a) The property administrator may authorize the contractor to maintain, in lieu of stock records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of Government-provided material that is issued for immediate consumption and is not entered in the inventory records as a matter of sound business practice.

(b) With respect to non-profit organizations, where material is issued directly upon receipt, Government invoices, contractor's purchase documents, or other evidence of acquisition and issue will be accepted as adequate property records for material furnished to or acquired by the contractor and issued directly so as to be considered consumed under the contract.

§ 109-60.205 Financial property control reports.

The contractor shall prepare a semi-annual report, as of March 31 and September 30 of each year, for each contract and subcontract thereunder showing the dollar amount and the number of line items of plant and capital equipment, by DOE asset type (see § 109-60.206), acquired or disposed of during the period. The report will show, at a minimum, the beginning balance, acquisition, disposition, and ending balance. The report format and the DOE office to which the report will be furnished will be as directed by the property administrator. The reports are due not later than 45 days after the end of the reporting period.

§ 109-60.206 DOE plant and equipment asset types.

- 401 Land.
- 410 Land Rights.
- 430 Minerals.
- 440 Timber.
- 460 Site Preparation, Grading and Landscaping.
- 470 Roads, Walks, and Paved Areas.
- 480 Fences and Guard Towers.
- 490 Other Improvements to Land.
- 501 Buildings.
- 550 Other Structures.
- 610 Communications Systems.

- 615 Electric Generation, Transmission and Distribution Systems.
- 620 Fire Alarm Systems.
- 625 Gas Production, Transmissions and Distribution Systems.
- 630 Irrigation Systems.
- 635 Railroad Systems.
- 640 Sewerage Systems.
- 645 Steam Generation and Distribution Systems.
- 650 Water Supply, Pumping, Treatment and Distribution Systems.
- 655 Nuclear Steam and Electric Generation and Transmission Systems.
- 660 SPR Crude Oil Piping System.
- 665 NPR Crude Oil Extraction and Distribution System.
- 710 Heavy Mobile Equipment.
- 715 Hospital and Medical Equipment.
- 720 Laboratory Equipment.
- 725 Motor Vehicles and Aircraft.
- 730 Office Furniture and Equipment.
- 735 Process Equipment.
- 740 Railroad Rolling Stock.
- 745 Reactors and Accelerators.
- 750 Security and Protection Equipment.
- 755 Shop Equipment.
- 760 Reserve Construction Equipment Pool.
- 765 Machine Tools in Standby.
- 770 Automatic Data Processing Equipment.
- 799 Miscellaneous Equipment.
- 800 Improvements to Property of Others.
- 900 Unclassified Plant and Equipment.

Subpart 109-60.3—Identification

§ 109-60.300 General.

(a) The contractor shall identify, mark, and record all capital and sensitive items of equipment promptly upon receipt, except leased or rented equipment, and shall maintain this identification as long as such property remains in the custody, possession, or control of the contractor. Property identification numbers will be recorded on all applicable receiving, shipping, and disposal documents, and any other documents pertaining to the property control system where practicable. Marking and numbering shall be accomplished by etching, stamping, painting, attaching metal or plastic tags or decalcomanias. Each item shall be marked "Property of the U.S. Government, Department of Energy." Information on property numbers will be furnished by the property administrator. If practicable, such markings shall be removed or obliterated from the property involved, if and when Government ownership is relinquished. Leased or rented equipment shall be identified in such manner as will not damage the property. Property which by its nature or size cannot be marked shall not be commingled with contractor-owned property unless approved by the property administrator. Where items are not susceptible to marking, they shall be subject to other specific control measures, such as custodial receipts.

(b) Where special tooling or special test equipment is utilized under a contract or subcontract, it shall be identified as required by the contracting officer.

Subpart 109-60.4—Physical Inventories

§ 109-60.400 General.

The contractor shall periodically physically inventory Government property in its possession or control and shall require such inventories of property held by subcontractors. The physical inventory shall be consistent with approved contractor procedures and generally accepted accounting principles. Procedures that are limited solely to a check-off of a listing of recorded property do not meet the requirements of a physical inventory. Personnel who perform the physical inventory shall not be the same individuals who maintain the property records or have custody of the property unless the contractor's operation is too small to do otherwise.

§ 109-60.401 Frequency.

Physical inventories of permanently affixed plant (such as fencing, buildings, other structures, utilities and systems) are to be taken not less frequently than every 10 years. Inventories of moveable capital equipment are to be taken not less frequently than every 2 years. Inventories of sensitive items (capital and non-capital) shall be taken not less frequently than annually. Substantial quantities of materials (stores) held under inventory control shall be inventoried annually. Small quantities of material representing bench stock need not be inventoried.

§ 109-60.402 Reporting results of inventories.

The contractor shall, at a minimum, submit to the property administrator a listing of all discrepancies disclosed by a physical inventory, and a signed statement that the physical inventory was completed on a certain date and that the official property records were found to be in agreement with the physical inventory, except for the discrepancies reported. As a minimum, the discrepancy listing shall contain the property number, nomenclature, and unit cost. The listing and signed statement shall be furnished with a minimum of delay after completion of the physical inventory, but no later than 60 days after its completion.

§ 109-60.403 Records of inventories.

Appropriate inventory records and reports shall be maintained and will serve as a basis for (a) effecting

maximum utilization of available property, (b) prompt identification and reporting of excess property, (c) effective physical protection of property, and (d) the preparation of special and recurring reports. Full use will be made of accounting records and reports to avoid duplication.

§ 109-60.404 Inventories upon termination or completion.

(a) Immediately upon termination or completion of a contract, the contractor shall submit an inventory report adequate for determining appropriate disposal of all Government property applicable to the terminated or completed contract. Further, this report shall include an inventory report of all Government property in a subcontractor's possession or control which is also applicable to the terminated or completed contract. This inventory report will be submitted to the property administrator for verification and disposition action.

(b) *Exception.* The requirement for physical inventory of Government property at the completion of a contract may be waived by the contracting officer when the property is authorized for use on a follow-on contract, provided that—

- (1) Past experience has established the adequacy of property controls; and
- (2) A statement is provided by the contractor indicating that transfer of record balances has been made in lieu of preparing a formal inventory list and the contractor accepts responsibility and accountability for those balances under the terms of the follow-on contract.

Subpart 109-60.5—Care and Maintenance

§ 109-60.500 General.

The contractor shall be responsible for the proper care and maintenance of Government property in its possession or control from the time of receipt until properly relieved of responsibility. The removal of Government property to storage, or its contemplated transfer, does not relieve the contractor of these responsibilities.

§ 109-60.501 Contractor's maintenance program.

The contractor's maintenance program shall be consistent with sound economic industrial practice, the manufacturer's recommendation, and the terms of the contract, and shall include the following:

- (a) *Preventive maintenance.* Preventive maintenance is generally performed on a regularly scheduled basis in order to detect and correct

unfavorable conditions or defects before they result in breakdowns and to maximize the useful life of the equipment. An effective preventive maintenance program shall consist of, but not be limited to—

(1) Inspection of equipment at periodic intervals to detect maladjustment, wear, or impending breakdown;

(2) Regular lubrication of bearings and moving parts in accordance with a lubrication plan;

(3) Adjustments for wear, repair, or replacement of work or damaged parts and the elimination of causes of deterioration;

(4) Removal of sludge, chips, and cutting oils from equipment which will not be used for a period of time;

(5) Taking necessary precautions to prevent deterioration from contamination and corrosion; and

(6) Proper storage and preservation of accessories and special tools furnished with an item of equipment but not regularly used with it.

(b) *Major repairs or rehabilitation.* The maintenance program of the contractor shall provide for the disclosure and reporting to the property administrator of the need for major repairs, replacement, and other rehabilitation work on Government property in its possession or control.

(c) *Records of maintenance.* The contractor shall keep records sufficient to disclose the maintenance and repair performed and associated cost.

Subpart 109-60.6—Utilization, Disposal, and Retirement

§ 109-60.600 General.

It is DOE's policy that all property furnished under a contract shall be utilized to the fullest extent possible. The contractor's procedures shall be adequate to assure that Government property will be utilized only for those purposes authorized in the contract, and that the contracting officer's approval is obtained prior to noncontract use.

§ 109-60.601 Maximum use of property.

Property and supply management practices shall assure that the maximum and best possible use is made of property. Materials and equipment shall be limited to those items essential for effective execution of work performed under the contract.

§ 109-60.602 Disposal.

Unless otherwise authorized, contractors having property determined to be excess shall contact the property administrator for instruction as to the proper method of disposal. Property shall not be disposed of without prior approval of the contracting officer.

§ 109-60.603 Retirement of property.

When capital equipment is worn out, lost, stolen, destroyed, abandoned or damaged beyond economical repair, it shall be listed on a retirement work order. A full explanation shall be made, supported by an investigation, if necessary, as to the date and circumstances surrounding loss, theft, destruction, or damage. The retirement work order shall be signed by the responsible contractor administrative official initiating the report and reviewed and approved by an official at least one supervisory echelon above the official initiating the report, and the property administrator. Detailed information concerning the retention and/or submission of retirement work orders will be furnished by the property administrator.

Subpart 109-60.7—Motor Vehicle and Aircraft Management

§ 109-60.700 Scope of subpart.

This subpart prescribes basic policies and procedures for the management of Government-owned motor vehicles and aircraft in the possession of off-site contractors.

§ 109-60.701 Definition.

"Government-furnished motor vehicles" are DOE-owned vehicles, vehicles leased from the General Services Administration Interagency Motor Pool System (GSA-IMPS), and vehicles leased from commercial sources.

§ 109-60.702 Policy.

(a) Government-furnished motor vehicles and aircraft shall be provided to or acquired by off-site contractors when considered essential for the performance of the contract work and when approved by the contracting officer.

(b) Government-owned motor vehicles and aircraft shall be maintained and utilized by contractors in the most practical and economical manner consistent with DOE program requirements, safety considerations, fuel economy, and applicable laws and regulations.

(c) DOE-PMR Parts 109-38 and 109-39 (41 CFR 109) contain the requirements for management of DOE-owned motor vehicles and aircraft. DOE contracting officers shall apply the applicable provisions contained therein in their management of contractor motor vehicle and aircraft operations.

(d) Contractors shall conform fully to the average fuel economy standards established by law and these

regulations in the selection of Government-furnished motor vehicles.

(e) Contractors shall maintain and operate motor vehicles in such a manner as to foster reduced fuel consumption.

(f) Normally, motor vehicles will not be furnished to fixed-price contractors.

(g) Prior approval of GSA must be obtained before—

(1) Fixed-price contractors can use the GSA-IMPS; and

(2) DOE-owned motor vehicles can be furnished to any contractor in an area served by a GSA-IMPS.

§ 109-60.703 Classification of motor vehicles.

Because of differences in controls or limitations on possession and use, Government vehicles are classified as follows:

(a) Passenger vehicles.

(1) Sedans and station wagons (small, subcompact, compact, mid-size, and large).

(2) Ambulances.

(3) Buses.

(b) Trucks.

(1) Light, less than 8,500 GVWR (Gross Vehicle Weight Rating).

(i) 4 x 2.

(ii) 4 x 4.

(2) Light, 8,500 to 12,499 GVWR.

(i) 4 x 2.

(ii) 4 x 4.

(3) Medium, 12,500 to 23,999 GVWR.

(4) Heavy, 24,000 GVWR or more.

(c) Special purpose vehicles.

(1) Fire trucks.

(2) Construction vehicles.

(3) Other vehicles equipped for special purposes.

§ 109-60.704 Acquisition of motor vehicles.

(a) GSA has the responsibility for procurement of motor vehicles for Government agencies.

(b) Contractors shall submit motor vehicle requirements to the contracting officer for approval.

(c) The acquisition of passenger vehicles is limited to small, subcompact, and compact vehicles which meet Government fuel economy standards.

(d) The DOE Procurement and Contracts Management Directorate, Headquarters, (PR-221), shall certify all requisitions for the following:

(1) The acquisition of small, subcompact, and compact passenger vehicles.

(2) The lease (60 continuous days or more) of any passenger automobile.

(3) The acquisition or lease (60 continuous days or more) of light trucks less than 8,500 GVWR.

(e) Purchase requisitions for acquisition of passenger vehicles by

purchase or lease must be processed in accordance with 41 CFR 109-38.1306.

(f) Purchase requisitions for other motor vehicles may be submitted to GSA as directed by the contracting officer.

(g) Contractors shall thoroughly examine motor vehicles acquired under a GSA contract for defects. Any defect shall be reported promptly to GSA, and repairs shall be made under terms of the warranty.

§ 109-60.705 Identification of motor vehicles.

(a) Except as indicated in § 109-60.705(b), DOE-owned motor vehicles will have Government license tags and the following identification, which will be furnished and displayed as specified by the property administrator:

"For Official Use Only
U.S. Government
Department of Energy"

(b) Security vehicles may be exempted from the above requirements by the contracting officer. All other exemptions require approval by the DOE Director of Procurement and Contracts Management Directorate.

§ 109-60.706 Use of the GSA Interagency Motor Pool System.

Where authorized by the contracting officer, contractors may use the services of the GSA-IMPS.

§ 109-60.707 Official use of motor vehicles.

Government-owned vehicles are to be used for "Official Use Only." Contracting officers may approve home-to-work or work-to-home transportation on a one-time exceptional basis. Home-to-work or work-to-home transportation on a continuing basis requires approval of the head of the cognizant DOE field office. Records of such approvals will be kept on file.

§ 109-60.708 Maintenance.

Contractors shall maintain Government-owned vehicles according to a systematic written procedure and in accordance with manufacturer's specifications and the terms of the warranty. The GSA publication "Guide for the Preventive Maintenance of Motor Vehicles" provides guidance for the maintenance of Government-owned vehicles.

§ 109-60.709 Disposition of motor vehicles.

(a) The contractor shall dispose of DOE-owned motor vehicles as directed by the contracting officer.

(b) DOE-owned motor vehicles may be disposed of as exchange/sale items when directed by the contracting officer;

however, a designated DOE official must execute the Title Transfer forms.

§ 109-60.710 Required motor vehicle reports.

Contractors shall submit the following annual fiscal year-end reports of Government-furnished motor vehicles to the contracting officer. Information on preparation and submission of the reports will be furnished by the property administrator.

(a) Agency Report of Motor Vehicle Data (Standard Form 82).

(b) Special Purpose Vehicle Report.

(c) Age and Mileage Analysis.

§ 109-60.711 Aircraft.

(a) Acquisition of aircraft requires statutory authority. Contracting officers may authorize a lease, rental, hire, or loan of an aircraft if the period is less than 30 days. If longer than 30 days, approval must be obtained from the DOE Director of Procurement and Contracts Management.

(b) Aircraft shall be used for official purposes only.

Subparts 109-60.8—109-60.46 [Reserved]

Subpart 109-60.47—Reports

§ 109-60.4700 Required reports.

Following is a summary listing of those property reports required to be submitted by the contractor, along with the frequency of the reports and the subpart which describes the report:

(a) Loss, damage, or destruction of Government property (On occurrence) § 109-60.102(b).

(b) Loss due to theft (On Occurrence) § 109-60.102(c).

(c) Financial property control reports (Semi-annual) § 109-60.205.

(d) Physical inventories of permanently affixed plant (Not less frequently than every 10 years) § 109-60.402.

(e) Physical inventories of capital equipment (Not less frequent than biennial) § 109-60.402.

(f) Physical inventories of sensitive items (Not less frequently than annual) § 109-60.402.

(g) Termination inventories (Termination or completion) § 109-60.404.

(h) Motor vehicle reports (Annual) § 109-60.710.

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Interstate

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Part V

Department of Transportation

Federal Highway Administration

Bicycle Grant Program

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****23 CFR Part 663****[FHWA Docket No. 79-13]****Bicycle Grant Program****AGENCY:** Federal Highway Administration (FHWA), DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to request comments on a proposed regulation to implement the bicycle program authorized by section 141(c) of the Surface Transportation Assistance Act of 1978. The proposed regulation would provide Federal grants to State and local governments for bikeway construction and for nonconstruction projects that can be expected to enhance the safety and use of bicycles.

DATES: Comments must be received on or before February 19, 1980.

ADDRESS: Comments should be sent (preferably in triplicate) to FHWA Docket No. 79-13, Federal Highway Administration, HCC-10 Room 4205, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed stamped postcard.

FOR FURTHER INFORMATION CONTACT: Tom Jennings, Highway Design Division, Office of Engineering (202-426-0314), or Reid Alsop, Office of the Chief Counsel (202-426-0800), Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration is proposing a regulation to provide Federal grants to State and local governments for bikeway construction, and for nonconstruction projects that can be expected to enhance the safety and use of bicycles, as authorized by section 141(c) of the Surface Transportation Assistance Act of 1978 (STAA) (Pub. L. 95-599, 92 Stat. 2689). The FHWA's objective is to promulgate a regulation that is responsive to the bicycling needs of State and local governments and the public. Section 141 allows significant latitude in the use of

the funds authorized. A wide variety of bicycle projects are eligible for funding under the Bicycle Grant Program.

Applications may be submitted by States and political subdivision thereof. The proposed regulation provides that all proposals be submitted through the appropriate State highway agency, which will forward all proposals to the Federal Highway Administration for review and selection.

The Department of Transportation Appropriations Act (Pub. L. 96-131) appropriated \$4,000,000 to carry out section 141(c) during the fiscal year ending September 30, 1980. Accordingly, many proposals submitted may not be funded since applicants will be competing for the limited funds available. If additional funds are appropriate in the future it is anticipated that they will be distributed in accordance with the procedures in this proposed rule.

The submission dates for proposals, contained in § 663.15 of the proposed rule, are intended to apply to proposals submitted for funds appropriated in subsequent fiscal years. In order to allow sufficient time for public participation in the development of Part 663, and for the preparation of proposals by State and local governments, it is anticipated that FHWA Regional Administrators will use the discretionary authority provided by that section to establish later submission dates for this fiscal year.

The Funds appropriated for this fiscal year are only available for obligation until September 30, 1980. To provide sufficient time to obligate these funds, FHWA Regional Administrators may allow only a short time period between publication of the final regulation and required submission dates. Accordingly, State and political subdivisions expecting to apply for fiscal year 1980 funds should begin to develop proposals based on the proposed regulations contained herein.

The current FHWA design and construction standards for bikeways, referred to in §§ 663.7 and 663.17(c)(1) of the proposed rule, are contained in "A Guide for Bicycle Routes," American Association of State Highway and Transportation Officials (AASHTO), 1974. Copies of this guide are available for inspection and copying in the FHWA Division offices, located in each State, and listed in 49 CFR Part 7, Appendix D. Section 625.5(e) of 23 CFR permits exceptions to these standards where warranted by unusual conditions. The FHWA is in the process of developing its own design and construction

standards pursuant to section 114(b) of the STAA. An advance notice of proposed rulemaking seeking comments on the development of these standards was published on February 8, 1979 (44 FR 7979). When promulgated these FHWA standards will replace those in the current AASHTO Guide on federally funded bicycle projects.

The bicycle grant program established by section 141(c) is not subject to the requirements contained in Title 23 of the United States Code, as are Federal-aid highway projects, except that bikeway projects in urban areas are required to be a product of the urban planning process in accordance with 23 U.S.C. 134. In order to simplify and clarify management of the grant, § 663.5(c) of the proposed regulation provides that each grant will be governed by a project agreement. The agreement is similar to that used on a Federal-aid highway project, and will contain basic provisions relating to the development and completion of the proposed project. The proposed rule, in § 663.19, also provides that fiscal procedures will be the same as those that are applicable to Federal-aid highway projects.

It is the objective of FHWA to implement and administer this program with a minimum of "red tape." Within the broad parameters of § 663.13, FHWA encourages great flexibility in developing proposals that will encourage bicycle transportation.

It is proposed that this rule replace the current regulation on bikeway demonstration projects contained in 23 CFR Part 63. Since all the demonstration projects have been approved and funded, the current provisions of Part 663 are no longer necessary. Bikeway demonstration projects that are not yet completed will continue to be administered in accordance with the project agreement and the current provisions of Part 663.

Note.—The Federal Highway Administration has determined that this document does not contain a significant proposal according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. A draft regulatory evaluation is available for inspection in the public docket and may be obtained by contacting Tom Jennings of the program office at the address specified above.

Accordingly, it is proposed that Part 663 of Title 23, Code of Federal Regulations, be revised to read as set forth below.

Issued on: December 28, 1979.

L. P. Lamm,
Executive Director.

PART 663—BICYCLE GRANT PROGRAM

- Sec.
 663.1 Purpose.
 663.3 Definitions.
 663.5 General provisions.
 663.7 Construction standards.
 663.9 Federal participation.
 663.11 Application procedures.
 663.13 Content of proposals.
 663.15 Submission date.
 663.17 Project selection criteria.
 663.19 Fiscal procedures.

Appendix: Examples of projects eligible for funding under the Bicycle Grant Program.

Authority: Section 141, Pub. L. 95-599, 92 Stat. 2711; 23 U.S.C. 315; 49 CFR 1.48(c)(1).

§ 663.1 Purpose.

To prescribe the policies and procedures for administering the Bicycle Grant Program.

§ 663.3 Definitions.

The definitions contained in 23 U.S.C. 101(a), as well as the following definitions, apply to terms used herein:

(a) *Applicant*—a State, county, city or other political subdivision of a State.

(b) *Bikeway project*—an undertaking to construct a new or improved lane, path, or shoulder for bicycles; traffic control devices; lighting; a shelter or parking facility for bicycles; or other physical improvements which enhance bicycle travel.

(c) *Bike path*—a bikeway physically separated from motorized vehicular traffic by an open space or barrier and either within the highway right-of-way or within an independent right-of-way.

(d) *Nonconstruction project*—a project not involving physical construction which enhances the safety of bicyclists or the use of bicycles.

(e) *Moped*—a motor-driven cycle both with pedals to permit propulsion by human power and with a motor which produces not to exceed two-brake horsepower and which is not capable of propelling the vehicle at a speed in excess of 48.3 km/h (30 m.p.h.) on level ground.

§ 663.5 General provisions.

(a) Grants may be made under this regulation for the construction of bikeway projects, nonconstruction projects, or a combination construction project and nonconstruction project (see Appendix for examples).

(b) No motorized vehicles, including mopeds, are to be permitted on bike paths funded under this regulation except those vehicles necessary for maintenance purposes and snowmobiles permitted by State or local regulation.

(c) After a project proposal has been approved for Federal Highway Administration (FHWA) funding in

accordance with § 663.11(c), the FHWA shall enter into a project agreement with the State highway agency (SHA). This agreement should be similar to that required on Federal-aid highway projects and should include the provisions contained in 23 U.S.C. 110. In addition to those provisions the SHA shall be responsible for:

(1) Receiving all proposals from political subdivisions within the State and transmitting all proposals including the SHA's to the FHWA Division Administrator;

(2) Certifying that any proposed bikeway project in an urbanized area has been developed in accordance with 23 U.S.C. 134 and 23 CFR Part 450A, the Urban Transportation Planning regulations;

(3) Ensuring that projects are completed in a timely fashion and in substantial conformance with the details outlined in the applicant's proposal.

(d) Many bikeway projects will not have a significant impact on the human environment and could be considered categorical exclusions as defined in 23 CFR 771.205. The Section 4(f) Determination portion of the Final Negative Declaration/Section 4(f) Statement and Determination for Independent Bikeway or Walkway Construction Projects dated May 23, 1977 (42 FR 15394), is applicable to Construction Projects authorized under this regulation.

(e) Funds made available for projects under this regulation shall be in addition to and not in place of funds made available for Bikeway projects under 23 CFR Part 652 or for Bicycle Safety Projects under 23 U.S.C. 402.

(f) Bikeway projects currently advanced to the "authorized to proceed" stage for any phase of work (23 CFR § 630.114) are not eligible for funding under this regulation.

§ 663.7 Construction standards.

Current FHWA design and construction standards for bikeways (FHPM 6-2-1-1, Design Standards for Highways)¹ or an approved equivalent shall apply.

§ 663.9 Federal participation.

(a) The Federal share of any project funded under this regulation shall not exceed 75 percent of the total eligible cost of such a project.

(b) The Federal share may include the costs of preliminary engineering, right-of-way, construction, and project evaluations.

§ 663.11 Application procedures.

(a) Applicants other than SHA's shall submit their proposals to the appropriate SHA. The SHA shall transmit four copies of each proposal to the FHWA Division Administrator.

(b) The Division Administrator shall review the proposals. Using the project selection criteria contained in § 663.17, a specified number of proposals as determined by the FHWA Regional Administrator shall be forwarded to the FHWA regional office. Each applicant whose proposal is not forwarded to the FHWA regional office will be notified of this action by the FHWA.

(c) The Regional Administrator shall review the proposals and the division office comments. Using the project selection criteria contained in § 663.17, the Regional Administrator shall select and approve the proposals for funding. Funds will be allocated to each region at the beginning of each fiscal year by the FHWA Washington Headquarters. Each applicant will be notified of the action taken on its proposal by the FHWA.

§ 663.13 Content of proposals.

(a) All proposals should contain general information pertinent to the proposed project. This information may include such items as: a description of the project; a discussion of the need for the project; what the project is intended to accomplish; how the project would relate to other community efforts to improve bicycle transportation; a description of coordination which may be necessary for successful completion of the project and the extent of citizen participation in project development; an estimate of the time necessary to complete the project; and the estimated cost of the project and the Federal share.

(b) For those proposals which involve bikeway projects, information should be included in the proposals which adequately describes the scope of the project. This information may include such items as: project length, width, cross section, and number of parking devices; for projects within urbanized areas, an indication that the project is a part of the Metropolitan Planning Organization's endorsed Transportation Improvement Program (TIP) and part of an overall bicycle plan; any energy savings which may be realized due to a shift from other forms of transportation to bicycles; and a determination that a public agency will be responsible for maintenance of the project.

(c) For those proposals which involve nonconstruction projects, information should be included in the proposals which adequately describes the nature

¹ Available for inspection and copying at FHWA offices, listed in 49 CFR Part 7, Appendix D.

of the project. This information may include such items as: the extent, coverage and intended recipients of the nonconstruction project; a description of how the project would be implemented and by whom; a description of how the project would be implemented and by whom; and an indication of how the project would enhance the safety and use of bicycles.

§ 663.15 Submission date.

Unless otherwise directed by the FHWA Regional Administrators, proposals shall be submitted to the FHWA division offices by January 15 of each fiscal year for which funds have been appropriated by Congress. Proposals should be received in the FHWA regional offices by March 15 of each fiscal year for which funds have been appropriated.

§ 663.17 Project selection criteria.

(a) Emphasis will be on those projects which will enhance the safety of bicyclists and will most benefit the community.

(b) The following general selection criteria will be applied by the FHWA for all types of projects:

(1) A demonstrated need for the project,

(2) Probability of successful implementation and completion of the project,

(3) Evidence of support and participation of the public in the project,

(4) The estimated cost and cost effectiveness of the project and the Federal share of that cost, and

(5) A determination that the project can reasonably be expected to enhance the safety of bicyclists and use of bicycles.

(c) In addition to the general criteria, the following selection criteria will be applied to bikeway construction projects:

(1) Compliance with the current FHWA design and construction standards for bicycle facilities (FHPM 6-2-1-1)² or an approved equivalent,

(2) For projects in urbanized areas, evidence that the project is part of the planning process specified in 23 U.S.C. 134 and a bicycle element of the Transportation Improvement Program described in 23 CFR Part 450, Subparts A and C.

§ 663.19 Fiscal procedures.

Project authorization and development shall be in accordance with the fiscal procedures applicable to Federal-aid highway projects, unless

otherwise prescribed by FHWA. Funds may be withdrawn for redistribution by the Regional Administrator if a project is not undertaken within a reasonable time.

Appendix—Examples of Projects Eligible for Funding Under the Bicycle Grant Program

Construction

1. Eligible projects which would result in support facilities for bicycling could include:

a. Bicycle parking facilities, or
b. Bicycle racks on buses and other facilities to interface bicycles with transit.

2. Eligible projects which would result in the modification or spot improvement of existing highways could include:

a. Widening of an existing roadway, shoulder or structure for the purpose of accommodating bicycle travel,
b. replacing existing unsafe drainage grates with "bicycle safe" grate inlets,
c. restriping pavement to provide bicycle lanes or wider curb lanes,
d. curb-cut ramps on new or existing bikeways,

e. grade separations where necessary,
f. treatment of railroad crossings to make them bicycle safe,
g. traffic control devices, or
h. lighting.

3. Eligible projects which would result in new facilities could include construction of a bike path adjacent to or independent of an existing highway or Federal-aid route (grading, drainage, paving, barriers, landscaping, signs, structures, right-of-way, etc.).

Nonconstruction

1. Eligible projects which would result in public information and encouragement programs could include:

a. Mapping of bicycle routes, or
b. bicycle use promotion and encouragement campaigns.

2. Eligible projects which educate and train the public could include:

a. Bicycle safety education and training courses, or
b. Education programs which teach motorists how to safely share the road with bicyclists.

[FR Doc. 80-36 Filed 1-2-80; 8:45 am]

BILLING CODE 4910-22-M

² See footnote 1, supra.

Registered

Thursday
January 3, 1980

Part VI

Department of Commerce

Office of Federal Statistical Policy and
Standards

Metropolitan Statistical Area
Classification

DEPARTMENT OF COMMERCE

Office of Federal Statistical Policy and Standards

Metropolitan Statistical Area Classification

AGENCY: Office of Federal Statistical Policy and Standards, Department of Commerce.

ACTION: Notice of Final Standards for Establishing Metropolitan Statistical Areas Following the 1980 Census.

SUMMARY: This document contains the final standards for designating and defining metropolitan statistical areas following the 1980 census. This notice contains five items in addition to this introductory statement: (1) an overview description of the metropolitan statistical area classification; (2) a summary of the standards in nontechnical language; (3) the text of the official standards; (4) an appendix containing certain guidelines regarding the data and procedures used in implementing the standards; and (5) lists of *potentially* affected counties and areas.

Not included in this notice are (1) a listing of prospective consolidated and primary (component) metropolitan statistical areas; (2) a listing of prospective changes in New England metropolitan statistical areas; and (3) a statement of the rationale for the standards. Copies of these documents, reflecting some changes resulting from the recent technical modifications to the standards, are available from the Office of Federal Statistical Policy and Standards.

Introduction

These final standards are the result of the most recent periodic review of the definitional structure under which metropolitan statistical areas are identified for Federal statistical purposes. Periodic review of the standards is necessary to maintain objectivity and consistency, and ensure that relevant data are used in implementing them. Such reviews have been conducted by the Federal Committee on Standard Metropolitan Statistical Areas in connection with each Decennial Census of Population since the official metropolitan areas were first established in the late 1940's. These final standards will be used in conjunction with the 1980 Decennial Census of Population results to determine the specific boundary definitions for each metropolitan statistical area, probably in 1982.

The final standards are the result of two rounds public comment. The initial proposal was published in the *Federal Register* on June 22, 1978. A revised proposal was issued in the *Federal Register* for November 29, 1978. The final standards incorporate technical modifications to the November 29 revised proposal.

The final standards are published here in order to give notice of the standards that will be used to define metropolitan statistical areas following the availability of the 1980 census data. Comments relating to the clarity and understanding of the standards will be welcomed.

The comment period will be open until March 3, 1980.

ADDRESS: Send comments to: Joseph W. Duncan, Director, Office of Federal Statistical Policy and Standards, U.S. Department of Commerce, Washington, D.C. 20230. All comments, materials, questions, etc., in response to the publication of these standards will be available for public inspection during normal business hours, 8:30 a.m. to 5:00 p.m., in Room 702, 2001 "S" Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Suzann Evinger, Office of Federal Statistical Policy and Standards, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 673-7965

Note.—The Department of Commerce has determined that this proposal is not a significant regulation requiring preparation of a regulatory analysis under Executive Order No. 12044.

Courtenay M. Slater,
Chief Economist for the Department of Commerce.

Standards for Establishing the Metropolitan Statistical Area Classification

Overview

The general concept of a metropolitan statistical area is one of a large population nucleus, together with adjacent communities which have a high degree of economic and social integration with that nucleus.

The Metropolitan Statistical Area classification is a statistical standard, developed for use by Federal agencies in the production, analysis, and publication of data on metropolitan areas. The metropolitan statistical areas are designated and defined by the Office of Federal Statistical Policy and Standards (OFSPS), U.S. Department of Commerce, following a set of official published standards. These standards have been developed by the interagency Federal Committee on Standard Metropolitan Statistical Areas, with the aim of

producing definitions that will be as consistent as possible for all metropolitan statistical areas nationwide.

To meet the needs of various groups of users, the standards provide for a flexible structure of metropolitan definitions by creating three sets of areas: metropolitan statistical areas, primary metropolitan statistical areas, and consolidated metropolitan statistical areas. Flexibility is further enhanced by the classification of the areas into four levels based on total population size—Level A with 1,000,000 or more; Level B with 250,000 to 1,000,000; Level C with 100,000 to 250,000; and Level D with less than 100,000.

Metropolitan statistical areas are relatively freestanding and not closely associated with other metropolitan statistical areas. These areas are typically surrounded by nonmetropolitan counties. Areas qualifying for recognition as metropolitan statistical areas have either a city with a population of at least 50,000, or a Bureau of the Census urbanized area of at least 50,000 and a total metropolitan statistical area population of at least 100,000.

Each metropolitan statistical area has one or more central counties, containing the area's main population concentration. A metropolitan statistical area may also include outlying counties which have close economic and social relationships with the central counties. Such counties must have a specified level of commuting to the central counties, and must also meet certain standards regarding metropolitan character, such as population density. In New England, metropolitan statistical areas are composed of cities and towns, rather than whole counties. Under specified conditions, two adjacent areas may be consolidated or combined into a single metropolitan statistical area.

Each metropolitan statistical area has at least one central city. The titles of metropolitan statistical areas include up to three central city names, as well as the name of each State into which the metropolitan statistical area extends.

In areas with over 1 million population (Level A areas), *primary metropolitan statistical areas* may be identified. These areas consist of a large urbanized county, or cluster of counties, that demonstrates very strong internal economic and social links, in addition to close ties to neighboring areas. When primary metropolitan statistical areas are defined, the large area of which they are component parts is designated a *consolidated metropolitan statistical area*. There are specific standards for

defining and titling the primary and the consolidated metropolitan statistical areas.

To aid users who want to become familiar with the metropolitan statistical area standards and how they are applied, the following documents are available from the Office of Federal Statistical Policy and Standards, U.S. Department of Commerce, Washington, D.C. 20230:

1. *Summary of the Standards Followed in Establishing Metropolitan Statistical Areas.* This states the principal standards using nontechnical language.

2. *Official Standards Followed in Establishing Metropolitan Statistical Areas.* These are the standards followed by the Federal Committee on Standard Metropolitan Statistical Areas in designating and defining metropolitan statistical areas.

3. *General Procedures and Definitions.* This appendix to the official standards specifies certain important guidelines regarding the data and procedures used in implementing the standards, and provides definitions for certain key terms.

4. *Detailed Procedures.* This document contains a description of the data sources used in the process of definition, and a statement of the specific procedures followed for implementing each section of the standards, step by step.

5. *Statement of the Rationale for the Standards.* This provides a brief historical background and an explanation of the reasoning behind the adoption of each section of the official standards.

Summary of the Standards Followed in Establishing Metropolitan Statistical Areas

This statement summarizes in nontechnical language the official standards for designating and defining metropolitan statistical areas. It omits certain exceptions and unusual situations that are covered in the rules themselves or in the detailed statement of the procedures followed in applying the standards.

The first eight sections contain the basic standards for defining metropolitan statistical areas in all States except the New England States. They specify standards for determining: How large a population nucleus must be to qualify as a metropolitan statistical area. (Section 1)

The central county(ies) of the metropolitan statistical area. (Section 2)

Whether additional "outlying" counties have sufficient metropolitan character and integration with the

central county(ies) to qualify for inclusion in the metropolitan statistical area. (Section 3)

The central city or cities of each metropolitan statistical area. (Section 4)

Whether two adjacent metropolitan statistical areas qualify to be consolidated or combined. (Sections 5 and 6)

Four categories or "levels" of metropolitan statistical areas, based on the total population of each area. (Section 7)

The title for each metropolitan statistical area. (Section 8)

Following these eight basic sections, there are three standards (Sections 9 through 11) which provide a framework for identifying primary metropolitan statistical areas within metropolitan statistical areas of at least 1 million population. A metropolitan statistical area in which primary metropolitan statistical areas have been identified is designated a consolidated metropolitan statistical area.

The concluding group of standards (Sections 12 through 16) applies only to the New England States. In these States, metropolitan statistical areas are composed of cities and towns rather than whole counties. Sections 12, 13, and 14 specify how to define and title New England metropolitan statistical areas, and Section 15 through 16 state how to identify and title primary and consolidated metropolitan statistical areas within areas of at least a million population.

Population Size Requirements for Qualification (Section 1)

To qualify for recognition as a metropolitan statistical area, an area must either have a city with a population of at least 50,000 within its corporate limits, or it must have a U.S. Bureau of the Census urbanized area of at least 50,000 population, and a total metropolitan statistical area population of at least 100,000. A few metropolitan statistical areas that do not meet these requirements are still recognized because they qualified in the past under standards that were then in effect.

The Census bureau defines urbanized areas according to specific criteria, designed to include the densely settled area around each large city. An urbanized area must have a population of at least 50,000. The urbanized area criteria define a boundary based primarily on a population density of at least 1,000 persons per square mile, but also include some less densely settled areas within corporate limits, and such areas as industrial parks, railroad yards, golf courses, and so forth, if they are adjacent to dense urban development.

The density level of 1,000 persons per square mile corresponds approximately to the continuously built-up area around the city, for example, as it would appear in an aerial photograph.

Typically, the entire urbanized area is included within one metropolitan statistical area; however, the metropolitan statistical area is usually much larger in areal extent than the urbanized area, and includes territory where the population density is less than 1,000 persons per square mile.

Central Counties (Section 2)

Every metropolitan statistical area has one or more central counties. These are the counties in which at least half the population lives in the Census Bureau urbanized area. There are also a few counties classed as central even though less than half their population lives in the urbanized area because they contain a central city (defined in Section 4), or a significant portion (with at least 2,500 population) of a central city.

Outlying Counties (Section 3)

In addition to the central county(ies), a metropolitan statistical area may include one or more outlying counties. Qualification as an outlying county requires a significant levels of commuting from the outlying county to the central county(ies), and a specified degree of "metropolitan character." The specific requirements for including an outlying county depend on the level of commuting of its resident workers to the central county(ies), as follows:

1. Counties with a commuting rate of 50 percent or more must have a population density of at least 25 persons per square mile.

2. Counties with a commuting rate of from 40 to 50 percent can qualify if they have a density of at least 35 persons per square mile.

3. Counties with a commuting rate of from 25 to 40 percent typically qualify through having either a density of at least 50 persons per square mile, or at least 35 percent of their population classified as urban by the Bureau of the Census.

4. Counties with a commuting rate of from 15 to 25 percent must have a density of at least 50 persons per square mile, and in addition must meet two of the following four requirements:

a. The population density must be at least 60 persons per square mile;

b. At least 35 percent of the population must be classified as urban;

c. Population growth between 1970 and 1980 must be at least 20 percent;

d. A significant portion of the population (either 10 percent or at least

5,000 persons) must live within the urbanized area.

There are also a few outlying counties which qualify for inclusion in a metropolitan statistical area because of heavy commuting from the central county(ies) to the outlying county, or because of substantial total commuting to and from the central counties.

Central Cities (Section 4)

Every metropolitan statistical area has at least one central city, which is usually its largest city. Smaller cities are also identified as central cities if they have at least 25,000 population and meet the following two commuting requirements. First, the city must have at least 75 jobs for each 100 residents who are employed. Second, no more than 60 percent of the city's resident workers may commute to jobs outside the city limits; in other words, at least 40 percent of the resident workers must be employed locally.

In addition, any city with at least 250,000 population or at least 100,000 persons working within its corporate limits qualifies as a central city even if (as rarely happens) it fails to meet the above two commuting requirements. Finally, in certain smaller metropolitan statistical areas there are places with between 15,000 and 25,000 population that also qualify as central cities, because they are at least one-third the size of the metropolitan statistical area's largest city and meet the two commuting requirements.

Most places that qualify as central cities are legally incorporated cities. It is also possible for a town in the New England States, New York, or Wisconsin, or a township in Michigan, New Jersey, or Pennsylvania to qualify as a central city. The town or township must, however, be recognized by the Bureau of the Census as a "census designated place" on the basis of being entirely urban in character, and must also meet the two commuting requirements described above.

Consolidated or Combining Adjacent Metropolitan Statistical Areas (Sections 5 and 6)

These two sections specify certain conditions under which adjacent metropolitan statistical areas defined by the preceding sections are joined to form a single area. Section 5 consolidates adjacent metropolitan statistical areas if their commuting interchange is at least 15 percent of the number of workers living in the smaller of the two areas. Commuting interchange means the total number of commuters who live in either of the two areas but work in the other. In a few cases, where adjacent metropolitan statistical areas have

contiguous urbanized areas or have central cities that are included within a single urbanized area, only a 10 percent commuting interchange is required. To be consolidated under Section 5, each of the metropolitan statistical areas must also be at least 60 percent urban, and the total population of the consolidated metropolitan statistical area must be at least 1,000,000.

Section 6 provides for combining as a single metropolitan statistical area those adjacent metropolitan statistical areas whose largest cities are within 25 miles of each other, unless there is strong evidence, supported by local opinion, that they do not constitute a single area for general social and economic purposes.

Levels (Section 7)

This section classifies the prospective metropolitan statistical areas defined by the preceding sections into four categories based on total population size: Level A with 1,000,000 or more; Level B with 250,000 to 1,000,000; Level C with 100,000 to 250,000; and Level D with less than 100,000.

Under this section, the metropolitan statistical areas in Levels B, C, and D (those with a population of less than 1 million) receive final designation as metropolitan statistical areas.

Area Titles (Section 8)

This section assigns titles to the metropolitan statistical areas defined by the preceding sections. (It does not apply to areas which are designated as primary or consolidated metropolitan statistical areas by Sections 9 through 11. These areas are titled under different standards, which are specified in Sections 10 and 11.) The titles of metropolitan statistical areas are always based on names of central cities. Up to three cities are included in the title provided they are qualified as central cities by Section 4 and have at least one-third the population of the metropolitan statistical area's largest city. Some cities meeting certain specified requirements are also included in titles even though they do not meet the one-third requirement.

The official title of each metropolitan statistical area also includes the name of each State into which the metropolitan statistical area extends.

Primary and Consolidated Metropolitan Statistical Areas (Sections 9 Through 11)

Within the metropolitan statistical areas classified as Level A, some areas may qualify for separate recognition as primary metropolitan statistical areas. A primary metropolitan statistical area is a large urbanized county, or cluster of counties, that demonstrates very strong

internal economic and social links, in addition to close ties to the other portions of the Level A metropolitan statistical area.

Any area that was recognized as a separate metropolitan statistical area before 1980, but is now included as part of a larger area, will be recognized as a primary metropolitan statistical area unless local opinion does not support its separate identification for statistical purposes.

In addition, the standards provide for recognizing and defining additional primary metropolitan statistical areas that would otherwise not be recognized separately (Section 9). Local opinion must be strongly in favor of this recognition. In addition, an area must contain at least one county that has a population of more than 100,000, an urban proportion of 60 percent, and a relatively low percentage of workers (less than 50 percent) commuting to jobs outside the county. If all these criteria are met, the area will be considered for separate recognition as a primary metropolitan statistical area subject to meeting additional statistical requirements.

Section 10 gives standards for titling the primary metropolitan statistical areas; either county name or central city names may be used.

Section 11 provides that if at least two primary metropolitan statistical areas have been defined, the Level A metropolitan statistical area is designated a consolidated metropolitan statistical area. This section also provides guidelines for titling the consolidated metropolitan statistical areas. Various alternatives for determining titles are specified. Local opinion, as expressed through the congressional delegation for the area, is an important factor in making the final decision.

Metropolitan Statistical Areas in New England (Sections 12 Through 14)

These sections provide the basic standards for defining metropolitan statistical areas in New England.

Qualification for recognition as a metropolitan statistical area in New England is on much the same basis as in the other States. A few modifications in the standards are necessary because cities and towns are used for the definitions. In New England each Census Bureau urbanized area of at least 50,000 normally has a separate metropolitan statistical area, provided there is a total metropolitan statistical area population of at least 75,000 or a central city of at least 50,000. The total metropolitan statistical area population requirement is lower than the 100,000 required in the other

States because the New England cities and towns used in defining metropolitan statistical areas are much smaller in areal extent than the counties used for the definitions in the other States. This makes it possible to define New England metropolitan statistical areas quite precisely on the basis of population density and commuting.

For users who prefer definitions in terms of counties, a set of New England County Metropolitan Areas is also officially defined using Sections 1 through 8. However, the official metropolitan statistical area designations in New England apply to the city-and-town definitions.

In order to determine the cities and towns which could qualify for inclusion in a New England metropolitan statistical area, Section 12 defines a *central core* for each New England urbanized area, consisting essentially of cities and towns in which at least half the population lives in the urbanized area or in a contiguous urbanized area.

Once the central core has been defined, Section 13 reviews the adjacent cities and towns for possible inclusion in the metropolitan statistical area. An adjacent city or town with a population density of at least 100 persons per square mile is included if at least 15 percent of its resident workers commute to the central core. Towns with a density between 60 and 100 persons per square mile also qualify if they have at least 30 percent commuting to the central core. However, the commuting to the central core from the city or town must be greater than to any other central core, and also greater than to any nonmetropolitan city or town.

If a city or town has qualifying commuting in two different directions (for example, to a central core and to a nonmetropolitan city) and the commuting percentages are within five points of each other, local opinion is solicited through the appropriate congressional delegation before assigning the city or town to a metropolitan statistical area. Some New England communities also qualify for inclusion in a metropolitan statistical area on the basis of reverse commuting or total commuting.

Once the qualifying outlying towns and cities have been determined, Section 14 qualifies the resulting area as a metropolitan statistical area provided it has a city of at least 50,000 or a total population of at least 75,000. This section also specifies that several of the standards used in the other States are also applied to the New England States:

1. The central cities of each area are determined by Section 4.

2. Two adjacent New England metropolitan statistical areas may be consolidated under Section 5.

3. New England areas are categorized into levels according to Section 7A. Those in Levels B, C, and D are given final designation as metropolitan statistical areas, and are assigned titles according to Section 8.

Primary and Consolidated Metropolitan Statistical Areas in New England (Sections 15 and 16)

Section 15 is used to review each Level A metropolitan statistical area in New England for the possible identification of primary metropolitan statistical areas. It follows the same general approach as is used for identifying such areas outside New England (Section 9). Finally, Section 16 provides that levels and titles for New England primary and consolidated metropolitan statistical areas are determined by much the same standards as for the remaining States.

Official Standards Followed in Establishing Metropolitan Statistical Areas

Basic Standards

Sections 1 through 8 apply to all States except the six New England States. They also apply to Puerto Rico.¹

Section 1. Populations Size Requirements for Qualification

A. Each metropolitan statistical area must include a city which, with contiguous, densely settled territory, constitutes a Census Bureau-defined urbanized area with at least 50,000 populations.²

B. If a metropolitan statistical area's largest city has less than 50,000 population, the area must have a total population of at least 100,000.³

Section 2. Central Counties

A county is designated as a central county of the metropolitan statistical area if:

A. At least 50 percent of its population lives in the urbanized area that resulted in qualification under Section 1A; or

¹ Those provisions of Sections 1 through 8 which are applicable to New England are specified in the standards relating to New England (Sections 12 through 16).

² A metropolitan statistical area designated according to standards in effect at the time of designation will not be disqualified in the basis of lacking an urbanized area of at least 50,000 population.

³ A metropolitan statistical area designated on the basis of census data according to standards in effect at the time of designation will not be disqualified on the basis of lacking a total population of at least 100,000.

B. At least 2,500 of its population lives in a central city of the metropolitan statistical area.⁴

Section 3. Outlying Counties

A. An outlying county is included in a metropolitan statistical area if any one of the four following conditions is met:

(1) At least 50 percent of the employed workers residing in the county commute to the central county(ies) and the population density of the county is at least 25 persons per square mile.

(2) From 40 to 50 percent of the employed workers commute to the central county(ies), and the population density is at least 35 persons per square mile.

(3) From 25 to 40 percent of the employed workers commute to the central county(ies), the population density is at least 35 persons per square mile, and any one of the following conditions also exists:

(a) Population density is at least 50 persons per square mile;

(b) At least 35 percent of the population is urban;

(c) At least 10 percent, or at least 5,000 of the population lives in the urbanized area that resulted in qualification under Section 1A.

(4) From 15 to 25 percent of the employed workers commute to the central county(ies),⁵ the population density is at least 50 persons per square mile, and any two of the following conditions also exist:

(a) Population density is at least 60 persons per square mile;

(b) At least 35 percent of the population is urban;

(c) Population growth between the last two decennial censuses is at least 20 percent;

(d) At least 10 percent, or at least 5,000, of the population lives in the urbanized area that resulted in qualification under Section 1A.

B. If a county qualifies on the basis of commuting to the central county(ies) of two different metropolitan statistical areas, it is assigned to the area to which commuting is greatest, unless the relevant commuting percentages are within 5 points of each other, in which case local opinion about the most

⁴ See Section 4 for the standards for identifying central cities.

⁵ Also accepted as meeting this commuting requirement are:

(a) the number of persons working in the county who live in the central county(ies) is equal to at least 15 percent of the number of employed workers living in the county; or

(b) the sum of the number of workers commuting to and from the central county(ies) is equal to at least 20 percent of the number of employed workers living in the county.

appropriate assignment will be considered.

Section 4. Central Cities

Recognized as the central city(ies) of the metropolitan statistical area are:

A. The city with the largest population in the metropolitan statistical area.

B. Each additional city with a population of at least 250,000 or with at least 100,000 persons within its limits.

C. Each additional city with a population of at least 25,000, an employment/residence ratio of at least 0.75, and has outcommuting of less than 60 percent of its resident employed workers.

D. Each city of 15,000 to 25,000 population which is at least one-third as large as the largest central city, has an employment/residence ratio of at least 0.75, and has outcommuting of less than 60 percent of its resident employed workers.

Section 5. Consolidating Adjacent Metropolitan Statistical Areas

Two adjacent metropolitan statistical areas defined by Sections 1 through 4 are consolidated as a single metropolitan statistical area provide all of the following conditions are met:

A. The commuting interchange between the two metropolitan statistical areas is equal to:

(1) At least 15 percent of the employed workers residing in the smaller metropolitan statistical area, or

(2) At least 10 percent of the employed workers residing in the smaller metropolitan statistical area, and

(a) The urbanized area of a central city of one metropolitan statistical area is contiguous with the urbanized area of a central city of the other metropolitan statistical area, or

(b) A central city in one metropolitan statistical area is included in the same urbanized area as a central city in the other metropolitan statistical area.

B. At least 60 percent of the population of each metropolitan statistical area is urban.

C. The total population is at least 1 million.

Section 6. Combining Adjacent Metropolitan Statistical Areas

Two adjacent metropolitan statistical areas defined by Sections 1 through 4 and not included in a consolidation by Section 5 will be combined as a single metropolitan statistical area if:

A. Their largest central cities are within 25 miles of one another, or their urbanized areas are contiguous; and

B. There is definite evidence that the two areas are closely integrated with

each other economically and socially; and

C. Local opinion in both areas supports the combination.

Section 7. Levels

A. Each metropolitan statistical area defined by Sections 1 through 6 is categorized in one of the following levels based on total population:

Level A—Metropolitan statistical areas of 1 million or more.

Level B—Metropolitan statistical areas of 250,000 to 1 million.

Level C—Metropolitan statistical areas of 100,000 to 250,000.

Level D—Metropolitan statistical areas of less than 100,000.

B. Areas assigned to Levels B, C, or D are designated as metropolitan statistical areas. Areas assigned to Level A are not finally designated or titled until they have been reviewed under Sections 9 and 10.

Section 8. Titles of Metropolitan Statistical Areas

A. The title of a metropolitan statistical area assigned to Level B, C, or D includes the name of the largest central city, and up to two additional names:

(1) The name of each additional city with a population of at least 250,000 or with at least 100,000 persons working within its limits;

(2) The names of additional cities qualified as central cities by Section 4, provided each is at least one-third as large as the largest central city;

(3) The name of the largest city of any separate area that qualified as a metropolitan statistical area under Sections 1 through 4, but was combined by Section 6 with the area being titled.

B. An area title that includes the names of more than one city begins with the name of the largest city and lists the other cities in order of their population according to the most recent national census.⁶

C. In addition to city names, the title contains the name of each State in which the metropolitan statistical area is located.

Standards for Primary and Consolidated Metropolitan Statistical Areas

Sections 9 through 11 apply to Level A metropolitan statistical areas outside New England.

⁶ If a city qualifies as a central city under Section 4, and is included in an existing metropolitan statistical area title, it will not be resequenced in or displaced from that title until both its population and the number of persons working within its limits are exceeded by those of another city qualifying for the area title.

Section 9. Qualification as a Primary Metropolitan Statistical Area

Within a Level A metropolitan statistical area:

A. Any county or group of counties that was recognized as a separate metropolitan statistical area on January 1, 1980, will be recognized as a primary metropolitan statistical area, unless local opinion does not support its continued separate recognition for statistical purposes.

B. Any additional county or group of counties for which local opinion strongly supports separate recognition will be considered for identification as a primary metropolitan statistical area, provided a county is included which has:

- (1) At least 100,000 population;
- (2) At least 60 percent of its population urban; and
- (3) Less than 50 percent of its resident workers commuting to jobs outside the county.

C. The geographic definition of any area recognized by Section 9A, and the identification and definition of any area under Section 9B, are subject to the specific statistical guidelines detailed in the Procedures supplement to these standards.

D. If any primary metropolitan statistical area or areas have been recognized under Sections 9A through C, the balance of the Level A metropolitan statistical area is also recognized as a primary metropolitan statistical area.⁷

Section 10. Levels and Titles Primary Metropolitan Statistical Areas

A. Primary metropolitan statistical areas are categorized in one of four levels according to total population, following the standards of Section 7A.

B. Primary metropolitan statistical areas are titled in either of two ways:

(1) Using the names of up to three cities in the primary metropolitan statistical area that have qualified as central cities of the Level A metropolitan statistical area under Section 4, following the standards of Section 8 for selection and sequencing; or

(2) Using the names of up to three counties in the primary metropolitan statistical area, sequenced in order from largest to smallest population.

C. Local opinion on the most appropriate title will be considered.

⁷ If Section 9D would result in the balance of the Level A metropolitan statistical area including a noncontiguous county, this county will be added to the contiguous primary metropolitan statistical area to which it has the greatest commuting.

Section 11. Designation and Titles of Consolidated Metropolitan Statistical Areas

A. Each Level A metropolitan statistical area in which primary metropolitan statistical areas have been defined by Section 9 is designated a consolidated metropolitan statistical area. A Level A metropolitan statistical area in which no primary metropolitan statistical areas have been defined is designated a metropolitan statistical area, and is titled according to Section 8.

B. Consolidated metropolitan statistical areas are titled according to the following guidelines. Local opinion is always sought before determining the title of a consolidated metropolitan statistical area.

(1) The title of each area includes up to three names, the first of which is always the name of the largest central city in the area. A change in the first-named city in the title will not be made until both its population and the number of persons working within its limits are exceeded by those of another city in the consolidated area.

(2) The preferred basis for determining the two remaining names is:

(a) The first city (or county) name that appears in the title of the remaining primary metropolitan statistical area with the largest total population; and

(b) The first city (or county) name that appears in the title of the primary metropolitan statistical area with the next largest total population.

(3) A regional designation may be substituted for the second and/or third names in the title if there is strong local support and the proposed designation is unambiguous and suitable for inclusion in a national standard.

Standards for New England

In the six New England States, the cities and towns are administratively more important than the counties, and a wide range of data is compiled locally for these entities. Therefore, the cities and towns are the units used to define metropolitan statistical areas in these States. The New England standards are based primarily on population density and commuting. Sections 12 and 13 constitute the basic standards for New England metropolitan statistical areas. As a basis for measuring commuting, a central core is first defined for each New England urbanized area, corresponding to the central counties that are identified in the States outside New England.

Section 12. New England Central Cores

A central core is determined in each New England urbanized area through the definition of two zones.

A. Zone A comprises:

(1) The largest city in the urbanized area.

(2) Each other place in the urbanized area or in a contiguous urbanized area that qualifies as a central city under Section 4, provided at least 15 percent of its resident employed workers work in the largest city in the urbanized area.⁹

(3) Each other city or town at least 50 percent of whose population lives in the urbanized area or a contiguous urbanized area, provided at least 15 percent of its resident employed workers work in the largest city in the urbanized area plus any additional central cities qualified by Section 12A(2).⁹

B. Zone B comprises each city or town which:

(1) Has at least 50 percent of its population living in the urbanized area or in a contiguous urbanized area; and

(2) Has at least 15 percent of its resident employed workers working in Zone A.⁹

C. The central core comprises Zone A, Zone B, and any city or town that is physically surrounded by Zones A or B, except that cities or towns that are not contiguous with the main portion of the central core are not included.

D. If a city or town qualifies under Sections 12 A through C for more than one central core, it is assigned to the core to which commuting is greatest, unless the relevant commuting percentages are within 5 points of each other, in which case local opinion as to the most appropriate assignment will also be considered.

Section 13. Outlying Cities and Towns

A. A city or town contiguous to a central core as defined by Section 12 is included in its metropolitan statistical area if:

(1) It has a population density of at least 60 persons per square mile and at least 30 percent of its resident employed workers work in the central core; or

(2) It has a population density of at least 100 persons per square mile and at least 15 percent of the employed

⁹ Also accepted as meeting this commuting requirement are:

(a) The number of persons working in the subject city or town who live in the specified city or area is equal to at least 15 percent of the employed workers living in the subject city or town; or

(b) The sum of the number of workers commuting to and from the specified city or area is equal to at least 20 percent of the employed workers living in the subject city or town.

workers living in the city or town work in the central core.⁹

B. If a city or town has the qualifying amount of commuting to two different central cores, it is assigned to the metropolitan statistical area to which commuting is greatest, unless the relevant commuting percentages are within 5 points of each other, in which case local opinion as to the most appropriate assignment will also be considered.

C. If a city or town has the qualifying level of commuting to a central core, but has greater commuting to a nonmetropolitan city or town, it will not be assigned to any metropolitan statistical area unless the relevant commuting percentages are within 5 points of each other, in which case local opinion as to the most appropriate assignment will also be considered.

Section 14. Applicability of Basic Standards to New England Metropolitan Statistical Areas

A. An area defined by Sections 12 and 13 qualifies as a metropolitan statistical area provided it contains a city of at least 50,000 population or has a total population of at least 75,000.¹⁰

B. The area's central cities are determined according to the standards of Section 4.

C. Two adjacent New England metropolitan statistical areas are consolidated as a single metropolitan statistical area provided the conditions of Section 5 are met. Section 6 is not applied in New England.

D. Each New England metropolitan statistical area defined by Sections 14A through C is categorized in one of the four levels specified in Section 7A. Areas assigned to Levels B, C, or D are designated as metropolitan statistical areas. Areas assigned to Level A are not finally designated until they have been reviewed under Sections 15 and 16.

E. New England metropolitan statistical areas are titled according to the standards of Section 8.

¹⁰ Also accepted as meeting this commuting requirement are:

(a) The number of persons working in the city or town who live in the central core is equal to at least 15 percent of the employed workers living in the city or town; or

(b) The sum of the number of workers commuting to and from the central core is equal to at least 20 percent of the employed workers living in the city or town.

¹¹ A New England metropolitan statistical area designated on the basis of census data according to standards in effect at the time of designation will not be disqualified on the basis of lacking a total population of at least 75,000.

Section 15. Qualification as a Primary Metropolitan Statistical Area

Within a Level A metropolitan statistical area in New England:

A. Any group of cities and towns that was recognized as a separate metropolitan statistical area on January 1, 1980, will be recognized as a primary metropolitan statistical area, unless local opinion does not support its continued separate recognition for statistical purposes.

B. Any additional group of cities and/or towns for which local opinion strongly supports separate recognition will be considered for identification as a primary metropolitan statistical area, provided:

(1) The total population of the group is at least 75,000;

(2) It includes at least one city with a population of 15,000 or more, an employment/residence ratio of at least 0.75, and outcommuting of less than 60 percent of its resident employed workers;

(3) It contains a core of communities, each of which has at least 50 percent of its population living in the urbanized area, and which together have less than 60 percent of their resident workers commuting to jobs outside the core.

C. The geographic definition of any area recognized by Section 15A, and the identification and definition of any area under Section 15B, are subject to the specific statistical guidelines detailed in the Procedures supplement to these standards.

D. If any primary metropolitan statistical area or areas have been recognized under Sections 15A through C, the balance of the Level A metropolitan statistical area is also recognized as a primary metropolitan statistical area.¹¹

Section 16. Levels and Titles of New England Primary and Consolidated Areas

A. New England primary metropolitan statistical areas are categorized in one of four levels according to total population, following Section 7A.

B. New England primary metropolitan statistical areas are titled using the names of up to three cities in the primary area that have qualified as central cities under Section 4, following the standards of Section 8 for selection and sequencing.

C. Each Level A metropolitan statistical area in New England in which

primary metropolitan statistical areas have been defined by Section 15 is designated a consolidated metropolitan statistical area. Titles of New England consolidated metropolitan statistical areas are determined following the standards of Section 11. A Level A metropolitan statistical area in which no primary metropolitan statistical areas have been defined is designated a metropolitan statistical area, and is titled according to the rules of Section 8.

Appendix—General Procedures and Definitions

This appendix specifies certain important guidelines regarding the data and procedures used in implementing the standards. It also gives definitions for "city," "urbanized area," and other key terms. A detailed statement of the data sources and procedural steps for implementing each section of the standards is available from the Office of Federal Statistical Policy and Standards.

General Procedures

Percentages, Densities, and Ratios

These are computed to the nearest one-hundredth (two decimals), and comparisons between them are made on that basis.

Populations

In general, the population data required by the standards are taken from the most recent national census. However, in certain exceptional situations either (1) the results of a special census taken by the Bureau of the Census, or (2) a population estimate published by the Bureau of the Census and accepted for use in the distribution of Federal benefits may be used to meet the requirements of the standards.

Local Opinion

Where local opinion is called for in the standards, for example, as an aid in determining primary or consolidated metropolitan statistical area titles or in assigning counties or places that qualify for two different areas, it is always obtained through the appropriate congressional delegation. After a decision has been made on a particular matter, local opinion on the same question will not be requested again until after the next national census.

Review of Cutoffs and Values

The Federal Committee on Standard Metropolitan Statistical Areas has developed the official standards and determined their various statistical cutoffs and values on the basis of an extensive examination of the current data for individual counties and cities. If data from 1980 or a subsequent national

census show that shifts in national commuting patterns or other long-term trends have seriously altered the makeup of the group defined by a value now specified in the standards, the Federal Committee will review this value and determine whether any changes should be made before the standards are implemented.

Definitions of Key Terms

City—The term "city" includes:

(a) Any place incorporated under the laws of its State as a city, village, borough (except in Alaska), or town (except in the New England States, New York, and Wisconsin). These comprise the category of "incorporated places" recognized in census publications.

(b) In Hawaii, any place recognized as a census designated place by the Bureau of the Census in consultation with the State government; in Puerto Rico, any place recognized as a *zona urbana* or *aldea* by the Bureau of the Census in consultation with the Commonwealth government. (Hawaii and Puerto Rico do not have legally defined cities corresponding to those of most States.)

(c) Any township in Michigan, New Jersey, or Pennsylvania, and any town in the New England States, New York, or Wisconsin, that is recognized by the Bureau of the Census as a census designated place. Under Census guidelines, such a town or township must not contain any part of a dependent incorporated place and must have a population density of at least 1,000 persons per square mile over essentially all its territory.

Urbanized Area—An area defined by the Bureau of the Census according to specific criteria, designed to include the entire densely settled area around each large city. An urbanized area must have a total population of at least 50,000. The urbanized area criteria define a boundary based primarily on a population density of at least 1,000 persons per square mile, but also include some less densely settled areas within corporate limits, and such areas as industrial parks, railroad yards, golf courses, and so forth, if they are adjacent to dense urban development.

Contiguous Urbanized Areas—They are those urbanized areas with a common boundary of at least 1 mile on land or following a waterway crossed by a bridge.

Urban—The Bureau of the Census classifies as urban:

(a) The population living in urbanized areas; plus

(b) The population in other incorporated or census designated places of at least 2,500 population at the most recent national census.

¹¹ If Section 15D results in the balance of the Level A metropolitan statistical area including a noncontiguous city or town, this place will be added to the contiguous primary metropolitan statistical area to which it has the greatest commuting.

County—For purposes of the standards, the term "county" includes county equivalents, such as parishes in Louisiana and boroughs and census areas (formerly census divisions) in Alaska. Certain States contain cities that are independent of any county; such independent cities in Georgia, Maryland, Missouri, and Nevada are treated as county equivalents for purposes of the standards.

In Virginia, where most places of more than 15,000 are independent, the standards usually regard each such city as included in the county from which it was originally formed, or primarily formed. In certain exceptional cases, the city itself is treated as a county equivalent, as follows:

(a) An independent city that has absorbed its parent county (Chesapeake, Hampton, Newport News, Suffolk, Virginia Beach);

(b) An independent city associated with an urbanized area other than the one with which its parent county is primarily associated (for example, Colonial Heights); and

(c) An independent city that is contiguous with a county in addition to its parent county, if including it with its parent county would result in including it in a metropolitan statistical area with which it would otherwise not be included. (There were no such cases at the time of the 1970 census).

A county included in a metropolitan statistical area is either a *central* (Section 2), or an *outlying* (Section 3) county. An outlying county must be contiguous with a central county or with an outlying county that has already qualified for inclusion.

Employment/Residence Ratio—This ratio is computed by dividing the number of persons working in the city by the number of resident workers with place of work reported. (Both these data items are taken from the most recent national census.) For example, a city with an equal number of jobs and working residents has an employment/residence ratio of 1.00.

Outcommuting—The number (or percent) of workers living in a specified area, such as a city or a county, whose place of work is located outside that area.

Commuting Interchange—The commuting interchange between two areas is the sum of the number of workers who live in either of the areas but work in the other.

List 1.—Current SMSA Counties That Will Probably Qualify for Inclusion in a Metropolitan Statistical Area Under the New Standards

[Note.—Counties are listed by State, in geographic order.]

| County | State | SMSA |
|-------------------|---------|--|
| Adams..... | PA..... | York. |
| Susquehanna..... | PA..... | Binghamton, NY-PA. |
| Ottawa..... | OH..... | Toledo, OH-MI. |
| Preble..... | OH..... | Dayton. |
| Putnam..... | OH..... | Lima. |
| Van Wert..... | OH..... | Lima. |
| Marshall..... | IN..... | South Bend. |
| Sullivan..... | IN..... | Terre Haute. |
| Vermillion..... | IN..... | Terre Haute. |
| Wells..... | IN..... | Fort Wayne. |
| Clinton..... | IL..... | St. Louis, MO-IL. |
| Menard..... | IL..... | Springfield. |
| Barry..... | MI..... | Battle Creek. |
| Ionia..... | MI..... | Lansing-East Lansing. |
| Oceana..... | MI..... | Muskegon-Norton Shores-Muskegon Heights. |
| Van Buren..... | MI..... | Kalamazoo-Portage. |
| St. Croix..... | WI..... | Minneapolis-St. Paul, MN-WI. |
| Polk..... | MN..... | Grand Forks, ND-MN. |
| Andrew..... | MO..... | St. Joseph. |
| Butler..... | KS..... | Wichita. |
| Jefferson..... | KS..... | Topeka. |
| Osage..... | KS..... | Topeka. |
| Cecil..... | MD..... | Wilmington, DE-NJ-MD. |
| Appomattox..... | VA..... | Lynchburg. |
| Charles City..... | VA..... | Richmond. |
| Craig..... | VA..... | Roanoke. |
| New Kent..... | VA..... | Richmond. |
| Wirt..... | WV..... | Parkersburg-Marietta, WV-OH. |
| Brunswick..... | NC..... | Wilmington. |
| Madison..... | NC..... | Asheville. |
| Bryan..... | GA..... | Savannah. |
| Lee..... | GA..... | Albany. |
| Twiggs..... | GA..... | Macon. |
| Baker..... | FL..... | Jacksonville. |
| Nassau..... | FL..... | Jacksonville. |
| Osceola..... | FL..... | Orlando. |
| Wakulla..... | FL..... | Tallahassee. |
| Marion..... | TN..... | Chattanooga, TN-GA. |
| Sequatchie..... | TN..... | Chattanooga, TN-GA. |
| Baldwin..... | AL..... | Mobile. |
| Limestone..... | AL..... | Huntsville. |
| Hancock..... | MS..... | Biloxi-Gulfport. |
| Stone..... | MS..... | Biloxi-Gulfport. |
| Benton..... | AR..... | Fayetteville-Springdale. |
| Little River..... | AR..... | Texarkana, TX-AR. |
| Grant..... | LA..... | Alexandria. |
| Le Flore..... | OK..... | Fort Smith, AR-OK. |
| Mayes..... | OK..... | Tulsa. |
| Sequoyah..... | OK..... | Fort Smith, AR-OK. |
| Callahan..... | TX..... | Abilene. |
| Clay..... | TX..... | Wichita Falls. |
| Hardin..... | TX..... | Beaumont-Port Arthur-Orange. |
| Harrison..... | TX..... | Longview-Marshall. |
| Hood..... | TX..... | Dallas-Fort Worth. |
| Jones..... | TX..... | Abilene. |
| Waller..... | TX..... | Houston. |
| Wise..... | TX..... | Dallas-Fort Worth. |
| Douglas..... | CO..... | Denver. |
| Gilpin..... | CO..... | Denver. |
| Teller..... | CO..... | Colorado Springs. |
| Sandoval..... | NM..... | Albuquerque. |
| Tooele..... | UT..... | Salt Lake City-Ogden. |

List 2.—Nonmetropolitan Counties That Will Probably Qualify for Inclusion in a Metropolitan Statistical Area Under the New Standards.

[Note.—Counties are listed by State, in geographic order. Counties marked with an asterisk (*) do not qualify for inclusion on the basis of 1970 data but will qualify by 1980 based on growth trends since 1970.]

| County | State | MSA |
|----------------|---------|------------------------------|
| Greene*..... | NY..... | Albany-Schenectady-Troy. |
| Hunterdon..... | NJ..... | New York Consolidated MSA. |
| Ocean..... | NJ..... | New York Consolidated MSA. |
| Sussex..... | NJ..... | New York Consolidated MSA. |
| Wyoming*..... | PA..... | Northeast Pennsylvania. |
| Brown..... | OH..... | Cincinnati, OH-KY-IN. |
| Harrison*..... | IN..... | Louisville, KY-IN. |
| Whitley*..... | IN..... | Fort Wayne. |
| Isanti*..... | MN..... | Minneapolis-St. Paul, MN-WI. |
| Calvert..... | MD..... | Washington, DC-MD-VA. |

List 2.—Nonmetropolitan Counties That Will Probably Qualify for Inclusion in a Metropolitan Statistical Area Under the New Standards.—Continued

[Note.—Counties are listed by State, in geographic order. Counties marked with an asterisk (*) do not qualify for inclusion on the basis of 1970 data but will qualify by 1980 based on growth trends since 1970.]

| County | State | MSA |
|------------------|---------|--------------------------------------|
| Frederick*..... | MD..... | Washington, DC-MD-VA. |
| Davie*..... | NC..... | Greensboro-Winston-Salem-High Point. |
| Lincoln*..... | NC..... | Charlotte-Gastonia. |
| Spalding..... | GA..... | Atlanta. |
| Carter*..... | KY..... | Huntington-Ashland, WV-KY-OH. |
| Grainger*..... | TN..... | Knoxville. |
| Sevier*..... | TN..... | Knoxville. |
| Blount*..... | AL..... | Birmingham. |
| Madison..... | MS..... | Jackson. |
| St. Charles..... | LA..... | New Orleans. |
| Yamhill*..... | OR..... | Portland, OR-WA. |

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Thursday
January 3, 1980

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Part VII

Council on Wage and Price Stability

Noninflationary Pay and Price Behavior

COUNCIL ON WAGE AND PRICE STABILITY

6 CFR Parts 705, 706, and 707

Noninflationary Pay and Price Behavior; Adoption of Form PAY-1 (Actual)

AGENCY: Council on Wage and Price Stability.

ACTION: Adoption of reporting form and request for submission of data.

SUMMARY: The Council is adopting a reporting form designated as Form PAY-1 (Actual) and requesting the submission of data by February 15, 1980.

EFFECTIVE DATE: January 3, 1980.

FOR FURTHER INFORMATION CONTACT: Homer Jack, 202/456-7180; David Hough, 202/456-7100.

SUPPLEMENTARY INFORMATION: On August 27, 1979, the Council requested companies to furnish voluntarily on Form PAY-1 data on prospective pay-rate increases for the first program year. (44 FR 50304) Since the first program year has ended for most compliance units, the Council is asking companies to furnish voluntarily information about their actual pay-rate increases during that period to enable the Council to evaluate each company's compliance with the voluntary pay standard for the first program year.

Form PAY-1 (Actual) is essentially the same as Form PAY-1. References in PAY-1 to prospective data have been changed to refer to actual data. In addition, Form PAY-1 (Actual) modifies Form PAY-1 as follows:

For collective bargaining units, companies are asked to submit a form for employee units with 500 or more workers only if the information was not included in the September 5, 1979, filing of Form PAY-1. Instructions under "What to File" have been changed to request actual pay-rate increases for the first program year for nonrepresented employee units; Part I, Items 2 and 4 have been modified to clarify what data the Council is seeking. Based on the previous PAY-1 filings, there appears to have been some confusion concerning these items.

Instructions for Part III, Item 1 relating to the amount of cost-of-living adjustments and the consumer price index have been changed to request actual cost-of-living amounts and applicable inflation rates; Instructions have been changed to say that Part III, Items 6-8 need not be completed if Part III, Item 5 shows that the employee unit is in compliance. However, Part IV should be completed by all respondents

to which it applies, regardless of the response in Part III, Item 5.

The Council has already sent or will shortly send copies of Form PAY-1 (Actual) to about 600 companies. However, all companies with 10,000 employees in the first program year are requested to file the form by February 15, 1980.

While the submission of data is voluntary, the Council views the access to timely, uniformly defined data as essential to the effective monitoring of compliance with the standards. The data will be treated as confidential in accordance with Section 4(f) of the Council on Wage and Price Stability Act, 12 U.S.C. 1904 note, and 6 CFR Part 702, 44 FR 70086 (December 5, 1979).

In accordance with 6 CFR 706.20, if a company has furnished the Council with any of the data requested by Form PAY-1 (Actual), it need not furnish them again, although it should identify for the Council the document (including page references) containing such data and the date on which the data was submitted.

This form was submitted to the Office of Management and Budget in accordance with the Federal Reports Act, and was approved under No. 116S79027.

(Council on Wage and Price Stability Act, Pub. L. 90-387, as amended (12 U.S.C. 1904 note); E.O. 12092)

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

R. Robert Russell,

Director, Council on Wage and Price Stability.

Instruction for Preparation of Form PAY-1 (Actual) Report on Compliance With the PAY Standard First Program Year

General Instructions

Purpose of Form PAY-1 (Actual): As part of the President's Anti-Inflation Program, the Council on Wage and Price Stability (the Council) has issued Voluntary Standards for Noninflationary Pay and Price Behavior. The first year standards appear at 43 FR 60772 (December 28, 1978); 44 FR 9582 (February 13, 1979); and 44 FR 17910 (March 23, 1979). The standards are further explained by the "Pay and Price Standards—Implementation Guide" at 44 FR 5339 (January 25, 1979) and by the questions and answers appearing with these publications. Additional questions and answers appear at 44 FR 32338 (June 5, 1979). Special Procedural Rules for complying with the standards appear at 44 FR 1346 (January 4, 1979); 44 FR 5337 (January 25, 1979); 44 FR 9585 (February 13, 1979); 44 FR 17916 (March 23, 1979); and 44 FR 23777 (April 20, 1979).

The submission of data on this form is voluntary. However, the Council views the access to timely, uniformly defined data as essential to the effective monitoring of compliance with the standards. Form PAY-1 (Actual) is used by the Council as a means for collecting data from companies. The information requested will allow the Council to meet two objectives: first, the data will be used to determine the extent to which firms have complied with the voluntary standard on pay-rate increases; second, companies are asked to report actual pay-rate increases, as well as those chargeable under the pay standard, to enable the Council to determine the effect of the "exclusions" on total pay-rates and measure the inflationary impact of actual labor costs. This is consistent with the Council's efforts to analyze the factors influencing the rate of inflation. Analysis of the requested data will have an impact on future policy decisions regarding the voluntary pay and price standards specifically, and the anti-inflation effort in general.

The Council on Wage and Price Stability Act, 12 U.S.C. Section 1904, note, authorizes the Council to collect data on wages, such as are requested on this form.

Confidentiality of Information: Information furnished to the Council pursuant to this request will be treated as confidential in accordance with Section 4(f) of the Council on Wage and Price Stability Act, 12 U.S.C. 1904, note, and 6 CFR Part 702 (44 FR 70086, December 5, 1979).

Suggestions for Improvement: The Council welcomes suggestions for improving this form. In general, it seeks ways of obtaining the information it needs to exercise its responsibilities for monitoring compliance with the Voluntary Standards for Anti-inflationary Pay and Price Behavior with the minimum reporting burden on reporting companies.

Who Should File: A reporting company, as specified in the plan of company organization previously submitted to the Council, with 10,000 employees or more at any time during the program year, and any other company designed by the Council, is requested to file with the Council information specified in "What to File" below. If a plan of company organization is not on file with the Council, a plan of company organization should accompany this form.

If a parent company chooses to disaggregate a consolidated entity for compliance purposes and no separately identified entity has 10,000 employees or more, this should be noted by the parent

company in Part 1, Item 1e of the form and the form returned to the Council.

What to File: Each reporting company is requested to submit a separate form PAY-1 (Actual) (one copy) for its individual employee units covering 100 employees or more. However, regarding collective bargaining units, a company should file reports only for collective bargaining contracts negotiated during the program year (and not considered exempt as specified in Section 705B-3(e) of the Pay Standard) covering 500 employees or more. Companies should submit a report for collective bargaining contracts negotiated during the first program year and multi-year pay commitments for nonrepresented employee units not reported on in the September 5, 1979 filing. For management and "all other" employee units not under a multi-year pay agreement, companies should report their base-period pay rates (Column A) and their actual pay rates for the end of the program year (Column B). For nonrepresented units under a multi-year pay commitment, companies should report their base-period pay rates (Column A) and projected pay rates at the end of the commitment period (Column B).

For collective bargaining contracts, companies should report pay rates in effect at the expiration of the prior contract (Column A), and projected pay rates at the expiration of the current contract (Column B). For multi-year collective bargaining contracts and multi-year pay commitments for nonrepresented employee units, companies are also asked to report their projected pay rates at the end of each year (see Insert for Multi-Year Agreements).

When To File: Form PAY-1 (Actual) should be addressed to: Office of Pay Monitoring, Council on Wage and Price Stability, Winder Building, 600 17th Street, N.W., Washington, D.C. 20506.

Specific Instructions: The Form PAY-1 (Actual) closely follows the definition of pay given in the Voluntary Pay and Price Standards, and reference to the Standards and Implementation Guide will help clarify items on the form. Do not include on this form overtime wages (unless overtime provisions change), or employer contributions for legally-mandated benefit programs. Exclude all wages and benefits to workers earnings straight-time wages of four dollars per hour or less as of October 1, 1978 as well as wages and benefits for workers hired during the program year at a straight-time wage of four dollars per hour or less. Also, exclude deferred compensation paid in the base period but earned in an earlier period. Include

deferred compensation earned in the program period but not paid in the program period. Other exclusions and adjustments to pay which the Standards allow should be treated as follows: determine the actual increase in the hourly pay rate prior to the allowable adjustments (Part III, Item 5), then list the applicable adjustments used to calculate the chargeable pay-rate increase under the Standards.

All pay rates should be calculated as pay per straight-time hour worked, per employee, carried to three decimal places (as shown on the form). When paid leave hours are incurred irregularly, these hours should be calculated according to the leave practices in effect at the end of the base quarter and at the end of the program year as though they were incurred evenly over time. Companies may use a straight-time hours-paid-for basis (e.g., for salaried workers), where paid leave is included in straight-time wage and salary pay and only changes to paid leave practices are reported as a benefit. Increases/decreases in paid leave hours during the program period affect the straight-time hours and correspondingly will increase/decrease the cost of all benefits. These effects should be reflected in calculations for columns B-E. Beginning with Part III, indicate items which are not applicable with a "O". The Council does not require companies to make inordinate calculations to complete this form; a good faith estimate should be made when data are not available.

Part I—Identifying Data

Item 1a: Enter name and address of reporting company.

Item 1d: Enter primary 4-digit 1972 Standard Industrial Classification Code.

Item 1e: For parent companies: enter the number of reporting companies with 10,000 employees or more, filing as separate entities.

Item 2a: Check the appropriate box indicating the type of employee unit as defined in Section 705B-2 of the Standards.

Item 2b: Give the location for the employee unit. Complete for collective bargaining units only.

Item 2c: Attach a list if more than one union is included in the unit.

Item 2d: Complete for non-represented units only. Item 2d(1) refers to the dates of the base quarter used in calculating pay-rate data in column A; item 2d(2) refers to the dates of the program period from which data in column B were obtained.

Item 3: For represented units, a company should use the method of pay

computation applicable to collective bargaining units, Section 705B-3. For other units a company may use either the average pay-rate change for the unit, Section 705B-4(a), called the "double snapshot" method, the pay-rate change for the fixed population of continuing employees employed in the beginning and end of the program year, Section 705B-4(b), called the "fixed population" method, or the weighted average pay-rate change of distinct functional employee subgroups, Section 705B-4(e). When using method 705B-4(b), only include on the form amounts paid to continuing employees. Check the method(s) used.

Item 4a-d: Enter the number of employees in the employee unit and the average straight-time hours worked per employee. For collective bargaining units enter the annual straight-time hours. For non-represented employee units enter the number of straight-time hours corresponding to the time period for Item 2d.

Part II—Certification

Self-explanatory.

Part III—Pay Rate Data

Item 1: Straight-time wage and salary pay should include, where applicable, payments for shift differentials, skill differentials, and cost-of-living adjustments.

Cost-of-living adjustments (COLA) should be included in the wage and salary entry, but should also be shown separately for the program period along with the applicable rate of increase in the Consumer Price Index (CPI). Item 6c provides the opportunity to exclude COLA costs above those resulting from a 6 percent annual rate of increase in the CPI. If COLA applies to only part of the employee unit, enter the actual COLA weighted by the ratio of those covered to the entire employee unit.

Item 2: Incentive pay includes, where applicable, the following items (expressed as pay per straight-time hour). The Council wishes to emphasize that it does not require companies to make inordinate calculations to complete these items: a good faith estimate should be made when data are not available.

Item 2a: Sales commission and production incentive pay (not adjusted for volume increases; an adjustment may be made in Item 6b);

Item 2b: Bonuses and other annual incentive compensation charged when earned for nondiscretionary plans (that is, when the services are

- performed that generate the compensation) and when paid for discretionary plans;
- Item 2c: Compensation from long-term incentive plans (including any spread between an option or purchase price and fair market value at time of grant for plans subject to the future-value standard, Section 705B-5(c)), new future-value incentive plans, and other similar compensation arrangements when earned or accrued.
- Item 2d: Enter the sum of 2(a), 2(b), and 2(c).
- Item 3: Benefits include, where applicable, employer contributions or costs for the following fringe benefit items (show the actual costs per straight-time hour; adjustments may be made to some items in Item 6).
- Item 3a: Pay for time not worked (e.g., paid vacations and holidays, sick leave and other paid leave), see the introduction to the *Specific Instructions* for an alternate treatment;
- Item 3b: Savings and thrift plans such as qualified stock bonus plans, qualified profit-sharing plans (including retirement plans), employee stock ownership plans, other defined contribution plans and nonqualified plans;
- Item 3c: Qualified defined-benefit retirement plans (if a company planned to exclude pension costs from its pay-rate computations and detailed costs are not available, an estimate based on available data is sufficient);
- Item 3d: Health benefit plans;
- Item 3e: Life insurance, accident insurance, and other insurance plans; and
- Item 3f: Legal assistance, educational assistance, and other plans resulting in benefits to employees but not reported as income; and job perquisites and other forms of compensation not covered elsewhere in the definition of pay but reported as income under the Internal Revenue Code and its interpretive regulations and rulings. Enter the total cost for these plans; list the major items.
- Item 3g: Enter the sum of 3(a) to 3(f).
- Item 4: The hourly pay-rate is the sum of the straight-time wage and salary rate (Item 1), the hourly cost of incentive pay (Item 2d), and the hourly cost of fringe benefits (Item 3g).
- Item 5: The annual percent pay-rate increase is the percent increase from the base period pay rate (Item 4A) to the program period pay rate (Item 4B). To determine the percent increase, divide the program period pay rate by the base period pay rate, subtract 1, and multiply the result by 100. The formula for doing this would be:
- $$\text{Percent increase} = (4B/4A - 1) \times 100.$$
- For multi-year agreements, the total percent increase should be expressed as the annual rate taking compounding into consideration. The formula in the multi-year case for doing this is: Annual percent increase = $(4B/4A - 1) \times 100$, where N is the number of years covered by the agreement, 4B is the pay rate at the end of the agreement period, 4A is the base period pay rate, and 4B/4A represents the total percent increase over the agreement. Thus, take the Nth root of the total pay increase (for example, the square root for a two-year agreement the cube root for a three-year agreement), subtract 1, and multiply the result by 100.
- Item 6: The pay standard provides exceptions, exclusions, and special treatment of some pay. Use this item to enter the amounts of pay which may be subtracted from the actual pay rate (Item 4) to yield the chargeable pay rate under the pay standard. All amounts should be calculated as pay divided by straight-time hours. Remember to enter both the *direct* amount and also the *indirect* (rollup or creep) amounts due to the adjustments. (See page 32 of the *Implementation Guide*, FR, January 25, 1979 for calculation of rollup.) If retirement plan costs are excluded under Item 6e(2) or Item 6f, exclude retirement plan costs when determining roll-up or creep costs where applicable.
- 6a: Instead of the bonus amount earned in the base period, a company may use as an alternate base the average of the corresponding bonus amounts in two of the last five years. If the alternate base is chosen, enter the *difference* between the base period bonus and the alternate bonus (which of course is larger) on this line. Show the difference as a negative number so that when the pay adjustments are subtracted in line 7, the entry will increase the base period pay rate.
- Item 6b: Under sales commission or production incentive plans, increases in compensation due to increases in the physical volume of items sold or produced are not charged to the pay standard (see the example on page 45 of the *Implementation Guide*, FR, January 25, 1979). Enter such increases in compensation on this line.
- Item 6c: Nonunion as well as union employee units may use a 6 percent projected rate of inflation to cost out a COLA formula in a multi-year agreement (which must, however, be binding on the company, see II-E, Q11, FR, December 28, 1979). Use this line to enter COLA amounts paid out because the inflation rate increased by more than 6 percent. Attach a copy of the COLA formula to the PAY-1 form. Note if the COLA provision is new; list any changes if a previous COLA provision was modified.
- Item 6d: Increases in the costs of maintaining existing health benefits are only charged against the pay standard up to a 7 percent annual increase in such costs; enter increases above 7 percent on this line (see Section 705B-6 of the Pay Standard).
- Item 6e(1): Enter changes in pension funding costs on this line (see Section 705B-7 of the Standards). Note that cost savings due to funding changes should be entered as well as cost increases; i.e., changes in funding methods may not offset increases in pension or other benefits.
- Item 6e(2): As an alternative to the adjustment in line 6e(1), for an unaltered pay-related pension plan companies may exclude the entire pension costs from both the base period and the program period. To do so, enter on this line the amounts shown in line 3c.
- Item 6f: Amounts paid under a qualified profit-sharing retirement plan in which the formula is not changed may be excluded from pay in both the base period and the program period (see *Pay Standard, Pensions*, FR, June 5, 1979). To do so, enter these amounts (which were included in line 3b) on this line.
- Item 6g: Pay rate increases above 7 percent which are dictated by the continuation of or prior announcement of a formal annual pay plan (as described in Sections 705B-4(c) and 705B-4(d) of the Standards) may be excluded in determining compliance and should be entered here.
- Item 6h(1): Enter the amounts of pay for which the Council has granted an exception on this line. Exceptions are made for tandem pay-rate changes (TA), pay-rate increases traded for productivity-improving work-rule changes in union agreements (WR), pay-rate increases attributable to acute labor shortages (LS), and undue hardship or gross inequity cases (WH). Enter the number of each type of exception next to the appropriate exception code.
- Item 6h(2): Enter the same data as in line 6h(1) for exceptions which have been self-administered by the company (e.g., for an employee unit of less than 100 employees).
- Item 6i: If the fixed population method of compliance is chosen, the amount of legitimate promotions and qualification increases may be

excluded from the payrate on these two lines. Also enter the corresponding amounts paid in the base period to demonstrate the consistency of the pay practices unless reasonable estimates of these data are not readily available, in which case attach other evidence of such consistency.

Item 6j: Under Section 705B-4(e) of the Standards, a weighted average of pay-rate changes may be used instead of a simple average, in order to adjust for changes in work-force composition. If this method is chosen, enter the difference between the two methods on this line.

Item 6k: Enter the sum of adjustments 6 a-j on this line (again, be sure that line 6a is a negative number); if Item 6k, Column A, is negative indicate this by placing a minus sign before the entry.

Item 7: On this line enter the difference between line 4 and line 6k.

Item 8: Calculate the annual rate of increase in pay in the same way as in line 5. The percent increase should be 7 percent or less for the employee unit to be in compliance.

Part III—A—Data Insert for Multi-Year Agreements

The data insert should be completed for any multi-year agreements for both collective bargaining units and nonrepresented units. Columns (C)–(E) represent individual years; complete as many columns as appropriate for the agreement period.

Items 1–4, 6, and 7: Instructions for these pay-rate items are the same as for the Base Period (column A) and Program Period (column B). The projected pay-rates in effect at the end of each year (12-month period) should be reported. For column D the adjustment in Item 6 should be cumulative for the first two years of the agreement and for column E the adjustments in Item 6 should be cumulative for the first three years of the agreement.

Item 5: Column (C) is the percent pay-rate increase from the base period (Item 4A) to the end of the first agreement year (Item 4C). Column (D) is the percent pay-rate increase from the end of the first agreement year (Item 4C) to the end of the second agreement year (Item 4D). Column (E) is the percent pay rate increase from the end of the second agreement year (Item 4D) to the end of the third agreement year (Item 4E).

Item 8: Columns C-E should be computed the same as Item 5 with Items 7A, 7C, 7D and 7E substituted for Items 4A, 4C, 4D and 4E.

Part IV—Future-Value Compliance

Complete this part separately for each of the company's future-value incentive plans.

Item 1: Name of future-value incentive plan.

Item 2: Description of plan.

Item 3: The pay standard for future-value incentive plans applies to existing and successor plans. Furthermore, successor plan treatment may apply to plans with a different type of unit if a company can demonstrate that the basic value of the new unit is generally equal to the value of the replaced unit (attach explanation).

Item 4: Enter the number of recipients under the plan in the base period (12 months prior to October 1, 1978) and in the program period (October 1, 1978 thru September 30, 1979) if changes in the number of recipients is based on the continuation of well-established past practices with objective criteria for determining recipients. Otherwise, enter the number of employees in the employee group to which the recipients belong.

Item 5: Enter the average number of units issued per recipient or per employee in the appropriate employee group in each period.

Item 6: A company may use as an alternate base the annual average of the units granted over the last five years. If used, enter the alternate base period average on this line.

Item 7: The percent increase in the average number of units per recipient granted or issued in the program year must be 7 percent or less of the base period for the plan to be in compliance.

BILLING CODE 3175-01-M

Form PAY-1 (Actual) Report on Compliance with the
Pay Standard - First Program Year

OMB No:

CWPS
Winder Building
600 17th Street, N.W.
Washington, D.C. 20506

Part I - Identifying Data

1. Company

- a. Name: _____
- b. Street Address: _____
- c. City, State, and Zip Code: _____
- d. Primary SIC: _____
- e. Number of Separate reporting companies with 10,000 or more employees
(this is to be completed by parent companies): _____

2. Employee Unit

- a. Type: ☐ Collective bargaining ☐ Management ☐ All other
- b. Location (City & State): _____
- c. If collective bargaining unit:
 - (1) Union (include Local number): _____
 - (2) Contract begins: _____ Expires: _____ negotiated: _____
- d. If non-represented unit:
 - (1) Base period (month/day/year): From _____ To _____
 - (2) Program period (month/day/year): From _____ To _____

3. Method of Computation

- ☐ (CB) Collective bargaining, 705B-3
- ☐ (UA) Unit average, 705B-4(a)
- ☐ (FP) Fixed population, 705B-4(b)
- ☐ (WA) Weighted average, 705B-4(e)

4.. Number of straight-time Hours and Employees:

- a. Base period straight-time hours per employee: _____
- b. Base period number of employees: _____
- c. Program period straight-time hours per employee: _____
- d. Program period number of employees: _____

Part II - Certification

To the best of my knowledge and belief the data submitted herewith are factually correct, complete and prepared in accordance with the application instructions. It is requested that the information submitted herewith be considered as confidential within the meaning of Section 4(f) of the Council on Wage and Price Stability Act, 12 U.S.C. 1904, Note, and 6 CFR Parts 702 and 704, 44 FR 5339 (January 25, 1979)

Chief Executive Officer of parent firm or other authorized designee (please Type)

Name of Company: _____
Name and Title: _____ Tel: () _____
Signature: _____ Date: _____

Part III - Pay Rate Data

| | (A) Base Period Pay Rate | (B) Program Period Pay Rate | |
|---|--------------------------------|-----------------------------------|----|
| 1. Straight-Time Wage and Salary: | \$ _ _ . _ _ _ | \$ _ _ . _ _ _ | 1 |
| COLA at _ _ . _ _ % CPI: \$ _ _ . _ _ _ | | | |
| 2. Incentive Pay (where applicable): | | | |
| a. Sales commission and production incentive pay: | _ _ . _ _ _ | _ _ . _ _ _ | 2a |
| b. Bonuses and other annual incentive pay: | _ _ . _ _ _ | _ _ . _ _ _ | 2b |
| c. Long term incentive pay: | _ _ . _ _ _ | _ _ . _ _ _ | 2c |
| d. Total hourly cost of incentive pay: | _ _ . _ _ _ | _ _ . _ _ _ | 2d |
| 3. Benefits: | | | |
| a. Pay for time not worked | _ _ . _ _ _ | _ _ . _ _ _ | 3a |
| b. Savings and thrift plans: | _ _ . _ _ _ | _ _ . _ _ _ | 3b |
| c. Qualified defined-benefit retirement plans: | _ _ . _ _ _ | _ _ . _ _ _ | 3c |
| d. Health benefit plans: | _ _ . _ _ _ | _ _ . _ _ _ | 3d |
| e. Other insurance plans: | _ _ . _ _ _ | _ _ . _ _ _ | 3e |
| f. Other (total): | _ _ . _ _ _ | _ _ . _ _ _ | 3f |
| g. Total hourly cost of fringe benefits: | _ _ . _ _ _ | _ _ . _ _ _ | 3g |
| 4. Hourly Pay Rate (Sum of 1+2d+3g): | \$ _ _ . _ _ _ | \$ _ _ . _ _ _ | 4 |
| 5. Annual Percent Pay-Rate Increase: | _ _ . _ _ % | | 5 |

IF THE ANNUAL PERCENT PAY-RATE INCREASE IS 7 PERCENT OR LESS (AND FOR MULTI-YEAR AGREEMENTS, NO INDIVIDUAL YEARLY INCREASE IS ABOVE 8 PERCENT) AND DEFINED-BENEFIT PENSION FUNDING COSTS ARE UNCHANGED, THE EMPLOYEE UNIT IS IN COMPLIANCE AND ITEMS 6-8 NEED NOT BE COMPLETED.

| | (A) Base Period Pay Rate | (B) Program Period Pay Rate | |
|---|--------------------------------|-----------------------------------|-------|
| 6. Adjustments to pay rate (where applicable) | | | |
| a. Alternate base adjustment for bonus plans: | \$ ---.--- | | 6a |
| b. Sales commission/production incentive pay due to higher volume: | | \$ ---.--- | 6b |
| c. COLA payments beyond 6 percent increase in CPI (attach copy of formula): | | ---.--- | 6c |
| d. Maintenance of health benefits cost increase above 7 percent: | | ---.--- | 6d |
| e. (1) Non-chargeable changes in defined-benefit pension funding costs: | | ---.--- | 6e(1) |
| (2) Exclusion of unaltered pension plan: | ---.--- | ---.--- | 6e(2) |
| f. Exclusion of qualified profit-sharing retirement plan: | ---.--- | ---.--- | 6f |
| g. Overage from formal annual pay plans: | | ---.--- | 6g |
| h. Overage from pay exceptions | | | |
| (1) Approved by CWPS (TA <u>LS</u> <u>WR</u> <u>WH</u>): | | ---.--- | 6h(1) |
| (2) Self-Administered(TA <u>LS</u> <u>WR</u> <u>WH</u>): | | ---.--- | 6h(2) |
| i. Effect on average wage if fixed population method used, 705B-4(b): | | | |
| (1) Promotions (in base period \$ ---.---): | | ---.--- | 6i(1) |
| (2) Qualification increases (in base period \$ ---.---): | | ---.--- | 6i(2) |
| j. Effect on pay rate if weighted average method used, 705B-4(e): | | ---.--- | 6j |
| k. Total adjustments: | \$ ---.--- | \$ ---.--- | 6k |
| 7. Adjusted Hourly Pay Rate (Difference 4-6k): | \$ ---.--- | \$ ---.--- | 7 |
| 8. Adjusted Annual Percent Pay-Rate Increase: | | ---.--- | 8 |

Part III-A - Data Insert for Multi-year Agreements

| | (C) End of 1st year | (D) End of 2nd year | (E) End of 3rd Year | |
|---|------------------------|------------------------|------------------------|-------|
| 1. Wage Rate: | \$ _ . _ _ _ | \$ _ . _ _ _ | \$ _ . _ _ _ | 1 |
| (1st year COLA: \$ _ . _ _ _; 2nd year COLA: \$ _ . _ _ _; 3rd year COLA: \$ _ . _ _ _) | | | | |
| 2. Incentive Pay: a. | _ . _ _ _ | _ . _ _ _ | _ . _ _ _ | 2a |
| b. | _ . _ _ _ | _ . _ _ _ | _ . _ _ _ | 2b |
| c. | _ . _ _ _ | _ . _ _ _ | _ . _ _ _ | 2c |
| d. | _ . _ _ _ | _ . _ _ _ | _ . _ _ _ | 2d |
| 3. Benefits: | | | | |
| a. | _ . _ _ _ | _ . _ _ _ | _ . _ _ _ | 3a |
| b. | _ . _ _ _ | _ . _ _ _ | _ . _ _ _ | 3b |
| c. | _ . _ _ _ | _ . _ _ _ | _ . _ _ _ | 3c |
| d. | _ . _ _ _ | _ . _ _ _ | _ . _ _ _ | 3d |
| e. | _ . _ _ _ | _ . _ _ _ | _ . _ _ _ | 3e |
| f. | _ . _ _ _ | _ . _ _ _ | _ . _ _ _ | 3f |
| g. | _ . _ _ _ | _ . _ _ _ | _ . _ _ _ | 3g |
| 4. Hourly Pay Rate: | \$ _ . _ _ _ | \$ _ . _ _ _ | \$ _ . _ _ _ | 4 |
| 5. Percent Increase: | _ . _ _ _ % | _ . _ _ _ % | _ . _ _ _ % | 5 |
| 6. Adjustments: | | | | |
| b. | _ . _ _ _ | _ . _ _ _ | _ . _ _ _ | 6b |
| c. | _ . _ _ _ | _ . _ _ _ | _ . _ _ _ | 6c |
| d. | _ . _ _ _ | _ . _ _ _ | _ . _ _ _ | 6d |
| e. 1 | _ . _ _ _ | _ . _ _ _ | _ . _ _ _ | 6e(1) |
| 2 | _ . _ _ _ | _ . _ _ _ | _ . _ _ _ | 6e(2) |
| f. | _ . _ _ _ | _ . _ _ _ | _ . _ _ _ | 6f |
| h. 1 | _ . _ _ _ | _ . _ _ _ | _ . _ _ _ | 6h(1) |
| 2 | _ . _ _ _ | _ . _ _ _ | _ . _ _ _ | 6h(2) |
| k. | \$ _ . _ _ _ | \$ _ . _ _ _ | \$ _ . _ _ _ | 6k |
| 7. Adjusted Pay Rate: | \$ _ . _ _ _ | \$ _ . _ _ _ | \$ _ . _ _ _ | 7 |
| 8. Adjusted % Increase: | _ . _ _ _ % | _ . _ _ _ % | _ . _ _ _ % | 8 |

Part IV - Future-Value Compliance

1. Plan Name: _____

2. Description: _____

3. Type: ☐ Existing plan
- ☐ Successor plan with same type of units
- ☐ Successor plan with different type of units
(attach explanation showing that the basic value of the new units is generally equal to the value of the replaced units)

(A)
Base Period(B)
Program Period

4. Number of recipients: _____

5. Average number of units issued: _____

6. Alternate base period average
(if used): _____7. Percent increase $(5B/5A-1) \times 100$ or $(5B/6A-1) \times 100$: -----

[FR Doc. 79-39961 Filed 12-29-79; 2:02 pm]

BILLING CODE 3175-01-C

Thursday
January 3, 1980

Equal Employment Opportunity

Part VIII

Department of the Interior

Office of the Secretary

Nondiscrimination on the Basis of Age in Programs and Activities Receiving Federal Financial Assistance

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 17

Nondiscrimination on the Basis of Age in Programs and Activities Receiving Federal Financial Assistance

AGENCY: Department of the Interior.

ACTION: Proposed regulations.

SUMMARY: The Department of the Interior (DOI) proposes specific regulations to carry out its responsibilities under the Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.*, and the government-wide regulations published in the *Federal Register* June 12, 1979, 44 FR 33768 (1979). The Age Discrimination Act prohibits discrimination on the basis of age in programs and activities receiving Federal financial assistance. The Act contains exceptions which permit, under certain circumstances, continued use of age distinctions or factors other than age that may have a disproportionate effect on a particular age group. The Act excludes from its coverage most employment practices except for programs funded under the public services employment titles of the Comprehensive Employment and Training Act (CETA).

DATE: Comments are invited from other Federal agencies and the public on or before January 31, 1980.

ADDRESS: Send written comments to Director, Office for Equal Opportunity, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Alfred J. Poole, III, Office for Equal Opportunity, at the above address or phone (202) 343-4331.

SUPPLEMENTARY INFORMATION:**Background**

The Age Discrimination Act of 1975 prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act contains exceptions which limit the general prohibition against age discrimination. The Act permits the use of age distinctions which are necessary to the normal operation of a program or to the achievement of a statutory objective. It also permits actions based on reasonable factors other than age. In accordance with section 304(a)(1) of the Act, the Secretary of the Department of Health, Education, and Welfare, (HEW) has issued government-wide regulations to guide the development of agency specific regulations by each Federal

agency that administers programs of Federal financial assistance. Final government-wide regulations were published in the *Federal Register* on June 12, 1979, (45 CFR 90).

Section 90.31(b) of the government-wide regulations requires the Department of Interior to issue proposed regulations applicable to its specific federally assisted programs and activities.

In addition to publishing specific regulations consistent with the government-wide regulations, the following actions are being taken by DOI in connection with implementation of the Act.

1. An appendix listing all age distinctions, which appear in Federal statutes and regulations and which affect the agency's programs of financial assistance, is required and will be included in the final regulations.

2. As a second step in the public information process, DOI must review any age distinctions it imposes on its recipients by regulation or by administrative action in order to determine whether these distinctions are permissible under the act. This review must be completed with 12 months after publication of agency final regulations and must be published for public comment in the *Federal Register*.

3. The act requires DOI to report annually to the Congress through HEW on its compliance and enforcement activities.

4. DOI is required to provide written notices to each recipient of the recipient's obligations under the Act, to provide technical assistance to recipients where necessary, and to make available educational materials explaining the rights and obligations of beneficiaries and recipients.

5. DOI is required to establish a procedure for processing complaints of age discrimination. The complaint handling procedure must include an initial screening by DOI and notice to complainants and recipients of their rights and obligations in the complaint process. All complaints which fall within the coverage of the Act will be referred to a mediation process managed by the Federal Mediation and Conciliation Service (FMCS).

6. DOI must review the effectiveness of its regulations 30 months after their effective date. The review is to be published in the *Federal Register* with an opportunity for public comment.

DOI's regulations are divided into four major parts: A—General; B—Standards for Determining Age Discrimination; C—Responsibilities of Recipients; D—Investigation, Conciliation, and Enforcement Procedures.

The general section of the regulations explains the purpose of DOI's age discrimination regulations and defines terms used throughout the document. Section 17.303(i) defines the term "recipient". It should be noted that these regulations do not apply to assistance programs administered by the Federal government directly to beneficiaries, e.g. individual fellowship award programs. However, the regulations may apply whenever direct aid is provided to an individual on condition that the aid be spent in providing services or benefits to others.

Although the HEW government-wide regulations and DOI regulations do not require written assurances in their grant agreements, the legal obligation of a recipient to comply with these regulations remains unchanged.

The general and specific prohibitions against discrimination on the basis of age (§ 17.304) as well as the exceptions of those prohibitions are set forth in Part B (§ 17.305). As a general rule, under the regulations, no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving DOI financial assistance.

The Act contains several exceptions which limit the general prohibitions against age discrimination. Section 304 (b)(1) of the Act permits the use of age distinctions which are based on reasonable factors other than age. The regulation provides definitions for two terms which are essential to an understanding of those exceptions: "Normal operation" and "statutory objective" (§ 17.305(a)). "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives. "Statutory objective" is defined to mean any purpose which is explicitly stated in a Federal statute, State statute or local statute or ordinance.

The regulations establish a four part test, all parts of which must be met for an explicit age distinction to satisfy one of the statutory exceptions and to continue in use in a federally assisted program. This four part test will be used to scrutinize age distinctions which are imposed in the administration of DOI's assisted programs, but which are not explicitly authorized by a Federal, State or local statute.

Recipients of DOI funds also are permitted to take an action otherwise prohibited by the Act, if the action is based on "reasonable factors other than age." In that event, the action may be taken even though it has a

disproportionate effect on persons of different ages. However, according to the regulations (17.305(c)) the factor other than age must bear a direct and substantial relationship to the program's normal operation or to the achievement of a statutory objective.

Part C sets forth the duties of DOI recipients. DOI recipients are responsible for ensuring that their programs and activities are in compliance with the Act and DOI regulations.

Where a DOI recipient passes on financial assistance to subrecipients, the recipient must notify subrecipients of their obligations under the regulations (§ 17.308). Each recipient and each subrecipient would be required to complete a one-time written self-evaluation of its compliance with the proposed regulations. The self-evaluation must be kept on file for three years from the effective date of the regulations and made available to the public upon request.

Part D of the proposed regulations establishes the procedures for investigation, conciliation, and enforcement of the Act. This section closely reflects the procedural requirements included in HEW's government-wide regulations.

Section 17.313 introduces mediation into the complaint process for age discrimination. DOI will refer all complaints of discrimination under the Act to the Federal Mediation and Conciliation Services (FMCS), which was designated by the Secretary of HEW to manage the mediation process.

Complainants and recipients are required to participate in the effort to reach a mutually satisfactory mediated settlement of the complaint. Mediation may last no more than 60 days from the date DOI first receives the complaint. No further action will be taken by DOI in connection with a successfully mediated complaint.

DOI will, however, investigate complaints that are unresolved after mediation or are reopened because the mediation agreement is violated.

Finally, the regulations permit DOI to disburse withheld funds to an appropriate alternate recipient. The alternate recipient must be in compliance with the regulations and must demonstrate the ability to achieve the goals of the program for which the funds were originally extended.

Dated: December 21, 1979.

James A. Joseph,
Under Secretary of the Interior.

The Department of the Interior proposes to add Subpart C to 43 CFR Part 17 as set forth below:

Subpart C—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance

General

Sec.

17.301 What is the purpose of DOI's age discrimination regulations?

17.302 To what programs do these regulations apply?

17.303 Definitions.

Standards for Determining Age Discrimination

17.304 Rules against age discrimination.

17.305 Exceptions to the rules against age discrimination.

17.306 Burden of proof.

Responsibilities of Recipients

17.307 General responsibilities.

17.308 Notice to subrecipients.

17.309 Self-evaluation.

17.310 Information requirements.

Investigation, Conciliation, and Enforcement Procedures

17.311 Compliance reviews.

17.312 Complaints.

17.313 Mediation.

17.314 Investigation.

17.315 Prohibition against intimidation or retaliation.

17.316 Compliance procedure.

17.317 Hearings.

17.318 Notices, decisions, and post-termination proceedings.

17.319 Remedial action by recipients.

17.320 Alternate funds disbursement procedure.

17.321 Exhaustion of administrative remedies.

Appendix A—Coverage and Definitions, Standards for Determining Age Discrimination, Burden of Proof (from 45 CFR 90).

Appendix B—HEW Activities (from 45 CFR 90).

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*; (45 CFR 90.)

Subpart C—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance.

General

§ 17.301 What is the purpose of DOI's age discrimination regulations?

The purpose of these regulations is to set out DOI's policies and to implement departmental procedures under the Age Discrimination Act of 1975 according to the government-wide age discrimination regulations at 45 CFR Part 90. (Published at 44 FR 33768, June 12, 1979). The Act and the government-wide regulations prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and the government-wide regulations permit federally assisted programs and activities, and recipients of Federal funds, to continue to use age distinctions

and factors other than age which meet the requirements of the Act and the government-wide regulations.

§ 17.302 To what programs do these regulations apply?

These regulations apply to each DOI recipient and to each program or activity operated by the recipient which receives or benefits from Federal financial assistance provided by DOI.

§ 17.303 Definitions.

As used in these regulations, the term:

(a) "Act" means the Age Discrimination Act of 1975, as amended, (Title III of Public Law 94-135).

(b) "Action" means any act, activity, policy, rule standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

(c) "Age" means how old person is, or the number of elapsed years from the date of a person's birth.

(d) "Age distinction" means any action using age or an age-related term.

(e) "Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children", "adult", "older persons", but not "student").

(f) "Discrimination" means unlawful treatment based on age.

(g) "DOI" means the United States Department of the Interior.

(h) "Federal financial assistance" means any grant, entitlement, loan, cooperative agreement contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or interest in or use of property, including:

(i) Transfers or lease of property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "FMCS" means the Federal Mediation and Conciliation Service.

(j) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political sub-division, 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. Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance.

(k) "Secretary" means the Secretary of the Department of the Interior or his or her designee.

(l) "Subrecipient" means any of the entities in the definition of "recipient" to which a recipient extends or passes on Federal financial assistance. A subrecipient is generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

(m) "United States" means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, the Trust Territory of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.

Standards for Determining Age Discrimination

§ 17.304 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in § 17.305

(a) General rule: No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) Specific rules: A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§ 17.305 Exceptions to the rules against age discrimination.

(a) Definitions. For purposes of this section, the terms "normal operation" and "statutory objective" shall have the following meaning:

(1) "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

"Statutory objective" means any purpose of a program or activity expressly stated in any Federal statute, state statute, or local statute or

ordinance adopted by any elected, general purpose legislative body.

(b) Normal operation or statutory objective of any program or activity. A recipient is permitted to take an action otherwise prohibited by Section 17.304 if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(1) Age is used as a measure of approximation of one or more other characteristics; and

(2) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(3) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(4) The other characteristic(s) are impractical to measure directly on an individual basis.

(c) Reasonable factors other than age. A recipient is permitted to take an action otherwise prohibited by Section 17.304 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 17.306 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in § 17.305 (b) and (c) is on the recipient of Federal financial assistance.

Responsibilities of Recipients

§ 17.307 General responsibilities of recipients.

Each DOI recipient must ensure that its programs and activities comply with these regulations.

§ 17.308 Notice to sub-recipients.

Where a recipient passes on Federal financial assistance from DOI to subrecipients, the recipient shall provide the subrecipient written notice of their obligations under these regulations.

§ 17.309 Self-evaluation.

(a) Each recipient employing the equivalent of 15 or more full-time employees shall complete a one-time

written self-evaluation of its compliance under the Act within 18 months of the effective date of these regulations.

(b) In its self-evaluation, each recipient shall identify and justify each age distinction imposed in the program or activity receiving Federal financial assistance from DOI.

(c) Each recipient shall take corrective action whenever a self-evaluation indicates a violation of the Act or these regulations.

(d) Each recipient shall make the self-evaluation available on request to DOI and to the public for a period of three years following its completion.

§ 17.310 Information requirements.

Each recipient shall:

(a) Make available upon request to DOI information necessary to determine whether the recipient is complying with the Act and these regulations.

(b) Maintain and permit reasonable access by DOI to the books, records, accounts, and other recipient facilities and sources of information to the extent necessary to determine whether the recipient is in compliance with the Act and these regulations.

Investigation, Conciliation, and Enforcement Procedures

§ 17.311 Compliance reviews.

(a) DOI may conduct compliance reviews and pre-award reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. DOI may conduct these reviews even in the absence of a complaint against a recipient. The review may be as comprehensive as necessary to determine whether a violation of these regulations has occurred.

(b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, DOI will attempt to secure the recipient's voluntary compliance with the Act. If voluntary compliance cannot be achieved, DOI will arrange for enforcement as described in § 17.316.

§ 17.312 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with DOI, alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1979. A complaint must be filed within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause shown, DOI may extend this time limit.

(b) DOI will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Accepting as a sufficient complaint, any written statement which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant.

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

(3) Widely disseminating information regarding the obligations of recipients under the Act and these regulations.

(4) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(5) Notifying the complainant and the recipient (or their representatives) of their right to contact DOI for information and assistance regarding the complaint resolution process.

(c) DOI will return to the complainant any complaint outside the jurisdiction of these regulations, and will state the reason(s) why it is outside the jurisdiction of these regulations.

§ 17.313 Mediation.

(a) *Referral of complaints for mediation.* DOI will refer to the Federal Mediation and Conciliation Service all complaints that:

(1) Fall within the jurisdiction of the Act and these regulations; and

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible. There must be at least one meeting with the mediator before DOI will accept a judgment that an agreement is not possible. However, the recipient and the complainant need not meet with the mediator at the same time.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and recipient sign it. The mediator shall send a copy of the agreement to DOI. DOI will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement. However, DOI retains the right to monitor the recipient's compliance with the agreement.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) DOI will use the mediation process for a maximum of 60 days after receiving a complaint.

(f) Mediation ends if:

(1) 60 days elapse from the time DOI receives the complaint; or

(2) Prior to the end of that 60 day period, an agreement is reached; or

(3) Prior to the end of that 60 day period, the mediator determines that a agreement cannot be reached.

(f) The mediator shall return unresolved complaints to DOI.

§ 17.314 Investigation.

(a) *Informal inquiry.* (1) DOI will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of the initial inquiry, DOI will use informal fact finding methods, including joint or separate discussions with the complainant and recipient to establish the facts, and, if possible, settle the complaint on terms that are mutually agreeable to the parties. DOI may seek the assistance of any involved State program agency.

(3) DOI will put any agreement in writing and have it signed by the parties and an authorized official at DOI.

(4) The settlement shall not affect the operation of any other enforcement effort of DOI, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation.* If DOI Cannot resolve the complaint through informal means it will develop formal findings through further investigations of the complaint. If the investigation indicates a violation of these regulations, DOI will attempt to obtain voluntary compliance. If DOI cannot obtain voluntary compliance, it will begin enforcement as described in § 17.316.

§ 17.315 prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, inquiry, hearing, or other part of DOI's investigation, conciliation, and enforcement process.

§ 17.316 Compliance procedure.

(a) DOI may enforce the act and these regulations through:

(1) Termination of a recipient's Federal financial assistance from DOI under the program or activity involved where the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge. Therefore, cases which are settled in mediation, or prior to a hearing, will not involve termination of a recipient's Federal financial assistance from DOI.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) DOI will limit any termination under § 17.316(a)(1) to the particular program or activity DOI finds in violation of these regulations. DOI will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from DOI.

(c) DOI will take no action under paragraph (a) until:

(1) The Secretary has advised the recipient of its failure to comply with the Act and these regulations and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the Secretary has sent a written report of the circumstances and grounds of the action to the committees of Congress having legislative jurisdiction over the Federal program or activity involved. The Secretary will file a report whenever any action is taken under paragraph (a) of this section.

(d) DOI also may defer granting new Federal financial assistance from DOI to a recipient when a hearing under § 17.316(a)(1) is initiated.

(1) New Federal financial assistance from DOI includes all assistance for which DOI requires an application or approval, including renewal or

continuation of existing activities, during the deferral period. New Federal financial assistance from DOI does not include increases in funding as a result of changed computation of formula awards or assistance approved prior to the beginning of a hearing under § 17.316(a)(1).

(2) DOI will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 17.316(a)(1). DOI will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Secretary. DOI will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

§ 17.317 Hearings

The procedural provisions for those hearings required by § 17.316(a)(1) are contained in 43 CFR 17.8.

§ 17.318 Notices, decisions and post-termination proceedings.

All notices, decisions and post-termination proceedings, insofar as DOI is concerned, shall be made in accordance with 43 CFR 17.9.

§ 17.319 Remedial action by recipients.

Where DOI finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that DOI may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, DOI may require both recipients to take remedial action.

§ 17.320 Alternate funds disbursement procedure.

(a) When DOI withholds funds from a recipient under these regulations, the Secretary may disburse the withheld funds directly to an alternate recipient under the applicable regulations of the bureau or office providing the assistance.

(b) The Secretary will require any alternate recipient to demonstrate:

- (1) The ability to comply with these regulations; and
- (2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

§ 17.321 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and DOI has made no finding with regard to the complaint; or

(2) DOI issues any finding in favor of the recipient.

(b) If DOI fails to make a finding within 180 days or issues a finding in favor of the recipient, DOI will:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That the complainant may bring a civil action only in a United States district in which the recipient is located or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Secretary, the Attorney General of the United States, and

(iv) That the notice must state: the alleged violation of the act; the relief requested; the court in which the complainant is bringing the action; and, whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

[FR Doc. 80-83 Filed 1-2-80; 8:45 am]

BILLING CODE 4310-10-M

Get It Right

Thursday
January 3, 1980

Part IX

Department of Transportation

Federal Highway Administration

National Standards for Traffic Control Devices: Manual on Uniform Traffic Control Devices

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 625 and 655

[FHWA Docket No. 79-37]

National Standards for Traffic Control Devices: Manual on Uniform Traffic Control Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed amendments to the Manual on Uniform Traffic Control Devices.

SUMMARY: The FHWA is inviting comments on requests that it has received for changes to the Manual on Uniform Traffic Control Devices (MUTCD). The MUTCD contains the standards for traffic control devices which have been approved by the FHWA for use on all streets and highways open to public travel.

DATES: Comments must be received on or before July 1, 1980.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 79-37, FHWA, Room 4205, HCC-10, 400 Seventh Street SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET., Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard. The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (\$18.00).

FOR FURTHER INFORMATION CONTACT: Mr. James C. Partlow, Office of Traffic Operations, (202) 426-0411, or Mr. Lee J. Burstyn, Office of the Chief Counsel, (202) 426-0754, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET., Monday through Friday.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA) prepares and issues the national standards for traffic control devices used on all streets and highways open to public travel. These standards are published in the MUTCD which has been incorporated by reference into title 23 Code of Federal Regulations, Parts 625 and 655. The FHWA both receives requests and initiates recommendations for changes to the MUTCD.

Prior to June 12, 1979, FHWA routinely solicited advice and recommendations from the National Advisory Committee on Uniform Traffic Control Devices (NACUTCD) on requests for changes in the MUTCD. The FHWA terminated its sponsorship of NACUTCD on June 12, 1979, and will now process all revisions to the MUTCD in accordance with the informal rulemaking procedures of the Administrative Procedure Act (5 U.S.C. 553) and the Department of Transportation procedures issued pursuant to Executive Order 12044. However, the continued availability of the variety of interests, viewpoints, and technical skills formerly provided by NACUTCD is considered essential to the standards development process. A public meeting concerning alternative methods for assuring the availability of these interests, viewpoints, and skills was held on June 20, 1979. The notice for this public meeting was published in the Federal Register on May 22, 1979 (44 FR 29787, Docket 79-19). Final action on development of the alternative methods to be used will be taken following a detailed review and consideration of all comments received in response to Docket 79-19 which closed on September 1, 1979. The final action will require the revision of Section 1A-6 of the MUTCD, which describes a general procedure for processing requests for changes in the MUTCD.

Part A of this advance notice contains requests for changes in the MUTCD received or originated by FHWA and referred to a technical subcommittee of the former NACUTCD. No formal recommendations had been received on these requests prior to termination of the NACUTCD. Advice received from the respective technical subcommittees is included where available.

Part B contains requests for changes received by FHWA and suggested changes developed by FHWA subsequent to termination of the NACUTCD.

Each request has been assigned an identification number which indicates, by Roman numeral, the organizational part of the MUTCD affected and, by Arabic numeral, the order in which the request was received.

This advance notice is being issued so that interested persons may have an opportunity to participate in the processing of requests for amendments to the MUTCD. Based upon comments received and its own review, the FHWA will prepare a notice of proposed rulemaking for those requests that the agency proposes to adopt as amendments to the MUTCD. Any final amendments which result from that action will be published in the Federal

Register and incorporated by reference in the Code of Federal Regulations.

Part A—Requests Submitted and Considered by NACUTCD

1. Signs (Part II)

(a) *Request II-4 (Chng.)—Placement of Warning Signs.* Warning signs must be placed far enough ahead of the hazard or the noted condition to give the driver time to comprehend and react to the message on the sign and to perform any necessary maneuvers. One of the primary factors in determining the location of warning signs is vehicle speed, which affects the message comprehension time. Section 2C-3 of the MUTCD provides only general guidance.

This request, which originated within the FHWA, proposes that a table of recommended distances for sign placement relating to prevailing speed and conditions affecting message comprehension be added to the MUTCD. This table would provide traffic engineers with better guidance in selecting the proper location of warning signs.

A task force of the NACUTCD reviewed this proposal in great detail and developed a table listing minimum recommended sign placement distances that should be used for three conditions: (A) where the driver needs extra time for message comprehension and executing a decision because of a complex driving situation; (B) where a driver is likely to be required to stop; and (C) where a driver will likely be required to slow down to a specific speed.

(b) *Request II-5 (Chng.)—Recreational and Cultural Area Interest Signs.* The purpose of this proposal, which originated within the FHWA, is to include in the MUTCD illustrations and guidelines for the use of certain National Park Service recreation symbols. These symbols were adopted by FHWA as national standards, by reference, in 1974. [Request Sn-84 (Chng.) FHWA, Recreational Symbol signs, approved August 30, 1974.]

(c) *Request II-23 (Chng.)—Signing for Bypass Lanes.* A bypass lane is an improvement added to the right of the roadway and designed to permit through vehicles to pass on the right of a vehicle waiting to make a left turn from a two-way, two-lane roadway. Normally such a feature is used as an intermediate measure between constructing a full left-turn lane and doing nothing.

The request, which was submitted by the Highway Department of Lake County, Illinois, contends that many States make use of bypass lanes, and since there are no national standards for

signing this condition, the States are using a variety of traffic control measures. The request asks that national standards for signing bypass lanes be adopted and suggests that possible signing could include a regulatory-type sign identifying the bypass lane and its special operational characteristics along with warning signs to advise drivers of possible turning movements of other vehicles.

(d) *Request II-24 (Chng.)—Modified Parking Area Sign.* Section 2D-40 of the MUTCD provides for a parking area sign which has a green legend, arrow, and border on a white background. The legend consists of the word PARKING with an oversize letter P. The Clearwater, Florida Downtown Development Board has requested approval of an additional parking area sign which is claimed to be more attractive, clearer, and to have greater attention-getting potential in an urban environment. The proposed sign consists of white legend and arrow and a white and green automobile symbol on a brown background.

(e) *Request II-26 (Chng.)—Application of Advance Street Name Signs.* Section 2D-39 of the MUTCD permits the installation of an Advance Street Name sign posted below an intersection warning sign (i.e., Crossroad Ahead, Side Road Ahead, Tee Intersection Ahead signs, etc.) on an approach to an intersection. This request from the Michigan Department of Transportation is for a change in the MUTCD to also permit the installation of Advance Street Name signs posted below the Stop Ahead, Yield Ahead, Signal Ahead, etc., signs on important intersection approaches. This change would eliminate the need for independent sign supports and save money.

The NACUTCD Subcommittee on Signs informally expressed approval of the concept but also advised careful wording of the change to avoid installation of Advance Street Name signs with other types of warning signs.

(f) *Request II-27 (Chng.)—Prioritized Listing of Basic Sign Groups.* This request from the Subcommittee on Signs of the NACUTCD, is for an addition to the MUTCD to provide a prioritized listing of eight basic groups of highway signs. These groups are: (1) regulatory, (2) warning, (3) navigational guide, (4) emergency services, (5) motorist services, (6) public transportation, (7) traffic generator, and (8) general information.

A prioritized listing could serve as a guide or recommendation to those installing signs, particularly with regard to sign preference or relative location in areas where the number of signs that

may be installed or the available space is limited.

(g) *Request II-28 (Chng.)—911—Emergency Sign.* Pinellas County, Florida, has initiated the "911 Emergency" system which allows any telephone user within the county to dial the emergency telephone number 911 and be speedily connected to the appropriate emergency agency.

Notices informing the public of the "911 Emergency" system have been placed in telephone booths, and signs have been erected along the county road system. The county wants to install signs along other highways and requests adoption of a standard sign for this purpose since no standard presently exists.

The NACUTCD Subcommittee on Signs suggested that those seeking assistance through the emergency system would have to first locate a telephone, where the emergency information would already be posted. Installation of miscellaneous highway signs can detract from essential driver information and create the hazard of an additional roadside obstacle.

(h) *Request II-29 (Chng.)—Application of Winding Road Sign.* This request from the Michigan Department of Transportation concerns the application of the Winding Road sign (W1-5). Section 2C-8 of the MUTCD restricts application of the Winding Road sign to locations where there is a series of five or more curves, each separated by short, straight sections of road. The Reverse Curve sign must be used where there is a series of three or four curves separated by short, straight sections.

In using the Reverse Curve sign, the requester feels that motorists are led to believe that there are only two curves. It is sometimes necessary to place another Reverse Curve sign on the second curve section to warn of the third and fourth curves. This could confuse the motorist who views the actual roadway curving in the opposite direction from the configuration depicted on the warning sign.

In order to avoid confusing installation procedures relating to the Reverse Curve sign and to reduce the number of roadside obstacles, the requester believes that Section 2C-8 should be revised to also permit the use of the Winding Road sign (W1-5) where there are only three or four curves.

(i) *Request II-33 (Chng.)—Hazardous Material Routing Sign.* This request from the Texas State Department of Highways and Public Transportation states that there is a need for a standard sign to direct operators of vehicles carrying hazardous material along

specific designated routes while traversing densely populated areas. As a minimum, there should be a sign on each major highway approaching a city providing information as to alternative routing for vehicles with hazardous materials. There may also be a need to establish a unique type of sign that could be used as a trailblazer guide for complicated routings through an area.

The requester has suggested a sign format for approaches utilizing a yellow warning sign symbol with the words Hazardous Material in the upper left corner of a larger rectangular sign providing information as to acceptable alternate routings.

An example of a trailblazer now in use is a rectangular sign with the letters HC inside a red circle.

2. Markings (Part III)

(a) *Request III-3 (Chng.)—Reduced Edgeline Widths to 2 Inches.* Section 3A-6 of the MUTCD provides that the minimum width of a line marking the edge of a roadway shall be 4 inches. Sacramento County, California, has requested a change to reduce the minimum allowable width to 2 inches.

This request originated a number of years ago and has been the subject of considerable study and discussion. In 1978 the NACUTCD recommended the use of 2-inch edgelines on roads other than freeways and expressways but only where warranted. However, the NACUTCD did not indicate what these warrants should be. Safety considerations indicate that further study and comment would be beneficial in determining the conditions, if any, under which 2-inch wide edgelines would be warranted.

(b) *Request III-9 (Chng.)—Use and Spacing of Raised Pavement Markers.* Although the MUTCD provides detailed guidance on the use of pavement marking lines, there is no guidance in the MUTCD on the placement of raised pavement markers used to supplement or simulate marking lines.

The Amerace Corporation of Niles, Illinois, has requested the addition of such guidance to the MUTCD.

(c) *Request III-12 (Chng.)—Mandatory Centerlines.* The MUTCD provides guidelines for the use of pavement marking centerlines but does not mandate their use on any highway.

This request, which originated within the FHWA, is for a change in the MUTCD to require that centerlines be marked on all paved highways:

(1) in rural districts, on two-lane pavements 16 feet or more in width with prevailing speeds of 35 miles per hour or more;

(2) in residential or business districts, on all through highways, and on other highways where there are significant traffic volumes; and

(3) on all undivided pavements of four or more lanes.

(d) *Request III-13 (Chng.)—*

Mandatory Lane Lines. The MUTCD requires lane line markings on all Interstate highways but not on any other class of highway. This request, which originated within the FHWA, is for a change in the MUTCD to require lane line markings on all multilane highways.

Although the NACUTCD Subcommittee on Markings recommended approval of this request, the NACUTCD did not concur and voted for a resubmittal of the request for further consideration.

(e) *Request III-14 (Chng.)—Marking*

Bypass Lanes. This request from the Highway Department of Lake County, Illinois, is a supplement of II-23

(Chng.)—*Signing for Bypass Lanes.*

Pavement markings in bypass areas should encourage the shifting of vehicles to the bypass lane in the approach area while discouraging vehicle lane shifting in the full width lane area. Also, through traffic not needing to use the bypass lane should not be encouraged by the markings to shift lanes. The requester asks that standard marking patterns be adopted for bypass lanes.

3. *Traffic Controls for Street and Highway Construction and Maintenance Operations (Part VI)*

(a) *Request VI-1 (Chng.)—Spacing of Channelizing Devices.* The MUTCD specifies that the spacing of channelizing devices used to close a lane should be approximately equal in feet to the speed limit (e.g., devices should be 35 feet apart where the speed limit is 35 MPH). The MUTCD does not specify an exact spacing of channelizing devices used to separate the open travel lanes from closed lanes or work area. A request was made by the FHWA to change the MUTCD to specify the spacing of channelizing devices along work areas. This request remains under review pending the completion of a research study on the effectiveness of channelizing devices. The request is for the inclusion of more guidance based upon the travel speed of the motorist and allowance for either curves or straight sections of roadway.

(b) *Request VI-3 (Chng.)—Temporary Markings for Construction and Maintenance Areas.* The MUTCD provides detailed requirements for pavement marking patterns used on completed roads open to unrestricted travel, but provides no guidance for patterns to be used for temporary

markings in work zones where road work is in progress but traffic is permitted to pass. Some States use very short pavement marking stripes with long gaps to save paint or materials in areas where the markings will be used for short periods of time.

This request from the FHWA is for a change in the MUTCD to provide guidance on this subject and to achieve uniformity in the use of temporary markings.

4. *Traffic Control Systems for Railroad-Highway Grade Crossings (Part VIII)*

(a) *Request VIII-1 (Chng.)—Lateral Clearance for Flashing Lights and Gates.* This request, originated by the Railroad Subcommittee of NACUTCD, is to locate railroad crossing signal supports further from the edge of the road than is now customary.

Taking into consideration items dealing with the ability to see the device, safety aspects, and cost factors, the NACUTCD recommended against the request for the following reasons:

(1) it would require an increase in the length of the gate arm;

(2) since the signals would be less visible to motorists, cantilever gate arms would be necessary;

(3) if cantilever arms were not used, an increase in potential for train/vehicle collisions would exist; and

(4) an increase in maintenance effort for the alignment of roadside lights would be required.

The FHWA has not taken final action on the request as additional related information is anticipated to be developed through proposed research.

(b) *Request VIII-2 (Chng.)—Warning Signs on Roads Parallel to Railroads.* This request, originated by the Railroad Subcommittee of NACUTCD, is for adoption of a railroad crossing warning sign to be used on roads running parallel to a railroad. The sign would warn drivers traveling on the parallel road.

The MUTCD requires the use of a Railroad Advance Warning sign in advance of every grade crossing with some minor exceptions. Placement of the sign is normally 750 feet or more in advance of the crossing in rural areas and 250 feet in urban areas. They may be as close as 100 feet where low speeds are prevalent. Where the distance between the parallel road and the railroad is relatively short, there is insufficient space to install a standard Railroad Advance Warning sign. Thus, it was recommended that there should probably be a distance criterion established where a new Railroad Advance Warning sign would be installed.

(c) *Request VIII-5 (Chng.)—Use of Stop Signs at Rail-Highway Grade Crossings.* Section 2B-5 of the MUTCD recommends that STOP signs should not be installed indiscriminately at unprotected rail-highway grade crossings and also that STOP signs should only be installed as an interim measure while the plans for lights, gates, or other means of traffic control are being prepared.

A recently completed research study developed guidelines for the use of STOP signs at rail-highway crossings as a permanent traffic control device. The results of this study have been published in the following two columns.

"Safety Features of Stop Signs at Rail-Highway Grade Crossings," Vol. I—Executive Summary, Report No. FHWA-RD-78-40, April 1978.¹

Vol. II—Technical Report, Report No. FHWA-RD-78-41, March 1978.²

Comments on the following two questions on the use of STOP signs at rail-highway grade crossings are requested by the FHWA:

1. Should any changes be made in the MUTCD concerning the use of STOP signs at rail-highway grade crossings?

2. If changes should be made, what should the changes be?

5. *Traffic Controls for Bicycle Facilities (Part IX)*

(a) *Request IX-3 (Chng.)—Hostel Signs.* This is a reconsideration of an earlier request from the American Youth Hostels, Inc.

Hosteling is a concept of inexpensive lodging brought over from the European countries. In those countries, a sign depicting a pine tree and house is used to direct travelers to hostels.

The requestor believes that with the increase of foreigners touring the United States and the increase in bicycle touring through the development of long-distance bicycle routes, the European symbol sign should be adopted as the United States standard. The proposed sign is similar to the present Camping/Picnicking signs. The similarity is so close that its use in conjunction with roadways shared with bicycles could mislead motorists.

Prior to its termination, the NACUTCD reviewed the initial request on this item. They believed that because of the limited and specialized use of such signs, hostellers' needs could be adequately addressed by use of their organization's handbook which lists all hostels in the United States, fees, special information pertaining to each hostel, and maps of most areas.

¹ and ² Available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

Part B—Requests Submitted After Termination of NACUTCD

1. Signs (Part II)

(a) *Request II-36 (Chng.)—Advance Rest Area Signs.* This request from a private individual suggests that highway agencies place signs at periodic intervals along highways to indicate the distance to the next rest area.

States are permitted to install guide signs for rest areas, usually 1 or 2 miles in advance of the site. Although this item is not specifically covered in the MUTCD, some States do place signs, such as NEXT REST AREA — MILES, but this practice is not uniform.

(b) *Request II-37 (Chng.)—Yield Signs in Conjunction With Stop Signs.* This request from the Michigan Department of Transportation is to modify Section 2B-8 of the MUTCD to permit the YIELD sign to be used in conjunction with the STOP sign for the major flow of traffic at intersections.

The MUTCD has the following provisions relative to the use of YIELD signs with STOP signs and major traffic movements: YIELD signs should not ordinarily be placed to control the major flow of traffic at an intersection. They should not be erected on the approaches of more than one of the intersecting streets or highways or used at any intersection where there are STOP signs on one or more approaches, except, under special circumstances, to provide minor movement control within complex intersections."

(c) *Request II-39 (Chng.)—Dead End Signs on Intersecting Streets.* This request from the cities of Ocala and Tampa, Florida, is for the development of a standard sign specifically to advise motorists of an intersecting street that dead ends.

Section 2C-37 of the MUTCD provides for the use of signs with the legend DEAD END and NO OUTLET to warn of a street or road that has no outlet. The sign is posted at a sufficient advance distance to permit drivers to avoid the dead end if desired.

These signs are posted in a position to warn motorists who are already on the street which dead ends. Motorists on an intersecting street will not see the standard sign until the turn into the dead end street has been made.

(d) *Request II-41 (Chng.)—Grooved Pavement Sign.* Many highway agencies are using longitudinal pavement grooving to improve the wet traction characteristics of certain highway surfaces. Some motorists have complained that this longitudinal grooving can induce small lateral movements of vehicles which are passing over the surfaces.

To partially alleviate these complaints and the motorist's feeling that something is wrong with the vehicle, the Rubber Manufacturers Association of Washington, D.C., requested that the MUTCD require the installation of an advance warning sign along the highway to inform drivers that the pavement ahead is grooved. Use of this sign is now optional.

(e) *Request II-42 (Chng.)—Use of the Color Coral for Mass Transit Signs.* This request from a private individual proposed a change in the MUTCD to require that the color coral be used for the background of mass transit and park and ride facility signs.

The MUTCD currently requires that the background color of destination and distance signs, as well as signs to mass transit facilities, be green. The requester would treat signs to mass transit facilities as a special case destination sign for drivers changing from one mode of transportation to another. He feels that these signs get lost among the conglomeration of other green signs.

(f) *Request II-43 (Chng.)—Anti-Litter Symbol Sign.* This request by a private individual suggests adoption of a national symbol to discourage motorists from littering highways and national parks. Two symbols are proposed, one depicting a thumbs down illustration along with the prohibitive highway symbol (red circle-slash) and the other an abstract illustration of a container with an arrow pointing to the opening.

Presently, there are two trash receptacle symbols approved for use along roads and highways. One of these depicts a litter barrel and is approved for use on highways. The other is a more abstract rendering of a trash receptacle and presently is used only on National Park Service roads.

2. Markings (Part III)

(a) *Request III-16 (Chng.)—Permissive Use of Wrong-Way Pavement Marking Arrows.* Accident statistics and some tragic wrong-way accidents prompted FHWA, in 1971, to restate its policy of attempting to prevent wrong-way driving. This restatement of policy subsequently was reissued in 23 CFR 655.607 (Federal-Aid Highway Program Manual 6-8-3-1) which remained the standard for wrong-way traffic control until April 1977.

In April 1977, the requirements from the cited regulation were incorporated into the MUTCD through the addition of Sections 2A-31 and 2E-41, both entitled "Wrong-Way Traffic Control." These sections subsequently have been carried forward into the 1978 edition of the MUTCD.

One mandatory requirement of Section 2E-41 is that in each lane of an exit ramp, one or more pavement marking arrows shall be placed near the crossroad terminal where it would clearly be in sight of a wrong-way driver. To be in conformance with the MUTCD, there is no waiver of this requirement.

A group of States officials recognizes that in some States, and more specifically at some locations in almost every State, there are wrong-way movement problems. However, they feel that requiring wrong-way pavement arrows at all exits without consideration of need is an unnecessary expenditure of public funds.

The Ohio Department of Transportation has requested that the MUTCD language be revised from the mandatory requirement for pavement marking arrows to one of permissive usage.

(b) *Request III-17 (Chng.)—Standard Markings for Angle Parking Spaces.* The FHWA has prohibited the use of angle parking on Federal-aid projects for several years because of the adverse effect on street capacity, safety, and operation. It is now recognized that angle parking may have application in some areas under certain conditions.

The MUTCD indicates that pavement markings can encourage more orderly and efficient use of parking spaces. Figure 3-16 provides typical parking space limit markings for parallel parking. However, the MUTCD contains no standards for marking angle spaces.

The FHWA suggests that a standards pattern be established for angle space markings to supplement Figure 3-16. There may also be a need to provide some type of longitudinal line to separate the parking lane from the traffic lanes, especially where there is a buffer zone between the through lanes and the parking area.

(c) *Request III-18 (Chng.)—Mandatory Marking of Interchange Ramps.* Intersections and interchanges are generally areas where accident potential is high. These are locations where drivers are required to make maneuvering decisions and where frequent driver confusion occurs. It is essential that proper and well maintained pavement markings be provided, especially at interchange exit ramps, for positive guidance.

Based upon field reviews of completed highway projects by an FHWA Safety Review Task Force, the FHWA suggests that Section 3B-11 of the MUTCD be revised to require, as a minimum, pavement markings in advance of exit ramps. These markings would include (1) dotted extension of

the right edgeline, (2) extension of the dashed line for parallel slow down lanes, and (3) marking the channelizing lines between the main roadway and exiting ramp, ash shown in Figure 3-11 of the MUTCD.

3. Signals (Part IV)

(a) *Request IV-13 (Chng.)—Dual Circular Indication Traffic Signals on Limited-Use Roadways.* The Madison, Wisconsin Department of Transportation has requested a change in the MUTCD to permit use of 2 lens signal which can display all 3 colors (green, yellow, red) on limited-use roadways as an alternative to the conventional 3 lens signal. The yellow and green signal indications are displayed alternately through the same signal lens. The proposed change was requested following favorable experience in 2 years of experimentation in Madison, Wisconsin.

(b) *Request IV-15 (Chng.)—Strobe Lights.* This request from Montgomery County, Maryland, is for the adoption of the strobe light as an optional traffic control device when used in conjunction with conventional traffic signals. The strobe would be added to a standard three-section signal head and placed on top of a nonflashing conventional red signal section to call attention to the red signal indication. Montgomery County, Maryland, and the District of Columbia have reported completion of their successful experimentation with the device. Portland, Oregon; Charleston, South Carolina; and Morgan County, Indiana, have indicated favorable experience with the device but have not yet submitted final reports to FHWA. Approval had recently been granted by FHWA to Dodge City, Kansas, to experiment further with the device.

(c) *Request IV-17 (Chng.)—Flashing Signal Display for Fire Preemption.* This request from a private individual is for the revision of Section 4B-22 of the MUTCD to provide for uniformity in the preemption of signals for fire emergency vehicles by adopting, as a standard, the use of flashing yellow on the route used by the emergency vehicles and flashing red for the side street.

(d) *Request IV-18 (Chng.)—No turn on Walk.* The request from West Hartford, Connecticut is for the adoption of a "No Turn on Walk" sign at signalized intersections where it is desired to prohibit right turns on red during a signal phase when pedestrians have complete use of the intersection.

4. Traffic Controls for Street and Highway Construction and Maintenance Operations (Part VI)

(a) *Request VI-8 (Chng.)—Orange Stop Ahead and Yield Ahead Symbol Signs.* The Alabama Highway Department has requested a change in the MUTCD to provide that the Stop Ahead and Yield Ahead symbol warning signs be used with a yellow background when installed in construction and maintenance areas. The request contends (1) that the prime purpose of these two symbols signs is to supplement regulatory signs and (2) that an orange background does not provide a satisfactory contrast for these symbols which are predominantly red. The MUTCD requires an orange background for warning signs used in construction and maintenance zones.

(b) *Request VI-9 (Chng.)—Prohibit Use of Metal Drums.* This request from the Alabama Highway Department is for a prohibition on the use of metal drums as channelizing devices. The request contends that metal drums may be hazardous to vehicles hitting them and that less hazardous channelizing devices are available and should be used.

(c) *Request VI-10 (Chng.)—Use of Yellow Background Signs in Work Zones.* The Pennsylvania Department of Transportation has requested an amendment to the MUTCD to change the required background color of warning signs used in work zones from orange to yellow. The request contends that yellow is more effective than orange under varying viewing conditions and also has a greater daytime recognition impact (contrast value) and greater nighttime recognition because of increased reflective qualities (intensity value).

Prior to 1971, yellow was the standard background color for warning signs in work zones. The background color was changed to orange in the 1971 edition of the MUTCD to provide a distinctive signing color for work areas and thereby have a greater recognition impact on motorists entering these work zones where the hazard potential is high.

(d) *Request VI-11 (Chng.)—Reflectorization of Signs.* This request, which originated within the FHWA, is for an amendment to the MUTCD to request that the entire area of construction and maintenance signs for all colors except black shall be reflectorized with a material that has a smooth, sealed outer surface which will display approximately the same size, shape, and color day and night. This change would, in effect, prohibit the use

of an inferior method of obtaining reflectorization (i.e., paint and glass beads).

(e) *Request VI-12 (Chng.)—Color of Reflectorized Material for Cones.* The MUTCD provides that cones and tubular markers shall be reflectorized or equipped with lighting devices when used at night. The color of the reflectorization is not specified. This request, which originated within the FHWA, would amend the MUTCD by specifying the color or colors (not yet determined) to be used on these devices.

(f) *Request VI-13 (Chng.)—Advance Warning Flashing Arrow Panels.* The present standards in Section 6E-7 of the MUTCD are written primarily to define the proper physical characteristics of flashing arrow panels. The FHWA has suggested that the MUTCD provide a better definition of both the proper and improper use of arrow panels in various work zone situations. A recent research study sponsored by FHWA and entitled "Guidelines for the Application of Arrow Boards in Work Zones" ³ has been completed and suggests the following:

(1) Use of the flashing arrow mode should generally be limited to lane closures and moving operations.

(2) Use of the flashing arrow mode should not generally be permitted for roadway diversions where there are no lane closures.

(3) For lane closures, arrow panels should be placed on the shoulder of the roadway adjacent to the start of the closed lane.

(4) For lane closures and moving operations, only the flashing arrow should be used. (Arrow panels are capable of showing other symbols.)

(g) *Request VI-14 (Chng.)—Two-Way Traffic on a Normally Divided Highway.* On September 17, 1979, FHWA issued an emergency final rule (44 FR 53739) which sets forth certain requirements for handling two-way traffic on a normally divided roadway on Federal-aid construction projects. This rule includes a requirement that where two-way traffic is operated, it shall be separated with either a positive barrier, (e.g., concrete "safety-shape" barrier) vertical panels, cones or drums. In addition, a positive barrier shall be used in the transition areas. Since this rule applies only to Federal-aid construction projects, the FHWA has suggested the adoption of appropriate standards for inclusion in the MUTCD to apply to all roadway work zones (i.e., Federal-aid and non-Federal-aid).

³ This study is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

(h) Request VI-15 (Chng.)—Use of Street Name Signs With Detour Signs.

The FHWA has suggested that Section 6B-38 of the MUTCD be revised to recommend the use of street name signs with M4-9 Detour sign for marking a detour from an unnumbered route. It was also requested that Figure 6-4 be modified to show the street name above the M4-9 sign.

Generally, the M4-9 sign is satisfactory for the motorists who wish to remain on the entire detoured route. Some motorists travel a portion of the detour route only because it overlaps their original intended route and there is a need to identify the detoured route with the closed street name.

(i) Request VI-16 (Chng.)—Use of Detour Ends Sign. A request which originated within the FHWA was to include a Detour Ends sign to Section 6B of the MUTCD.

Recent reviews conducted on various detour routes indicate that motorists traveling detour routes are searching for additional detour guidance signs or markers. It was noted that some motorists returned to the original route and were not aware of it. The proposed sign is 24 inches by 18 inches with a black message on an orange background.

This advance notice of proposed amendments to the MUTCD is issued under the authority of 23 U.S.C. 109(b) and (d), 315, and 402(a), and the delegation of authority in 49 CFR 1.48(b).

Note.—The Federal Highway Administration has determined that this document does not contain a significant proposal according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. Due to the preliminary nature of this inquiry, a full regulatory evaluation has not been prepared at this time.

Issued on December 28, 1979.

John S. Hassell, Jr.,
Deputy Administrator.

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CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes weekly a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the previous date of such list.

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| 19 CFR | | |
| 201 | 707 | 55 |
| 202 | 707 | 55 |
| 203 | 21, 707 | 55 |
| Proposed Rules | | |
| 411 | 48 | 55 |

to be consistent with the MUTCD. The MUTCD is the only standard for traffic signs and signals in the United States. The MUTCD is the only standard for traffic signs and signals in the United States. The MUTCD is the only standard for traffic signs and signals in the United States.

A. Request for Change

(a) Request IV-17 (Change)—*Red Circular Advance Traffic Signal as Located on Roadway*. The Maine, Wisconsin Department of Transportation has requested a change in the MUTCD to permit use of a new signal design. The design is a red circular advance traffic signal as located on a roadway. The design is a red circular advance traffic signal as located on a roadway. The design is a red circular advance traffic signal as located on a roadway.

(b) Request IV-22 (Change)—*Single Light*. This request from Montgomery County, Maryland, is for the adoption of the single light as an optional traffic signal design. The design is a single light as an optional traffic signal design. The design is a single light as an optional traffic signal design. The design is a single light as an optional traffic signal design.

(c) Request IV-17 (Change)—*Red Circular Advance Traffic Signal as Located on Roadway*. This request from a private individual is for the adoption of the red circular advance traffic signal as located on a roadway. The design is a red circular advance traffic signal as located on a roadway. The design is a red circular advance traffic signal as located on a roadway.

(d) Request IV-22 (Change)—*No Red on Walk*. This request from West Hartford, Connecticut is for the adoption of a "No Red on Walk" sign at signalized intersections where a red is enabled to prohibit right turn on red. The design is a "No Red on Walk" sign at signalized intersections where a red is enabled to prohibit right turn on red.

(e) Request IV-22 (Change)—*No Red on Walk*. This request from West Hartford, Connecticut is for the adoption of a "No Red on Walk" sign at signalized intersections where a red is enabled to prohibit right turn on red.

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Federal Register

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Thursday, January 3, 1980

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 523-3517
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- 523-5233 Executive Orders and Proclamations
 523-5235 Public Papers of the Presidents, and Weekly Compilation of Presidential Documents

Public Laws:

- 523-5266 Public Law Numbers and Dates, Slip Laws, U.S.
 -5282 Statutes at Large, and Index
 275-3030 Slip Law Orders (GPO)

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- 523-5239 TTY for the Deaf
 523-5230 U.S. Government Manual
 523-3408 Automation
 523-4534 Special Projects
 523-3517 Privacy Act Compilation

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-5127) Section in large and date

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

| Monday | Tuesday | Wednesday | Thursday | Friday |
|-----------------|------------|-----------|-----------------|------------|
| DOT/SECRETARY* | USDA/ASCS | | DOT/SECRETARY* | USDA/ASCS |
| DOT/COAST GUARD | USDA/APHIS | | DOT/COAST GUARD | USDA/APHIS |
| DOT/FAA | USDA/FNS | | DOT/FAA | USDA/FNS |
| DOT/FHWA | USDA/FSQS | | DOT/FHWA | USDA/FSQS |
| DOT/FRA | USDA/REA | | DOT/FRA | USDA/REA |
| DOT/NHTSA | MSPB/OPM | | DOT/NHTSA | MSPB/OPM |
| DOT/RSPA | LABOR | | DOT/RSPA | LABOR |
| DOT/SLSDC | HEW/FDA | | DOT/SLSDC | HEW/FDA |
| DOT/UMTA | | | DOT/UMTA | |
| CSA | | | CSA | |

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

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of

the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

REMINDERS

S. 585 / Pub. L. 96-162 To authorize the Secretary of the Interior to engage in a feasibility study. (Dec. 28, 1979; 93 Stat. 1241) Price \$.75.

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

Rules Going Into Effect Today

CIVIL AERONAUTICS BOARD

69640- 12-4-79 / Liberalization of regulation of foreign indirect cargo carriers (7 documents)

FEDERAL COMMUNICATIONS COMMISSION

67669 11-27-79 / FM broadcast station in Iron Mountain, Mich.; table of assignments

TRANSPORTATION DEPARTMENT

Coast Guard—

69299 12-3-79 / Benzene carriage requirements

69297 12-3-79 / COLREGS demarcation line at Capri Pass, Fla.

List of Public Laws

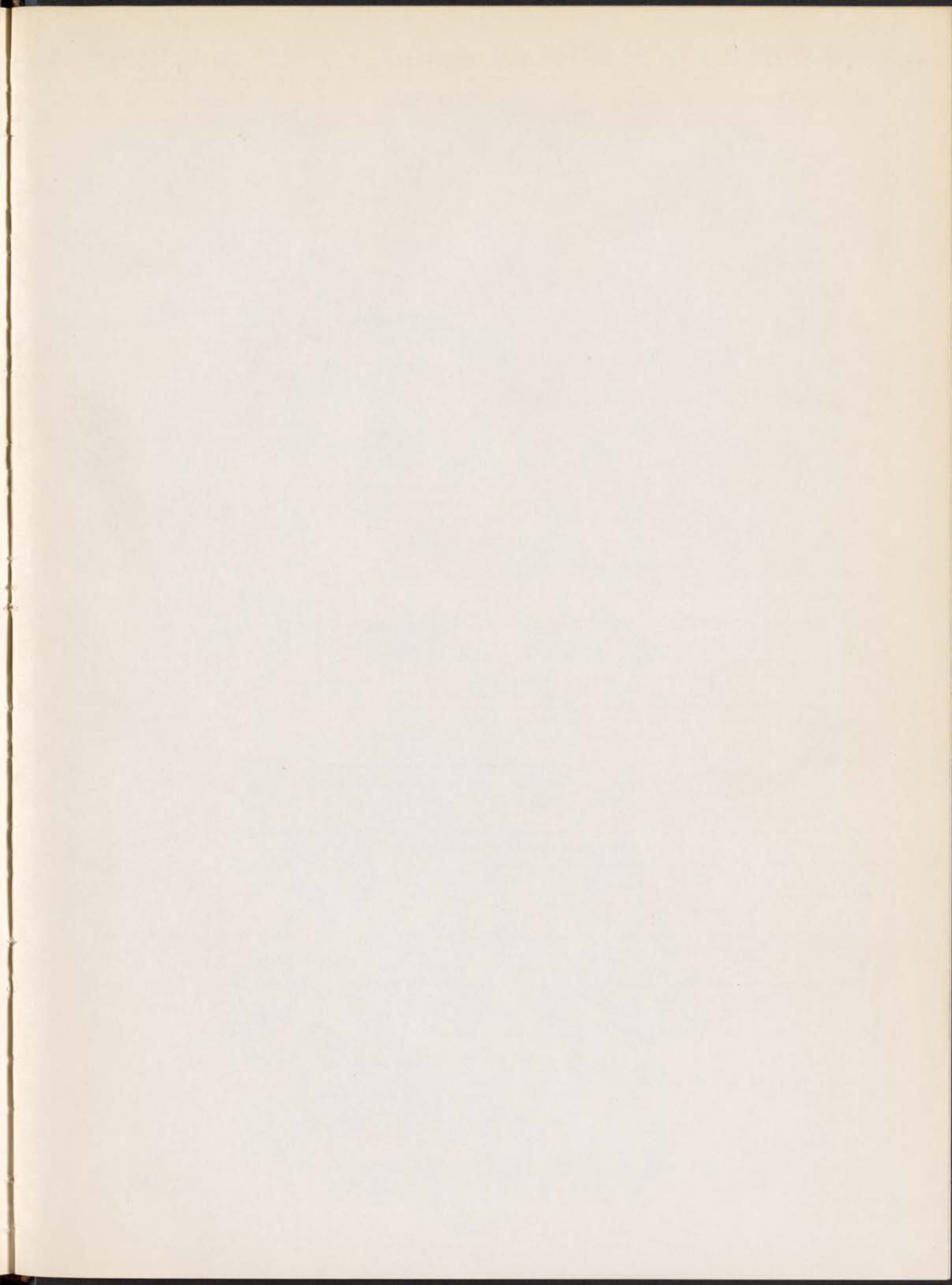
Last Listing January 2, 1980

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

S. 1143 / Pub. L. 96-159 To authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1980, 1981, and 1982, and for other purposes. (Dec. 28, 1979; 93 Stat. 1225) Price \$.75.

H.R. 5537 / Pub. L. 96-160 To amend the District of Columbia Self-Government and Governmental Reorganization Act with respect to the borrowing authority of the District of Columbia. (Dec. 28, 1979; 93 Stat. 1232) Price \$.75.

H.R. 4998 / Pub. L. 96-161 To authorize automatic transfer accounts at commercial banks, remote service units at Federal savings and loan associations, and share draft accounts at Federal credit unions during the period beginning on December 31, 1979, and ending on April 1, 1980. (Dec. 28, 1979; 93 Stat. 1233) Price \$.75.



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