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5-13-80
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federal register

Tuesday
May 13, 1980

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31544 **Grant Programs—Juvenile Delinquency** Justice/ LEAA publishes guidelines for National Priority Program and Discretionary Program

31457 **Grant Programs—Marine Pollution** Commerce/ NOAA invites applications for participation in two programs related to research, development and monitoring, apply by 5–16–80

31410 **Loan Programs** SBA proposes to remove interest rate ceiling of 8 percent and establish rate consistent with business loans; comments by 7–14–80

31604 **Loan Programs** DOE/SOLAR issues regulations establishing procedures and requirements for filing applications for loan guarantees to support urban waste facilities; effective 6–12–80 (Part IV of this issue)

31622 **Natural Gas** DOE/FERC issues rule, subject to Congressional approval, regarding the incremental pricing program; (Part V of this issue)

31682 **Petroleum Allocation** DOE/ERA proposes alternatives to Alaska North Slope Crude Oil Entitlements; comments by 6–13–80, hearings 6–3 and 6–5–80 (Part VI of this issue)

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Highlights

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

FEDERAL ELECTION COMMISSION

11 CFR Part 4

[Notice 1980-18]

Public Records and the Freedom of Information Act

AGENCY: Federal Election Commission.

ACTION: Final rule.

SUMMARY: This notice contains the final rule amending the Federal Election Commission Regulations implementing the Freedom of Information Act (5 USC 552). Specifically, this rule amends certain sections of 11 CFR Part 4 which were published as part of a final rule on June 8, 1979, and June 27, 1979, at 44 FR 33368 and 44 FR 37491, respectively.

The proposed rule upon which this final rule is based was published on September 17, 1979, at 44 FR 53924. A comment period was specified and one person commented. Slight changes have been made from the proposed rule, both to take into account the comment received and also to make the final rule conform to the Federal Election Campaign Act Amendments of 1979 with respect to section references, definitions, and enforcement procedures.

EFFECTIVE DATE: June 12, 1980.

FOR FURTHER INFORMATION CONTACT: Frederick S. Eiland, Publication Information Officer (202) 523-4065.

SUPPLEMENTARY INFORMATION: These amendments to the Commission's FOIA regulations reflect the fact that records made available to the public by the Commission pursuant to its statutory public disclosure duties (*see* 2 USC 437f(d), 437g(a)(4)(B)(ii), 438(a)) may also be legally obtained by the public through the Freedom of Information Act (5 USC 552). 11 CFR 4.3 and 4.4 have therefore been amended to include such records in the list of records available pursuant to the FOIA.

The amendments also reflect minor changes necessitated by the Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187 (1980).

The amendments include a schedule of fees which will be charged for records produced pursuant to the FOIA. These fees are based upon a study conducted by the Commission's Office of Planning and Management and are no higher than, and in most cases lower than, the direct cost of search and reproduction as calculated by that study.

With respect to records which are available both pursuant FOIA and also through the Commission's Public Disclosure Division, these amendments, together with 11 CFR Part 5 which is contained in a separate notice published today provide a uniform disclosure policy with respect to both procedures and fees.

The Commission received a comment with respect to the waiver of fees provision in the existing regulations stating that the criteria for determining whether a reduction or waiver of fees is in the "public interest" should be stated. In response to this comment, the amended regulations track the language of 5 USC 552(a)(4)(A) in an effort to indicate that waiver or reduction of fees is in the "public interest" when furnishing the requested information to the requester is considered by the Commission as primarily benefiting the public at large as opposed to primarily benefiting the requester or a limited class of interested persons.

The Commission intends by separate notices to promulgate proposed regulations implementing both the FOIA and the Commission's public disclosure duties under the Act with respect to computer tapes and indices. In the interim, requests for computer tapes and indices will be handled in accordance with a notice published in the *FEC Record*, Vol. 6 No. 2 (February 1980).

Chapter 1, Part 4 of Title 11, Code of Federal Regulations is amended as follows:

§ 4.1 [Amended]

1. 11 CFR 4.1(b) and (e) are amended, 11 CFR 4.1(f) is added:

* * * * *

(b) "Commissioner" means the Secretary of the Senate, the Clerk of the House, or their designees ex officio, or an individual appointed to the Federal Election Commission pursuant to 2 USC 437c(a).

* * * * *

(e) "Act" measn the Federal Election Campaign Act of 1971, as amended by the Federal Election Campaign Act Amendments of 1974, 1976, and 1979, and unless specifically excluded, includes Chapters 95 and 96 of the Internal Revenue Code of 1954 relating to public financing of Federal elections.

(f) "Public Disclosure Division" of the Commission is that division which is responsible for, among other things, the processing of requests for public access to records which are submitted to the Commission pursuant to 2 USC 437f(d), 437g(a)(4)(B)(ii), and 438(a).

* * * * *

§ 4.3 [Amended]

2. 11 CFR 4.3(b) and (c) are deleted and 11 CFR 4.3(a) is designated 11 CFR 4.3.

§ 4.4 [Amended]

3. 11 CFR 4.4(a)(3) is amended and 4.4(a)(10) through (15) are added:

(a) * * *

(3) Opinions of Commissioners rendered in enforcement cases and General Counsel's reports and non-exempt 2 USC 437g investigatory materials in enforcement files will be made available no later than 30 days from the date on which a respondent is notified that the Commission has voted to take no further action and to close such an enforcement file.

* * * * *

(10) Reports of receipts and expenditures, designations of campaign depositories, statements of organization, candidate designations of committees, and the indices compiled from the filings therein.

(11) Requests for advisory opinions, written comments submitted in connection therewith, and responses approved by the Commission.

(12) With respect to enforcement matters, any conciliation agreement entered into between the Commission and any respondent.

(13) Copies of studies published pursuant to the Commission's duty to serve as a national clearinghouse on election law administration.

(14) Audit reports (if discussed in open session).

(15) Agenda for Commission meetings.

§ 4.4 [Amended]

4. 11 CFR 4.4 (b), (c), (d), and (e) are redesignated 4.4 (c), (d), (e), and (f), respectively, and a new paragraph (b) is inserted as follows:

* * * * *

(b) Public access to the materials described in subparagraphs (a)(3) and (a)(10) through (a)(15) of this section is also available pursuant to the Federal Election Campaign Act of 1971, as amended, in accordance with the provisions of Part 5 of this chapter.

§ 4.7 [Amended]

5. 11 CFR 4.7 (a) and (b) are amended to read as follows:

(a) A request to inspect or copy Commission public records of the type referred to in 11 CFR 4.4(b) may be made in person or by mail. The Public Records Office is open Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. and is located on the first floor, 1325 K Street, N.W., Washington, D.C. 20463.

(b) Request for copies of records pursuant to the Freedom of Information Act shall be addressed to FOIA officer, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. The request shall reasonably describe the records sought with sufficient specificity with respect to names, dates, and subject matter, to permit the records to be located. A requester will be promptly advised if the records cannot be located on the basis of the description given and that further identifying information must be provided before the request can be satisfied.

* * * * *

§ 4.9 [Amended]

6.11 CFR 4.9 is amended to read as follows:

(a) Fees will be charged for copies of records which are furnished a requester under this part and for the staff time spent in locating and reproducing such records. The fees to be levied for services rendered under this part shall not exceed the Commission's direct costs of processing requests for these records enumerated in section 4.4(a) of this part computed on the basis of the actual number of copies produced and the staff time expended in searching for and reproducing such copies in accordance with the following schedule of standard fees:

Paper reproduction of documents by Kodak, IBM, and Xerox copiers—$.05 per page plus any staff time.
Paper reproduction of microfilm prints made overnight in Baltimore lab—$.10 per page (no staff time).
Paper reproduction of microfilm prints using Microfilm Reader-Printers—$.10 per page plus any staff time.
Staff time/first half hour—no charge.
Staff time/each additional half hour—$2.50.
Copy of transcription of Commission proceedings not previously transcribed—$3.00 per page.
Copy of existing transcription of Commission proceedings—$.05 per page.
Record certification—$2.00 per order.
Microfilm-Index—$1.00 per reel.
Microfilm-Documents—$10.00 per reel.
Multicandiate Committee Index—$4.00.
Index of Committee/Sponsor or Sponsor/Committee—$10.00 each.
Office Account Index—$2.50.
Advisory Opinion Index—$5.10.
Report on Financial Activity—$5.00 per volume.
Financial Control and Compliance Manual—$7.50.

(b) In the event the anticipated fees for pending requests under this part from the same requester exceed $25.00, such records will not be searched for or made available, nor copies furnished unless the requester pays, or makes acceptable arrangements to pay, the total amount due, or if the fee is not precisely ascertainable, the approximate amount. In the event an advance payment hereunder shall differ from the actual fees due, an appropriate adjustment will be made at the time the copies are delivered or made available.

(c) The Commission may reduce or waive payments of fees hereunder if it determines that such waiver or reduction is in the public interest because the furnishing of the requester involved can be considered as primarily benefiting the general public as opposed to primarily benefiting the person or organization requesting the information.

Dated: May 2, 1980.

Robert O. Tiernan,

Chairman, Federal Election Commission.

[FR Doc. 80-14863 Filed 5-12-80; 8:45 am]

BILLING CODE 6715-01-M

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11 CFR Part 5

[Notice 1980-19]

Access to Public Disclosure Division Documents

AGENCY: Federal Election Commission.

ACTION: Final rule.

SUMMARY: This notice contains the final rule adding a new Part 5 to 11 CFR to implement the public access provisions of the Federal Election Campaign Act of 1971, as amended. Prior Commission policy was set forth in the announcement appearing at 40 FR 580 (July 7, 1975).

The proposed rule upon which this final rule is based was published on September 17, 1979, at 44 FR 53924. A comment period was specified and one person commented. Slight changes have been made from the proposed rule both to take into account the comment received and also to make the final rule conform to the Federal Election Campaign Act Amendments of 1979 with respect to section references, definitions, and enforcement procedures.

EFFECTIVE DATE: June 12, 1980.

FOR FURTHER INFORMATION CONTACT: Frederick S. Eiland, Public Information Officer (202) 523-4143.

SUPPLEMENTARY INFORMATION: These regulations create a new Part 5 in 11 CFR which contains a description of those documents which are available to the public pursuant to the Commission's public disclosure duties (see 2 U.S.C. 437f(d), 437g(a)(4)(B)(ii), 438(a)) and prescribes fees to be charged for their location and reproduction.

The schedule of fees is based upon a study conducted by the Commission's Office of Planning and Management and are no higher than, and in most cases lower than, the direct cost of search and reproduction as calculated by that study.

Minor changes have been made from the proposed regulations where necessitated by the Federal Election Campaign Act Amendments of 1979, Pub. L. 96-187 (1980).

With respect to records covered by this part, these regulations, together with the amendments to 11 CFR Part 4 which are contained in a separate notice published today, provide a uniform disclosure policy with respect to both procedures and fees.

The Commission received a comment with respect to the waiver of fees provision in the proposed regulations stating that the criteria for determining whether a reduction or waiver of fees is in the "public interest" should be stated. In response to this comment, the regulation tracks the language of 5 U.S.C. 552(a)(4)(A) in an effort to indicate that waiver or reduction of fees is in the "public interest" when furnishing the requested information to the requestor is considered by the Commission as primarily benefiting the public at large as opposed to primarily benefiting the requestor or a limited class of interested persons.

The Commission intends by separate notices to promulgate proposed regulations implementing both the FOIA and the Commission's public disclosure duties under the Act with respect to computer tapes and indices. In the

interim, requests for computer tapes and indices will be handled in accordance with a notice published in the *FEC Record*, Vol. 6, No. 2 (February 1980).

Chapter I of Title II Code of Federal Regulations is amended by the addition of the following new part:

PART 5—ACCESS TO PUBLIC DISCLOSURE DIVISION DOCUMENTS

Sec.
5.1 Definitions.
5.2 Policy on disclosure of records.
5.3 Scope.
5.4 Availability of records.
5.5 Request for records.
5.6 Fees.

Authority: 2 U.S.C. 437f(d), 437g(a)(4)(B)(ii), 438(a), and 31 U.S.C. 483a.

§ 5.1 Definitions.

(a) "Commission" means the Federal Election Commission established by the Federal Election Campaign Act of 1971, as amended.

(b) "Commissioner" means the Secretary of the Senate, the Clerk of the House, or their designees, ex officio, or an individual appointed to the Federal Election Commission pursuant to 2 U.S.C. 437c(a).

(c) "Request" means to seek access to Commission materials subject to the provisions of the Federal Election Campaign Act of 1971, as amended.

(d) "Requestor" is any person who submits a request to the Commission.

(e) "Act" means the Federal Election Campaign Act, as amended by the Federal Election Campaign Act Amendments of 1974, 1976, and 1979, and unless specifically excluded, includes Chapters 95 and 96 of the Internal Revenue Code of 1954 relating to public financing of Federal elections.

(f) "Public Disclosure Division" of the Commission is that division which is responsible for, among other things, the processing of requests for public access to records which are submitted to the Commission pursuant to 2 U.S.C. 437g(a)(4)(B)(ii), and 438(a).

§ 5.2 Policy on disclosure of records.

(a) The Commission will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the rights of persons contracting with the Commission with respect to trade secret and commercial or financial information entitled to confidential treatment, the need for the Commission to promote free internal policy deliberations and to pursue its official activities without undue disruption.

(b) Nothing herein shall be deemed to restrict the public availability of Commission records falling outside provisions of the Act, or to restrict such public access to Commission records as is available pursuant to the Freedom of Information Act and the rules set forth as Part 4 of this chapter.

§ 5.3 Scope.

(a) The regulations in this part implement the provisions of 2 U.S.C. 437f(d), 437g(A)(4)(B)(ii), and 438(a).

(b) Public access to such Commission records as are subject to the collateral provisions of the Freedom of Information Act and are not included in the material subject to disclosure under this part (described in 11 CFR 5.4(a)) shall be governed by the rules set forth as Part 4 of this chapter.

§ 5.4 Availability of records.

(a) In accordance with 2 U.S.C. 438(a), the Commission shall make the following material available for public inspection and copying through the Commission's Public Disclosure Division:

(1) Reports of receipts and expenditures, designations of campaign depositories, statements of organization, candidate designation of campaign committees and the indices compiled from the filings therein.

(2) Requests for advisory opinions, written comments submitted in connection therewith, and responses issued by the Commission.

(3) With respect to enforcement matters, any conciliation agreement entered into between the Commission and any respondent.

(4) Opinions of Commissioners rendered in enforcement cases and General Counsel's report and non-exempt 2 U.S.C. 437g investigatory materials in enforcement files will be made available no later than 30 days from the date on which a respondent is notified that the Commission has voted to take no further action and to close such an enforcement file.

(b) The provisions of this part apply only to existing records; nothing herein shall be construed as requiring the creation of new records.

(c) In order to ensure the integrity of the Commission records subject to the Act and the maximum availability of such records to the public, nothing herein shall be construed as permitting the physical removal of any Commission records from the public facilities maintained by the Public Disclosure Division other than copies of such records obtained in accordance with the provisions of this part.

(d) Release of records under this section is subject to the provisions of 5 U.S.C. 552a.

§ 5.5 Request for records.

(a) A request to inspect or copy those public records described in 11 CFR 5.4(a) may be made in person or by mail. The Public Disclosure Division is open Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. and is located on the first floor, 1325 K Street, Northwest, Washington, D.C. 20463.

(b) Each request shall describe the records sought with sufficient specificity with respect to names, dates and subject matter to permit the records to be located with a reasonable amount of effort. A requestor will be promptly advised if the requested records cannot be located on the basis of the description given and that further identifying information must be provided before the request can be satisfied.

(c) Requests for copies of records not available through the Public Disclosure Division shall be addressed to the FOIA Officer, Federal Election Commission, 1325 K Street, Northwest, Washington, D.C. 20463. Requests for Commission records not described in 11 CFR 5.4(a) shall be treated as requests made pursuant to the Freedom of Information Act (5 U.S.C. 552) and shall be governed by 11 CFR Part 4. In the event that the Public Disclosure Division receives a written request for access to materials not describe in 11 CFR 5.4(a), it shall promptly forward such request to the Commission FOIA officer for processing in accordance with the provisions of Part 4 of this chapter.

§ 5.6 Fees.

(a) Fees will be charged for copies of records which are furnished a requestor under this part and for the staff time spent in locating and reproducing such records. The fees to be levied for services rendered under this part shall not exceed the Commission's direct cost of processing requests for those records computed on the basis of the actual number of copies produced and the staff time expended in fulfilling the particular request, in accordance with the following schedule of standard fees:

Paper reproduction of documents by Kodak, IBM and Xerox copiers—$.05 per page plus any staff time.
Paper reproduction of microfilm prints made overnight in Baltimore lab—$.10 per page (no staff time).
Paper reproduction of microfilm prints using Microfilm Reader-Printers—$.10 per page plus any staff time.
Staff time/first half hour—no charge.
Staff time/each additional half hour—$2.50.
Microfilm-Index—$1.00 per reel.
Microfilm-Documents—$10.00 per reel.
Multicandidate Committee Index—$4.00.
Index of Committee/Sponsor or Sponsor Committee—$10.00 each.

Office Account Index—$5.10.
Report on Financial Activity—$5.00.
Financial Control and Compliance Manual—$7.50.

(b) In the event the anticipated fees for pending requests under this part from the same requestor exceed $25.00, such records will not be searched for or made available, nor copies furnished unless the requestor pays, or makes acceptable arrangements to pay, the total amount due, or if the fee is not precisely ascertainable, the approximate amount. In the event an advance payment hereunder shall differ from the actual fees due, an appropriate adjustment will be made at the time the copies are delivered or made available.

(c) The Commission may reduce or waive payments of fees hereunder if it determines that such waiver or reduction is in the public interest because the furnishing of the requested information to the particular requestor involved can be considered as primarily benefiting the general public as opposed to primarily benefiting the person or organization requesting the information.

Dated: May 2, 1980.

Robert O. Tiernan,

Chairman, Federal Election Commission.

[FR Doc. 80-14684 Filed 5-12-80; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 309

Information Made Available for Public Inspection

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") regulation 309.4(b)(4) states that the Summary of Deposits for commercial banks (Form 8020/05) and the Summary of Deposits for mutual savings banks (Form 8020/46) are surveys available for public inspection at the FDIC's discretion. Enactment of the Depository Institutions Deregulation and Monetary Control Act of 1980, Section 308 "Deposit Insurance," necessitates that the FDIC collect, in the Summary of Deposits, additional information that should not be disclosed to the public. Therefore, the Board of Directors of the FDIC is issuing an amendment to its regulations. This amendment limits information made available for public inspection.

EFFECTIVE DATE: May 5, 1980.

FOR FURTHER INFORMATION CONTACT: Carol Galbraith, Attorney (202-389-4422), Bank Regulation Section, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: Section 309.4 of the FDIC regulations (12 CFR 309.4) concerns information made available for public inspection. Subsection (b)(1) to § 309.4 (12 CFR 309.4(b)(1)) states that the Summary of Deposits for commercial banks (Form 8020/05) and the Summary of Deposits for mutual savings banks (Form 8020/46) are available for public inspection at the FDIC's discretion.

Enactment of the Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. 96-221), Section 308 "Deposit Insurance," necessitates the collection of additional data in the Summary of Deposits. Specifically, the FDIC needs detailed breakdowns on the size of accounts and the number of accounts held by insured banks. The FDIC's Board of Directors is of the opinion that this new information represents confidential financial data and, therefore considers it desirable to exempt from public disclosure those parts of the Summary of Deposits containing the size and number of accounts.

This amendment of § 309.4(b)(4) maintains the confidentiality of data on the size and number of accounts (whereas, § 304.2 requires that the summaries of deposit be reported). Thus, the Board has determined that since this amendment pertains only to disclosure of information by the FDIC, it will not affect the record-keeping or reporting requirements of the banks. Thus the amendment will have no significant direct costs to banks and no cost-benefit analysis is needed.

The alternative approach considered was the creation of an additional form to contain the newly required confidential information on size and number of accounts. That alternative was rejected since use of the Summary of Deposits format is both familiar and more efficient for reporting banks to use.

The regulation will preserve the confidentiality of information that has not been reported in the recent past and that when reported earlier, has been held in confidence (for example in the surveys of the Summary of Accounts and Deposits of 1975 and prior years). By maintaining confidentiality, the regulation enhances competition by encouraging economic research and banking innovation. (For example, to the extent that data on the size and number of accounts for each bank office may reveal the results of marketing research, the public availability of that data would discourage research and innovation.)

The Board has further determined that because the amendment is a technical change that preserves existing confidentiality of size and number of accounts, for which it is in the interest of reporting banks to make the amendment effective without delay, no purpose would be served by conventional rule-making procedures prescribed by section 553(b) of the United States Code (5 U.S.C. 553(b) and 553(d)), including notice, public participation, and deferred effective date.

Section 309.4(b)(4) is revised to read as follows:

§ 309.4 Information made available for public inspection.

* * * * *

(b) * * *

(4) The following statistical surveys filed by insured banks, which would otherwise be exempt from disclosure under subsection (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(8)); Summary of Deposits for Commercial banks[5] and Summary of Deposits for mutual savings banks,[6] except that information on the size of accounts and the number of accounts will not be available to the public. Requests for information contained in the surveys should be sent to the Chief of the Bank Statistics Branch, Division of Management Systems and Financial Statistics, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

(Sec. 9 "Seventh" and "Tenth", 64 Stat. 881 (12 U.S.C 1819 "Seventh" and "Tenth"))

By Order of the Board of Directors.

Dated: May 5, 1980.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 80-14704 Filed 5-12-80; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Order No. 84; Docket No. RM79-29]

Filing of Rate Schedules; Regulations Limiting Percentage Adders in Electric Rates for Transmission Services

May 7, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) adopts regulations that require electric utilities or systems to limit the amount of revenue recovered under percentage adders contained in rates used for transactions in which the utility or system transmits or purchases and resells wholesale electric power as part of a multiple party transaction. The rule requires limits on only those percentage adders that recover revenues computed wholly or in part as a percentage of the purchase price of electric power paid by a transmitting utility for power generated by another utility. All revenue limits must be supported by cost information, unless a percentage adder is limited at one mill per kilowatt-hour or less.

The Commission adopts this rule to prevent overrecovery of costs by means of percentage adders. Charges under these rate components are added to the cost of power by each intervening transmitting utility or system during multiple party transactions. In addition, percentage adders recover revenues based largely on the costs incurred by the utility or system that originally generates the power, which costs have been swollen by increases in the price of fuel in recent years.

The final rule will ensure that revenues recovered under percentage adders used for transmission services, including purchases and resales of power, and based on the purchased power price will more closely approximate certain operational costs incurred by transmitters.

EFFECTIVE DATE: June 11, 1980.

FOR FURTHER INFORMATION CONTACT:

Robert Cackowski, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426, (202) 376-9229.

James Hoecker, Division of Regulatory Development, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426, (202) 357-9342.

The Federal Energy Regulatory Commission (Commission) gives notice that it adopts a new § 35.23 which requires that revenue limits be placed on the operation of percentage adders in rate schedules used for the transmission or third party resale of electric power. For purposes of this rulemaking, a percentage adder is a rate component that recovers revenues computed wholly or in part as a percentage of the price of purchased electric power paid by a transmitting utility for power generated by another utility. The rule requires submittal of cost information to support the limits that are established for percentage adders used by a transmitting utility. If the utility limits such revenues to one mill per kilowatt-hour or less, cost support information is not required by the rule. Rate schedules must be revised to show the limit established for any percentage adder that is based on the price of the purchased power transmitted.

If a utility that performs a transmission or purchase and resale function computes a percentage adder charge on a different basis, as a percentage of only internal incremental costs other than the purchased power price, for example, this rule does not apply and no limitation is required.

The Commission will continue to study the question of what should be the appropriate level of revenues recovered by percentage adders in rates used by utilities or systems that generate the electric power delivered during interchange sales. Continued examination of this issue will also help the Commission assess the need for limits on percentage adders used by transmitting utilities if transmitters use only the internal incremental costs that they incur as a base for such adders.

I. Background

A. *History of the rulemaking.* Rate schedules currently on file contain adder percentage adders that cover a variety of miscellaneous costs in electric energy transactions. The economic dislocations caused by an oil embargo and a coal strike in the 1970's presented questions about the fairness of using percentage adders in multiple interchange transactions. The dimensions of the distortion in the relationship between costs and rates caused by these rate components were clearly evident in the Commission's coal strike report in 1979.[1] The report showed how adder charges may be compounded several times in a single interchange transaction without regard to the actual internal incremental costs incurred by each intervening utility. A percentage adder included by each intervening utility in the price of the transmitted power uses as all or part of its base the purchased power price. Only some of the transmitters may be replacing power lost in transmission. This purchased power price includes all adder charges previously assessed by other transmitting utilities.[2] This phenomenon becomes exacerbated as fuel costs escalate because revenues recovered by percentage adders increase in proportion to the increases in the incremental costs of generating power, not in proportion to the costs of transmitting it.

In light of these considerations, the Commission was persuaded that the percentage adders contained in electric rate schedules were no longer cost-justified in most circumstances. The Federal Power Act requires that utilities use just and reasonable rates. The Commission is required to implement this statutory requirement by requiring that rates be based on costs incurred by utilities.

Accordingly, the Commission issued a Notice of Proposed Rulemaking in this docket on April 4, 1979 [3] to establish limits for all percentage adders in electric rate schedules. Submittal of initial and reply comments was followed by oral presentations before the Commission. The proposed rule was designed to limit percentage adders in all electric rates according to whether a utility generated the electric power delivered or only transmitted it through an interconnection arrangement. The proposed rule set fixed monetary limits for revenues recovered under such adders, so that the use of percentage adders could be retained without allowing recovery of excessive revenues. Retention of percentage adders would, among other things, diminish the burden of revising rate schedules.

The Commission received comment on the rulemaking from ninety public utilities and cooperatives, six power-pooling organizations, sixteen municipal, state, and Federal entities, and three trade associations or related industries.[4] Sixteen of the commenters, including the Commission staff, made oral presentations before the Commission on June 4, 1979.

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[1] Report of the Designated Officer, Investigation Into Wholesale Power Transactions During Time of Fuel Inadequacies, March 19, 1979 (Docket No. ER78-367). The discussion of adders is found on pages 11-14 and Appendix I, pages 7-13.

[2] "For instance, short-term energy having an original out-of-pocket cost of $30/mwh may end up costing $50/mwh after moving through four systems ($30\times1.1\times1.15\times1.15\times1.15$)." These figures indicate that the intervening transmitting utilities added to the price of the power they purchased one 10% and three 15% charges. Id., Appendix I, at 14.

[3] 44 FR 21863, April 11, 1979.

[4] The Commission consolidated the comment and oral presentation procedures in this docket with the comment procedures in Docket No. RM79-28. The rulemakings are somewhat similar to one another in limiting certain components of electric rates, although Docket No. RM79-28 applies only to emergencies under section 202(c) of the Federal Power Act. Most of the comments also addressed the special issues peculiar to electric rates used during emergencies declared under the Act. In this docket, the Commission is only concerned with limitations on percentage adders in non-emergency situations.

Most commenters dealt with the issues and problems presented by the proposed adder limits only as they affect generating utilities. Yet, the notice and comment procedure yielded a paucity of cost data from which the Commission could have established a reasonable limit on percentage adders relative to the unquantified incremental costs incurred by a utility that generates power, either as the original source system in an interchange transaction or for purposes of replacing transmission losses. Throughout the rulemaking process, the Commission focused its attention on the manner in which percentage adders are used by utilities that perform transmission or purchase and resale functions in multiple party transactions. The level of revenues charged the ultimate purchaser of the power was too high because it reflected compounded applications of percentage adders to the price of wheeled electric power. In addition, the Commission believed that there was a misapplication of the percentage adder to the price that each intervening utility pays for the power that it resells, that is, the "purchased power price." The Commission therefore adopts a final rule that applies only to rates used for transmission services and requires limits to be placed on percentage adders that are based, wholly or in part, on the purchased power price.

B. *The rule adopted.*

1. *Statement of the problem with percentage adders in rates used for transmission services.*

An "adder" is included in an electric rate to recover unquantifiable or expensive-to-quantify incremental energy costs. An adder may be a set charge per kilowatt-hour, that is, a "fixed adder", or it may function as a percentage of quantifiable incremental costs, including the purchased power price, as a so-called "percentage adder."

Percentage adders are part of the energy component in a rate and their function is limited. Percentage adders are not designed to recover the fixed costs of capacity.[5] Nor do they provide a profit on capital investment. There are other components in the utility's electric rate schedule that recover fixed capacity costs and that provide the utility with a rate of return on investment. Recovery of fixed costs or of a return on investment through percentage adders would therefore constitute overrecovery of these costs.

Much of the misunderstanding among the commenters about the intent and effect of the proposed rule appears to have arisen from the varying justifications offered by commenters to explain how a percentage adder operates in a rate schedule. Percentage adders were variously described as compensation for fixed costs, incremental costs, risks taken by the generating utility, or error in the estimation of costs. It appears that many commenters believe that percentage adders should also provide an incentive to engage in interchange transactions, which presumably means some form of compensation beyond out-of-pocket and fully allocated costs. Arguably, adders may be justified for purposes other than cost recovery if there were no demand or reservation charge to provide an incentive to transact. However, other components of ordinary filed rates provide such incentives.

Some commenters maintain that percentage adders compensate a utility for risks undertaken by a utility to supply electric interchange power, such as depletion of difficult-to-replace fuel resources. To the extent that such a proposition may arguably be true, the fact remains that those risks are borne largely by generating systems.[6]

Among the rate components that capture incremental costs in the energy portion of a rate, the percentage adder is unique. Other rate components that recover incremental costs do so strictly on a dollar-for-dollar basis; that is, a utility's rates are designed to recover exactly the amount of its demonstrable incremental costs. By definition, percentage adders are a ratemaking convenience for recovering costs that cannot otherwise be easily demonstrated. Because of this fact, percentage adders have provided utilities an opportunity to recover revenues in excess of operating expenses, unlike other components of the energy portion of a rate.[7]

Percentage adders recover revenues computed as a percentage, usually 10 percent,[8] of an incremental cost "base." This convenient mechanism may be reasonable for generating utilities because the adder is at least arguably derived from an appropriate base, *viz.*, the actual cost of producing a unit of power. Percentage adders applied to another utility's cost of generation, as is frequently done in the rates of utilities that provide only transmission or

[5] A major objection to the proposed rulemaking was that the one and two mill limitation on percentage adders for transmitting and generating utilities, respectively, would fail to provide sufficiently for fixed costs such as interest, depreciation, taxes, labor costs, administrative and general costs, or return on investment. It was argued that, during an interchange transaction of long duration, interchange customers should make some contribution to the fixed or investment costs of the seller. In rates used by transmitters or generators, recovery of fixed costs is the function of rate components other than percentage adders. The appropriate function of percentage adders in non-emergency transactions has been and remains the recovery of the difficult-to-quantify incremental costs.

[6] Many commenters argue that the adder is a means of compensating for uncertainties in incremental costs, underestimation of those costs, or taking risks to supply interchange power. Cost uncertainties, such as those involved in any replacement of fuel months or years after an interchange transaction, are problems faced by utilities that originally produce electric power. A commenter claims that even a 2.5 percent error in estimating transmission losses that must be replaced can consume a utility's margin for error under a percentage adder. Another alleges that transmission losses may run from 10 to 30 percent. Although such an estimate appears to be high, the Commission believes that compensation for transmission losses of that size can be specifically recovered, if justified, by a utility as a separately stated incremental cost. If a transmitting utility affected by this rule incurs costs when generating power to make-up for line losses during transmission, those costs are also quantifiable and should become part of the incremental rate. While the Commission recognizes that uncertainty in determining such incremental costs exists, it does not believe that the unrestricted use of percentage adders is appropriate protection from any and all degrees of uncertainty or a suitable substitute for the need to quantify or more accurately estimate any amount of a utility's costs.

[7] Split-savings rates used in economy energy transactions result in a similar kind of an expense-based recovery above costs. However, such a device has generally been considered acceptable both because there is a savings to the buying utility or system that would otherwise have to use a more expensive fuel to generate power and because there are no other rate components that would provide selling utilities incentives to transact. Thus, the combined costs incurred by the buying and selling utilities are less than what the cost would have been had the split-savings transaction not occurred.

Split-savings rates are based on the difference between the supplier's incremental cost and the buyer's decremental cost. Fifty percent of the difference is added to the supplier's incremental costs to form the energy portion of an economy energy rate. For example, where $10/mwh coal-fired energy displaces $20/mwh oil-fired energy, the energy is priced at $15/mwh. The seller realizes $5 above its out-of-pocket costs.

Many commenters were apprehensive that the proposed rule would affect the use of split-savings rates. Although the Commission recognized in the Notice of Proposed Rulemaking that split-savings rates may present cost control problems similar to those created by percentage adders, neither the proposed rule nor the final rule attempt to deal with cost justification of economy energy transactions conducted on a split-savings basis.

[8] In the case of third-party, short-term firm energy, the adder is usually 15 percent.

Fuel conservation rates on file with the Commission for use in times of fuel shortages contain only fixed adder charges to cover demand-related costs and unquantifiables. These rates have been seldom used during past fuel shortages.

The Commission Order in Docket No. ER78-229, *et al.* sets forth adder principles for fuel conservation energy rates. While percentage adders for generation of power are capped at 2 mills/kilowatt-hour, such components are replaced by fixed adders for transmission services. Order Establishing Principles for Settlement of Fuel Conservation Energy Rate Schedule Proceedings and Providing for Filing, issued March 28, 1980, *mimeo* at 7–9 and Appendix A (45 *Fed. Reg.* 23723, April 4, 1980).

purchase and resale services, do not have this redeeming feature.

It is frequently argued, with some credibility, that an adder charge is appropriate as a rule of administrative convenience to prevent unnecessary expenditures of funds to quantify miscellaneous cost. This argument does not support use of unlimited percentage adders applied to the purchased power price. If, as now, the previously unquantified incremental costs that adders are designed to recover are increasing, it may become economically practical to quantify those costs as part of the incremental rate. The use of percentage adders as a rule of administrative convenience may still operate to save money by allowing utilities to recover, within limits, incidental or miscellaneous costs that remain economically impractical to quantify.[9]

In summary, there is generally no relationship between the purchased power price paid by transmitting utilities and those utilities' internal incremental costs which percentage adders recover. The purchased power price largely represents costs incurred by utilities that generate the power. Therefore, recovery of a transmitter's own unquantified incremental costs by means of a percentage adder applied to a base that includes the purchase power price is inappropriate unless the adder is permitted to recover only revenues limited to those internal incremental costs. Moreover, the problem is compounded because revenues recovered under percentage adders tend to increase geometrically according to the number of utilities that become parties to a multiple purchase and resale transaction. As a result, the final charge for the electric power may bear little relation to the actual costs of producing the power and transferring it to a receiving system.

The Commission believes that percentage adders that recover revenues based wholly or in part on the purchased power price are no longer justifiable when permitted to recover revenues without limit. The Commission believes that a limit of one mill/kwh can usually be cost-justified. The final rule takes this fact into account by offering to accept, without cost justification, any percentage adder within that limit.

2. *The solutions presented by the final rule.*

The final rule addresses the problems discussed above by requiring that limits be placed on the amount of revenues that a utility may recover through percentage adders in rates used for transmission services in those circumstances where revenues recovered under these rates components are computed as a percentage of the purchased power price.

Of the comments filed in response to the Notice of Proposed Rulemaking, a few indicated approaches similar to the one adopted by the Commission in this rule.[10] A few utilities commented that the limitation on percentage adders might appropriately be applied only to transmission utilities to reduce unreasonable costs to the purchasing utility. This is, of course, the action taken in this rule. These commenters claim that intervening utilities in an interchange transaction perform only transmission services but impose substantial charges based on transmission plus generation costs.

The final rule is based on the determination that any adder that is applied in rates for transmission services and that computes revenues as a percentage of the purchased power price is unjust and unreasonable, unless the revenues recovered by such a rate component are limited and cost-justified. The Commission has determined that there is no logical connection between the costs of operation of the transmitting utility and the base to which percentage adders are generally applied, that is, the costs of the system or utility that first supplies the power. It is not justifiable that one utility's charges be predicated on another utility's costs. When percentage charges are added to the purchased power price of electricity by all intervening transmitting utilities during a multi-party interchange transaction, the rates and charges for the electric power paid by the ultimate purchaser reflect less and less the actual costs of producing and transmitting the electric power.

The final rule focuses on the most obvious excesses of recovery under percentage adders. It, in effect, establishes an administrative rule of convenience that permits a utility to establish an adder limited at one mill/kwh or less without submitting cost support information. This rule allows recovery under percentage adders of what the Commission believes is a reasonable amount of miscellaneous and unquantifiable incremental costs incurred for transmission services. Yet the rule does not necessarily require major changes in rate schedules or the collection and submittal of new data.

An example of a suitable amendment to a rate schedule under the final rule would be: "The percentage adder components contained in the transmission or third-party purchase and resale provisions of this rate schedule are hereby limited to recover no more than ————mills per/kwh per transaction." This will indicate that revenues recovered by a transmitter or purchaser and reseller under a percentage adder based wholly or in part on the purchased power price will be limited to a specified amount in any transaction. Cost support will then be required only if the utility indicates revenues in excess of one mill/kwh.

The Commission has a "heavy burden * * * to justify" departures from cost-based ratemaking.[11] It is the position of the Commission in this docket that, under existing circumstances, it is the unrestricted operation of percentage adders in rates for transmission services that constitutes a departure from cost-based ratemaking. Percentage charges have become less cost-based because of widely-recognized economic conditions that have escalated the incremental costs of producing electric power, especially the cost of fuel, and because the use of the percentage adder mechanism by transmitting utilities results in revenue recovery that bears little, if any, relation to the costs incurred by transmitting utilities. The Commission chooses to curb by rule this departure from cost-based ratemaking. In this rulemaking, the Commission is acting to prevent departures from established ratemaking concepts and to help ensure a correlation between charges for the electric power and the costs of producing it.

The Commission emphasizes that the approach taken in the final rule is predicated on the functional difficulties raised by the use of adders by transmitters in multiple, as opposed to bilateral, interchange transactions. The Commission continues to study the appropriateness of percentage adders when used for the primary generation of power and the interchange generation functions of transmitting utilities where the charge added to the overall charge

[9] Many utilities claim that the statement in the Notice of Proposed Rulemaking that the unquantifiable incremental costs normally recovered by percentage adders do not increase in proportion to escalating fuel costs is, to some extent, erroneous. While there may be merit in the argument that certain unspecified miscellaneous administrative costs have increased, the commenters supplied insufficient evidence to show that such costs have increased in proportion to the enormous increases in the cost of fuels since the oil embargo of 1973.

[10] Initial comments: Pacific Power & Light Company, at 9–10; Pennsylvania Power & Light Company, at 5–6, 10; Cities, at 14–15.

[11] *City of Chicago v. F.P.C.*, 458 F. 2d 731, 749 (D.C. Cir. 1971), *cert. denied*, 405 U.S. 1074 (1972). *City of Detroit v. F.P.C.* 230 F. 2d 810 (D.C. Cir. 1955), *cert. denied*, 352 U.S. 829 (1956).

for the power transmitted is based only on the internal incremental costs incurred by the transmitter. The Commission believes that limiting the presently unbridled operation of percentage adders in rates for transmission services will serve the public interest by helping to ensure that utilities recover under this component of a rate only incremental costs not recovered elsewhere.

3. *Effect of percentage adder limitations on interchange transactions.* Several commenters expressed concern that limitations on percentage adders might impede effective energy marketing through voluntary electrical interchange transactions in non-emergency situations. It was frequently observed that interconnected systems produce energy reliably and, generally, at a low cost to ratepayers. The Economic Regulatory Administration of the Department of Energy, because of its role in implementing national energy policy, allocating scarce fuel supplies, and promoting reliable bulk power system operations, was likewise concerned that interruptible transactions between non-contiguous utilities not be impeded during day-to-day operations.

The Commission acknowledges that voluntary negotiations and agreements for the interchange of electrical energy must be facilitated in emergency and non-emergency situations. When a utility experiences a fuel or capacity shortage, it must be able to shop for the best available source of electric power with the assurance that electric power can be purchased for its actual cost plus a reasonable incentive or fair rate of return. The reliability of interchange agreements are of increasing importance in the energy market. The continued occurrence of voluntary transactions will help avoid declarations of emergency under section 202(c) of the Federal Power Act.

The Commission does not believe that the proposed rulemaking in this docket would have destroyed the concept of power-pooling or vitiated the whole interchange system, as some commenters believed it might. The objectives of the Commission's actions in this docket have been focused on a specific rate problem, not reform of the whole interchange system. The final rule deals only with percentage adders in interchange rates for transmission services *if* the adders are based wholly or in part on the price of purchased power. Moreover, the rule will affect only rates for transmission or purchase and resale services and therefore addresses multiple party transactions, not bilateral system-to-system transactions where the power purchased remains within the receiving system. The final rule will not prevent full recovery of quantified incremental costs or of any fixed cost. Any incentives to engage in voluntary interchange energy marketing may be provided to transmitting utilities elsewhere in the rate structure, as should be the case.

Most commenters dealt with the merits of percentage adders, the bases and rationales of their operation, and the consequences of limiting recovery under percentage adders in terms of the incremental costs of generating utilities. The majority of the comments were not responsive to the concerns that form the predicate for the limitations on percentage adders in rates for transmission services provided in this rule, *i.e.*, the lack of connection between the adder charges and their cost base, and the multiplication of charges in multi-party transactions.

4. *Related reasons for Commission action.* The Commission bases its observations in part on the conclusions of the so-called "coal strike report" that shows how percentage adders operated in a fuel shortage emergency that resulted in many multiple interchange transactions.[12] Such adders have the same structure and they function similarly in non-emergency circumstances, although the frequency of multiple party transactions may be less in such circumstances.

Revenues collected under percentage adders increase as incremental costs rise. The average cost of oil-fired electrical generation rose from $0.70/mBtu at the beginning of 1973 to $2.08/mBtu in July 1978, with a peak of $2.30/mBtu in 1977.[13] A new round of increases in the cost of oil began in 1979. Since 1973, the increase in the cost of fuel has been greater than increases for any other component of out-of-pocket cost. This great rise in fuel costs has increased revenues recovered under adders that are described in rate schedules as a proportion of out-of-pocket or incremental costs.

The pattern of escalating costs is demonstrated by the increase in production expenses between 1969 and 1978. The average production expense, including fuel, was 4.2 mills/kwh in 1969; 6.7 mills/kwh in 1973; and 17.3 mills/kwh in 1978.[14] Production costs form the basis of a percentage adder. Average production expenses increased 60% between 1969 and 1973 and 158% between 1973 and 1978. A 10% adder based on such expenses would not have recovered as much as one mill/kwh until after the 1973 oil embargo when high fuel costs had already swollen production expenses.

The use of a ten or fifteen percent adder may have been an appropriate surrogate for quantification of incidental costs at a time when interchange transactions consistently delivered energy of 10 mills/kwh or less. However, such transactions may now involve the transfer of electricity at 50 mills/kwh or more, particularly when more than two systems are involved in the transaction. This increase, caused mainly by a rise in fuel prices, has tended to generate revenues under percentage adders that are inordinately large in relation to incremental out-of-pocket costs. Adders now recover significantly greater amounts of money—5 mills/kwh or more, in contrast to less than one mill in an earlier period.[15] This higher recovery of revenue exceeds increases in the kinds of incremental costs that percentage adders defray.

The coal strike report illustrates the relative magnitude of transactions that would be subject to the limitations on adders under the final rule. For example, during a one-hour period on February 18, 1978, the abnormally large interchange transactions being used to conserve coal ranged in capacity from a low of 19 megawatts (MW) for surplus power to 1200 MW for short-term power.[16] For a transmission or pass-through system, these transactions for a one-hour period would have produced a maximum revenue ranging from $19 to $1200 under a 1.0 mill/kwh adder.

The issues that the Commission faces are whether the use of percentage adders still works as a viable rule of administrative convenience and, if it does, what appropriate steps ought to be taken to restrain the inherent tendency of percentage adders to distort the cost relation of electric rates. The final rule adopted provides for cost-supported revenue limits that permit recovery of difficult-to-quantify out-of-pocket costs, such as billing and dispatching costs, and compensation for the cost of transmission losses in the event that such losses are not recovered separately in the incremental rate, as is sometimes the case.

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[12] report of the Designated Officer, *supra*, footnote 1.

[13] Id., Appendix I, at 9.

[14] U.S. Department of Energy Data Report, Statistics of Privately Owned Electric Utilities in the United States—1978: Classes A and B Companies (October 1979), at 40: *Production Expenses per Kilowatt-hour sold, mills—1978, 17.3; 1977, 15.9; 1976, 13.7; 1975, 12.7; 1974, 10.7; 1973, 6.7; 1972, 6.0; 1971, 5.5; 1970, 4.8; 1969, 4.2.*

[15] Id., Appendix I, at 12.

[16] Id. at 8.

The one mill/kwh limit beneath which cost support data are not required operates as a rule of administrative convenience, without requiring major renovation of rate schedules, to allow recovery of what the Commission anticipates to be all the unquantifiable incremental costs that transmitting utilities will usually incur. In establishing such a cut-off, the Commission confronts the same difficulties that a utility may confront in accounting for all its costs. The miscellaneous costs which are traditionally covered by percentage adders are precisely those costs that are too expensive or otherwise too difficult to quantify and recover under other components of the rate. The coal strike report and available information on the average costs of production, cited above, indicate that one mill/kwh or less has previously provided ample revenue to cover miscellaneous incremental costs. While these costs are no doubt subject to inflation, the 312% increase in average production costs in the decade between 1969 and 1978 is almost entirely due to escalating fuel costs.

Because the Commission is reasonably confident that one mill/kwh could almost always be cost-justified in terms of miscellaneous incremental costs, it has determined to accept any percentage adder limited to that amount or less without scrutinizing its cost basis. If more revenue is required to cover costs, the final rule permits a utility to show that a higher limit is justified. The Commission recognizes, of course, that there exists for any utility a point at which the increased size of any expenditure will warrant the effort necessary to quantify it and remove it from the domain of administrative conveniences like percentage adders.

The proposed one mill/kwh limitation on the adders used by transmitting utilities was believed by many of the commenters that addressed the subject to be sufficient to cover the utility's costs. One commenter, representing several municipalities, argued that less than one mill would suffice.[17] The Commission believes that the claim by transmitting facilities that they are entitled to a percentage adder based on the purchase price of interchange electric power does not conform to the precepts of cost-based ratemaking.

An issue raised by several commenters was the method by which the limitation proposed to be placed on percentage adders would be adjusted to reflect inflation in the costs of doing interchange business. A commenter proposed that the Commission adopt an adder that would recover a smaller percentage of incremental costs or a fixed adder that would be updated annually. The Commission envisions periodic updating of the percentage adder level that, in the final rule, demarcates those adders that require cost justification from those that do not.

The prospect of further fuel price increases as well as other considerations make it imperative that the Commission's rate regulations do not discourage utilities from engaging in transfers of wholesale electricity from less expensive or more readily available sources by providing inadequate compensation for costs incurred in those transactions. However, it is also obligatory that costs to recipients of power in multiple interchange transactions bear a reasonable relationship to the costs required to produce and transmit the electricity. The coal strike report confirms that percentage adders tend to undermine the cost relation of electric rates, especially in multiple interchange transactions conducted during periods of escalating fuel costs.

5. *Commission authority to act.* Several commenters challenged the Commission's authority to establish rates by rulemaking procedures as proposed by the Commission in Docket Nos. RM79–28 and RM79–29. The Commission agrees with the position taken by the Commission staff in its reply comment in these dockets. Section 403(c) of the Department of Energy Organization Act (DOE Act) states that "any function * * * which relates to the establishment of rates and charges under the Federal Power Act * * * may be conducted by rulemaking procedures." Within the procedural safeguards in the DOE Act and section 553 of the Administrative Procedures Act that provide for full consideration of the issues and an opportunity for persons to present their views, the Commission is exercising its discretion to establish just and reasonable rates by rule.

While the Commission agrees with Potomac Electric Power Company (PEPCO) that section 403(c) does not provide the Commission ratemaking power greater than that afforded in sections 205 and 206 of the Federal Power Act, section 403(c) does establish a procedure for ascertaining the justness and reasonableness of rates on a generic basis, independently of strictly adjudicatory proceedings. Rulemaking is a particularly appropriate tool where a specific rate feature common to the rate structures of an entire industry is found to lead to undesirable effects or otherwise violate the accepted principles of ratemaking. The Commission's action in this docket addresses one feature of electric rates that has ceased to function equitably.

II. Finding

The Commission finds that rate components that recover revenues computed wholly or in part as a percentage of the price of purchased electric power are unjust and unreasonable if not limited and cost-justified as provided by this rule.

The Commission is exercising in this rulemaking its discretion to establish a just and reasonable rate pursuant to its authority under section 206(a) of the Federal Power Act.

III. Section-by-Section Analysis

Applicability (§ 35.23(a))

This paragraph states that the regulation applies to all electric rate schedules that are required to be filed under Part 35 of the regulations and that are used by utilities or systems that function as transmitters or purchasers and resellers of electric power in an electric interchange transaction.

Definition (§ 35.23(b))

This paragraph defines "purchased power price" as the amount paid by a transmitting utility for power generated by another utility.

General rule (§ 35.23(c))

This paragraph requires a utility to limit recovery of revenues under any rate component that computes those revenues wholly or in part as a percentage of the purchased power price. This component may be a so-called percentage adder. The limit will be established according to paragraph (d) in terms of mills per kilowatt-hour in any transaction.

Cost support information (§ 35.23(d))

This paragraph provides that a utility must submit cost support information to justify the limits imposed under paragraph (c). An exception to this requirement is provided in paragraph (e). The cost support information must be based on costs to the transmitting utility, other than the purchased power price, incurred during the transmission or purchase and resale function and not recovered in any other part of the rate.

Exception (§ 35.23(e))

If an adder will recover one mill per kilowatt-hour or less, no cost support

[17] Oral comment of municipal utilities, Transcript of Public Hearing on Amendments to Parts 32 and 35, June 4, 1979, Washington, D.C. (Dockets Nos. RM79–28, RM79–29), at 100.

information is required under paragraph (d).

Revision of rate schedules (§ 35.23(f))

This paragraph requires that any utility that is required under this section to place a limit on the amount of revenues recovered under percentage adders in a rate schedule or tariff, must amend such schedule or tariff to indicate that limit in accordance with this section not later than 60 days after the effective date of the rule. The utility is also required to cost-justify any limitation established for a percentage adder when filing any new rate or rate schedule change after this rule is effective, as provided in this section.

Effective date: This rule is effective June 11, 1980.

(Federal Power Act, as amended, 16 U.S.C. 792–828c; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 142 (1978))

In consideration of the foregoing, the Commission amends part 35, Subchapter B of Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. Part 35 is amended in the Table of Contents, to read as follows:

PART 35—FILING OF RATE SCHEDULES

Subpart A—Application

* * * * *

Subpart B—Documents To Be Submitted With a Filing

* * * * *

Subpart C—Other Filing Requirements

* * * * *

Sec.

35.23 Limits for percentage adders in rates for transmission services; revision of rate schedules.

2. Part 35 is amended by adding § 35.23, to read as follows:

§ 35.23 Limits for percentage adders in rates for transmission services; revision of rate schedules.

(a) *Applicability.* This section applies to all electric rate schedules required to be filed under this part that are used for transactions in which the utility or system performs a transmission or purchase and resale function.

(b) *Definition.* For purposes of this section, "purchased power price" means the amount paid by a utility or system that performs a transmission or purchase and resale function for electric power generated by another utility or system.

(c) *General rule.* (1) If a utility or system uses a rate component that recovers revenues computed wholly or in part as a percentage of the purchased power price, the utility or system shall establish a limit on the revenues recovered by such rate component in any transaction, in accordance with paragraph (d) of this section.

(2) The limit established under this paragraph shall be stated in mills per kilowatt-hour.

(d) *Cost support information.* (1) A utility or system shall submit cost support information to justify any revenue limit established under paragraph (c) of this section, except as provided in paragraph (e) of this section.

(2) The information submitted under this section shall consist of those costs, other than the purchased power price, incurred by a utility or system as a result of a transmission or purchase and resale transaction, which costs are not recovered under any other rate component.

(e) *Exception.* A utility or system need not submit the cost support information required under paragraph (d) of this section if the limit established under paragraph (c) of this section is not more than one mill per kilowatt-hour.

(f) *Revision of rate schedules.* Every utility or system shall:

(1) amend any rate schedule or tariff to indicate any limit established pursuant to this section, not later than 60 days after the effective date of this rule; and

(2) hereafter conform any rate or rate change filed under this part to the requirements of this section.

[FR Doc. 80-14675 Filed 5-12-80; 8:45 am]

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18 CFR Part 282

[Order No. 81; Docket No. RM79-21]

Rule Further Exempting Industrial Boiler Fuel Facilities From Incremental Pricing Above the Price of No. 6 Fuel Oil and Applying Ceiling Prices to Forty-Eight Incremental Pricing Regions

May 7, 1980.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule, subject to Congressional review.

SUMMARY: The Federal Energy Regulatory Commission hereby adopts a rule which, if not disapproved by either House of Congress, will provide that large industrial boiler fuel facilities subject to the incremental pricing program will continue to be surcharged only at the level of the high sulfur No. 6 fuel oil price until October 31, 1981.

EFFECTIVE DATE: July 1, 1980, or such later date as represents the first day following 30 days of continuous session of the Congress, if not disapproved by either House.

FOR FURTHER INFORMATION CONTACT: Alice Fernandez, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357–9095.

I. Introduction

Title II of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301 *et. seq.*, establishes an incremental pricing program for pricing natural gas. Section 201 of Title II requires that natural gas acquisition costs subject to the incremental pricing program are to be passed through to certain industrial boiler fuel facilities by means of incremental pricing surcharges. Section 204 provides, however, that surcharges to incrementally-priced industrial facilities should not be so high as to cause the rates charged for natural gas to exceed the price of the alternative fuel for such facilities. In a previously issued order, the Commission adopted a three-tier system of alternative fuel price ceilings.[1] Under this system prices for No. 2 fuel oil, low-sulfur No. 6 fuel oil and high-sulfur No. 6 fuel oil are to be published for industrial boiler fuel users within each incremental pricing region. The price ceiling applicable to each industrial boiler fuel user is the ceiling price which corresponds to the lowest priced fuel oil that the facility has the installed capability and legal authority to burn.

Pursuant to Commission authority under section 206(d) to adopt exemptions from the incremental pricing program, the Commission hereby adopts and transmits to Congress a rule affecting the alternative price ceiling applicable to industrial boiler fuel facilities subject to incremental pricing. This rule provides that until November 1, 1981, incrementally priced industrial boiler fuel facilities shall be exempt from incremental pricing above the price level for high-sulfur No. 6 fuel oil. This rule also provides that until October 31, 1981, the incremental pricing regions for industrial boiler fuel users will correspond to the 48 contiguous states.

Under section 206(d)(2) exemptions from incremental pricing regulations must be sent to the Congress for review.

[1] *Regulations Implementing Alternative Fuel Cost Ceilings on Incremental Pricing under the Natural Gas Policy Act of 1978*, Order No. 50, Docket No. RM79-21, "Final Rule", issued September 28, 1979, 44 FR 57754 *et. seq.* (October 5, 1979).

If neither House of Congress disapproves the rule within a 30-day period of continuous session, the exemption rule becomes effective. This section 206(d) exemption rule relating to alternate fuel prices follows a similar rule that was transmitted to the Congress in October of 1979. The first section 206(d) rule sent to the Congress deferred application of the three-tier system of alternative price ceilings until November 1, 1980.[2] Neither House disapproved the first exemption rule, and it became effective December 1, 1979. As stated, this exemption rule extends application of a single-tier, high-sulfur No. 6 ceiling for an additional year.

II. Background

The incremental pricing provisions of Title II of the NGPA were enacted by the Congress for the purpose of placing certain portions of an interstate pipeline's acquisition costs of natural gas into a special incremental pricing account for passthrough to incrementally priced users. The NGPA specifies that the incremental pricing program shall be applied in two phases. In the first phase (Phase I) incremental pricing is applied to large industrial boiler fuel facilities that use natural gas as a boiler fuel.[3] In the second phase (Phase II) incremental pricing may be extended to a larger class of industrial users than those affected by Phase I. The Phase II rule is being issued concurrently with this rule and, under section 202(c) of the NGPA, will be subject to Congressional review.

For industrial facilities subject to either the Phase I or the Phase II rule, section 204(e) provides that the passthrough or surcharge should not rise above the "appropriate alternative fuel cost" for the region where the facility is located. The appropriate alternative fuel cost is the price paid for No. 2 fuel oil in the region where the industrial facility is located, unless the Commission determines that a No. 2 fuel oil alternative fuel cost would cause the loss of industrial load and an increase in rates to residential and commercial gas users (high-priority gas users). In such cases, it may reduce the alternative fuel ceiling to a level not lower than the price of No. 6 fuel oil. Section 204(e) provides:

> Sec 204 Method of passthrough.
>
> * * * * *
>
> (e) Determination of alternative fuel cost.
>
> (1) In general.—Except as provided in paragraph (2), the appropriate alternative fuel cost for any region (as designated by the Commission) shall be the price, per million Btu's, for Number 2 fuel oil determined by the Commission to be paid in such region by industrial users of such fuel.
>
> (2) Reduction of Appropriate Alternative Fuel Cost Allowed.—The Commission may, by rule or order, reduce the appropriate alternative fuel cost—
>
> (A) for any category of incrementally-priced industrial facilities subject to the rule required under section 201 (including any amendment under section 202 to such rule) located within any region and served by the same interstate pipeline; or
>
> (B) for any specific incrementally-priced industrial facility which is subject to such requirements and which is located in any region;
>
> to an amount not lower than the price, per million Btu's, for Number 6 fuel oil determined by the Commission to be paid in such region by industrial users of such fuel, if and to the extent the Commission determines, after an opportunity for written and oral presentation of views, data, and arguments, that such reduction is necessary to prevent increases in the rates and charges to residential, small commercial, and other high-priority users of natural gas which would result from a reallocation of costs caused by the conversion of such industrial facility or facilities from natural gas to other fuels, which conversion is likely to occur if the level of the appropriate alternative fuel cost were not so reduced.

A. Commission Order No. 50

The Commission's choice of a three-tier system of alternative fuel prices for Phase I was based upon a determination that the appropriate alternative fuel cost should be designed to achieve the maximum possible flow-through of incremental costs to industrial boiler fuel users without causing load loss that would result in shifting capital costs to high-priority users not subject to incremental pricing. The Commission's order adopting a three-tier ceiling (Order No. 50) reasoned on the basis of the data presented that a large number of price-sensitive industrial boiler fuel users with capability to burn fuel oils cheaper than No. 2 would switch to alternate fuels if a single-tier No. 2 ceiling were adopted. The Commission further determined that, because of the projected substantial load loss at a No. 2 ceiling, there would likely be a disadvantageous shifting of capital costs to high-priority users.

The Commission also concluded, however, that Congress did not intend that the alternative fuel ceiling be reduced to the price level of No. 6 fuel oil if such a ceiling would likely result in rates to high-priority users that are higher than they would be at a No. 2 ceiling. Data submitted by the Department of Energy and widely supported by other commenters convinced the Commission that in contrast to either a No. 2 or a No. 6 ceiling, a three-tier ceiling results consistently in lower rates to high-priority users. Also, a three-tier system applying separate prices to high-sulfur No. 6 and low-sulfur No. 6 fuel oil recognized the difference in sulfur content of No. 6 fuel oil.

The Commission also explained in Order No. 50 that a three-tier ceiling would be consistent with the national goal of displacing imported oil with domestic gas resources. A single-tier, No. 2 ceiling would have caused price-sensitive industrial boiler fuel users possessing alternative fuel capability to switch to use of oil. The Commission reasoned, however, that the economic loss could be avoided by use of a three-tier system that would minimize load loss.

Another feature of the choice of a three-tier system of alternative price ceilings was the Commission's decision, expressed in Order No. 50, to require that incremental pricing ceilings be established for each of the 48 contiguous States and 31 selected metropolitan regions. The Commission concluded that together the 79 incremental pricing regions would reflect fuel oil market conditions in discrete marketing areas while also recognizing State boundaries.

Until October 20, 1980, Order No. 50 provides that ceilings should be published for only the 48 contiguous States. The decision to initially limit the number of regions to the 48 States was based on the difficulty anticipated by the Energy Information Administration in developing ceilings for the metropolitan regions. Order 50 requires that EIA assume responsibility for collecting price data and publishing, on or before the twentieth of each month, the price ceilings to be applied in the subsequent month. It was expected that the delay in publication of price ceilings for the 31 metropolitan regions until October 20, 1980, would enable EIA to perfect its system for deriving price ceilings for each of the metropolitan regions identified in Order No. 50.

B. Commission Order No. 51

Order No. 51 was issued by the Commission as a companion rule to Order No. 50. Order No. 51, issued under authority of section 206(d) of the NGPA, amended Order No. 50 to provide that for the period January 1, 1980 until

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[2] *Rule Exempting Industrial Boiler Fuel Facilities from Incremental Pricing Above the Price of No. 6 Fuel Oil*, Order No. 51, Docket No. RM79-21, issued September 28, 1979, 44 Fed. Reg. 57778 (October 5, 1979).

[3] The mechanism for incremental pricing in accordance with section 201 is set forth in *Regulations Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978*, Docket No. RM79-14, Order No. 49, "Final Rule", issued September 28, 1979, 44 Fed. Reg. 57726 (October 5, 1979).

November 1, 1980, a single-tier high-sulfur No. 6 alternative fuel ceiling would be applied to industrial boiler fuel facilities subject to incremental pricing. Order No. 51 thus provided an exemption from the regulations adopting a three-tier system of alternative fuel prices.

The decision to postpone implementation of the upper two ceilings until November 1, 1980, resulted from the Commission's concern that additional familiarity with the program was needed before the three-tier system was applied. More specifically, the Commission expressed its concern that a three-tier system might induce significant investment in No. 6 oil buring capability solely for the purpose of qualifying for the lower incremental pricing ceiling. The Commission acknowledged that the level of such "induced investment" could not be estimated with precision at that time, although the record indicated that the amount could be sizable. During the period of application of a single-tier system, the Commission concluded it would be able to gain a better understanding of the number and characteristics of incrementally priced facilities and the price relationships among the various alternative fuels. Such additional knowledge could then be utilized by the Commission to analyze and evaluate the amount of induced investment and the implications for the economic interest of high priority gas consumers as well as fuel oil consumers.

The Commission further explained that postponement of the three-tier system of ceiling prices would likely ease implementation of the incremental pricing program. As compared to a single-tier ceiling, a three-tier system of prices necessarily requires application of more complex regulations, a more extensive enforcement program to assure compliance with the regulations and a more complicated data gathering and analysis effort to derive three separate prices for each incremental pricing region.

Especially critical to the Commission at the time it adopted Order No. 51 was the concern that data collection should be reliable and not result in inaccurate price ceilings. Inaccuracy could result in load loss of industrial boiler fuel users and a shift of capital costs to high priority users. The Commission therefore determined that to avoid such consequences and enhance the likelihood of statistically valid results, application of the three-tier system of alternative fuel price ceilings should be postponed until November 1, 1980.

In accordance with section 206(d) of the NGPA, the exemption set forth in Order No. 51 was sent to the Congress on October 10, 1979 for its review. Neither House of Congress disapproved the Order No. 51 exemption within the statutorily-prescribed period of 30 calendar days of continuous session of Congress and, accordingly, the exemption rule became effective.

III. Further Exemption From a Three-Tier Ceiling

The Commission has determined to amend the regulations to provide that, for the period January 1, 1980, until November 1, 1981, an incrementally-priced industrial boiler fuel facility shall be exempt from incremental pricing above the price level of high-sulfur No. 6 fuel oil in the incremental pricing region in which the facility is located. This exemption rule, like the previous rule set forth in Order No. 51, will be transmitted to the Congress.

This rule is subject to Congressional review and may be disapproved upon the resolution of either House of Congress. If, however, the exemption embodied in this rule is not disapproved during the first 30 days of continuous session following submittal of the rule to Congress, the rule will take effect on July 1, 1980, or such later date as represents the first day following 30 days of continuous session of Congress.

If not disapproved by either House of Congress, this exemption will postpone application of the low-sulfur No. 6 and No. 2 alternative price ceilings until November 1, 1981. The price for high-sulfur No. 6 fuel oil will thus be the only published alternative fuel price ceiling in each incremental pricing region. This exemption will expire, however, on October 31, 1981. On November 1, 1981, the three-tier system of alternative price ceilings will become effective, unless the rule establishing the three-tier system is amended or a further exemption rule is transmitted to Congress and not disapproved.

It is the Commission's conclusion that further experience with the incremental pricing program is necessary before a three-tier system of price ceilings is placed in effect. At this time, the Commission does not possess adequate information about the level of investment in No. 6 oil burning capability that may be induced as a result of application of a three-tier ceiling. Further, the Commission is concerned about the current status of data collection and analysis necessary to apply a three-tier system of price ceilings.

The first exemption rule transmitted to Congress expressed the concern that a three-tier system might lead to significant and possibly unproductive investment for equipment to burn high-sulfur No. 6 fuel oil. It was anticipated that abeyance of the three-tier system of prices until November 1, 1980, would provide the Commission adequate time to gain familiarity with the incremental pricing program as well as the number of industrial boiler fuel facilities incrementally priced and the consequent extent to which induced investment would likely occur. The Commission's anticipation now appears to have been somewhat optimistic.

The Commission's own experience with the incremental pricing program has not yet provided the familiarity and knowledge necessary to confidently predict the amount of induced investment that would occur under a three-tier ceiling. Several matters concerning the scope and application of Phase I are only now being resolved.[4] Others will be resolved in the near future.[5] The Commission expects that resolution of many of the outstanding issues will provide information to assist the Commission in determining the scope of induced investment that might occur under a three-tier system of price ceilings. Time will be needed, however, to evaluate such forthcoming information and, in the interim, the Commission judges that abeyance of the three-tier ceiling best serves the public interest.

Moreover, industrial users of gas have also expressed a belief that postponement of the application of the three-tier ceiling is necessary. For example, many commenters have indicated in their comments relating to issues in Phase II that unfamiliarity about the effect of incremental pricing upon induced investment continues to exist. Such comments reinforce the Commission's view that this exemption rule is necessary.

Postponement of the three-tier ceiling approach is also necessitated by the Commission's concern that ceiling prices be accurate. One of the reasons given by the Commission for the initial delay in applying a three-tier system of prices was that a single-tier ceiling applied until November 1, 1980, would ease the

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[4] *See e.g., Permanent Rule Defining Small Existing Industrial Boiler Fuel Users Exempt from Incremental Pricing under the Natural Gas Policy Act of 1978*, Docket No. RM80-24, "Final Regulations" issued today.

[5] *See e.g., Treatment Under the Incremental Pricing Program of Natural Gas Used as Boiler Fuel to Raise Steam which Forms an Integral Step in the Manufacturing Process for Fertilizer*, Docket No. RM80-18, "Notice of Opportunity to Comment on Whether a Rulemaking Proceeding Should be Established", issued February 21, 1980, 45. Fed. Reg. 13122, (February 28, 1980).

burden of providing accurate price ceilings. The experience with a single price ceiling for the first several months of the incremental pricing program demonstrates that the task of establishing accurate price ceilings is challenging.

The experience with the April price ceilings is indicative of the ongoing efforts of the Commission and EIA to assure accuracy of the ceiling prices.[6] The Commission cannot state with certainty, however, that an acceptably high degree of accuracy can be assured by November 1, 1980 for a three-tier system of ceiling prices. To resolve uncertainties about the ability of EIA to implement the three-tier ceiling approach, the Commission is convinced that a further delay of the three-tier system is necessary. Abeyance of the first two tiers for an additional year until November 1, 1981, should serve to resolve uncertainties about the ability to implement an accurate three-tier ceiling.

IV. Incremental Pricing Regions

The preamble to the rule set forth in Order No. 50 provides that until October 20, 1980, there will be 48 incremental pricing regions that correspond to each of the 48 contiguous states. Thereafter, the preamble provides that incremental pricing ceilings will be developed for 79 regions corresponding to the 48 states and 31 metropolitan regions.

The Commission concludes that an additional year's experience with incremental pricing should be acquired before the program is expanded to the 79 incremental pricing regions. EIA continues to experience difficulty in developing a method for determining ceilings for the metropolitan regions. In keeping with its intent to assure accurate ceiling prices, the Commission will therefore delay publication of ceiling prices for the 31 metropolitan regions. It is expected that such delay will allow EIA to perfect a system for developing ceiling prices for metropolitan regions.

V. Public Procedures and Effective Date

Section 502(b) of the NGPA requires that "[t]o the maximum extent practicable", an opportunity for the oral presentation of data, views, and arguments be afforded for certain regulations under the NGPA. The Commission's actions reflected in this order are based upon comments previously received by it in this docket, as well as comments received with respect to other aspects of the Commission's own administrative experience with the incremental pricing program.[7] In such circumstances, the Commission finds that good cause exists to have dispensed with additional notice and comment procedures. To request further comments at this time upon the issues resolved by this order would result in needless delay and replication of an already developed record.

(Natural Gas Policy Act of 1978, Pub. L. 96-621, 92 Stat. 3350, 15 U.S.C. 3301, *et seq.)*

In consideration of the foregoing, if neither House of Congress passes a Resolution of Disapproval of the regulations transmitted to them in this order, Title 18 of the Code of Federal Regulations is amended in Part 282 to read as set forth below, effective July 1, 1980, or such later date as represents the first day following 30 days of continuous session of Congress, as described in section 507(c)(3) of the NGPA.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. Section 282.402(c) is amended to read as follows:

§ 282.402 General rule.

* * * * *

(c) *Exemption.* For any month during the period January 1, 1980 through October 31, 1981, the alternative fuel price ceiling which shall be applicable to a nonexempt industrial boiler fuel facility for incremental pricing purposes shall be the ceiling which has been published for No. 6 high-sulfur fuel oil for that month in accordance with section 282.404 for the incremental pricing region in which the facility is located. Publication of ceilings for No. 2 fuel oil and No. 6 low-sulfur fuel oil for such period may be omitted.

§ 282.404 [Amended]

2. Section 282.404 is amended in subparagraph (2) of paragraph (b) by inserting "October 20, 1981", in lieu of "October 20, 1980".

[FR Doc. 80-14771 Filed 5-12-80; 8:45 am]

BILLING CODE 6450-85-M

[6] *Rule Adopting Revised Alternative Fuel Price Ceilings for the Month of April 1980,* Docket No. RM80-46, "Interim Rule", issued March 28, 1980, 45 Fed. Reg. 22891 (April 4, 1980).

[7] *See e.g.,* comments filed in *Rule Required Under Section 202 of the Natural Gas Policy Act of 1978,* Docket No. RM80-10; and, *Permanent Rule Defining Small Existing Industrial Boiler Fuel Users Exempt from Incremental Pricing Under the Natural Gas Policy Act of 1978,* Docket No. RM80-24.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 250

[Docket No. 79N-0139]

Special Requirements for Specific Human Drugs Revocation of Requirements for Dimethylsulfoxide

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document revokes the regulation that established specific requirements for the clinical testing and investigational use of dimethylsulfoxide (DMSO) in humans. The Food and Drug Administration (FDA) is taking this action because clinical testing and investigational use of DMSO can be adequately controlled under the agency's investigational new drug regulations and the special regulation concerning DMSO is no longer needed.

EFFECTIVE DATE: June 12, 1980.

FOR FURTHER INFORMATION CONTACT: Philip L. Paquin, Bureau of Drugs (HFD-30), Food and Drug Administration, Department of Health and Human Services, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5220.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 21, 1979 (44 FR 54730), the agency proposed to revoke § 250.107 (21 CFR 250.107). Section 250.107 served primarily as a way to publicize the agency's concern about the safety of the use of DMSO, to give notice that an investigational new drug (IND) exemption was required before beginning clinical studies, to impose some specific limitations on the investigational use of DMSO, and to establish a preclearance requirement for investigations with the drug. The agency had tentatively concluded that the regulation was unnecessary because FDA's position on the investigational status of DMSO is now widely known, and the investigational use of DMSO can be adequately controlled under the investigational drug regulation (21 CFR 312.1). No comments were received on the proposal.

§ 250.107 [Revoked]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 701, 52 Stat. 1050-1053 as amended, 1055-1056 as amended (21 U.S.C. 352, 355, 371)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 250 is amended by revoking § 250.107 *Dimethylsulfoxide (DMSO) preparations: clinical testing and investigational use.*

Effective date. This amendment is effective June 12, 1980.

(Secs. 502, 505, 701, 52 Stat. 1050–1053 as amended, 1055–1056 as amended (21 U.S.C. 352, 355, 371))

Dated: May 5, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-14477 Filed 5-12-80; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 520

Oral Dosage Form New Animal Drugs not Subject to Certification; Phthalofyne Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The regulations are amended to reflect approval of a supplemental new animal drug application (NADA) filed by Pitman-Moore, Inc., providing that phthalofyne (worm-killing agent) tablets in dogs be restricted to use by or on the order of a veterinarian to assure safe and effective use.

EFFECTIVE DATE: May 13, 1980.

FOR FURTHER INFORMATION CONTACT: Bob G. Griffith, Bureau of Veterinary Medicine (HFV–112), Food and Drug Administration, Department of Health and Human Services, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3430.

SUPPLEMENTARY INFORMATION: Pitman-Moore, Inc., Washington Crossing, NJ 08560, filed a supplemental NADA (9–342) providing for a change from OTC to prescription drug status for its Whipcide product (phthalofyne tablets) used to eliminate whipworms from dogs. Proper treatment of parasitic infections depends on accurate identification of the invading organisms. *Trichuris vulpis* (whipworm) infection can be confused with *Capillaria* infection because of similarity of the ova. Proper treatment when *Trichuris vulpis* is suspected necessitates clinical diagnosis and verification by laboratory tests before initiating drug therapy. Consequently, adequate directions for proper use of phthalofyne tablets by lay persons cannot be written. Therefore, the conditions of use of this drug are restricted to use by or on the order of a licensed veterinarian.

Under the Bureau of Veterinary Medicine's proposed supplemental approval policy (December 23, 1977, 42 FR 64367), this is a Category II approval. Approval of this supplement improves the animal safety and effectiveness of the product by moving the drug from OTC to prescription status. Accordingly, this approval did not require a reevaluation of the underlying safety and effectiveness data in the parent application.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C.360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 520 is amended in § 520.1760 by adding new paragraph (c)(3) to read as follows:

§ 520.1760 Phthalofyne tablets.

* * * * *

(c) * * *

(3) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. This amendment is effective May 13, 1980.

(Sec. 512(i) 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: May 5, 1980.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 80-14476 Filed 5-12-80; 8:45 am]

BILLING CODE 4110-03-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[FRL 1473-4]

Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans; Partial Stay of Regulations.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial stay of regulations.

SUMMARY: By the administrative order which appears below, EPA stays those regulations relating to the construction of new sources of air pollution and modifications to existing sources which appear at 40 CFR Part 51, Appendix S (1979) and 40 CFR 52.24, 44 FR 38471 (July 2, 1979). This stay parallels the stay of regulations for the prevention of significant air quality deterioration which appears at 45 FR 7800 (February 5, 1980).

EFFECTIVE DATE: The effective date of the stay is the date of signature of this notice.

FOR FURTHER INFORMATION CONTACT: James Weigold, Standards Implementation Branch (MD–15), Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, 919–541–5292, FTS 629–5292.

SUPPLEMENTARY INFORMATION: In the course of interpreting and implementing Title I of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, EPA in recent years has laid out a detailed mosaic of regulations and guidelines relating to the construction of new stationary sources of air pollution and modifications to existing ones. In June 1978, EPA issued regulations for the prevention of significant air quality deterioration, which now appear at 40 CFR 51.24 (1979) (the "Part 51 PSD regulations") and 40 CFR 52.21 (1979) (the "Part 52 PSD regulations"). In January 1979, EPA revised its Emission Offset Interpretative Ruling (the "Offset Ruling"), which now appears at 40 CFR Part 51, Appendix S (1979). Then, in April 1979, EPA issued a guideline entitled "General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas." *See* 44 FR 20372.[1] Finally, in July 1979, EPA issued an interpretive rule concerning certain statutory restrictions on new construction in nonattainment areas. *See* 44 FR 38471 (the "construction moratorium").

Each of those rules and guidelines focuses primarily on certain new stationary sources and modifications that would be "major." The Part 52 PSD regulations provide in general that any new "major stationary source" or "major modification" that would locate in a state in which the regulations apply must obtain a PSD permit before construction on the source or modification may begin. *See* 40 CFR 52.21(i)(1)(1979). The Part 51 PSD regulations, which specify the elements of an approvable state PSD program, provide in effect that the coverage of such a program must be at least as comprehensive as the coverage of the Part 52 regulations. *See id.* § 51.24(i)(1). Similarly, the General Preamble states in effect the EPA would propose to approve a program for preconstruction review that a state had submitted to meet the requirements of Part D of the Act, only if the program required "permits for the construction and operation of [certain] proposed *'major sources'* and *'major modifications'* * * *." 44 FR 20379 (emphasis added). The construction moratorium provides that "[a]fter June 30, 1979, no *major stationary source shall be constructed or modified* in any [designated] nonattainment area * * *, if [certain narrow circumstances exist]." 40 CFR 52.24(a), 44 FR 38473. The Offset Ruling, finally, applies to certain "major sources" and "major modifications." *See* 40 CFR Part 51, Appendix S, § I (1979).

[1] For supplements to the General Preamble, see 44 FR 38583 (July 2, 1979); 44 FR 50371 (August 28, 1979); 44 FR 51924, 51928–29 (September 5, 1979); 44 FR 53761 (September 17, 1979); and 44 FR 67182 (November 23, 1979).

Whether a proposed project would be "major" under each of those rules and guidelines depends upon the meaning of three terms: "source," "modification" and "potential to emit." In essence, the Part 51 and Part 52 PSD regulations provide that a proposed project would be "major," if it would be a "source" or "modification" with the "potential to emit" 100 or 250 tons per year or more of a pollutant regulated under the Act, depending on source type. *See* 40 CFR 51.24(b)(1)–(2), 52.21(b)(1)–(2) (1979). Similarly, the Offset Ruling provides that a project would be "major," if it would be a "source" or "modification" with the "potential to emit" 100 tons per year or more of any one of five named pollutants. *See* 40 CFR Part 51, Appendix S, § II(A)(4)–(5) (1979). Finally, EPA has established that in general the definition of "major" in the Offset Ruling is to govern the meaning of that term in the General Preamble and the construction moratorium.[2] *See* 44 FR 76 (first column), 38473 (second column); 44 FR 20379 (second column).

Under the PSD regulations, "source" means in general [3] plant; "modification" means a change at a "source" that would increase its "potential to emit" by a certain amount, ignoring any emission reductions; and "potential to emit" refers largely to the maximum rate at which the "source" or "modification" would emit a pollutant without control equipment. *See* 40 CFR 51.24(b)(2)–(5), 52.21(b)(2)–(5) (1979). The definitions of those terms in the Offset Ruling are virtually identical to those in the PSD regulations. *See* 40 CFR Part 51, Appendix S, § II(A)(1)–(5) (1979). Thus, each of the three terms currently shares a common meaning under the PSD regulations, the Offset Ruling, the General Preamble and the construction moratorium.

In June 1979, the United States Court of Appeals for the District of Columbia Circuit in a preliminary opinion held invalid the definitions of "source," "modification," and "potential to emit" in the Part 51 and Part 52 PSD regulations, as well as certain other key provisions of those regulations. *See Alabama Power Company* v. *Costle*, 13 ERC 1225. In December 1979, the court in a final opinion reaffirmed its earlier decisions as to the validity of the provisions at issue. *See* 13 ERC 1993.

In September 1979, EPA proposed various amendments to the PSD regulations in response to the preliminary opinion in *Alabama Power*. *See* 44 FR 51924. Among those amendments are provisions that would replace the current definitions of "source," "modification," and "potential to emit." *See id.* at 51948, 51952. Under those replacements, "source" would again generally mean plant; "modification," however, would mean any change at a "source" that would result in a significant *net* increase in "potential to emit"; and "potential to emit" would refer largely to the maximum rate at which the "source" or "modification" would emit a pollutant *with* control equipment.

In September, EPA also proposed amendments to the Offset Ruling that would establish for the purposes of those regulations definitions of "modification" and "potential to emit" that would parallel the new PSD definitions and a definition of "source" that would differ substantially. *See id.* at 51956, 51959. Under the proposed definition, "source" would mean in effect, not only plant, but also "identifiable piece of process equipment." *See id.*

In addition, EPA proposed amendments to 40 CFR 51.18 (1979) that would specify what a state new source review progam for nonattainment areas must provide in order to be approved by EPA. *See id.* at 51958. Those amendments to Section 51.18, which would override the relevant guidelines of the General Preamble, would require the use of the same definitions of "modification" and "potential to emit" as EPA proposed for the Offset Ruling. As to "complete" state implementation plans, they would allow the use of the same definition of "source" as EPA proposed for the PSD regulation; but, as to "incomplete" plans, they would require the use of the same definition of "source" as EPA proposed for the Offset Ruling. *See id.* at 51958. [4] In the preamble to the September proposals, EPA stated that it would propose in the interim, before completion of the rulemaking, to approve any state new source review program that would meet either the relevant guidelines of the General Preamble *or* the proposed amendments to Section 51.18 [5] *See id.* at 51928–29.

Finally, in September, EPA also proposed various amendments to the construction moratorium. Among them are the same definitions of "potential to emit" and "source" that the agency proposed for the Offset Ruling and a different definition of "modification." Under that definition, "modification" would be any change at a "source" that would result in *any* significant increase in "potential to emit," ignoring any emission reductions.

EPA will be unable to complete the rulemaking it began in September until approximately June 1980. The comments EPA has received so far are voluminous and raise important issues that deserve serious consideration. In addition, EPA is reanalyzing the exemptions for *de minimis* emission increases that it proposed (*see id.* at 51937–38) and attempting to complete an economic impact assessment of the proposals. Finally, internal formulation and review of drafts of the final amendments will require considerable time.

Until it completes the rulemaking, EPA plans to continue to operate for PSD purposes under the Part 51 and Part 52 PSD regulations. [6] Recently, however, EPA shrank the coverage of those regulations by staying them as to any source or modification that would not be "major" under the proposed amendments or would locate in an area designated nonattainment under Section 107 of the Act for each of the pollutants for which the source or modification would be "major" under the amendments. *See* 45 FR 7800 (February 5, 1980).

Until it completes the rulemaking, EPA will also continue to operate under the Offset Ruling and the construction moratorium. [7] By the order which

[2] For an exception relating to the definition of "modification" for Part D revisions to state implementation plans, see 44 FR 3277 (first and second columns).

[3] The actual definition is "any structure, building facility, equipment, installation, or operation (or combination thereof) which is [at one site and under common control]." 40 CFR 51.24(b)(4), 52.21(b)(4) (1979). "Facility" means "an identifiable piece of process equipment." *Id.* §§ 51.24(b)(5), 52.21(b)(5). Thus, a piece of equipment, as well as a plant, can be a "source."

[4] Under the proposal, a "complete" plan is one that "show(s) attainment by the deadline under section 172, and reasonable further progress in the interim, based exclusively on currently adopted, approved, and enforceable requirements. . . ." *Id.* An "incomplete" plan is "any plan where approval under Part D of Title I of the Act is conditioned on submission of additional material by the state; any plan containing state-adopted schedules for submission of additional material required under Part D; and any plan where additional submissions are needed by July 1, 1982. . . ." *Id.*

[5] EPA added that "[e]ven during the interim period, however, a plan will not be acceptable if it meets a combination of old and new requirements in such a way that it is less stringent than would be allowed under either the old or new set of requirements." *Id.* at 51929.

[6] The final opinion in *Alabama Power* has not yet come into effect. When it does, it will render ineffective key elements of those regulations. To avoid the uncertainty and confusion that would occur in PSD permitting if the opinion came into effect before EPA completed the rulemaking, EPA and many of the petitioners in *Alabama Power* asked the court to keep the opinion from coming into effect until June 2, 1980. On March 14, 1980, the court granted that request.

[7] It should be noted that the opinion in *Alabama Power* will not render ineffective any portion of the Offset Ruling or the construction moratorium, since neither of those regulations was before the court in that case. Obviously, however, the opinion is "of significance" to them. 13 ERC 1996 n. 7.

appears below, however, EPA is also shrinking the coverage of those regulations. The order shields from the Ruling any "source" or "modification" as defined in the proposed amendments to the Ruling that would *not* be "major" within the meaning of those amendments. Similarly, the order shields from the moratorium any "source" or "modification" as defined in the proposed amendments to the moratorium that would *not* be "major" within the meaning of those amendments. The purpose of this stay parallels that of the PSD stay: to relieve from the burdens of the Ruling and the moratorium that narrow class of projects that would escape those burdens under each possible set of amendments to the Ruling and the moratorium that would be issued in light of *Alabama Power*. To defer action with respect to those "sources" and "modifications" until completion of the rulemaking would cause on further reflection unnecessary hardship. It should be emphasized that the stay in no way expands the coverage of the Offset Ruling or the construction moratorium, since it affects *only* those projects which are already subject to those regulations.

EPA has decided that to take similar action aimed at the General Preamble is unnecessary. As stated above, EPA has already supplemented the General Preamble with the statement that it would propose during this transition period to approve any state program which would meet either the new source review guidelines of the General Preamble or the amendments to 40 CFR 51.18 (1979) that were proposed in September.

The following three examples illustrate in broad outline how the stay works. Each of the examples assumes that only the Offset Ruling or the moratorium might apply to the proposed project and that, if one would apply, the other would not. The examples reflect a common pattern of analysis: Roughly, the first step is to determine whether the proposed project would be a "major stationary source" or "major modification" under the relevant existing definitions. If it would not be, then neither the Ruling nor the moratorium would apply to it, independently of the stay. If, on the other hand, the project would be "major," then the second step is to determine whether it would be a "major stationary source" or "major modification" in whole or in part under the definitions proposed for the regulations in question. If it would not be, then the stay would shield it from those regulations. But if it would be a "major stationary source" or "major modification" in whole or in part, then the regulations in question would apply in spite of the stay, but only as to those parts of the "source" or "modification" that would fit either category.

Example I

A company proposes to build an entirely new plant. The plant would emit at maximum 10,000 tons per year of particulate matter (TPY of TSP) without controls and 50 TPY with controls. Under the applicable existing definition of "potential to emit," the plant would be a "major stationary source." Hence, the Ruling or the moratorium would apply to it, absent the stay. Under the definition of "potential to emit" in the proposal, however, the plant would not be "major." Hence, the stay would shield it from the Ruling or the moratorium, whichever would otherwise apply.

Example II

A company owns and operates a plant (A) which consists of two pieces of process equipment (B and C). The plant and the equipment could emit TSP at the following maximum rates:

	Without controls (TPY)	With controls (TPY)
B	20,000	100
C	100,000	500
A	120,000	600

A, B and C are each a "major stationary source" for the purposes of the Ruling and the moratorium under both the applicable existing definition of that term and the proposed definitions. Also, no increase or decrease in maximum uncontrolled and controlled emissions have yet to occur at the plant.

The company now proposes to expand the production capacity of C and simultaneously to install better controls at C, so that there would be no net increase in maximum controlled emissions. The change at C would not be a "reconstruction" of it, as defined in the proposal. The plant and the equipment after the changes would have the following maximum TSP emission rates:

	Without controls (TPY)	With controls (TPY)
B	20,000	100
C	120,000	500
A	140,000	600

The proposed change would be a "major modification" for the purposes of both the Ruling and the moratorium under the applicable existing definition of that term, since it would result in a gross increase in maximum uncontrolled emissions of 20,000 TPY at the plant. Hence, absent the stay, the Ruling or the moratorium would apply to the changes. The stay, however, would shield the change from whichever of those regulations would otherwise apply, since the change would result in no increase in maximum controlled emissions at either A or C.

Example III

A company owns and operates a plant which consists of one piece of process equipment. The equipment is "major" under the existing and the proposed definitions, and no increase or decrease in its maximum uncontrolled and controlled emissions have yet to occur.

The company proposes to add a new piece of equipment. The new piece would emit at maximum no more than 90 TPY of a particular pollutant without controls and no less than 20 TPY with controls.

Neither the Ruling nor the moratorium would apply to the change. The change would not be a "major modification" of the plant under the existing definition, since it would result in a gross increase in uncontrolled emissions of only 90 TPY. Although the change would be a "major modification" under the definitions of that term *proposed* for the Ruling and the moratorium, the stay does not operate to make those provisions of the proposal effective.

EPA regards the issuance of the stay as "nationally applicable" "final action" within the meaning of Section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1). EPA does not, however, regard the stay as the "promulgation or revision of regulations" within the meaning of Section 307(d)(1)(I) of the Act, 42 U.S.C. 7607(d)(1)(I). The stay is merely an order providing equitable relief during the period before the completion of the rulemaking that EPA began in September. The procedural requirements of Section 307(d), therefore, do not apply to the issuance of the administrative stay.

Those requirements, as well as the notice and comment requirements of Section 4 of the Administrative Procedure Act (the "APA"), 5 U.S.C. 553, do not apply for other reasons. Meeting either set of requirements would be "contrary to the public interest" within the meaning of Section 4(b)(B) of the APA, 5 U.S.C. 553(b)(B), since it would significantly delay the construction of those projects to which the stay applies. Meeting those requirements would also be "impracticable" within the meaning of Section 4(b)(B), since it would defeat

the very purpose of the stay: to provide relief as soon as possible. *See* Clean Air Act section 307(d)(1)(N), 42 U.S.C. 7607(d)(1)(N). For the same reasons, EPA finds that it has good cause to make the administrative stay immediately effective. *See* APA § 4(d), 5 U.S.C. 553(d).

(Clean Air Act, 42 U.S.C. 7401 *et seq.*]

Dated: April 23, 1980.

Douglas M. Costle,

Administrator.

Order Staying the Application of 40 CFR Part 51, Appendix S (1979) and 40 CFR 52.24, 44 FR 38471 (July 2, 1979)

I hereby stay the regulations at 40 CFR Part 51, Appendix S (1979) (the "Offset Ruling") as they apply to any "source" or "modification" as defined in the proposed amendments to the Offset Ruling at 44 FR 51924, 51956–57 (September 5, 1979) that would not be a "major stationary source" or "major modification" as defined in those proposed amendments. I hereby also stay the regulations at 40 CFR 52.24 (1979) (the "construction moratorium") as they apply to any "source" or "modification" as defined in the proposed amendments to the construction moratorium at 44 FR 51924, 51959 (September 5, 1979) that would not be a "major stationary source" or "Major modification" as defined in those proposed amendments. This order in no way affect the status of any state-adopted program for new source review which I have approved. This order applies immediately.

[FR Doc. 80-14661 Filed 5-12-80; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Parts 51 and 52

[FRL 1473-5]

Requirements for Preparation, Adoption, and Submittal of SIPS; Approval and Promulgation of State Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In the 1977 amendments to the Clean Air Act, Congress established a statutory restriction on construction or modification of certain major sources of air pollution after June 30, 1979 if State Implementation Plans are inadequate or are not adequately carried out for nonattainment areas. In the July 2, 1979 issue of the **Federal Register**, EPA published a final rule codifying the statutory restriction in the Code of Federal Regulations (40 CFR 52.24) and adding it to the State Implementation Plans. 44 FR 38471. In that same issue, EPA published a proposed rule inviting comment on additional language dealing with how the statutory restriction would apply. 44 FR 38583. After reviewing the comments, EPA is now amending 40 CFR 52.24 to clarify that the restriction on construction is to apply only to proposed new and modified major stationary sources that would be constructed in designated nonattainment areas.

EPA proposed on September 5, 1979 to amend the Emission Offset Interpretative Ruling (40 CFR Part 51 Appendix S), and its interpretation of the requirements for State Implementation Plans imposed by Section 173 of the Clean Air Act. These amendments would also apply to the requirements for restrictions on new source construction in nonattainment areas (40 CFR 52.24). In this action, EPA finalizes that portion of the September 5 proposal which eliminates the "clean portion of a designated nonattainment area" exemption; thus, restrictions on major source growth, requirements under the Offset Ruling and requirements under Section 173 of the Act now apply across the entire Section 107 designated nonattainment area.

EPA also solicited comments on September 5 regarding the applicability of nonattainment requirements to sources locating outside a designated nonattainment area but causing or contributing to a violation of an ambient air quality standard. In this action, EPA has decided that the Offset Ruling and Section 173 apply only in nonattainment areas, provided that the state submits and EPA approves a permit program or its equivalent that will review sources locating outside of nonattainment areas to assure attainment and maintenance of the standards. The Offset Ruling will continue to apply to sources locating outside of nonattainment areas but causing or contributing to a violation of ambient standards until the state's permit or equivalent program is approved.[1]

DATES: The effective date of these regulations is May 13, 1980. State Implementation Plan revisions for the purpose of conforming to these regulations are due nine months from May 13, 1980.

FOR FURTHER INFORMATION CONTACT: James Weigold, Standards Implementation Branch, (MD–15), Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, (919) 541–5292, FTS 629–5292.

SUPPLEMENTARY INFORMATION:

I. Growth Restrictions Outside the Designated Nonattainment Areas

The background of this rulemaking is described in the preamble to the rule published on July 2, 1979, 44 FR 38471. In summary, Congress provided that before July 1, 1979, EPA's Offset Ruling would govern new source construction affecting nonattainment areas. From that date forward, proposed major new sources or modifications of existing major sources are to be reviewed under the provisions of a revised SIP that meets the requirements of Part D, Title I, of the Clean Air Act. If a state does not have a revised plan in effect by July 1 that satisfies the requirements of Part D, Congress established that there would be a restriction on certain major new construction until the revised plan is approved by EPA. Congress also established that, if the revised plan is not carried out in accordance with Part D, permits for major new construction are not to be issued.

On July 2, 1979, EPA promulgated a rule imposing the statutory restriction on construction of major new sources or modifications in nonattainment areas for which no SIP meeting the requirements of Part D has been approved, if such sources or modifications [2] would cause or contribute to concentrations of pollutants for which a national ambient air quality standard is exceeded in the nonattainment area. 44 FR 38971. EPA also proposed additional language concerning how the statutory restriction would apply. In particular, EPA proposed to apply the restriction on construction without regard to the precise boundaries of the designated nonattainment area. Under this approach proposed sources would be subject, regardless of their location, if they would cause or contribute to the violation of the ambient standard within a nonattainment area where the restriction applied. Thus, sources outside the area would be subject if they would cause or contribute to the violation due to transport of pollutants, and sources inside the area would not be subject if they would not cause or contribute to the violation due to imprecise area boundaries (i.e., the presence of "clean pockets"). However, EPA has decided not to adopt this approach. Rather, the restriction on

[1] On September 5, EPA also proposed action on other matters relating to nonattainment areas. EPA will take final action on those matters when it completes action on the PSD proposals announced on September 5. In addition, EPA will at about the same time respond to the comments submitted in response to EPA's call for comments on the Offset Ruling, 44 FR 3298 (January 16, 1979).

[2] In this notice, "source" will refer to both source and modification.

construction applies (1) only to major sources or modifications locating within a designated nonattainment area and (2) to all such major sources or modifications locating within a designated nonattainment area which emit the pollutant for which the area is nonattainment (see Part II of this notice).

On the question of whether sources outside the designated nonattainment area may be subject to the statutory restriction, comments solicited July 2 have convinced EPA not to adopt this element of its proposal. The Act provisions calling for a statutory restriction on construction (sections 110(a)(2)(I) and 173(4)) specifically state that sources and modifications "in" the nonattainment area are covered. This represents a Congressional instruction that sources outside the nonattainment area are exempt from the restriction on construction. Commenters argued that this statutory language must take priority over the policy reasons EPA raised for the approach proposed July 2. EPA agrees, and is not extending the restriction to any sources or modifications outside of the designated nonattainment area. If it is discovered that the boundaries of a designated nonattainment area were drawn too narrowly, and that the ambient standard is in fact violated at a site outside of the designated nonattainment area, the Act provides for extending the boundary. *See* 43 FR 40412 col. 2 (September 11, 1978); 44 FR 30380, cols. 2 and 3 (April 4, 1979).

EPA also invited comment on July 2 on how the statutory construction restriction is to apply if a single nonattainment area covers several political subdivisions of a state, where one subdivision adopts and carries out the necessary SIP provisions while another subdivision refuses. EPA has decided that it may not exempt sources locating in the subdivision with an adequate control program where there is no approved Part D SIP revision covering the nonattainment area as a whole. The language of Sections 110(a)(2)(I) and 173(4) indicates that the statutory restriction is to be applied to an *entire* nonattainment area. EPA therefore lacks the statutory authority to exempt *any* source that would locate in a nonattainment area and would cause or contribute to concentrations of any pollutant for which a national ambient air quality standard is exceeded in that nonattainment area.

II. Elimination of Clean Spot Exemption

A. Background

On December 21, 1976, EPA issued an Emission Offset Interpretative Ruling (41 FR 55524) establishing certain requirements which must be met prior to construction of major new or modified stationary air pollution sources. Subsequent to the enactment of the Clean Air Act Amendments (CAAA) of 1977 (Pub. L. 95–95), EPA revised the Offset Ruling on January 16, 1979 and codified that ruling as Appendix S to 40 CFR Part 51. Appendix S applies to each "major new source or modification which would contribute to a violation of a (NAAQS)." 40 CFR Part 51, Appendix S, § I (1979). However, new or modified sources which locate in "a clean portion of a designated nonattainment area" are presently exempt from the requirements of Appendix S if, upon the basis of substantial and relevant evidence, they would not significantly impact the actual area of nonattainment; i.e., the source may apply for the "clean spot exemption." See Section IID of the Offset Ruling. Later, on April 4, 1979, EPA published a general preamble for proposed rulemaking for approval of SIP revisions for nonattainment areas, 44 FR 20372, which among other things, provided guidance to the states on proper application of the requirements of the Clean Air Act regarding new source review (Section 173) and the construction prohibition (Section 110(a)(2)(I)). Shortly thereafter, on July 2, 1979, EPA published an interpretive rule (40 CFR 52.24 (a) thru (d)) with respect to the restriction on construction for nonattainment areas. 44 FR 38471. In conjunction with this interpretive rule, EPA proposed language that would apply the construction restriction within the designated nonattainment area according to the principles set forth in section II. D of the Offset Ruling, exempting from the restriction sources which would locate in a clean portion of a nonattainment area and would not cause or contribute to a violation of the NAAQS for which the area was nonattainment. 44 FR 38585 (July 2, 1979).

However, in December, 1979, the United States Court of Appeals for the District of Columbia Circuit issued its final opinion in *Alabama Power Co.* v. *Costle,* 13 ERC 1993, holding that Congress intended the applicability of PSD permit review to turn on whether the proposed source would locate in an area designated attainment or unclassifiable, not on whether the source would impact such an area. Because of this holding, EPA, on September 5, 1979, proposed to vacate the "clean spot exemption" by changing the coverage of Section 173, and the Offset Ruling, and by not adopting the proposed changes to the restrictions on growth. 44 FR 51939, 51957–59. The Administrator reiterated his intention to promulgate this modification of these nonattainment provisions in the preamble to his January 30, 1980 partial stay of the prevention of significant deterioration regulations (45 FR 7800 (February 5, 1980)).

B. Discussion.

As proposed on September 5, 1979 (44 FR 51944) and as indicated on February 5, 1980 (45 FR 7800), EPA will no longer apply the "clean spot exemption" to sources within a nonattainment area. Instead, EPA is extending the requirements of 40 CFR Part 51 Appendix S (Offset Ruling) and promulgating requirements under 40 CFR 51.18 relating to the approvability of State Implementation Plan provisions for new source review pursuant to Section 173, as well as maintaining the requirements of 40 CFR 52.24 (prohibitions on growth), to cover new major stationary sources and major modifications proposing to construct *anywhere* in the designated nonattainment area which emit the pollutant(s) for which the area is nonattainment. This change is needed to effectuate Congressional intent by overcoming a very important shortcoming in the present regulatory structure. The PSD regulations, 40 CFR 51.24, 52.21 (1979), required any new major stationary source or modification (whether within or outside areas designated as nonattainment under Section 107) that would impact areas with air quality cleaner that an NAAQS to meet the applicable preconstruction requirements of those regulations. However, *Alabama Power* indicates at a minimum that PSD review for sources that would emit only criteria pollutants and would locate in areas designated nonattainment for all criteria pollutants is no longer appropriate. Consequently, since the Administrator has stayed application of the PSD regulations to certain sources locating in designated nonattainment areas, *see* 44 FR 7800 (February 5, 1980), use of the clean spot exemption means that certain sources would not be subject to either PSD or nonattainment new source review requirements. Today's action eliminates this shortcoming by having the appropriate nonattainment provisions apply everywhere in the designated nonattainment area.

The Clean Air Act generally requires review of each new major stationary source or major modification. Section

110(a)(2)(D). In particular, all such sources and modifications planning to locate in areas designated nonattainment for a pollutant for which the source or modification would be major [3] must receive a permit to assure that they will not interfere with efforts to attain and maintain national standards and that they utilize suitable emissions control technology. Since EPA may no longer apply PSD requirements in all cases to sources locating in clean spots of a nonattainment area, EPA must apply the requirements of Part D so that these basic congressional goals may be met.

Before making this decision, EPA considered the public comments addressing this issue. These comments were made in response to proposals on January 16, 1979 (Offset Ruling), July 2, 1979 (prohibition of construction) and September 5, 1979 (PSD and NSR). Thirty-five comments addressing the issue of the clean air pocket exemption were received.

The primary arguments presented for keeping this exemption, and the EPA response to these arguments, are presented below:

(1) The court decision in *Alabama Power* did not necessarily eliminate all preconstruction review for sources in clean spots, because state permit programs ensure preconstruction review of every new major source regardless of the source's location.

While this may be true for several States, other States may not have such comprehensive permit programs. For example, their permit programs may contain the clean spot exemption. Furthermore, not all State permit programs routinely require BACT or LAER for major new sources.

(2) Sources wishing to construct in clean spot areas must at a minimum meet new source performance standards (NSPS).

This would not eliminate the need to review many major sources, since NSPS does not cover all source categories. Moreover, sources subject to NSPS are not required to conform to requirements consistent with reasonable further progress towards attainment or the Part D attainment demonstration.

(3) Since the areas covered by the clean spot exemption really are attainment areas, PSD should be applied to sources desiring to locate in "clean spots" of a nonattainment area.

These areas are formally designated as "nonattainment," and *Alabama Power* indicates at a minimum that EPA may not extend PSD requirements to any source emitting only criteria pollutants and locating in an area designated as nonattainment for all criteria pollutants.

(4) The nonattainment areas should be redesignated to more closely match the actual nonattainment problem.

Considering the length of time involved in the process of redesignation and the lack of major source review in the interim, this suggestion is not a viable alternative. Moreover, this option would not be in conformance with the statute, since it would entail, at least temporarily, retention of the clean spot exemption. However, in light of today's action, States may wish to review past area designations and redesignate where they feel this would be necessary and appropriate.

Responding to a request for comment by EPA on September 5 (see 44 FR 51939), several commenters argued that the construction ban and new source review in nonattainment areas ought to be applied only if the proposed source would have a significant impact on ambient air quality, by causing or contributing to a violation of ambient air quality standards. Such an interpretation of Sections 172(b)(6) and 110(a)(2)(I) goes beyond the intent of Congress. Section 110(a)(2)(I) provides that the construction ban applies if the proposed source would "cause or contribute to *concentrations*" of any pollutant for which an area is nonattainment. A source may not have a significant impact (as defined, for example, by Section IID of the current Offset Ruling), yet still cause or contribute to concentrations of the pollutant. Furthermore, to ensure consistency, a source must be required to obtain a permit if it causes or contributes to concentrations of the pollutant for which the area is nonattainment, since it would be anomalous to prevent a source from constructing if there is no Part D Plan, yet exempt it from new source review once a Part D Plan has been approved. This is supported by the language of Section 173(1)(B), which requires a state permitting agency to determine that a proposed major source's emissions "will not cause or contribute to *emission levels* which exceed" the growth allowance a state may provide for under Section 172(b)(5). (emphasis added). Congress here spoke not of a "violation," but rather in terms of "emission levels," which is similar to "concentrations" of a pollutant. Similarly, applying the permit requirements of Section 173 to sources causing or contributing to concentrations of pollutants is necessary to ensure that the coverage of the construction moratorium embodied in Section 110(a)(2)(I) coincides with that in Section 173(4).[4] For these reasons, EPA will apply the construction ban and the Offset Ruling and will require state-submitted Part D permit programs to apply to proposed sources locating in a nonattainment area that will cause or contribute to concentrations of a pollutant for which the area exceeds a national ambient air quality standard.

III. Sources Locating Outside of Nonattainment Areas

On September 5, 1979 EPA also solicited comments on whether to apply nonattainment requirements to sources locating in designated clean or unclassifiable areas. See 44 FR 51939–40. Current EPA policy is to apply the Offset Ruling to all major sources locating in such areas if they would cause or contribute to a violation of ambient air quality standards anywhere in the state. In addition, the General Preamble for Proposed Rulemaking on Approval of State Implementation Plan Provisions for Nonattainment Areas ("General Preamble"), 44 FR 20372 (April 4, 1979), stated that EPA would require states to require new source review under Section 173 for all such sources. See 44 FR 20379. In its September 5 proposal, EPA announced that it was considering changing this policy and applying nonattainment requirements only to sources locating in nonattainment areas or those sources proposing to locate at sites where the standard is actually violated. Sources having a significant impact on a violation would have been required to reduce that impact so as not to cause or contribute to a violation, under the policy EPA was considering. See 44 FR 51939.

After further consideration and evaluation of the comments which were submitted, EPA has decided to restrict the required applicability of Section 173 and the Offset Ruling to only those sources locating in designated

[3] A source may emit many different pollutants. Also, an area may be designated attainment for certain criteria pollutants and nonattainment for other criteria pollutants. For simplicity, in this notice, EPA will use "sources locating in a nonattainment area" to refer to sources locating in an area designated nonattainment for a pollutant for which the source is major.

[4] It should also be noted that the legislative history of the Act does not speak of limiting the application of section 173 to sources causing or contributing to a violation. Rather, it speaks only of "all new or modified facilities" desiring to locate "in" a nonattainment area. *See*, e.g., H.R. Rep. 95–564, 95th Cong., 1st Sess., at 156–57 (1977). (Conference Report).

nonattainment areas.[5] EPA believes that this approach for Section 173 is required by the Act. While Sections 172(b)(6) and 173 (1), (2), (3) are not on their face restricted to designated nonattainment areas, Section 173(4) provides that a state permit program must contain a provision that no permit be issued unless the SIP "is being carried out for the nonattainment area *in which* the proposed source is to be constructed or modified * * *." (emphasis added). In addition, the legislative history speaks of new source review for nonattainment purposes to be carried out "in" the nonattainment area. *See* H.R. Rep. 95–564, 95th Cong., 1st Sess., at 156–7 (1977). To provide consistency, the Offset Ruling will be similarly constricted.

However, sources locating in clean or unclassifiable areas and causing or contributing to a violation of a standard must undergo review beyond the bare review required by 40 CFR 51.18 (1979). Section 165(a)(3)(B) requires that sources which apply for a PSD permit to construct in clean or unclassifiable areas demonstrate that they will not cause or contribute to "air pollution in excess of any * * * national ambient air quality standard in any air quality control region * * *." Section 110(a)(2)(D) requires each state to have "a permit or equivalent programs for *any* major emitting facility * * * to assure * * * that national ambient air quality standards are achieved and maintained * * *." (emphasis added). Taken together, these provisions require that the state review all major sources locating outside nonattainment areas but causing or contributing to a violation of a standard to reduce the impact on air quality so as to assure attainment and maintenance of ambient air quality standards.[6]

EPA believes that states may meet the requirements of Section 110(a)(2)(D) and 165(a)(3)(B) in a number of ways, including the use of the Offset Ruling or the Section 173 permit program. EPA cannot at this time specify detailed criteria for evaluating a state's program, since circumstances differ from state to state. Rather, EPA will evaluate each program on a case-by-case basis. However, the program must ensure that: (i) the program applies to all sources causing or contributing to violation of a standard, under the criteria used by section IIIA of the Offset Ruling; and (ii) the program will assure that ambient air quality standards are attained and maintained.

States will have nine months to submit a program meeting these requirements. Until EPA approves the program, or if a state does not submit a program, the Offset Ruling, or if already in place, the Section 173 permit program, will continue to apply to sources causing or contributing to a violation and locating outside a nonattainment area. This is to ensure that the drive toward attainment will not be delayed while the states prepare their Section 110(a)(2)(D) review programs.[7]

Most of the comments received by EPA generally supported the notion that nonattainment review ought to apply only in nonattainment areas. Many commenters noted that meeting the requirements of Section 165(a)(3)(B) should suffice to reduce the impact of sources locating outside a nonattainment area, but causing or contributing to a violation of a standard. EPA basically agrees, but notes that Section 110(a)(2)(D) requires that the impact of such sources must be sufficiently reduced to assure the attainment and maintenance of ambient air quality standards.

Other commenters argued that under *Alabama Power*, EPA may only apply PSD review in PSD areas, and nonattainment review in nonattainment areas. For the reasons discussed in the September 5 proposal, EPA does not agree with such a reading of this opinion. *See* 44 FR 51939. However, as discussed above, EPA does believe that by the terms of the statute, EPA may only require that Section 173 and the Offset Ruling be applied in designated nonattainment areas.

Some commenters disagreed that the statute compels restricting Section 173 to designated nonattainment areas. They point out that Sections 172(b)(6) and 173 (1), (2), (3) are not so restricted, and they argue that Congress ratified requiring the use of Section 173 outside nonattainment areas when it ratified the Offset Ruling in Section 129(a)(1). They also state, as did EPA on September 5, (see 44 FR 51939–40), that requiring stringent review is needed to protect air quality where there is a new violation and to avoid gerrymandering nonattainment area boundaries. EPA does not agree. As discussed above, the Act read as a whole and its legislative history suggest that Section 173 nonattainment review is only to be done in nonattainment areas. Moreover, the review mandated by Section 110(a)(2)(D) should suffice to protect air quality. Congressional ratification of the Offset Ruling is not applicable here, since Congress ratified the ruling "as may be modified by rule of the Administrator." Section 129(a)(1). Finally, EPA will carefully review all proposed redesignations to avoid the problem of gerrymandering.

IV. Authority.

This ruling is issued under Section 129(a) of the Clean Air Act Amendments of 1977, Pub. L. 95–95, 91 Stat. 745, August 7, 1977 (note under 42 U.S.C. 7502) and Sections 110, 172 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601).

The Administrator has determined that this rule is nationally applicable and is based on determinations of nationwide scope and effect. EPA intends that, for purposes of judicial review, the actions announced in this notice be treated as severable.

The Administrator has also determined that there is good cause to make this promulgation immediately effective. The stay of PSD review in nonattainment areas, combined with the current clean spot exemption, has created a loophole in new source review for nonattainment areas. To wait 30 days before implementing today's action could allow some sources which otherwise will need a permit to escape review entirely. Making today's action immediately effective will avoid this consequence and thereby protect public health and welfare. In addition, since Section 406(d)(2)(B) gives states 9 months after date of *promulgation* of these regulations to amend their implementation plans, there will be no adverse effect by making the regulations immediately effective.

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.

[5] The offset ruling will apply only when an area has been newly designated as nonattainment. It remains in effect until EPA approves the state's Part D plan for that area, or for 15 months, whichever is shorter. If 15 months pass without a Part D plan being approved, the construction moratorium will go into effect. However, if the state does not submit a plan within 9 months of redesignation, the moratorium also will go into effect.

[6] This Section 110(a)(2)(D) program must also apply to sources causing or contributing to a newly discovered violation of an ambient standard until the area is designated nonattainment, at which time the Offset Ruling will apply to sources locating in the new designated nonattainment area. The 110(a)(2)(D) program will continue to apply outside that new area.

[7] A state which is currently applying its Section 173 permit program or a program meeting the requirements of the Offset Ruling to such sources may, if it wishes simply continue to do so, rather than develop a new program.

Dated: April 23, 1980.

Douglas M. Costle,

Administrator.

Emission Offset Interpretive Ruling

1. The second sentence of Section I of the Emission Offset Interpretive Ruling, 40 CFR Part 51, Appendix S, as revised 44 FR 3282 (January 16, 1979), is amended to read as follows:

I. Introduction

* * * * *

A major new source or major modification which would locate in an area designated in 40 CFR 81.300 *et. seq.* as nonattainment for a pollutant for which the source or modification would be major may be allowed to construct only if the stringent conditions set forth below are met.

* * * * *

2. Section II of the Emission Offset Interpretive Ruling, 40 CFR Part 51, Appendix S, as revised 44 FR 3283 (January 16, 1979), is amended as follows:

2.a. By revising subsection C, to read as follows:

C. *Review of specified sources for air quality impact.* In addition, the reviewing authority must determine whether the major stationary source or major modification would be constructed in an area designated in 40 CFR 81.300–81.356 as nonattainment for a pollutant for which the stationary source or modification is major. However, a proposed source with allowable emissions which do not exceed 50 tons per year, 1000 pounds per day, or 100 pounds per hour, whichever is most restrictive,[2] needs no further analysis under this ruling, provided such a source meets the requirements of Section II.B.

Where a source is constructed or modified in increments which individually do not emit more than the above amounts and the increments have not been offset in accordance with this Ruling, the allowable emissions from all such increments granted a permit to construct after December 21, 1976, shall be added together and this Ruling may be applicable to each increment when a proposed increment would cause the sum of the allowable emissions which have not been offset to equal or exceed 50 tons per year, 1000 pounds per day, or 100 pounds per hour. If any of the increments has not previously been subject to Condition 1 of Section IV.A. (requiring the source to meet the lowest achievable emission rate), such determination must consider the stage of construction of such increment and the ability of the source to install additional control equipment.

2.b. By deleting subsection D, entitled "Sources locating in a 'clean' portion of a designated nonattainment area" and denoting it as [Reserved].

2.c. By deleting subsection E, entitled "Sources in attainment or unclassifiable areas" and denoting it as [Reserved].

3. Section III of the Emission Offset Ruling, 40 CFR Part 51, Appendix S, as revised 44 FR 3282 (January 16, 1979), is amended as follows:

III. Sources Locating in Designated Clean or Unclassifiable Areas Which Would Cause or Contribute to a Violation of a National Ambient Air Quality Standard.

A. This section applies only to major sources or major modifications which would locate in an area designated in 40 CFR 81.300 *et seq.* as attainment or unclassifiable in a state where EPA has not yet approved the state preconstruction review program required by 40 CFR 51.18(k), if the source or modification would exceed the following significance levels at any locality that does not meet the NAAQS:

	Annual	Averaging time (hours)			
		24	8	3	1
Pollutant:					
SO_2	1.0 μg/m³	5 μg/m³		25 μg/m³	
TSP	1.0 μg/m³	5 μg/m³			
NO_2	1.0 μg/m³				
CO			0.5 mg/m³		2 mg/m³

B. Sources to which this section applies must meet Conditions 1, 2, and 4 of Section IV.A. of this ruling.[2] However, such sources may be exempt from Condition 3 of Section IV.A. of this ruling.

C. *Review of specified sources for air quality impact.* For "stable" air pollutants (i.e. SO_2, particulate matter and CO), the determination whether a source will cause or contribute to a violation of an NAAQS generally should be made on a case-by-case basis as of the proposed new source's start-up date using the source's allowable emissions in an atmospheric simulation model (unless a source will clearly impact on a receptor which exceeds an NAAQS).

For sources of nitrogen oxides, the initial determination of whether a source would cause or contribute to a violation of the NAAQS for NO_2 should be made using an atmospheric simulation model assuming all the nitric oxide emitted is oxidized to NO_2 by the time the plume reaches ground level, the initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate.

For photochemical oxidants, sources of volatile organic compounds (VOC) locating within 36 hours travel time (under wind conditions associated with concentrations exceeding the NAAQS for oxidants) of a nonattainment monitor shall be subject to Section IV of this Ruling. However, a VOC source may be exempt from these requirements if the source owner can demonstrate that the emissions from the proposed source will have virtually no effect upon any area that exceeds the NAAQS for photochemical oxidant. This exemption is only intended for remote rural sources whose emissions would be very unlikely to interact with other significant sources of VOC or NO_2 to form additional oxidant.[3]

As noted above, the determination as to whether a source would cause or contribute to a violation of an NAAQS should be made as of the new source's start-up date. Therefore, if a designated nonattainment area is projected to be an attainment area as part of an approved SIP control strategy by the new source start-up date, offsets would not be required if the new source would not cause a new violation.

D. *Sources locating in "clean areas," but would cause a new violating of an NAAQS.* If the reviewing authority finds that the emissions from a proposed source would cause a new violation of an NAAQS, but would not contribute to an existing violation, approval may be granted only if both of the following conditions are met:

[2] Required only for those pollutants for which the increased allowable emissions exceed 50 tons per year, 1000 pounds per day, or 100 pounds per hour, although the reviewing authority may address other pollutants if deemed appropriate. The preceding hourly and daily rates shall apply only with respect to a pollutant for which a national ambient air quality standard, for a period less than 24 hours or for a 24-hour period, as appropriate, has been established.

[3] The discussion in this paragraph is a proposal, but represents EPA's interim policy until final rulemaking is completed.

Condition 1. The new source is required to meet a more stringent emission limitation [4] and/or the control of existing sources below allowable levels is required so that the source will not cause a violation of any NAAQS.

Condition 2. The new emission limitations for the new source as well as any existing sources affected must be enforceable in accordance with the mechanisms set forth in Section V below.

4. The title to Section IV and the first paragraph of Section IV.A. of Emission Offset Interpretive Ruling, 40 CFR Part 51, Appendix S, as revised 44 FR 3282 (January 16, 1979), are amended to read as follows:

IV. Sources That Would Locate in a Designated Nonattainment Area

A. *Conditions for Approval.* If the reviewing authority finds that the major stationary source or major modification would be constructed in an area designated in 40 CFR 81.300 *et seq* as nonattainment for a pollutant for which the stationary source or modification is major, approval may be granted only if the following conditions are met:

* * * * *

5. The final sentences of Section VI of the Emission Offset Interpretive Ruling, 40 CFR Part 51, Appendix S, as revised 44 FR 3282 (January 16, 1979), is amended to read as follows:

VI. Policy Where Attainment Dates Have Not Passed.

* * * * *

In such cases, a new source locating in an area designated in 40 CFR 81.3000 *et seq.* as nonattainment (or, where Section III of this Ruling is applicable, a new source which would cause or contribute to an NAAQS violation) may be exempt from the Conditions of Section IV.A. so long as the new source meets the applicable SIP emissions limitations and will not interfere with the attainment date specified in the SIP under Section 110 of the Act.

[4] If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an enforceable numerical emission standard infeasible, the authority may instead prescribe a design, operational or equipment standard. In such cases, the reviewing authority shall make its best estimate as to the emission rate that will be achieved and must specify that rate in the required submission to EPA (see Part V). Any permits issued without an enforceable numerical emission standard must contain enforceable conditions which assure that the design characteristics or equipment will be properly maintained (or that the operational conditions will be properly performed) so as to continuously achieve the assumed degree of control. Such conditions shall be enforceable as emission limitations by private parties under Section 304. Hereafter, the term "emission limitation" shall also include such design, operational, or equipment standards.

Preconstruction Review Requirements for State Plans

6. Add paragraphs (j) and (k) to 40 CFR 51.18 to read as follows:

§ 51.18 Review of new sources and modifications.

* * * * *

(j) Each plan shall adopt a preconstruction review program to satisfy the requirements of Sections 172(b)(6) and 173 of the Act for any area designated as nonattainment for any national ambient air quality standard under 40 CFR 81.300 *et seq.* Such a program shall apply to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment, if the stationary source or modification would locate anywhere in the designated nonattainment area. A major stationary source or major modification that is major for volatile organic compounds is also major for ozone.

(k) Each plan shall adopt a preconstruction review permit program or its equivalent to satisfy the requirements of Section 110(a)(2)(D)(i) of the Act for any area designated as attainment or unclassifiable for any national ambient air quality standard under 40 CFR 81.300 *et seq.* Such a program or its equivalent shall apply to any new major stationary source or major modification that would locate in a designated attainment or unclassifiable area and would exceed the significance increments specified in Section III.A. of the Emission Offset Interpretive Ruling, Appendix S to this Part.

Restrictions on Construction For Nonattainment Areas

7. Add paragraph (e) to 40 CFR 52.24 to read as follows:

§ 52.24 Statutory Restriction on New Stationary Sources.

* * * * *

(e) For any area designated as nonattainment for any national ambient air quality standard, the restrictions in paragraph (a) and (b) shall apply to any major stationary source or major modification that would be major for the pollutant for which the area is designated nonattainment, if the stationary source or major modification would be constructed anywhere in the designated nonattainment areas. A major stationary source or major modification that is major for volatile organic compounds is also major for ozone.

[FR Doc. 80-14662 Filed 5-12-80; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 180

[PP OF2295/R249; FRL 1491-1]

Nosema locustae; Exemption from the requirement of a tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the insecticide *Nosema locustae.* The request was submitted by Sandoz, Inc. This regulation establishes a tolerance exemption for residues of *Nosema locustae* on rangeland forage.

EFFECTIVE DATE: May 13, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Franklin Gee, Product Manager (PM-17), Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, 202-755-2196.

SUPPLEMENTARY INFORMATION: On January 29, 1980, notice was given (45 FR 7622) that Sandoz, Inc., 480 Camino del Rio So., San Diego, CA 92108, had filed a pesticide petition (PP OF2295) with EPA. This petition proposed the establishment of an exemption from the requirement of tolerances for residues of the insecticide *Nosema locustae* when used on the raw agricultural commodity rangeland forage. No comments were received in response to this notice of filing.

The data submitted or referenced in the petition and other relevant material have been evaluated. The toxicology data considered in support of the proposed exemption from the requirement of a tolerance included a subacute oral study in rats, a primary skin irritation study in rabbits, an acute dermal toxicity study in guinea pigs, an acute inhalation study in rats and a 13-week dietary study in rats. No adverse effects were noted in any of these studies. An intraperitoneal injection study in mice was submitted, but it was considered inconclusive. Insufficient data were presented to show whether the subject insecticide is pathogenic to man or fish and wildlife species. However, in order to resolve this concern, the Agency has contracted to have the following toxicology studies performed:

(1) Intraperitoneal injection in mice.
(2) Intarcerebral innoculation.
(3) Occular innoculation.

These studies were designed to show whether *Nosema locustae* is pathogenic to man. Preliminary results of these studies show no adverse effects on man.

The Agency is awaiting the full reports of these studies. In regards to whether *Nosema locustae* is pathogenic to fish and wildlife species, the Agency is requiring registrants to submit, within a year, the following studies:

(1) An avian intraperitoneal injection test (preferably with an upland gamebird).

(2) An aquatic invertebrate acute toxicity test (preferably with a *Daphnia magna*).

(3) An avian infestivity test (preferably with an upland gamebird). After a full review of the data, *Nosema locustae* may be determined to be non-pathogenic to man and fish wildlife. In the meantime, the granting of an exemption from the requirement of a tolerance would be in the public interest because of the beneficial role of this protozoan in rangeland pest management. The grasshopper is a devastating pest and threatens to render useless many acres of valuable rangeland. Additionally, the registration under which use will be permitted is a conditional one, and may be terminated quickly should additional data not be provided or should adverse effects be manifest from the review of new data and information. (The notice of receipt of the application for conditional registration appears elsewhere in today's **Federal Register.**)

Information shows that spores of *Nosema locustae* are removed by grasshoppers or other insects, dissipate rapidly in the environment, and are not expected to enter the human food chain. Thus, acceptable daily intake (ADI) and maximum permissible intake (MPI) considerations are not relevant to this petition. No enforcement actions are anticipated. Therefore, the requirements of an adequate analytical method for enforcement purposes is not applicable to this exemption request. However, an analytical method is available for quality control of the product.

Nosema locustae is a naturally occurring protozoan of the class Cnidosporidea, which produces multicellular spores. When ingested by susceptible insects (mainly grasshoppers), these spores penetrate the midgut epithelium, and vegetative forms reproduce repeatedly in fat bodies. When host tissue is depleted, sporulation occurs, and spores are released when the host cadaver decomposes allowing the cycle to continue. This is the first exemption from the requirement of a tolerance for this protozoan. The protozoan is considered useful for the purpose for which an exemption from the requirement of a tolerance is sought, and it is concluded that an exemption will protect the public health.

Any person adversely affected by this regulation may, on or before June 12, 1980, file written objections with the Hearing Clerk, EPA, Rm. M-3708 (A-110), 401 M St., SW, Washington, DC 20460. Such objections should be submitted in triplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Effective May 13, 1980, Part 180 is amended as set forth below.

(Sec. 408(d)(2), 68 Stat. 512, (21 U.S.C. 346a(d)(2)).

Dated: May 7, 1980.

James M. Conlon,

Acting Deputy Assistant Administrator for Pesticide Programs.

Part 180, Subpart D, is amended by adding the new § 180.1041 to read as follows:

§ 180.1041 Nosema locustae; exemption from the requirement of a tolerance.

The microbial insecticide *Nosema locustae* is exempted from the requirement of a tolerance for residues in or on the raw agricultural commodity rangeland forage.

[FR Doc. 80-14652 Filed 5-12-80; 8:45 am]

BILLING CODE 6560-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 101

[FPMR Temp. Reg. F-495]

Sharing and Procurement of ADP Services; Temporary Regulations

AGENCY: Automated Data and Telecommunications Services, General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This regulation changes the provisions of FPMR Subpart 101-36.2 so that Federal agencies are not required to submit a GSA Form 2068, Request for ADP Service, for lower value ADP time and service procurements. However, agencies will continue to be required to contact GSA's regional offices to determine whether existing Federal ADP resources can meet their requirements. This change will allow Federal agencies to proceed with these procurement actions without prior GSA approval. It will also reduce paperwork for both GSA and the Federal agencies.

DATES: Effective date: May 1, 1980. Expiration date: May 1, 1982. Comments are due: On or before August 11, 1980.

ADDRESS: Comments should be addressed to: General Services Administration (CPEP), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: John F. Stewart, Procurement Policy and Regulations Branch, Policy and Evaluation Division (202-566-0834).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purpose of Executive order 12044.

(Sec. 205(c), 63 Stat. 390, (40 U.S.C. 486(c)))

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter F to read as follows:

[Federal Property Management Reg. Temporary Reg. F-495]

Sharing and procurement of ADP services

April 30, 1980.

1. *Purpose.* This regulation changes the provisions of FPMR Subpart 101-36.2 so that Federal agencies can obtain lower dollar value ADP time or services from commercial sources without submitting a GSA Form 2068, Request for ADP Service. This change will allow Federal agencies to proceed with these

procurement actions without prior GSA approval. However, a determination must be made by the procuring agency that there are no Federal ADP resources or established GSA mandatory contractual resources that can meet the particular requirement.

2. *Effective date.* The provisions of this regulation become effective May 1, 1980.

3. *Expiration date.* This regulation expires May 1, 1982.

4. *Background.* FPMR Subpart 101–36.2 requires that agencies obtain an approved GSA Form 2068 before contracting for any ADP services. The current FPMR procedures are directly related to GSA's regional ADP sharing program. However, these regulations create considerable paperwork for both GSA and Federal agencies. This regulation requires only that agencies contact GSA's regional offices to ensure that ADP sharing is or is not available. If sharing is not available, the GSA regional office will advise the agency. However, submission and approval of the GSA Form 2068 will continue to be required prior to procurement action when its value is above the thresholds stated in this regulation.

5. *Applicability.* The provisions of this temporary regulation apply to all Federal agencies as defined in Subpart 101–35.2, Appendix A—Glossary of Terms.

6. *Explanation of change.* Subpart 101–36.2—Automatic Data Processing Resources Utilization is amended to allow agencies to procure ADP time or services without prior approval under specified conditions, by revising the following sections.

a. Section 101–36.203–1 is revised, as follows:

§ 101–36.203–1 ADP sharing procedures.

(a) Federal agencies shall not initiate the process of selecting and acquiring ADP time or services from commercial sources unless it is first determined that the required ADP capability cannot be met satisfactorily by utilizing existing Federal ADP resources.

(b) Federal agencies shall first attempt to satisfy their ADP requirements by screening resources of other ADP units in their vicinity. If the result of the screening is unsuccessful, the requirement shall be referred to the appropriate ADP sharing exchange for assistance in locating suitable Federal ADP resources and in making the necessary arrangements for sharing. Requests for assistance may be made by mail, telephone, teletypewriter, or personal contact.

(c) The sharing exchange will advise requestors as to the availability of existing Federal ADP resources capable of satisfying their requirements.

b. Section 101–36.203–2 is revised as follows:

§ 101–36.203–2 Authorization for commercial procurement.

(a) Agencies may procure ADP time or services without prior approval of GSA provided:

(1) ADP time or services cannot be met satisfactorily by utilizing existing Federal ADP resources; and

(2) The value of the procurement does not exceed (i) $300,000 per year cost for a competitive procurement or (ii) $50,000 per year cost for a sole source procurement.

(b) When the value of the requirement exceeds the thresholds set forth in § 101–36.203–2(a)(2), the agency shall submit a completed GSA Form 2068, Request for ADP Service (illustrated at § 101–36.4902–2068), to the General Services Administration (C), Washington, DC 20405. An approved GSA Form 2068 constitutes authorization to proceed with procurement action. Agencies are required to comply with regulatory provisions relating to competition in procurement (see particularly Federal Procurement Regulations §§ 1–1.301–1 and 1–1.302–1).

(c) If a request for ADP services will or may result in the government's acquiring title to general-purpose ADP equipment or proprietary software, GSA will process the proprietary software and equipment portions of the request as an Agency Procurement Request (APR) in a manner similar to the method described by Subpart 101–36.4. Note, software development, in contrast to proprietary software, in being, is an ADP service and as such is subject to the provisions of § 101–36.203–1.

7. *Comments.* Comments are invited concerning the effect or impact of this regulation and the policy and procedures that should be adopted in the future. Comments should be forwarded to the General Services Administration (CPEP), Washington, 20405 within 90 days of publication in the **Federal Register.**

8. *Effect on other regulations.* This temporary regulation replaces FPMR sections §§ 101–36.203–1 and 101–36.203–2. This action also supersedes the provisions of FPMR Temporary Regulation E–47 to the extent that they are in conflict with this regulation. Specifically, prior approval of GSA is not required to conduct selections under the Teleprocessing Services Program (TSP) below the thresholds set forth in §§ 101–36.203–1 and 101–36.203–2. Detailed agency reporting procedures for reporting acquisitions under TSP in accordance with the provisions of this regulation may be obtained from GSA's regional offices. These procedures will be incorporated in a formal change to the GSA Teleprocessing Services Program handbook.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 80–14627 Filed 5–12–80; 8:45 am]

BILLING CODE 6820–25–M

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41 CFR Ch. 101

[FPMR Temp. Reg. A–14]

Discontinued Use of General Supply Fund in Financing Nonstock Requisitions; Temporary Regulations

AGENCY: Office of Plans, Programs, and Financial Management, General Services Administration.

ACTION: Temporary regulation.

SUMMARY: The General Services Administration (GSA) is changing its regulations by specifying that the General Supply Fund (GSF) will no longer be used to finance nonstock direct delivery requisitions for Government agencies. Agencies will submit requisitions to GSA, where a purchase order will be initiated. Invoices for goods will be sent directly to the agency by the vendor. The agency that ordered the goods is responsible for payment of the invoice. GSA expects these changes will significantly reduce the impact of cash flow upon the GSF.

DATES: Effective date: May 1, 1980. Expiration date: April 30, 1981.

FOR FURTHER INFORMATION CONTACT: William R. Stanton, Supply and Transportation Accounting Division (202–566–0620).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044.

(Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)))

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter A.

[Federal Property Management Regs., Temporary Reg. A–14]

May 1, 1980.

Discontinued use of General Supply Fund in financing nonstock requisitions

1. *Purpose.* This temporary regulation establishes new procedures for the payment of nonstock direct delivery requisitions prescribed by § 101–2.101(c).

2. *Effective date.* This regulation is effective May 1, 1980.

3. *Expiration date.* This regulation expires April 30, 1981.

4. *Background.* The General Supply Fund (GSF) will no longer be used to finance nonstock direct delivery requisitions for Government agencies. The General Services Administration (GSA) will initiate purchase orders when agencies submit requisitions for goods using the client agency's billing address. Therefore, the agency will be billed by the vendor directly and also resolve certain losses or discrepancies.

5. *Effect on other directives.* Section 101-2.101 is amended by revising paragraphs (a) and (c) to read as follows:

§ *101-2.101 Background.*

(a) GSA provides supplies, equipment, services, space, communications, motor vehicles, printing, and other miscellaneous items for Government agencies on a reimbursable basis. These supplies and services are financed from revolving, management, or working funds; and reimbursement from agencies is obtained through periodic billings and collections intended to permit GSA to operate these programs with a minimum amount of appropriated capital. However, nonstock direct deliveries for goods are financed from the ordering agency's appropriations and funds.

* * * * *

(c) In providing for nonstock direct deliveries, GSA will receive a requisition or other appropriate request from a Government agency for goods. This requisition or request shall indicate a Fund Code and where possible a specific number for the appropriation to be charged. The Fund Code entry itself represents a certification to GSA that sufficient funds have been properly made available by the ordering agency to cover the procurement action. Once received, GSA will initiate a procurement action using the client agency's billing address. The ordering agency will be billed directly by the vendor and payment will be made from the agency's appropriations and funds. If the ordering agency has not received the goods in accordance with the purchase order, it is the agency's responsibility to resolve certain losses or discrepancies with the vendor as prescribed in Subpart 101-26.8. GSA will provide packing services for export shipments and bill the customer agency at a prorated value of the material requisitioned.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 80-14628 Filed 5-12-80; 8:45 am]

BILLING CODE 6820-39-M

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41 CFR Part 101-26

[FPMR Amdt. E-238]

Reporting Discrepancies or Deficiencies in GSA or DOD Shipments, Material, or Billings

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation clarifies policy conerning reporting discrepancies or deficiencies in shipments by providing information for obtaining copies of the GSA Handbook, Discrepancies or Deficiencies in GSA or DOD Shipments, Material, or Billings. The addition of this information will update the FPMR accordingly.

EFFECTIVE DATE: May 13, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. John Carney, Office of Supply Policy, Federal Supply Service, General Services Administration, Washington, DC 20406 (703-577-0393).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, it is not significant for the purposes of Executive Order 12044.

Section 101-26.803-1(a) is amended by revising the introductory paragraph to read as follows:

§ Section 101-26.803 Reporting discrepancies or deficiencies.

(a) When discrepancies or deficiencies are incurred in shipments or material, activities shall document these discrepancies or deficiencies with sufficient information to enable initiation and processing of claims against carriers and suppliers for shortages, damages, and the disposition of any overages or incorrect items. Procedures for documenting these discrepancies or deficiencies, including those for documenting and reporting quality deficiencies, are set forth in the GSA Handbook, Discrepancies or Deficiencies in GSA or DOD Shipments, Material, or Billings, promulgated by the Commissioner, Federal Supply Service. Copies of this handbook may be obtained by submitting a completed GSA Form 457, FSS Publications Mailing List Application, in accordance with the instructions on the form. The mailing list code for this handbook is ODDH-0001. Copies of GSA Form 457 may be obtained from the GSA regional office servicing the area in which the requesting activity is located or by writing the General Services Administration, Centralized Mailing List Services, Building 41, Denver Federal Center, Denver, CO 80225.

* * * * *

(Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)))

Dated: May 1, 1980.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 80-14629 Filed 5-12-80; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 5720

[C-27013]

Colorado; Withdrawal of National Forest Lands for Public Road and Utility Corridor

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This public land order withdraws 4.036 acres in Summit County for protection of an existing road and utility corridor.

EFFECTIVE DATE: May 13, 1980.

FOR FURTHER INFORMATION CONTACT: Alvah Q. Whitledge, Colorado State Office, 303-837-2825.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described national forest lands are hereby withdrawn from entry or location under the mining laws (30 U.S.C., Chapter 2), and reserved for protection of a State highway and public utilities corridor:

Arapaho National Forest Sixth Principal Meridian

Summit County Road No. 700

T. 6 S., R. 77 W.

A tract of land in section 30, more particularly described as follows:

Beginning at a point lying on the 3-4 line of the Rankin Placer, U.S. Mineral Survey No. 1364 whence the southwest corner of said section 30 bears S. 87°12'44" W. 320.32 feet distant; thence N. 04°38'35" W. a distance of 453.98 feet to a point on the 2-3 line of the Dora L. Lode, U.S. Mineral Survey No. 16068; thence N. 60°54'10" E. along said 2-3 line of Dora L. Lode a distance of 26.91 feet to corner

No. 2 of said Dora L. Lode; thence N. 25°15'20" W. along line 2–1 of said Dora L. Lode a distance of 151.53 feet to corner No. 1 of said Dora L. Lode also being corner No. 1 of Iron Mask Lode, U.S. Mineral Survey No. 16068; thence N. 29°24'05" W. along the 1–2 line of said Iron Mask Lode a distance of 149.83 feet to corner No. 2 of said Iron Mask Lode; thence N. 60°49'44" E. along the 2–3 line extended of said Iron Mask Lode a distance of 100.68 feet; thence N. 04°38'35" W. a distance of 761.94 feet to a point on the 5–6 line of the Masonic Placer, U.S. Mineral Survey No. 9616; thence N. 00°24'47" W. along the 6–5 line of said Masonic Placer a distance of 868.43 feet to corner No. 5 of said Masonic Placer; thence S. 89°57'51" E. a distance of 16.00 feet to a point on line 1–2 of the Magnum Bonum Placer, U.S. Mineral Survey No. 3139; thence S. 04°38'35" E. along said line 2–1 of the Magnum Bonum Placer a distance of 2,124.46 feet to corner No. 1 of said Magnum Bonum Placer, also being corner No. 18 of French Gulch Placer, U.S. Mineral Survey No. 2589; thence S. 04°38'35" E. along line 18–19 of said French Gulch Placer a distance of 247.00 feet to corner No. 19 of said French Gulch Placer, thence continuing S. 04°38'35" E. a distance of 45.71 feet to a point on said 3–4 line of Rankin Placer; thence S. 89°24'26" W. along said 3–4 line of the Rankin Placer a distance of 80.20 feet to the point of beginning.

The area described aggregates 4.036 acres in Summit County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal shall remain in effect for a period of 20 years from the date of this order.

Dated: April 23, 1980.

Guy R. Martin,

Assistant Secretary of the Interior.

[FR Doc. 80-14680 Filed 5-12-80; 8:45 am]

BILLING CODE 4310-84-M

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43 CFR Public Land Order 5722

[NM-22547]

New Mexico; Withdrawal for National Forest Recreation Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 128.50 acres of national forest land from the operation of the mining laws as an addition to the Cienega Recreation Area in the Cibola National Forest.

EFFECTIVE DATE: May 13, 1980.

FOR FURTHER INFORMATION CONTACT: Stella Gonzales, New Mexico State Office, 505–988–6211.

By virtue of the authority contained in Section 204 of the Act of October 21, 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described national forest land is hereby withdrawn from appropriattion under the mining laws, 30 U.S.C. 21, et seq., but not from leasing under the mineral leasing laws, in aid of programs of the Department of Agriculture:

Cibola National Forest; New Mexico Principal Meridian

Cienega Recreation Area Addition

T. 11 N., R. 5 E.,
- sec. 14, NE¼NW¼SW¼, W½NE¼SW¼SW¼, SE¼NE¼SW¼SW¼, SE¼SW¼SW¼ and SW¼SE¼SW¼;
- sec. 23, lot 1 (approximately 10 acres not included in PLO 4757), N½NE¼NW¼ (less approximately two acres included in PLO 4757), E½SW¼NE¼NW¼, N½NE¼NW¼NW¼, SE¼NE¼NW¼, N½NE¼SE¼NW¼, N½SW¼NE¼ and N½SE¼NE¼ (less approximately two acres in PLO 4757).

The area described aggregates 128.50 acres, more or less, in Bernalillo County, New Mexico.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest lands under lease, license or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

Dated: May 7, 1980.

Guy R. Martin,

Assistant Secretary of the Interior.

[FR Doc. 80-14648 Filed 5-12-80; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No FEMA 5819]

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 34294, Bethesda, Maryland 20034, phone: (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Krimm, National Flood Insurance Program (202) 755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Insurance Administrator has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	County	Location	Community No.	Effective dates of authorization/ cancellation of sale of flood insurance in community	Special flood hazard area identified
Alabama	De Kalb	Collinsville, town of	010066B	Apr. 15, 1980, Suspension withdrawn.	May 17, 1974 and Jan. 2, 1976.
Do	Talladega	Talladega, city of	010200C	do	June 7, 1974 and July 16, 1976.
Do	De Kalb	Valleyhead, town of	010068B	do	May 3, 1974 and Apr. 30, 1976.
Arkansas	Lawrence	Hoxie, city of	050119B	do	May 10, 1974 and Oct. 24, 1975.
California	Los Angeles	Lynwood, city of	060635B	do	June 28, 1974 and Nov. 21, 1975.
Do	Riverside	Palm Desert, city of	060629B	do	June 14, 1977
Do	Ventura	Santa Paula, city of	060420B	do	May 24, 1974 and June 25, 1976.
Connecticut	Litchfield	New Milford, town of	090049B	do	Nov. 29, 1974 and Dec. 24, 1976.
Florida	Seminole	Longwood, city of	120292B	do	Jan. 13, 1974 and Sept. 17, 1976.
Do	Indian River	Sebastian, city of	120123B	do	Feb. 8, 1974 and July 11, 1975.
Kentucky	Campbell	Bellevue, city of	210035B	do	Feb. 1, 1974 and Mar. 5, 1976.
Do	Kenton	Bromley, city of	210253B	do	Feb. 1, 1974.
Do	McCracken	Paducah, city of	210152C	do	June 14, 1974 and June 13, 1975.
Mississippi	Forrest	Petal, city of	280260B	do	Feb. 1, 1974, Jan. 30, 1976, and March 26, 1976.
Do	Newton and Neshoba	Union, town of	280122A	do	Feb. 7, 1975.
Missouri	Cole and Callaway	Jefferson City, city of	290108B	do	Mar. 15, 1974 and Nov. 21, 1975.
New Hampshire	Grafton	Bristol, town of	330047B	do	June 21, 1974 and Sept. 26, 1975.
Do	Strafford	Dover, city of	330145B	do	July 26, 1974 and Feb. 11, 1977.
New York	Albany	Albany, city of	360001C	do	May 3, 1974 and June 4, 1976.
Do	Cayuga	Aurora, village of	360101B	do	Apr. 25, 1975 and Jan. 2, 1976.
North Dakota	Pembina	Wallalla, city of	380254A	do	Jan. 31, 1975.
North Carolina	Buncombe	Black Mountain, town of	370033B	do	Mar. 8, 1974 and Aug. 27, 1976.
Do	Orange	Carrboro, town of	370275B	do	Feb. 22, 1974.
Do	Edgecombe	Princeville, town of	370318A	do	July 25, 1975.
Do	do	Whitakers, town of	370095B	do	May 24, 1974 and July 2, 1976.
Pennsylvania	Lehigh	Macungie, borough of	420590B	do	Jan. 9, 1974.
Do	Lycoming	Nippenosa, township of	420651B	do	Oct. 12, 1973 and Dec. 17, 1976.
Wisconsin	Milwaukee	River Hills, village of	550280B	do	Dec. 17, 1973 and May 28, 1976.
Do	do	South Milwaukee, city of	550283B	do	Dec. 28, 1973 and Sept. 10, 1976.
Nebraska	York	Unincorporated areas	310486	Apr. 16, 1980, emergency	Nov. 1, 1977.
Minnesota	Roseau	Warroad, city of	270415B	July 3, 1974, emergency, Dec. 4, 1979, regular, Dec. 4, 1979, suspended, Apr. 16, 1980, reinstated.	May 24, 1974 and Dec. 13, 1974.
Arizona	Pima	Marana, town of	040118A	Apr. 17, 1980, emergency	May 15, 1979.
Mississippi	Hinds	Raymond, town of	280320	do	Nov. 3, 1978.
Missouri	Lincoln	Troy, city of	290641	do	Oct. 29, 1976.
New York	Chenango	Smithville, town of	361040A	do	June 10, 1977.
Indiana	Hendricks	Brownsburg, town of	180087C	Apr. 17, 1980, emergency, Apr. 1, 1980, regular.	Nov. 23, 1973 and June 18, 1976.
Missouri	Clay and Clinton	Holt, town of	290093A	Apr. 17, 1980, emergency, Apr. 1, 1980, regular.	July 2, 1976.
Minnesota	Wright	St. Michael, city of	270543B	June 16, 1975, emergency; Nov. 1, 1979, regular Nov. 1, 1979, suspended Apr. 17, 1980, reinstated.	May 17, 1974 and Aug. 20, 1976.
Colorado	Morgan	Unincorporated areas	080129	Apr. 22, 1980, emergency	Feb. 21, 1978.
Georgia	Chatham	Thunderbolt, town of	130460	do	May 26, 1978.
New York	St. Lawrence	Edwards, village of	361463A	do	Nov. 15, 1974 and Feb. 6, 1976.
Do	do	Edwards, town of	361176A	do	Jan. 24, 1975 and Feb. 6, 1976.
Pennsylvania	Juniata	Monroe, township of	421744	do	Jan. 10, 1975.
Illinois	Logan	Atlanta, city of	171006	Apr. 23, 1980, emergency, Apr. 23, 1980, regular.	
Mississippi	Stone	Unincorporated areas	280300	Apr. 23, 1980, emergency	Sept. 9, 1977.
Pennsylvania	Monroe	Tunkhannock, township of	421898	do	Jan. 31, 1975.
South Dakota	Grant	Milbank, city of	460200	do	Aug. 13, 1976.
Illinois	St. Clair	Centreville, city of	170622B	May 16, 1973, emergency, Mar. 4, 1980, regular, Mar. 4, 1980, suspended, Apr. 23, 1980, reinstated.	Jan. 13, 1978.
Pennsylvania	Washington	South Strabane, township of	422155A	Mar. 6, 1975, emergency, Apr. 15, 1980, regular, Apr. 15, 1980, suspended, Apr. 23, 1980, reinstated.	Mar. 6, 1975.
Minnesota	Koochiching	South International Falls	270727—New	Apr. 24, 1980, emergency	
Illinois	Hancock	Unincorporated areas	170267	Apr. 25, 1980, emergency	Jan. 24, 1975 and Feb. 20, 1976.
Do	Stark	do	170613	do	Apr. 2, 1976.
Iowa	Floyd	Nora Springs, city of	190384	do	Sept. 26, 1975.
Nebraska	Keith	Unincorporated areas	310487	do	Nov. 15, 1977.
Do	Scotts Bluff	do	310473A	do	Feb. 7, 1978.
North Dakota	Cass	Argusville, city of	380639—New	do	
Do	Traill	Eldorado, township of	380645—New	do	
Tennessee	Monroe	Vonore, town of	470330	do	Dec. 10, 1976.
New York	Steuben	Cameron, town of	361208	Apr. 30, 1980, emergency	Jan. 10, 1975.
Do	Livingston	Geneseo, village of	361452A	do	Nov. 15, 1974 and Nov. 14, 1975.
Utah	Salt Lake	Draper, city of	490244—New	do	

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: April 30, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-14455 Filed 5-12-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

[Docket No. FEMA 5820]

List of Withdrawal of Flood Insurance Maps Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration.

ACTION: Final rule.

SUMMARY: This rule lists communities where Flood Insurance Rate Maps or Flood Hazard Boundary Maps published by the Federal Insurance Administration, have been temporarily withdrawn for administrative or technical reason. During that period that the map is withdrawn, the insurance purchase requirement of the National Flood Insurance Program is suspended.

EFFECTIVE DATES: The date listed in the fifth column of the table.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426–1460 or Toll Free Line 800–424–8872, Room 5150, 451 Seventh Street, SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The list includes the date that each map was withdrawn, and the effective date of its republication, if it has been republished. If a flood prone location is now being identified on another map, the community name for the effective map is shown.

The Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended, requires, at Section 102, the purchase of flood insurance as a condition of Federal financial assistance if such assistance is:

(1) for acquisition and construction of buildings, and

(2) for buildings located in a special flood hazard area identified by the Director of Federal Emergency Management Agency.

One year after the identification of the community as flood-prone, the requirement applies to all identified special flood hazard areas within the United States, so that, after that date, no such financial assistance can legally be provided for acquisition and construction of buildings in these areas unless the community has entered the program. The denial of such financial assistance has no application outside of the identified special flood hazard areas of such flood-prone communities.

Prior to July 1, 1975, the statutory requirement for the purchase of flood insurance did not apply until and unless the community entered the program and the special flood hazard areas were identified by the issuance of a flood insurance map. However, after July 1, 1975, or one year after identification, whichever is later, the requirement applies to all communities in the United States that are identified as having special flood hazard areas within their community boundaries, so that, no such financial assistance can legally be provided for buildings in these areas unless the community has entered the program.

The insurance purchase requirement with respect to a particular community may be altered by the issuance or withdrawal of the Federal Insurance Administration's (FEMA) official Flood Insurance Rate Map (FIRM) or the Flood Hazard Boundary Map (FHBM). A FHBM is usually designated by the letter "E" following the community number and a FIRM by the letter "R" following the community number. If the FIA withdraws a FHBM for any reason the insurance purchase requirement is suspended during the period of withdrawal. However, if the community is in the Regular Program and only the FIRM is withdrawn but a FHBM remains in effect, then flood insurance is still required for properties located in the identified special flood hazard areas shown on the FHBM, but the maximum amount of insurance available for new applications or renewal is first layer coverage under the Emergency Program, since the community's Regular Program status is suspended while the map is withdrawn. (For definitions see 44 CFR Part 59 et. seq.).

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

As the purpose of this revision is the convenience of the public, notice and public procedure are unnecessary, and cause exists to make this amendment effective upon publication. Accordingly, Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations is amended as follows:

1. Present § 65.6 is revised to read as follows:

§ 65.6 Administrative withdrawal of maps.

(a) *Flood Hazard Boundary Maps (FHBM's).*

The following is a cumulative list of withdrawals pursuant to this Part:

40 FR 5149; 40 FR 17015; 40 FR 20798; 40 FR 46102; 40 FR 53579; 40 FR 56672; 41 FR 1478; 41 FR 50990; 41 FR 13352; 41 FR 17726; 42 FR 8895; 42 FR 29433; 42 FR 46226; 42 FR 64076; 43 FR 24019; 44 FR 815; 44 FR 6383; 44 FR 18485; 44 FR 25636; 44 FR 34120; 44 FR 52835; 44 FR 57094; 45 FR 12421; 45 FR 26051.

(Enter page number of this notice in **Federal Register**)

(b) *Flood Insurance Rate Maps (FIRM's).*

The following is a cumulative list of withdrawals pursuant to this Part:

40 FR 17015; 41 FR 1478; 42 FR 49811; 42 FR 64076; 43 FR 24019; 44 FR 25636; 44 FR 52835; 45 FR 12421; 44 FR 26051.

2. The following additional entries (which will not appear in the Code of Federal Regulations) are made Pursuant to § 65.6:

State	Community name and number	County	Hazard ID date	Rescission date	Reason
Iowa	City of Afton, 190538(E)	Union	Sept. 26, 1975	Apr. 7, 1980	1
Do	City of Atkins 190548(E)	Benton	Aug. 22, 1975	do	1
Do	City of Blue Grass, 190554(E)	Scott	Aug. 13, 1976		1
Do	City of Bridgewater, 190314(E)	Adair	June 18, 1976		1
Do	City of Dexter, 190360(E)	Dallas	Nov. 5, 1976		1
Do	City of Dewitt, 190568(E)	Clinton	Oct. 22, 1976		1
Do	City of Garner, 190581(E)	Hancock	Oct. 29, 1976		1
Do	City of Gowrie, 190279A(E)	Webster	June 28, 1974		1
Do	City of Grand Junction, 190585(E)	Greene	July 30, 1976		1
Do	City of Harper, 190541(E)	Keokuk	Nov 19, 1976		1
Do	City of Lakota, 190753(E)	Kossuth	Mar. 19, 1976		1
Do	City of Laurens, 190485(E)	Pocahontas	July 30, 1976		1
Do	City of Magnolia, 190773(E)	Harrison	Oct. 29, 1976		1
Do	City of Martelle, 190775(E)	Jones	Aug. 13, 1976		1
Do	City of Marcus, 190614(E)	Cherokee	Mar. 19, 1976		1
Do	City of Milford, 190368(E)	Dickinson	July 16, 1976		1
Do	City of Minburn, 190780(E)	Dallas	July 23, 1976		1
Do	City of Moulton, 190624(E)	Appanoose	July 16, 1976		1
Do	City of Orchard, 190460(E)	Mitchell	July 2, 1976		1
Do	City of St. Charles, 190802(E)	Madison	Dec. 10, 1976		1
Do	City of Schleswig, 190653(E)	Crawford	Dec. 10, 1976		1
Do	City of Shueyville, 190832(E)	Johnson	Nov 19, 1976		1

State	Community name and number	County	Hazard ID date	Rescission date	Reason
Do	City of Stan Hope, 190807(E)	Hamilton	Aug. 13, 1976		1
Do	City of Stuart, 190663(E)	Adair	Mar. 26, 1976		1
Do	City of Swale Dale, 190809(E)	Cerro Gordo	Aug. 13, 1976	do	1
Do	City of Urbana, 190672(E)	Benton	Nov. 19, 1976	do	1
Do	City of Van Horne, 190673(E)	Benton	Mar. 25, 1976	do	1
Do	West Okoboji, 190824(E)	Dickinson	Oct. 29, 1976	do	1
Do	City of Wesley, 190681(E)	Kossuth	Aug. 13, 1976	do	1
Do	City of Lake Mills, 190604(E)	Winnebago	May 21, 1976	Apr. 8, 1980	1
Do	City of Long Grove, 190764(E)	Scott	May 14, 1976	do	1
Do	City of Meservey, 190777(E)	Cerro Gordo	Oct. 29, 1976	do	1
Do	City of Tripol, 190669(E)	Bremer	Mar. 26, 1976	do	1
Do	City of Osceola, 190637(E)	Clarke	Apr. 23, 1976	do	1
Do	City of Peterson, 190357(E)	Clay	Mar. 26, 1976	do	1
Do	City of Rake, 190530(E)	Winnebago	June 25, 1976	do	1
Do	City of Postville, 190641(E)	Allamakee	Nov. 5, 1976	do	1
Do	City of Tabor, 190665(E)	Fremont	July 2, 1976	do	1
Do	Town of Walnut, 190676(E)	Pottawattamie	Sept. 19, 1976	do	1
Do	City of Waukee, 190678(E)	Dallas	Mar. 26, 1976	do	1
Do	City of State Center, 190660(E)	Marshall	Aug. 13, 1976	do	1
Do	City of Scranton, 190654(E)	Greene	Nov. 12, 1976	do	1
Do	City of Slater, 190659(E)	Story	Mar. 26, 1976	do	1
Do	City of Stockport, 190808(E)	Van Buren	Mar. 26, 1976	do	1
Do	Town of Strawberry Point, 190662(E)	Clayton	Apr. 16, 1976	do	1
Do	City of Swea, 190664(E)	Kossuth	Sept. 19, 1975	do	1
Do	City of Osage, 190636(E)	Mitchell	Dec. 3, 1976	do	1
Do	City of Oskaloosa, 190638(E)	Mahasfa	July 23, 1976	do	1
Do	City of Winthrop, 190690(E)	Buchanan	July 16, 1976	do	1
Do	City of Alexander, 190387(E)	Franklin	Mar. 26, 1976	do	1
Do	City of Auburn, 190697(E)	Sac	July 30, 1976	do	1
Do	City of Batavia, 190551(E)	Jefferson	Sept. 26, 1975	do	1
Do	City of Primghar, 190643(E)	O'Brien	Oct. 29, 1976	do	1
Do	City of Earlville, 190571(E)	Delaware	Mar. 14, 1976	do	1
Do	City of Clare, 190714(E)	Webster	Oct. 29, 1976	do	1
Do	City of Boxholm, 190708(E)	Boone	Mar. 26, 1976	do	1

KEY TO SYMBOLS

E—The community is participating in the Emergency Program. It will remain in the Emergency Program without a FHBM.
C—The community is participating in the Emergency Program. It will be converted to the Regular Program without an FIA map.
R—The community is participating in the Regular Program.

1. The Community appealed its flood-prone designation and FIA determined the Community would not be inundated by a flood having a one-percent chance of occurrence in any given year.
2. FIA determined the Community would not be inundated by a flood having a one-percent chance of occurrence in any given year.
3. The Flood Hazard Boundary Map (FHBM) contained printing errors or was improperly distributed. A new FHBM will be prepared and distributed.
4. The Community lacked land-use authority over the special flood hazard area.
5. A more accurate FIA map is the effective map for this community.
6. The FHBM does not accurately reflect the Community's special flood hazard areas (i.e., sheet flow flooding, extremely inaccurate map, etc.) A new FHBM will be prepared and distributed.
7. The Flood Insurance Rate Map was rescinded because of inaccurate flood elevations contained on the map.
8. The Flood Insurance Rate Map was rescinded in order to re-evaluate the mudslide hazard in this Community.
9. The T&E or H&E Map was rescinded.
10. A revision of the FHBM within a reasonable period of time was not possible. A new FHBM will be prepared and distributed.

(National Flood Insurance Act of 1968 title XIII of the Housing and Urban Development Act of 1968); effective January 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: April 30, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-14456 Filed 5-12-80; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[Docket No. 20828; FCC 80-189]

Second Computer Inquiry

AGENCY: Federal Communications Commission.

ACTION: Final Decision in Docket No. 20828 (Second Computer Inquiry).

SUMMARY: This decision amends 47 CFR § 64.702. A distinction is made for purposes of regulation between the common carrier provision of basic transmission services and enhanced services. The Decision requires the detariffing of carrier-provided customer-premises equipment. It also sets forth a structure under which certain telephone common carriers may engage in the provision of enhanced services and customer-premises equipment. The effect of the Final Decision is to limit common carrier regulation to basic transmission services, and to separate terminal equipment from carrier services and deregulate it.

DATES: Effective Dates: Carrier provided customer-premises equipment must be detariffed prior to March 1, 1982. By March 1, 1981 all telephone companies providing exchange services must

unbundle their rates for residential service and file new local tariffs with the various state commissions showing a separate charge for the telephone instrument; Rule Amendments effective June 13, 1980.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: James K. Smith, Special Assistant to the Chief, Common Carrier Bureau, (202) 632-6910.

In the matter of amendment of § 64.702 of the Commission's rules and regulations (second Computer Inquiry), Docket No. 20828.

Final Decision

Adopted: April 7, 1980
Released: May 2, 1980.

By the Commission: Commissioners Ferris, Chairman and Brown issuing separate statements; Commissioner Quello concurring and issuing a statement; Commissioner Washburn approving in part and concurring in part and issuing a statement; Commissioners Fogarty and Jones dissenting in part and issuing statements.

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Appendix Amended Section 64.702

I. Introduction

1. Under consideration are issues addressed in the *Notice of Inquiry and Proposed Rulemaking (Notice)*, 61 FCC 2d 103; *Supplemental Notice of Inquiry and Enlargement of Proposed Rulemaking (Supplemental Notice)*, 64 FCC 2d 771; and *Tentative Decision and Further Notice of Inquiry and Rulemaking (Tentative Decision)*, 72 FCC 2d 358 adopted in this proceeding. Commonly referred to as the "Second Computer Inquiry," this proceeding focuses on regulatory issues emanating from the greater utilization of computer processing technology and its varied market applications. The thrust of this proceeding is threefold: (a) to determine whether enhanced services which are provided over common carrier telecommunication facilities should be subject to regulation and, if so, to what extent; (b) to examine the competitive and technological evolution of customer premises equipment, with a view toward determining whether the continuation of traditional regulation of terminal equipment is in the public interest; and (c) to determine, consistent with the statutory mandate set forth in the Communications Act of 1934, as amended, 47 U.S.C. 151, the role of communication common carriers in the provision of enhanced services and customer-premises equipment.

II. Summary of Decision Network Services

2. In addressing the regulatory problems raised by the confluence of communications and data processing, we concluded in the *Tentative Decision* that a revised definitional structure standing alone would not adequately resolve the issues before us. We thought it necessary to address the structure under which competitive computer processing services are provided. In so doing we distinguished three categories of service—voice, "basic non-voice" (BNV) and "enhanced non-voice" (ENV). We proposed a resale structure for the carrier provision of ENV services under which carrier owning transmission facilities would be required to provide ENV services through a separate corporate entity that would acquire the necessary transmission facilities pursuant to tariff. At the same time we proposed new definitions for distinguishing the communications or data processing nature of ENV services, and proposed to eliminate our "maximum separation" policy for resale carriers, thereby allowing them to offer both ENV communications and ENV data processing services through common computer facilities. It was thought that the need to artificially structure or limit services provided to consumers would be substantially reduced under this structure. Any ENV data processing service could be provided by as resale carrier on a non-tariffed basis.

3. In setting forth this resale structure, we also identified various regulatory implications that we perceived flowing from this structure and discussed alternative means of alleviating certain regulatory constraints. We set forth specific options for consideration in reaching a final decision, and sought comment on the public interest considerations relevant to adoption of the different options.

4. In response to the resale structure and the various options put forth for consideration, the comments focused on the appropriateness of establishing three categories of service (voice, ENV and ENV), the viability of the proposed definitional structure for distinguishing the communications or data processing nature of ENV services, and whether ENV services should be subject to regulation. Concerning carrier participation in the provision of ENV services, the comments addressed whether the resale structure is appropriate, whether it must necessarily be applied to all carriers owning transmission facilities, and the appropriate degree of corporate separation required for those carriers that must offer ENV services through a separate subsidiary.

5. Based on the voluminous record compiled in this proceeding, we adopt a regulatory scheme that distinguishes between the common carrier offering of basic transmission services and the offering of enhanced services. Although more simplified terminology is employed, this basic/enhanced dichotomy for network services is consistent with the approach taken in the *Tentative Decision*. We find that basic service is limited to the common carrier offering of transmission capacity for the movement of information, whereas enhanced service combines basic service with computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information, or provide the subscriber additional, different, or restructured information, or involve subscriber interaction with stored information.

6. As the *Tentative Decision* recognizes, it is in the provision of enhanced services that uncertainty as to the communications or data processing nature of a service is significant. In the course of this proceeding we have made several attempts to adopt a definitional

scheme that would provide an adequate regulatory demarcation between regulated communications services and unregulated data processing services. We conclude that the record does not support adoption of the definitional scheme proposed in the *Tentative Decision* and that any attempt to so categorize enhanced services is unnecessary under our statutory mandate and would be contrary to the public interest. Such use of a definitional scheme to classify various types of enhanced services would not result in regulatory certainty in the marketplace and would most likely result in the direct or indirect expansion of unnecessary regulation over currently unregulated vendors of enhanced services and deprive consumers of increased opportunities to have these services tailored to their individual needs.

7. The decision sets forth the regulatory scheme for basic and enhanced services. The common carrier offering of basic transmission services are communications services and regulated as such under traditional Title II concepts. Consistent with the determinations made in the *First Computer Inquiry*, we find that regulation of enhanced services is not required in furtherance of some overall statutory objective. In fact, the absence of traditional public utility regulation of enhanced services offers the greatest potential for efficient utilization and full exploitation of the interstate telecommunications network. Significant public benefits accrue to the Commission's regulatory process, providers of basic and enhanced services, and consumers under this approach.

Customer-Premises Equipment

8. In the *Tentative Decision* we proposed a regulatory scheme for carrier-provided customer-premises equipment (CPE) based on whether the CPE performed more than a basic media conversion (BMC) function. We attempted to set forth a structure under which carriers could, separate from their basic transmission services, provide CPE that incorporated various computer processing applications. We sought comment, however, as the whether any regulatory distinction should be made between the various kinds of CPE offered by carriers, and whether all such equipment should be deregulated. We find that the public interest would not be served by classifying CPE based on whether of not more than a basic media conversion function is performed. We conclude that, in light of increasing sophistication of all types of CPE and the varied uses to which CPE can be put while under the user's control, it is likely that any given classification scheme would impose an artificial, uneconomic constraint on the design and use of CPE. In general, no regulatory distinction should be made between various types of carrier-provided CPE.

9. As to the appropriate regulatory scheme for CPE, we find tht this tariffing of CPE in conjunction with regulated communications services has a direct effect on rates charged for interstate services. To the extent rates for interstate services bear costs attributable to carrier-provided CPE regulation serves to thwart the competitive provision of CPE. The continuation of tariff-type regulation over carrier-provided CPE neither recognizes the role of carriers as competitive providers of CPE, nor does it reflect the severability of CPE from transmission services. We conclude that CPE is a severable commodity from the provision of transmission services and that regulation of CPE under Title II is not required and is no longer warranted.

10. We appreciate that implementation of our decision to exclude carrier-provided CPE from regulation requires the eventual removal of CPE related costs from a carrier's rate base and its ultimate exclusion from the jurisdictional separations process. A transition period is established to allow for the orderly removal of CPE investment and other CPE related costs from the jurisdictional separations process. During this transition period, a Federal-State Joint Board will consider whether modifications to the separations process are warranted in light of the removal or CPE.

11. We consider as well whether it is necessary to apply the resale structure set forth in the *Tentative Decision* to all carriers owning transmission facilities. We address whether certain carriers should be required to offer enhanced services on a resale basis through a separate corporate entity and whether CPE should likewise be marketed through an entity separate from that providing basic services.

12. Weighing the public interest benefits of our objectives and the economic tradeoffs inherent in a separate subsidiary requirement, we have determined that limited imposition of the requirement will best serve the communications ratepayer and the public interest more generally. There is little need to subject carriers to the resale structure if such entities lack significant potential to cross-subsidize or to engage in other anticompetitive conduct. We find that only AT&T and GTE present a sufficiently substantial threat such that they should be required to establish separate corporate entities for the provision of enhanced services and customer-premises equipment. We will not require any other underlying carrier to form separate entities for the provision of these services and CPE. Accordingly, we are removing the maximum separation requirements for all carriers except those under direct or common control of AT&T or GTE. In reaching this conclusion we recognize that a reasonable balance can be struck only following a weighing of all appropriate circumstances bearing upon the risks that largely captive monopoly ratepayers will be burdened by anti-competitive conduct on the one hand and that opportunities for economic efficiencies redounding to their benefit may be lost on the other. The locus of the balance changes with circumstances. Because we have the flexibility under the Communications Act to adjust the balance as circumstances change or additional evidence is brought to light, we opt for a solution in which only AT&T and GT&E must form separate subsidiaries to offer ENHANCED service or CPE. Similarly, in establishing guidelines governing the relationship of the separated entities with their affiliates, we opt for a pragmatic approach which we can adjust when and if necessary.

13. Finally, we believe that our action does not preclude AT&T from offering enhanced services and CPE under the provisions of the 1956 Western Electric consent decree.

III. Background

A. First Computer Inquiry

14. More than a decade ago an inquiry was commenced to address the regulatory and policy problems raised by the interdependence of computer technology, its market applications, and communications common carrier services. In that proceeding, commonly referred to as the "First Computer Inquiry," [1] information was sought regarding actual and potential computer uses of communications facilities and services. Views and recommendations were sought as to whether there was any need for new or improved common carrier service offerings, or for revised rates, regulations, and practices of carriers to meet the emerging communications requirements for the provision of data processing or other

[1] *Regulatory & Policy Problems Presented by the Interdependence of Computer & Communications Services & Facilities*, 28 FCC 2d 291 (1970) (*Tentative Decision*); 28 FCC 2d 267 (1971) (*Final Decision*), *aff'd in part sub. nom. GTE Service Corp. v. FCC*, 474 F. 2d 724 (2d Cir. 1973), *decision on remand*, 40 FCC 2d 293 (1973).

computer services involving the use of communication facilities.

15. A number of regulatory issues were raised in the course of the proceeding. A major issue was whether communications common carriers should be permitted to market data processing services, and if so, what safeguards should be imposed to insure that the carriers would not engage in anti-competitive or discriminatory practices. Concern was also expressed as to the appropriateness of a carrier utilizing part of its communications switching plant to offer a data processing service. The potential existed for common carriers to favor their own data processing activities through cross-subsidization, improper pricing of common carrier services, and related anti-competitive practices which could result in burdening or impairing the carrier's provision of other regulated services. There was also concern over the extent to which data processing organizations should be permitted to engage in transmission as part of a data processing package free from regulation.

16. Two fundamental regulatory issues were addressed: (a) Whether data processing services should be subject to regulation under Title II of the Communications Act, and (b) whether, under what circumstances, and subject to what conditions or safeguards, common carriers should be permitted to engage in data processing. In addressing the first issue, we looked to the basic purpose of our regulatory authority as well as specific statutory guidelines and determined that data processing services should not be regulated, even though transmission over common carrier communications facilities was involved in order to link user terminals to central computers. Thus, certain communications-related services involving electronic transmission over common carrier communication facilities were not subject to regulation under the Act.

17. Regulatory forbearance with respect to data processing services made it necessary to distinguish regulated communications services from unregulated data processing services. Accordingly, in the *First Computer Inquiry* a set of definitions was adopted to assist in making such determinations. See 47 CFR 64.702. The thrust of this definitional approach was to distinguish between unregulated data processing and permissible carrier utilization of computers by establishing a dichotomy between data processing and message or circuit switching. We recognized that entities would offer "hybrid" services combining both communications and data processing functions. We stated that where message-switching is offered as an incidental feature of an integrated service offering that is primarily data processing, there would be total regulatory forbearance with respect to the entire service. However, where the package offering is oriented to satisfy the communications or message-switching requirements of the subscriber, and the data processing function is incidental to the message-switching performance, we concluded that the entire integrated service would be treated as a communications service. We also stated that in making such determinations we would look to whether the service, by virtue of its message-switching capability, has the attributes of the point-to-point services offered by conventional communications common carriers and is basically a substitute therefor.

18. As to the issue of carrier participation, we recognized that provision of data processing services by common carriers might give rise to certain regulatory problems. Primarily, we were concerned with the possibility that common carriers might favor their own data processing activities through cross-subsidization, improper pricing of common carrier services, and related anti-competitive practices which could result in burdening or impairing the carrier's provision of its other regulated services. We therefore adopted a policy of "maximum separation" whereby a communications common carrier had to furnish data processing services through a separate corporate entity.[2]

B. Second Computer Inquiry

19. The *First Computer Inquiry* was a vehicle for identification and better understanding of problems spawned by the confluence of computer and communications technologies taking place at that time. The scope of the Inquiry was very broad and determinations were made based on the state of the art as it then existed. However, significant advances in computer hardware and software have been made since that time. In particular, dramatic advances in large-scale integrated circuitry and microprocessor technology have permitted fabrication of mini-computers, micro-computers, and other special purpose devices, which are capable of duplicating many of the data-manipulative capabilities which were previously available only at centralized locations housing large scale general-purpose computers. With this new technology, users now find it cost-beneficial to remove some of the computing power from a centralized computer location. The phenomenon of distributed processing allows computers and terminals to perform both data processing and communications control applications within the network and at the customer's premises. See *Notice* at paras. 8–10.

20. The *First Computer Inquiry* addressed the informational processing environment as it then existed. The definitions and policy determinations incorporated into § 64.702 reflect the fact that data processing applications were then marketed under a service structure which employed a central host computer in conjunction with a remote, "unintelligent" terminal device. The current distributed processing environment, wherein computer processing capabilities are placed throughout a data information or transmission system, compelled, at a minimum, a re-examination of the definitional structure used to distinguish regulated communications services from unregulated data processing services. Due to the inadequacy of the existing definitional structure we proposed to revise the current definitional structure set forth in § 64.702. See *Notice* at paras. 15–22. Essentially, we sought to define data processing positively in terms of what it is, rather than by exception as we had previously done.[3] Under this approach a carrier could use a computer for any purpose that is not data processing.

21. The *Notice* focused on the market applications of computer processing technology within a carrier's network. Shortly after its release, however, we were confronted in our *Dataspeed 40/4* decision with the issue of computer processing applications incorporated into terminal devices and whether such equipment should be offered as part of a regulated communications service.[4] Because the computer rules embodied in § 64.702 did not address the situation where data processing elements are

[2] 47 CFR 64.702 (c) and (d) required that a carrier establish a separate data processing entity having separate books of accounts, separate officers, separate operating personnel and separate equipment and facilities devoted exclusively to rendition of data processing services; and the carrier is prohibited from promoting the data processing services offered by the separate subsidiary. Carriers with annual revenue less than one million dollars were exempt from the maximum separation requirement.

[3] In the *Notice* we proposed that data processing be defined as: "the use of computer for the purpose of processing information wherein: (a) The semantic content, or meaning, of input data is in any way transformed, or (b) where the output data constitute a programmed response to input data."

[4] *American Telephone and Telegraph Co. (AT&T) Revisions to Tariffs FFC No. 269 and 267 Relating to Dataspeed 40/4*, 62 FCC 2d 21 (1977), *aff'd sub. nom. International Business Machines Corporation v. FCC*, 570 F. 2d 452 (2d Cir. 1978).

removed from a central computer and distributed among various components within the particular service offering, a void existed in the Commission rules when it came to determining whether carrier provided computer terminals should fall within the scope of a regulated communications service. In *Dataspeed 40/4* we determined that AT&T could offer its Dataspeed 40/4 terminal as part of a tariffed communications services; however, this determination was made subject to an examination in this proceeding of the issues raised by a carrier's provision of peripheral devices which incorporate computer information processing functions.

22. As a result of the *Dataspeed 40/4* decision, a *Supplemental Notice* was issued. We proposed to enlarge the scope of the proceeding to include all processing activities, whether performed at a central location, at the customer's premises, or at intermediate locations within or interconnected with a telecommunications network. A modified definition of data processing was proposed to render our computer rules applicable to the distributed processing environment and to determinations as to the nature of a carrier's processing activities—regardless of location or system structure. We proposed that "data processing" be defined as:

> The electronically automated processing of information wherein: (a) The information content, or meaning, of the input information is in any way transformed, or (b) where the output information constitutes a programmed response to input information.

Supplemental Notice at para. 8. Recognizing that various computer processing functions are performed in the provision of both data processing and communications services, the new definition was structured in a manner so as to focus on processing activities.[5] Under the new definition the determination as to whether a communications or data processing service is being offered would depend on the nature of the processing activity involved.

23. In addition to its impact on network services, we noted that microprocessor technology has clearly made it possible for terminals to perform many processing operations which they previously performed poorly or not at all by employing techniques previously limited to central computers. Microprocessor technology permits terminals to perform many sophisticated arithmetic and word processing functions at the remote location while reducing the processing load at the central location. Thus technology may have rendered meaningless any real distinction between "terminals" and computers. With the trend toward distributed processing, functions are being taken over by "smart" terminals which are (a) offered to users by the regulated carrier sector and by the unregulated terminal equipment manufacturing sector, and (b) under the control of the user—not the carrier.

24. We indicated in the *Supplemental Notice* that the confluence of data processing and communications may be such that it is no longer practical or possible to make such classifications with respect to carrier equipment offerings. The potential exists for changing the nature of the processing performed in such devices through utilization of interchangeable software programs. Comments were sought as to whether the offering of customer-premises equipment which performs any information processing activity should be considered a communications common carrier activity, and the proper institutional arragements, terms, conditions, and regulations under which communications common carriers should be permitted to offer such equipment. At the same time comments were sought on (a) whether the proposed definition of "data processing" correctly divided "communications" and "data processing" when applied to a carrier's processing activities, regardless of location within a service offering; (b) whether the proposed Section 64.702 would be administratively enforceable and in the public interest; and (c) whether the proposed amendment of Section 64.702 would afford flexibility in the structuring of service offerings, and, at the same time, be conducive to innovation in the communications and data processing fields. Comments were also sought on the possible relevance of the 1956 consent decree [6] and its applicability to AT&T's ability to offer various services and customer-premises equipment.

C. Tentative Decision—Network Services

25. After reviewing the comments on the *Notice* and *Supplemental Notice* (Tentative Decision, at paras. 8–58), we concluded that a revised definitional structure, standing alone, would not adequately resolve the issues before us. *Tentative Decision*, at para. 67. Moreover, we noted that continued reliance on a pure definitional approach would merely accentuate the controversy over whether communications is incidental to data processing or data processing is incidental to communications. It became evident that any such proposal would be, at best, a short term solution and would fail to recognize and take advantage of the potential for new and innovative competitive computer services. Accordingly, we concluded that the regulatory problems arising from the interplay of data processing and communications must be addressed by way of a more comprehensive solution—a solution which accommodates the market applications of computer processing technology taking into consideration the realities of the marketplace and user needs—consistent with the mandate entrusted to us by Congress under the Communications Act of 1934, as amended. *Id.*

26. We proposed to address the structure under which competitive computer processing services are provided. In so doing we recognized that the confluence of communications and data processing renders unlimited the possible combinations and permutations of services which can be offered to the consumer. Moreover, we noted that the nature of these services are determined not by the transmission facilties but, rather, by the specific processing applications offered through electronic equipment attached to the channel of communications. Recognizing that a carrier's telecommunications network is a common denominator in the provision of these services, we proposed a regulatory structure which reflected this fact. However, an attempt was made to rely on a definitional approach for distinguishing regulated communications services from unregulated data processing services.

27. The regulatory structure proposed in the *Tentative Decision* divided common carrier communications services into three classes—"voice", "basic non-voice" (BNV), and "enhanced non-voice" (ENV) services. We defined these three categories of services as follows:

> (1) A "voice" service is the electronic transmission of the human voice such that one human being can orally converse with another human being. (2) A "basic non-voice" service is the transmission of subscriber inputted information or data where the carrier: (a) Electrically converts originating messages to signals which are compatible with a transmission medium, (b) routes these signals through the network to the appropriate destination, (c) maintains signal

[5] A function is a separable specific operation, such as storing, merging, etc. whereas an activity is the aggregate result of a combination of functions, regardless of where they may be performed.

[6] *United States* v. *Western Electric Co.*, 1956 Trade Cas. 71, 134, (D.N.J. 1956).

integrity in the presence of noise and other impairments, (d) corrects transmission errors, and (e) converts the electrical signals to usable form at the destination. (3) An "enhanced non-voice service" is any non-voice service which is more that the "basic" service, where computer processing applications are used to act on the form, content, code, protocol, etc., of the inputted information.

28. We noted that it is primarily when carriers seek to provide "enhanced non-voice" service that uncertainty arises as to the nature of the service and whether maximum separation applies. This is because the category of "enhanced non-voice" service subsumes both regulated communications and unregulated data processing services. We therefore focused our attention on the establishment of a regulatory structure under which carriers could provide "enhanced non-voice" services free from regulatory constraints as to the communications or data processing nature of the service. In order to provide the necessary regulatory safeguards and still foster a competitive environment where computer services can be custom-tailored to individual user needs, we concluded:

> First, communications common carriers owning transmission facilities used in the provision of interstate communications services may directly provide only "voice" and "basic non-voice" services. Second, carriers owning such transmission facilities may provide "enhanced non-voice" services only through a separate corporate entity on a resale basis. Third, the computer facilities of the underlying carrier which are used in the interstate provision of "voice" and "basic non-voice" services may not be used for those computer processing applications associated with "enhanced non-voice" services and which would render the service more than a "basic non-voice" service.

Id., at para. 71. In essence, we proposed a resale structure for the provision of all ENV services.

29. We found that this regulatory structure has distinct benefits over the existing manner in which hybrid services are provided. By separating out those services which must be provided on a "resale" basis, a structure is provided whereby the concerns which prompted the maximum separation policy are substantially minimized. It permits "enhanced" services to be provided under a framework that does not require the complete separation of communications and data processing services and their provision through separate entities with separate computer equipment. This removes regulatory restrictions that serve to artificially structure or limit the types of services that can be offered consumers. Moreover, it substantially reduces the impact any determination as to the communications or data processing nature of an offering would have on the availability of services to the consumer. Whereas under the existing rules a determination that a particular service constitutes a data processing service would foreclose a carrier from offering the particular service or processing application, under this structure the resale carrier could offer an ENV communications service on a tariffed basis, and could offer an ENV data processing service on a non-tariffed basis.

30. This structure obviously did not negate the need to establish a regulatory boundary between ENV communications services and ENV data processing services. Rather than adopting the definition of data processing as proposed in the *Supplemental Notice*, we set forth a new definitional structure to distinguish the use of data processing in the provision of various regulated communication services from the offering of a data processing service.[7] This definitional structure would allow carriers to perform data processing as part of a communications offering as long as the data processing directly relates to and is for the purpose of providing a communications service or for meeting its own internal operational and financial management needs.

31. We also attempted to set forth a candid appraisal of the regulatory implications of the resale structure and this definitional scheme if they were adopted. In this regard we noted that the need to distinguish between regulated communications services and unregulated data processing services was not eliminated. Because of the inherent flexibility of the definitional scheme, uncertainty would remain as to the exact boundary line beyond which regulation ceases. To the extent there is regulatory uncertainty as to the dividing line between communications and data processing services, a corresponding degree of uncertainty would exist as to the status of resale entities as communications common carriers. For example, a resale entity is not regulated as a communication common carrier if it is only providing a data processing service.[8] In addition, we noted that decided marketing advantages attend regulated status. A resale carrier would be able to offer any ENV service, whereas an unregulated data processing vendor would be limited to providing only ENV data processing services. Because the resale carrier would have more flexibility, one result may be an indirect forcing of currently unregulated entities to acquire common carrier status in order to have the same marketing flexibility as a regulated resale carrier.

32. We also raised questions as to the need for any regulation over ENV services. Arguments were advanced by various parties to the effect that regulation in this area restricts competitive activity, and increases the potential for regulatory responses to foster inefficiencies and misallocations of resources in the telecommunications market. We also noted that the nature of the telecommunications industry may be such that application of the resale structure to every carrier owning transmission facilities may not be necessary. With the relatively recent development of competition in selected telecommunications markets, we inquired into whether the resale structure should be applied to those carriers lacking the ability or incentive to engage in predatory pricing or other anticompetitive conduct. Finally, we sought comment on whether the requirement that carriers provide ENV services on a resale basis should apply to the international arena, particularly the International Record Carriers (IRCs).

[7] The *Tentative Decision*, at para. 83, proposed the following definitional structure to distinguish between ENV communications services and ENV data processing services at the resale level:

64.702 Furnishing of computer processing services:

(a) For the purpose of this subpart—

(1) "Computer Processing" is the use of a computer for processing information where the output information constitutes a programmed response to input information. The term "computer" encompasses, *inter alia:* General purpose stored program processors, general and special purpose minicomputers and microprocessors. "Processing" entails the use of a computer for operations upon data which include, *inter alia:* Arithmetic and logical operations, storage, retrieval, and transfer.

(2) "Data processing" is the computer processing of input information for the purpose of providing additional, different, or restructured information.

(3) A "data processing service" is the offering for hire of Computer processing capabilities for the purpose of: (a) transforming or altering for the subscriber of the service the information content or meaning of information provided by the subscriber; or (b) maintaining, managing, or providing a data information bank or information retrieval service whereby information may be selectively retrieved by or for a subscriber to the service; or (c) monitoring or controlling an on-going non-communications process or event.

(4) "Hybrid data processing service" is an offering of a data processing service utilizing common carrier communications facilities for the transmission of data between remote computers and customer terminals.

(b) Communications common carriers may utilize computer processing, including data processing, in the provision of a communications service; provided, however, that any data processing performed by a carrier as part of a tariffed service must directly relate to and be for the purpose of providing a communication service, or for meeting the carrier's own internal operational and financial management needs.

[8] See n. 42 infra.

33. In light of these concerns, various alternatives were advanced for comment prior to reaching a final decision. The thrust of the various options revolves around the nature and extent of regulation, if any, to be applied to "ENV" services; and the application of the resale structure to selected underlying carriers. We proposed that the relative merits of the following five options be considered in reaching a final decision:

(1) Adoption of the *Tentative Decision* as proposed;

(2) Adoption of the resale structure of the *Tentative Decision;* however, a) extend the resale structure to the IRCs, and/or b) limit the application of the resale structure to those underlying carriers having the potential to engage in cross-subsidization or other anti-competitive behavior;

(3) Adoption of the resale structure of the *Tentative Decision;* however, exclude from Title II jurisdiction "enhanced non-voice" services;

(4) Adoption of the resale structure of the *Tentative Decision* with enhanced non-voice services excluded from Title II regulation (same as #3); however, a) extend the resale structure to the IRCs, and/or b) limit the application of the resale structure to those underlying carriers having the potential to engage in cross-subsidization or other anticompetitive behavior; [9]

(5) Adoption of a regulatory scheme giving specific recognition to a regulatory "gray area" under which the provider of an "enhanced non-voice" service would decide the communications or data processing nature of the service.

Customer-Premises Equipment (CPE)

34. The *Tentative Decision* distinguished between the computer processing capabilities within a carrier's network and the processing capabilities incorporated into equipment located on the customer's premises. We concluded that customer-premises equipment (CPE) [10] should not be subject to a definitional scheme which classifies either the device or its functions as communications or data processing.

[9] We noted that under option #1 we would have the discretion to waive the resale structure for a given carrier upon a proper showing that the public interest would be better served by grant of such a waiver of the Commission's rules. Options #2 and #4 suggest the possibility of excluding at the outset certain carriers from the resale structure, as opposed to subsequent *ad hoc* determinations.

[10] "Customer-premises equipment" (CPE) is terminal equipment located at a subscriber's premises which is connected with the termination of a carrier's communication channel(s) at the network interface at that subscriber's premises. However, see n. 57, *infra.*

Tentative Decision at paras. 104–107. Recognizing the trend toward integration of communications and information processing functions into terminal devices, we proposed to distinguish between CPE which performs a basic media conversion (BMC) function and that equipment which serves more than a BMC function. (See *Tentative Decision* at paras. 108–111 for an explanation of BMC terminal equipment). Delineating between various types of CPE in this manner was thought to offer a relatively stable criterion which was independent of the information processing capabilities of the equipment.

35. We found that the provision of CPE was not a common carrier activity and that CPE need not be provided as part and parcel of a common carrier communications service. Conditions were set forth under which various types of equipment could be marketed. We concluded that carriers owning transmission facilities could market only BMC devices as part of a "voice" or "basic non-voice" service. As to that class of equipment which performs more than a BMC function, we concluded that there should be no requirement that such equipment be offered as part of a tariffed communications service. Moreover, if a carrier desired to tariff such equipment as part of a communications offering, it could only be tariffed in conjunction with an "enhanced non-voice" communications service at the resale level. Under this structure the marketing of CPE which performed more than a BMC function was to be separated from the carrier's basic transmission services; such equipment, if tariffed, would be offered only in conjunction with competitive enhanced services. This arrangement essentially reflected the dynamics of the CPE market and the desirability of having such equipment provided on a competitive basis. It and the possibility of deregulating terminal equipment supply through a separate subsidiary were advanced as alternative approaches to achieving an enduring, consumer-oriented solution to the problems raised by the increasing intelligence of CPE.

1956 AT&T Consent Decree

36. In the *Tentative Decision* we recognized that the extent to which AT&T would be able to participate on an unregulated basis in the provision of customer-premises equipment and/or ENV services on a non-tariffed basis was not clear due to possible constraints imposed by the terms of the 1956 AT&T consent decree. We set forth the regulatory complications created by the decree, and our view as to how various plausible interpretations of the consent decree should be factored into the decision making process in reaching a final decision. See *Tentative Decision*, paras. 135–148.

IV. Comments

A. Network Services

37. As expected, the *Tentative Decision* evoked a tremendous response. Almost fifty parties filed comments. Reply comments were filed by approximately thirty parties. [11]

38. With respect to network services, the comments focus on whether the basic/enhanced dichotomy is appropriate, the viability of the proposed definitional structure for distinguishing the communications or data processing nature of enhanced services, and whether ENV services

[11] Comments were filed by: New York Public Service Commission (NYPSC); Honeywell, Inc. (Honeywell); American Telephone & Telegraph Company (AT&T); Walter R. Hinchman (Hinchman); GTE Service Corporation (GTE); Computer & Business Equipment Manufacturers Association (CBEMA); Delphi Communications Corporation (Delphi); U.S. Telephone & Telegraph Corporation (UST&T); Central Telephone & Utilities Corporation (CENTEL); Rochester Telephone Corporation (Rochester); Sperry Univac Division-Sperry Corporation (Sperry Univac); Xerox Corporation (XEROX); Western Union International, Inc. (WUI); American Newspaper Publishers Association (ANPA); Satellite Business Systems (SBS); Plexus Corporation (Plexus); COMSAT General Corporation (COMSAT); American Satellite Corporation (ASC); United States Independent Telephone Association (USITA); The National Burglar and Fire Alarm Association and The Alarm Industry Telecommunications Committee (NBFAA & AITC); Citicorp; GTE Telenet; RCA Global Communications, Inc. (RCA Globcom); North American Telephone Association (NATA); Central Committee on Telecommunications of the American Petroleum Institue (API); Bunker Ramo Corporation (Bunker Ramo); Southern Pacific Communications Corporation (SPC); MCI Telecommunications Corporation (MCI); General Electric Information Services Company (GEISCO); TRT Telecommunications Corporation (TRT); ISA Communications Services, Inc. (ISACOMM); United Telecom Service, Inc. (U.T.); Securities Industry Automation Corporation (SIAC); Aeronautical Radio, Inc. (ARINC); Tymnet, Inc. (Tymnet); Computer & Communications Industry Association (CCIA); Association of Data Processing Service Organizations, Inc. (ADAPSO); Independent Data Communications Manufacturers Association, Inc. (IDCMA); Western Union Telegraph Company (Western Union); Control Data Corporation (Control Data); National Telecommunications & Information Administration (NTIA); General Instruments Corporation (GIC); Computer Corporation of America (CCA); American Banking Association (ABA) and Department of Justice (DOJ). Reply comments were filed by: Honeywell; AT&T; GTE; CBEMA; UST&T; XEROX; WUI; Plexus Corp.; USITA; NBFAA & AITC; Citicorp.; GTE Telenet; RCA Globecom; NATA; Bunker Ramo; SPC; IBM; GEISCO; SBS; TRT; ARINC; Tymnet; CCIA; ADAPSO; IDCMA; WU; Control Data; NTIA; ABA; Hazeltine Corporation (Hazeltine); TDX Systems, Inc. (TDX). Motions to Accept Late Filed Comments were filed by RCA GLOBCOM, GIC, DOJ and ABA. These motions are hereby granted.

should be subject to regulation. Concerning carrier participation in the provision of ENV services, the comments address whether the resale structure is appropriate, whether it should be applied to all carriers owning transmission facilities, and the appropriate degree of corporate separation required for those carriers that must offer ENV services through a separate subsidiary. The comments also address the extent to which the decision should be applicable to the international arena. Insofar as customer-premises equipment is concerned the comments address whether the "basic media conversion" distinction is appropriate, whether all CPE should be treated alike, and whether carrier provided CPE should be offered on a tariffed basis. Relative to both network services and CPE, the comments address various legal considerations, the implications of the 1956 AT&T consent decree, and the need for a transition period if the current regulatory scheme is significantly altered.

Basic/Enhanced Dichotomy

39. There appears to be a general consensus that a regulatory structure distinguishing between basic and enhanced services is appropriate. However, concern is expressed that in establishing the three categories of service—voice, BNV, and ENV—an artificial distinction is being made between voice and non-voice services. It is argued by various parties that any such distinction is unworkable and should be rejected since there is no fundamental distinction between voice and non-voice communications services. These parties argue that there should only be two classes of communications services—basic and enhanced—each capable of providing voice and non-voice communications indiscriminantly.

40. AT&T recommends that the definition of "voice" services be modified to include recorded and simulated voice services. It fears that, as drafted, the definition of "voice" services will exclude services which it feels to be within the voice category such as the Public Announcement Services and Automatic Intercept System. Other parties think the voice category should be more limited and that it should be made clear that human to computer services fall into the ENV category. Arguing that there should be a deliberate overlap between ENV communications and BNV services, GTE requests that the definition of a "basic non-voice service" be modified to include any function which affects or facilitates the transfer of information. Additionally, GTE asserts that the definition of a "data processing service" should only be used to identify what unregulated firms can do without coming under regulation, and should not prohibit underlying carriers from providing data bank or information retrieval services which are related to a carrier's communications function or preclude underlying carriers from providing energy management and emergency systems.

Data Processing/Communications Definitional Structure

41. Our proposed definitional approach to the data processing-communications dilemma evoked considerable discussion. There is uniform disagreement and confusion as to the regulatory implications of the proposed definitional terms. Parties worry that the definitions, as drafted, will either foreclose carriers from offering legitimate communications services [12] or unduly enlarge the scope of regulation and force unregulated data processing vendors to seek regulated status to offer the same degree of service as resale carriers.[13] Parties also comment that the proposed approach will eliminate neither regulatory uncertainty nor the need for *ad hoc* determinations.[14] Other parties reject the proposed definitional approach as not representing any improvement and recommend that the present rules be retained.[15]

42. According to AT&T, the Commission's proposed definition of "data processing" should be amended to include the processing of information for the purpose of transforming or altering its content or meaning. AT&T states that the definition of a "data processing service" is overbroad and recommends that it be deleted as it includes aspects of information retrieval and process control, and would preclude some innovative carrier communications offerings. AT&T also suggests that Part (b) of the proposed rule be modified to make explicit that carriers may perform data processing as part of a tariffed service consistent with the application of the primary purpose test.

43. IBM and others express concern that the proposed scheme for distinguishing enhanced non-voice communications and data processing services is unworkable and will unnecessarily expand the scope of regulation. IBM states that marketplace forces are bound to frustrate and quickly render obsolete any attempt to draw a regulatory boundary based on technical distinctions between enhanced communications and data processing services. It comments that the Commission's definition of a "data processing service" is inadequate as it does not include classic data processing of customer information and suggests that the Commission not define data processing because any definition would become rapidly obsolete and difficult to apply. Bunker Ramo, supported by ADAPSO, recommends that the alteration of all data, not just customer-provided data, should be considered a data-processing service. NTIA disparages the Commission's reliance on the definition of a data processing service to distinguish between enhanced communications and data processing. In the appendix to its comments NTIA proposes a mathematical entropy criterion for distinguishing data communications and data processing functions. The merits of the proposed definition of a "hybrid data processing service" are also debated by the parties. AT&T recommends that the Commission continue to define a hybrid data processing service to underscore the fact that unregulated entities may offer computer processing capabilities for hire on an unregulated basis, utilizing carrier communications facilities where the primary purpose is to provide data processing as a service. The general consensus of the other parties is that the proposed definition of a "hybrid data processing service" is in reality an inaccurate description of remote access data processing and should be amended to include the component of incidental message switching.[16]

44. Various parties criticized AT&T's proposals concerning the definitions of a "voice service," "data processing" and a "data processing service" as being an attempt to expand the scope of regulated common carrier services to permit the offering of data processing by underlying carriers. CBEMA and ADAPSO claim AT&T is seeking to exempt the direct provision of future data processing services by underlying carriers from the resale structure requirements. According to NTIA, the redefinition of voice services is not necessary since services such as directory assistance, itemized billing, speed calling and call forwarding are basic and underlying carriers should be

[12] See, e.g., comments of AT&T, GTE and USITA.

[13] See, e.g., comments of Honeywell, Delphi, IBM, CBEMA, ABA, Bunker Ramo, CCA, NBFAA-AITC, Citicorp, and ARINC.

[14] See, e.g., comments of Hinchman and Western Union.

[15] See, e.g., comments of the DOJ and Western Union. Avoiding this controversy, somewhat, NBFFA-AITC urged the Commission to hold that alarm services were neither communications nor data processing.

[16] See, e.g., comments of ADAPSO and ARINC.

free to offer them as part of a voice service.

Resale Structure

45. The commenting parties generally support the application of the resale structure to the provision of enhanced non-voice services. AT&T supports a resale approach, but argues for internal organizational separation as opposed to the establishment of a separate subsidiary. Recommending in the alternative either a modified resale approach or reliance on a revised system of accounts, GTE asserts that the application of a separate corporation requirement to the service and equipment offerings of the GTE telephone companies would be tantamount to precluding the provision of such offerings by these companies.

46. There is a great diversity of opinion, however, with regard to whether the resale structure should be imposed upon all communications common carriers. AT&T argues that imposing varying degrees of regulation on carriers providing the same service is inconsistent with the Communications Act, and suggests that the resale approach should be applied equally to all carriers. However, a number of parties supporting the resale approach suggest that the requirement only be imposed upon the provision of enhanced non-voice services by large monopoly or dominant carriers.[17] They submit that while the imposition of the resale structure on enhanced services provided by dominant carriers is logical, it is not required for non-dominant carriers since they do not have the potential to engage in the anticompetitive practices that the resale approach is designed to prevent. For example, SBS, MCI and GTE-Telenet state that non-dominant carriers and the specialized common carriers (SCCs) operate in a competitive marketplace and have no monopoly power or profits with which to engage in anticompetitive behavior; furthermore, users of basic services offered by SCCs at rates intended to cross-subsidize other services have competitive alternatives. USITA points out that even with the one million dollar exemption, the resale requirement will affect 503 of the nation's 1,527 independent telephone companies. Asserting that the majority of these companies do not have the potential to engage in cross-subsidization, it urges that the resale concept be limited to those instances where, without it, appropriate regulation in the public interest would be impossible. For its part, NTIA states that any requirement that non-dominant carriers establish separate subsidiaries will result in unnecessary costs, inefficiencies, and may inhibit the entry of smaller firms and block innovative efforts.

47. There is disagreement among the parties as to which carriers should be deemed to be dominant. NTIA, GTE-Telenet, ASC, and CCA argue that the separation requirement should only be applied to AT&T.[18] NTIA submits, based on what it describes as a "dominant market power test," [19] that only AT&T poses a threat to fair competition in the enhanced non-voice market. According to NTIA, the magnitude of AT&T's monopoly revenues creates the clear possibility that AT&T could engage in substantial cross-subsidization of competitive services which would result in substantial injury to AT&T's monopoly ratepayers and to its competitors. In contrast, NTIA argues, other monopoly communications common carriers obtain much smaller revenues from monopoly services, and most do not provide interstate monopoly services or have substantial interstate monopoly revenues. Tymnet argues that, contrary to the proposals of GTE and GTE-Telenet, the separation requirement should be equally applicable to GTE and other entities possessing similar market power. UST&T suggests that the proposed rules should be amended to define dominant carriers as those controlling at least fifty percent of the relevant market. Xerox urges that Digital Termination Systems (DTS) carriers not be considered dominant carriers and states that the application of the separation requirement to DTS carriers will hinder their offering of new and innovative services.

48. Other parties reject the proposed dominant/non-dominant carrier distinction and urge the FCC to require all underlying carriers to establish separate subsidiaries for the provision of enhanced services.[20] CBEMA states that the potential abuse of network ownership is no less compelling when the carrier is a "competitive" underlying carrier. ADAPSO asserts that basic transmission facilities are a limited national resource that cannot be easily or economically replicated by users or non-facility owning carriers. This limitation, according to ADAPSO, permits an underlying carrier to exercise market power well beyond that indicated by the size of its revenues; as a result, all underlying carriers, not just AT&T, have the power to engage in anti-competitive activity. Taking a similar position, NATA states that smaller monopoly carriers will simply affect a smaller percentage of users and exclude a smaller number of competitors. It is suggested by these parties that a waiver procedure be established whereby underlying carriers claiming undue hardship could petition to be exempted from the separation requirement.[21]

Degree of Separation

49. The parties take sharply divergent viewpoints on the degree of organizational separation that should be required under the resale structure. AT&T, rejecting the need for stringent separation, recommends the establishment of internal resale organizations, separated by an internal accounting system, to provide enhanced non-voice services and sophisticated customer premises equipment.[22] Pursuant to this proposal, carrier facilities used by the resale organization to provide enhanced services would be available on a non-discriminatory resale basis to all carriers providing enhanced services. If a fully separated subsidiary is to be established, AT&T proposes that the subsidiary be allowed to construct its own facilities.

50. Additionally, AT&T recommends a number of guidelines for any organizational changes. It suggests that the resale organization be able to offer basic services and equipment, that no restrictions be placed on the technology that may be employed with enhanced

[17] See, e.g., comments of Western Union, USITA, UST&T, SBS, ASC, COMSAT General, SPC, Hinchman, NTIA.

[18] Western Union maintains that since it is not achieving a fair rate of return, has no excess revenue, and its public offerings are subject to competition, the resale requirement should not be applicable to it. It seeks an amendment to the proposed § 64.702 to exempt carriers whose operations depend in large measure on circuits and facilities leased from other carriers. Western Union also seeks an exemption from the proposed rules so that it may continue to offer TWX and Telex services as it does at present.

[19] NTIA would define a dominant carrier as one that both (1) furnishes telecommunications service in a substantial percentage of the total number of markets for interexchange telecommunications services, and (2) has the ability, in a substantial percentage of those markets in which the carrier furnishes such services, to either raise or lower prices without significantly affecting the amount of service demanded by its customers.

[20] See, e.g., comments of CBEMA, CCIA, ADAPSO, and IDCMA.

[21] The American Newspaper Publishers Assocation (ANPA) did not support a general set of rules applicable to all carriers. Instead it recommended either an *ad hoc* approach to the maximum separation requirements or the development of a range of regulatory approaches applicable in different contexts.

[22] Similarly, GTE and *Centel* state that the Commission's objectives can be met by measures other than complete separation, such as an improved Uniform System of Accounts or implementation of the resale concept without the separate subsidiary requirement.

services and sophisticated equipment, and that there should be no condition which would either require or prohibit interconnection between providers of enhanced services. In line with this, it argues that a carrier should have the flexibility to group products and services in as many, or as few, resale organizations as it desires. Likewise, a resale organization should be free to have access to, and to fund, the research, development, and manufacturing resources of the underlying carrier without any obligation to share information or products with competitors. Finally, AT&T urges that there should be no restrictions on the purchase of equipment by the resale organization from an affiliated manufacturer or other suppliers, or on the acquisition of services, including administrative services from the carrier by its resale organization, or *vice versa*, on an appropriate cost basis.

51. Citing the enormous benefits and cost savings of its integrated structure, AT&T suggests that any conditions which separate the Bell resale entity from Bell's centralized resources will be detrimental to the entity and its customers, and will not benefit, but instead burden, subscribers of the underlying services. In particular, AT&T notes that an arm's length relationship, rather than full participation in an integrated system with Bell Labs and Western Electric, will deprive the resale entity of cost savings at all levels of the enterprise and all stages of the production process. In making this argument AT&T stresses that the integrated Bell System is a valuable source of innovation.

52. NTIA advocates a somewhat more stringent separation. NTIA's proposal would require AT&T to establish a separate entity to provide equipment performing more than a basic conversion function and services other than pure communications.[23] It recommends that the subsidiary have separate books and accounts. Further, it proposes that the exchange of customer or competitor information between a Bell company and the subsidiary should be prohibited or, in the alternative, that its mandatory release to all competitors be required. Under NTIA's proposal, AT&T and its subsidiary would be able to exchange corporate proprietary information (research and development, entrepreneurial data gathering, etc.); however, the subsidiary would be billed for all such services. On the other hand, technical plans for the networks would be required to be shared among all competitors. AT&T would be able to supply logistical support via explicit, publicly declared terms, to the subsidiary. The subsidiary and AT&T would be able to undertake joint ventures provided that all AT&T facilities be made available to the subsidiary and its competitors on equal terms and that the subsidiary not own joint plant with the parent or any Bell system entity.

53. Taking a more rigid position than did NTIA, a variety of parties, representing a wide range of interests, support the concept of full maximal separation.[24] They argue that the parent and subsidiary should be required to have separate officers, directors, personnel and books of accounts. Joint ventures and shared facilities and equipment, they state, should be prohibited; all basic transmission services should be acquired from the parent under tariff. Moreover, they contend that the subsidiary should not be able to obtain services relating to planning, marketing, operations, consulting, customer billing and maintenance from either the parent or an affiliate. SPC maintains that if any services or facilities are made available to the subsidiary they must be made available to non-affiliates on equivalent, non-discriminatory terms. CCIA requests that the Commission prohibit the procuring by the parent of any enhanced services from its resale affiliate except through competitive bids. These parties generally agree that all transactions between parent and subsidiary should be conducted on an arm's length basis. This includes restrictions on joint research and development efforts, limitations on the general financing and capitalization of the subsidiary by the parent or an affiliate, and restrictions on the exchange of proprietary information.

54. In support of their position, the parties advocating maximum separation argue that full and complete separation will limit both the incentive and opportunity for anticompetitive practices, and that the benefits of separation would outweigh the costs. Various commenters, such as ADAPSO, reject AT&T's economies of scale argument contending that such economies are not important in data processing technologies and that technological development is not necessarily spurred by vertical integration. As an example, they claim that AT&T, with its integrated structure and massive resources has lagged behind the data processing industry in terms of innovation. The parties further state that no showing has been made that the use of structural separation will result in the unavailability of service, more costly service, diseconomies of scale, or inefficiencies. In line with this, NATA argues that even if AT&T were correct with respect to the economies of integration, the competitive advantage conferred by those artificial savings would secure for monopoly carriers the same type of monopoly power in the enhanced market as they enjoy in the basic market.

55. AT&T's organizational separation proposal is sharply criticized by the proponents of maximum separation who characterize the proposal as representing no change from the present situation and charge that it will engender problems similar to the ones the Commission is currently concerned with. For example, GTE-Telenet argues that given its anti-competitive history and integrated structure, AT&T's suggestion that accounting measures represent an adequate substitute for separation is wrong. Parties such as UST&T and IDCMA claim that AT&T's accounting approach is impractical in light of the problems with the Uniform System of Accounts, that the accounting approach ignores anticompetitive problems other than cross-subsidy, and that, at a minimum, revised accounting procedures must be accompanied by effective structural measures. They assert that the requirement that AT&T establish a fully separate resale affiliate is critical in order to minimize the potential for anticompetitive activity on AT&T's part as well is to prevent market entrants from experiencing a chilling effect.

International

56. In the *Tentative Decision* at para. 165 we indicated that we would consider extending the resale structure to the International Record Carriers (IRCs). This proposed option has evoked a strong negative response from the IRCs [25] joined by UST&T and ADAPSO. RCA Globcom argues the international market is different from the domestic market in that it is competitive and there

[23] NTIA's recommendations are tentative and dependent upon the resolution of the issue of economic parity in regard to access charges. In any event, its proposal is severely criticized by ADAPSO and IDCMA. ADAPSO charges that NTIA's recommendations are skewed by its preoccupation with cross-subsidization and will create opportunities for tying and other anticompetitive activities as well as retard innovation. IDCMA contends that NTIA's proposals reflect a lack of awareness of AT&T's long, anticompetitive history.

[24] See, e.g., comments of Western Union, UST&T, SBS, Tymnet, SPC, Honeywell, Plexus, ADAPSO, CCIA, CBEMA and IDCMA.

[25] See, e.g., the comments of WUI, RCA Globcom and TRT.

is no dominant underlying carrier and its accompanying danger of unfair competitive advantage. Additionally, international satellite facilities are already obtained by IRCs on a resale basis pursuant to tariff and, unlike the domestic area, there is little leasing or other non-ownership acquisition of international cable circuits. The IRCs also assert that all user needs are being met.

57. In further opposition various parties comment that the Commission should not and cannot unilaterally extend the resale structure to the IRCs. They note that not only do CCITT recommendations preclude resale and shared use of facilities but almost all of the foreign administrations are opposed to the unrestricted resale and shared use of international facilities.

58. The option of extending the resale structure to the IRCs is supported by NTIA and several other parties.[26] Citing what it sees as problems of entry, NTIA recommends that the Commission institute a separate inquiry into the applicability of the *Resale* decision to the international arena. It also recommends that the IRCs be required to provide enhanced non-voice services through separate subsidiaries, that AT&T be allowed to provide enhanced non-voice services internationally, and that if COMSAT enters the enhanced non-voice market, it should only do so through a separate resale entity. In reply, WUI states that it perceives no relationship between the proposed resale structure and the problems sought to be remedied.

59. Responding to the comments of various IRCs, SPC states that the argument that the IRC industry is already competitive is not supportable in the absence of a market test. SPC rejects the arguments that the resale structure should not be imposed because equal access already exists and it would place an intolerable burden on smaller IRCs. SPC points out that the contention based on the opposition of foreign administrations to resale has been rejected in past situations where the FCC has held that jurisdiction over the charges and practices of IRCs does not require foreign agreement.

Regulatory and Legal Considerations

60. A number of parties suggest that the offering of enhanced non-voice communications services should be completely deregulated. IBM questions whether the Commission possesses jurisdiction under Title II to regulate anything more than pure transmission services. Further, it argues that enhanced services are offered under highly competitive conditions and should not be regulated regardless of any features. CBEMA maintains that regulation should be limited to the provision of basic services by underlying carriers with no regulation of either resale services or the offering of enhanced non-voice services. It argues that resale carriers are "private carriers," not "common carriers," and are outside the Commission's jurisdiction under Title II. To the extent that resellers might be subject to Commission jurisdiction generally, CBEMA states that the Commission has the legal authority to forbear and should forbear from regulating resale services.

61. Many parties comment that while the Commission is either required by the Act to regulate or on policy grounds should continue to regulate certain enhanced non-voice offerings, it has the authority to and should forbear from regulating enhanced offerings by non-dominant carriers. GTE-Telenet states that pursuant to our *Resale* decision, the offering of resale communications services constitutes common carriage, not private carriage, and as a result the Commission lacks discretion to totally exempt resale entities from Title II regulation. However, GTE-Telenet maintains that the Commission may limit the scope of its regulation of certain classes of carriers [27] and it proposes that needless and counterproductive incidents of regulation of enhanced service carriers be eliminated. IDCMA, citing the Commission's comprehensive mandate under the Act, states that the Commission has the authority to and should exercise its power to forbear from the regulation of resale carriers not affiliated with underlying carriers. It states that the affiliates of underlying carriers should remain subject to supervision at least during a transition period. ADAPSO takes the position that although the FCC should consider the option of varying degrees of forbearance depending upon whether the resale carrier is affiliated with an underlying carrier, minimal regulation of resale carriers is needed. It suggests that affiliated resale carriers should offer separately, pursuant to cost-based tariff, the communications component of their "enhanced non-voice" services.

62. NTIA proposes that the Commission forbear from regulation of all ENV services whether offered by non-dominant carriers or by its proposed AT&T resale subsidiary. Citing a number of Commission proceedings, NTIA argues that we have traditionally recognized that economic and structural differences exist between common carriers and that these distinctions justify disparate treatment. There is, according to NTIA, ample legal authority for the Commission to decline to regulate enhanced non-voice communications services even though it retains Title II jurisdiction over these services. Forbearance, NTIA declares, is necessary to allow the full development of the extremely competitive enhanced non-voice market and should market dominance develop the Commission could always reassert jurisdiction. NTIA also recomends that the states should be preempted from imposing any regulation over ENV communications services.

63. AT&T contends that regulation under Title II of the Act is mandatory; an agency cannot decline to regulate. It argues that providers of enhanced non-voice service are clearly common carriers and therefore subject to regulation. While AT&T supports the Commission's objective of removing regulatory constraints over competitive enhanced non-voice services and customer premises equipment, it contends that deregulation of communications services requires an amendment of the Communications Act and consent decree relief. AT&T proposes a number of steps the Commission could take toward achieving its goal of more flexible regulation in the absence of legislation and modification of the Decree. AT&T is also concerned that any deregulation by the Commission would deprive state regulatory bodies of important powers in conflict with Sections 2(b) and 221(b) of the Communications Act. Taking a similar position on the question of regulation, GTE argues that the Commission must apply the requirements of Sections 201–205 of the Act to any interstate common carrier communications service. USITA argues that the Act requires that a common carrier communications service be regulated.[28]

B. Customer-Premises Equipment (CPE)

64. The Commission's proposal to classify CPE has garnered little support. The dichotomy that the *Tentative Decision* establishes between equipment which performs a "basic media conversion" (BMC) function and that which performs more than a BMC is uniformly criticized. AT&T submits that the BMC function criterion is too narrow a demarcation point between basic and

[26] See, e.g., the comments of ARINC and SIAC.

[27] See also the comments of UST&T.

[28] The optional tariffing approach which would have left the decision of whether a service should be regulated to the service vendor drew little support. It was generally contended that this proposal would not add to regulatory certainty.

sophisticated non-voice customer premises equipment and requests that the criterion be located to ensure that underlying carriers may provide traditional basic functions. GTE recommends that the Commission take a fresh look at the BMC concept charging that it would establish an arbitrary classification which would interfere with economic design of equipment, limit carrier flexibility and deny valuable options to users.

65. *Centel* comments that it is not appropriate for the FCC to distinguish between types of customer-premises equipment. The definitions are not clear and the technology changing. Any distinctions, it argues, should be made on the basis of whether the equipment controls the entire network as the central computer once did, not on the basis of the existence or non-existence of data processing. It submits that restrictions should be determined on an *ad hoc* basis and be limited to media conversion devices equal in influence to distributed computer networks.

66. Other parties are equally disturbed by the proposed distinction. CCIA, IBM and CBEMA argue that the distinction between equipment performing a BMC function and that doing more is artificial and not justified. They state that the proposed distinction is unworkable, could unnecessarily expand the scope of regulation, and would increase the risk of improper cross-subsidization. IBM criticizes AT&T for never adequately defining its proposal that the category of basic CPE be expanded to include equipment that provides traditional basic telecommunications functions in addition to media conversion.

67. IDCMA recommends that the Commission classify CPE on the basis of whether it is offered in a competitive environment. According to IDCMA, the line between BMC devices and other types of equipment is not precise; it is not clear what auxiliary functions, if any, a "basic media conversion" device may perform and continue to be offered as part of a carrier's basic "voice" service. In IDCMA's opinion, the fundamental difficulty with the Commission's classification of CPE is that it attempts to deal with an economic problem in engineering terms and fails to take into account the potential for anticompetitive practices and economic considerations.

68. The other primary areas of controversy are whether CPE should be tariffed and regulated, and whether underlying carriers should be required to establish separate entities for the provision of CPE. AT&T states that the Commission has an obligation to regulate carrier offerings of instrumentalities, apparatus or services incidental to transmission regardless of whether similar items are offered on a nontariffed basis by non-carriers. Also, AT&T suggests that because of the difficulty of classifying sophisticated customer-premises equipment as primarily "communications" or data processing, any equipment with a comunications purpose should be tariffable and any data processing capabilities it possesses should be considered irrelevant.

69. AT&T's proposal to allow carriers or their resale affiliates to tariff any kind of customer premises equipment "with a communications purpose" is opposed by CBEMA. It argues that, contrary to the intention of the *Tentative Decision*, this proposal would allow carriers to provide any type of equipment, including that which would be classified as primarily data processing under the current rules, so long as it performs any communications function.

70. NATA finds unobjectionable the notion that carriers may participate in the terminal equipment market by offering equipment pursuant to tariffs associated with their traditional voice and basic non-voice services. It states that under the Consent Decree and the Act, tariff regulation of all carrier communications services (especially those of AT&T) is mandatory. However, it submits that Docket 20828 is not the appropriate vehicle to decide the proper scheme of regulation for "conventional" terminal gear and that the issues raised in *RM 3308* should not be considered here. In the absence of Commission regulation, it foresees no possibility for the development of a genuinely competitive equipment market. Market forces, NATA states, will not be sufficient to control anticompetitive activities because of carrier monopoly power in equipment and transmission markets.

71. Several of the comments suggest that the Commission limit its regulation to the provision of either basic or non-competitive customer-premises equipment. NTIA recommends that the Commission exclude the offering of all equipment performing more than a BMC function from regulation. IDCMA suggests that the Commission should not regulate the competitive equipment offerings of carriers unaffiliated with underlying carriers. IDCMA and others argue that the FCC should, at least initially, continue to regulate the terminal equipment offerings of affiliates of dominant underlying carriers until the Commission implements the resale structure. They submit that such regulation is proper even though comparable offerings would be unregulated. From a slightly different perspective, Xerox and USITA recommend that non-dominant carriers and competitive DTS carriers have the option of offering equipment on a tariffed or a non-tariffed basis.

72. A number of parties recommend that customer-premises equipment not be tariffed and further that the Commission not regulate its provision.[29] IBM and CBEMA assert that the *Tentative Decision* would impose burdensome and costly regulation in a robustly competitive marketplace. IBM recommends that the Commission deregulate all customer-premises equipment and not permit carriers to offer any such equipment under tariff as part of a basic transmission service or otherwise. To permit such an offering as part of basic service would, it states, undermine the ability to prevent cross-subsidization. According to CBEMA, the lack of competition with respect to "basic" customer-premises equipment, such as the telephone, has been attributable not to inherent monopoly characteristics but to artificial constraints imposed by carrier tariff restrictions. It submits that there is no corollary in the equipment market to the "basic" and resale services distinctions; instead there is a basic fungibility in equipment with respect to adaptability to either "pipeline" or resale services.

73. Taking a position contrary to those above, the Justice Department states that there is no need for additional FCC action regarding deregulation of terminal equipment since at present the Commission does not regulate the non-carrier majority of firms offering terminal equipment. DOJ reasons that deregulation by the FCC would in effect mean deregulation of AT&T. In opposition to this it states that AT&T's basic terminal equipment offerings are subject to state and federal regulation, and that AT&T's intelligent terminal offerings are not only a minority of those otherwise available but also are currently subject to economic regulation in addition to state and federal regulation. Further, since provision of terminal equipment is not characterized by pervasive scale economies, it concludes that there is no legitimate reason to change the present deregulatory *status quo* that prevails in respect of most terminal equipment vendors.

[29] GTE submits that in order to effectively compete, the GTE telephone companies should be allowed to provide customer-premises equipment on an unregulated basis.

74. The opinions of the parties regarding whether a carrier should be required to offer customer-premises equipment through a separate resale entity, and if so, what degree of separation should be required are similar to the opinions they expressed on these issues with respect to enhanced non-voice services. AT&T supports the resale proposal and the principle that the provision of basic equipment should be separated from the provision of sophisticated equipment; provided, however, that the resale mechanism is accomplished by means of internal organizational separation. It suggests that the organization which provides sophisticated non-voice customer-premises equipment should be permitted to offer basic equipment as well and that the Commission should not impair the ability of underlying carriers to offer under tariff a full range of customer-premises equipment in the voice category. NTIA recommends that only AT&T be required to form a separate subsidiary for the provision of sophisticated customer-premises equipment and that AT&T be allowed to provide such equipment through the same subsidiary that provides enhanced services. Other parties, such as Xerox, request that the Commission require not just AT&T, but any dominant carrier, to establish a separate entity for the provision of intelligent customer-premises equipment.

75. ADAPSO and IDCMA recommend that the Commission require all underlying carriers to offer competitive customer-premises equipment through a maximally separated affiliate. CBEMA and IBM make a similar request with respect to all customer-premises equipment, while NATA argues for such a requirement with respect to all untariffed customer-premises equipment. Both CCIA and IDCMA urge that the manufacturing and marketing of competitive customer-premises equipment be fully separated from monopoly carrier activities. Further, arguing that there are no significant economies of scale, IDCMA suggests that underlying carriers should have to establish separate subsidiaries to manufacture competitive customer-premises equipment as well as separate subsidiaries to market it. IDCMA suggests that until maximum separation can be fully implemented, the FCC should require the Bell Operating Companies to purchase at least one-third of their terminal, switching and transmission equipment from suppliers unaffiliated with AT&T. NATA submits that the FCC should continue to regulate interconnection standards, and Xerox recommends that all carriers be required to make public interface specifications and protocols in a timely fashion. Finally, Xerox and other parties state that the unbundling of equipment is essential.

C. Consent Decree

76. The comments exhibit a noted disagreement among the parties regarding the Commission's interpretation of the consent decree and its proposed approach toward resolving the various related issues. While several parties, including AT&T, agree with the Commission's interpretation and proposed approach, others, such as the Department of Justice, disagree with both.[30] Still other parties argue that even if the Commission were correct in its interpretation and proposed approach, it should adopt a policy unconstrained by the Decree and should rely instead on the judgment court or Congress to resolve the various issues.

77. DOJ states that it would regard any Commission determination that AT&T's diversification into the unregulated data processing field is permissible as without determinative effect. DOJ further submits that the *Tentative Decision* erroneously states that the limitations the decree imposed on AT&T were adopted at a time when there was no perceived distinction between data processing and communications. The Department rejects the interpretation of the "incidental to" savings provision of the decree put forth in the *Tentative Decision.* It maintains that the decree restricts AT&T to the provision of regulated communications services and that Paragraph V(g) of the decree cannot be interpreted as creating an exception which would render the general prohibition in the judgment meaningless. Moreover, it submits that the Commission has no authority to render definitive interpretations of or to modify the decree. DOJ suggests that if the Commission believes the decree should be modified, the appropriate action would be to formally request such a modification from the judgment court. The Justice Department concludes its comments by stating affirmatively that, if on the basis of facts submitted in this Inquiry it is evident that the 1956 decree should be modified or rescinded to facilitate more effective competition, it is prepared to take the necessary action.

78. For its part, AT&T takes the position that the Commission is correct in concluding that it is in public interest for Bell to compete in the provision of integrated solutions to user needs and that the decree should not be permitted to preclude the Bell System from participation on an unregulated basis in the arena in which data processing and communications technologies converge. It argues that there is a strong basis for modification of the decree. AT&T supports the Commission's proposal to apply the provision of Paragraph V(g) of the decree to unregulated services as consistent with the language and spirit of the decree. However, since the interpretation by DOJ reflects a narrower view, AT&T is uncertain about relying on the Commission's interpretation and committing resources. It states that, absent remedial legislation or a conclusive interpretation of the decree similiar to that the Commission advanced, a modification of the decree will be necessary to permit Bell to offer services of the character and in a manner suggested by the Commission.

79. NTIA generally supports the Commission's interpretation of the decree. It states that the decree would not preclude an AT&T subsidiary from offering unregulated customer premises equipment as long as it is of a type which the subsidiary manufactures for the use of the Bell Operating Companies. However, NTIA is uncomfortable with the Commission's interpretation of the "incidental to" language. It is NTIA's belief that even if the Commission forbears from regulating enhanced non-voice communications services, AT&T can market enhanced non-voice services on an unregulated basis since these services would still be subject to regulation. Furthermore, if a service were not subject to regulation because it is a data processing service, the Commission, in its opinion, could then consider whether the service is "incidental to" the furnishing of a common carrier communications service as defined in the decree. If the service were incidental to the furnishing of a common carrier service, NTIA submits that AT&T may offer it in compliance with the terms of the decree. Similarly, NTIA reasons, the provision of customer-premises equipment may be incidental to the furnishing of a common carrier service although it is excluded from regulation.

80. A number of other parties argue for various reasons that the Commission should adopt a policy unconstrained by the consent decree. For instance, although castigating DOJ for its "wooden" interpretation of the decree and supporting modification of the decree, IBM urges the Commission not to forego a sound regulatory approach and institute needless regulation

[30] See, e.g., comments of MCI, CCIA, ADAPSO, and IDCMA.

because of the decree. Parties such as GIC, CCA and SPC submit that having no valid record before it to support modification of the decree, the Commission should forego treatment of the decree in any final decision.

81. In response to the assorted comments, CBEMA states that to the extent that neither AT&T nor DOJ believes that the Commission's proposed interpretation of Paragraph V(g) of the Decree is adequate, there is no valid reason for the FCC to pursue the matter further. Taking AT&T's comments to task, CCIA maintains that AT&T's market dominance in communications, and the extent to which such market dominance would allow it to confer monopoly power on a CPE subsidiary, must also be taken into consideration. Moreover, CCIA accuses AT&T of overlooking the fact that if the decree were modified to permit AT&T's entry, it would be the non-IBM segment of the data processing market which would be injured by anticompetitive AT&T practices, thereby increasing economic concentration in the two industries.

D. Transition Period

82. The commenting parties agree that a transitional period will be necessary prior to the Commission's implementation of any resale structure. AT&T recommends that a significant transitional period will be needed because of the large number of complex legal, financial and logistical problems which would have to be resolved. Being more specific, IBM and Hinchman suggest timetables which set an outside limit of between three to five years before any resale structure would be fully implemented.

V. Discussion

A. Introduction

83. The history of this proceeding lends perspective to the issues before us. The *First Computer Inquiry* was initiated in 1966. Five years later in 1971, after receiving thousands of pages of comments and having an independent contractor evaluate them, the Commission issued a *Final Decision, supra* at n. 1. Litigation over our decisions in the *First Computer Inquiry* ended in 1973. A mere three years later, this proceeding, the *Second Computer Inquiry*, was initiated and now, after almost four more years, we are again issuing a final decision on issues raised by the confluence of technology in the offering of communications and data processing services. The significant difference now is that the evolution of a distributed processing environment makes the issues more complicated, and the resulting regulatory uncertainty greater. We believe the time has come to address these matters in a manner which gives clear direction to the marketplace, but without restricting the types of services that may be offered to consumers. We will thus clearly set forth those offerings, resulting from market applications of computer processing technology, that will not be regulated by this Commission.

84. Voluminous comments have been filed in this proceeding addressing the public interest considerations affecting each of the various options. In weighing the comments and reaching a final decision we are guided by the mandate entrusted to us by Congress as set forth in Section 1 of the Communication Act, i.e., "* * * to make available * * * to all people of the United States a rapid, efficient Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges * * *" 47 U.S.C. 151. The exercise of our regulatory authority under this mandate is analyzed in the context of rapid technological and market developments affecting communications and data processing services, the ever-increasing reliance upon common carrier transmission facilities in the movement of all kinds of information, and the need to tailor communications-related services to individual user requirements.

85. The *Tentative Decision* set forth various options for addressing regulation and the role of common carriers in the provision of enhanced computer services and customer-premises equipment. In considering these options we shall treat network services separately from terminal equipment issues as was done in the *Tentative Decision*. Insofar as network services are concerned, the options set forth for consideration in the *Tentative Decision* and the comments of the parties essentially focus on (a) whether the basic/enhanced dichotomy is appropriate, (b) whether there should be a distinction between enhanced services based on their communications or data processing nature, (c) whether Title II regulation should be imposed over any enhanced service, and (d) whether the resale structure should be applicable to all carriers owning transmission facilities, i.e., whether such carriers should be required to form a separate subsidiary for the provision of unregulated enhanced services and acquire the necessary transmission facilities pursuant to tariff. As to customer-premises equipment (CPE) the comments focus on a) whether all CPE should be treated the same, b) whether CPE should be deregulated, and c) the structure under which communications common carriers should be permitted to market CPE in conjunction with their transmission services. We must now weigh the public interest considerations relevant to these issues in light of our overall statutory mandate. After delineating the regulatory scheme in these two areas, we will address common carrier participation in the provision of enhanced services and customer-premises equipment.

B. Network Services

Basic and Enhanced Services

86. The structure set forth in the *Tentative Decision* focused on the separation of common carrier transmission services from those computer services which depend on common carrier services in the transmission of information. We proposed a resale structure for those computer processing services which would be subject to a regulatory delineation between communications and data processing. A distinction was made between basic common carrier transmission services and enhanced services; enhanced services were to be provided on a resale basis such that the requisite common carrier facilities would be acquired pursuant to tariff. Moreover a set of definitions was proposed for distinguishing the regulated or non-regulated status of enhanced services based on the communications or data processing nature of the service.

87. The benefits of this structure were set forth in the *Tentative Decision* at paras. 72–75. We stated there that this resale structure enables us to do away with the "separate facilities" requirement of our "maximum separation" policy for resale carriers.[31] Restrictions on the use of a carrier's facilities for only regulated services would be removed; both communications and data processing services could be provided through a resale carrier's computer facilities. Moreover, an environment would be created in which the licensed transmission facilities of a carrier are equally available to all providers of enhanced services. In addition, the potential for a carrier to use its transmission facilities to improperly subsidize an enhanced data processing service without detection would be minimized. Most importantly, however, we noted the potential benefit to consumers of enabling resale entities to

[31] See 47 CFR 64.702(c).

custom-tailor services to individual user needs.

88. The comments generally support distinguishing between basic common carrier services and enhanced services. Questions were raised, however, as to the manner in which we delineated the three categories of service—voice, basic non-voice (BNV), and enhanced non-voice (ENV). The comments raise concerns on two fronts. First, it is argued that use of "voice" and "non-voice" terminology may result in an artificial voice/data service distinction that will eventually fall of its own weight as technology evolves. Second, various parties argue that the definitions of BNV and ENV services should somehow be altered. In this regard, certain regulated carriers seek to have the BNV category expanded so as to not restrict their regulated activities. At the same time various unregulated entities seek a narrow construction of voice and BNV services so as not to unnecessarily expand the scope of regulation.

89. Unnecessary confusion may have resulted in proposing these three service categories using voice/non-voice terminology. Continued use of these terms is not warranted. The same objective is obtainable through use of simplified and more descriptive terminology. We believe that delineating between basic transmission services and enhanced services is consistent with the thrust of the *Tentative Decision* and will remove any conceptual problems as to the technological merging of voice and data.

90. The "voice" and "basic non-voice" categories proposed in the *Tentative Decision* represent nothing more than basic transmission services. The "voice" category was limited, by definition, to telephone service and was intended to distinguish "plain old telephone service" (POTS) from other basic and enhanced services where interaction of the human voice is involved. The "basic non-voice" category was essentially defined in terms of functions necessary to route a message through the network. See para. 27, *supra*. That nothing more than a basic transmission service was intended by these two categories is evident from our statement that "this structure requires the facilities of the underlying carrier to be transparent to the information transmitted and for a carrier to provide a 'pure transmission' service which forms the basis upon which all 'enhanced' services are provided." *Tentative Decision*, at para. 75. Accordingly, it is consistent with the *Tentative Decision* to refer to services that would fall within the voice and BNV categories as "basic" transmission services. Likewise, the ENV category was intended to encompass those computer offerings which are more than basic services, and it included both voice and data applications. The "non-voice" designation was given to the category to include human-to-computer services and make clear that such services were not "voice" services because of any voice synthesis or speech recognition capabilities. (See *Tentative Decision*, at n. 60 where we stated that the "non-voice" designation does not exclude voice transmission as part of an "enhanced non-voice" service.) Hence, deleting the "non-voice" designation in referring to enhanced services does not limit voice/data applications, and neither limits nor expands the types of services intended to fall within the ENV category. Hence the basic/enhanced distinction is consistent with the service classification structure proposed in the *Tentative Decision*.

91. We disagree with the first argument that an artificial distinction is made between voice and data services, or that we are imposing such a separation. The incorporation of voice and data transmission capabilities into the network is inherent in the basic service category. This dual capability is also recognized in the provision of enhanced services. To the extent confusion may have resulted over the use of "voice" and "non-voice" terminology, it should be alleviated by our use of more descriptive "basic" and "enhanced" terminology in differentiating services falling within the former "voice," "basic non-voice," and "enhanced non-voice" categories.

92. We conclude that the record in this proceeding supports our adopting a basic/enhanced dichotomy for network services. In going forward with a regulatory scheme that distinguishes a carrier's basic transmission services from its enhanced services, it behooves us to make clear our perception of what constitutes a basic service. In so doing we are mindful of the arguments raised by various parties that the basic service category should be broadly construed so as to not limit the scope of regulated services. However, based on our review of the comments and our determination, *infra*, that enhanced services should not be subject to regulation, we conclude that the parameters of a basic service should be dictated by the purposes of the Act and the statutory scheme set forth in Title II for the regulation of common carrier communications services.

93. A basic transmission service is one that is limited to the common carrier offering of transmission capacity for the movement of information. In offering this capacity, a communications path is provided for the analog or digital transmission of voice, data, video, etc. information. Different types of basic services are offered by carriers depending on (a) the bandwidth desired, (b) the analog and/or digital capabilities of the transmission medium, (c) the fidelity, distortion, or other conditioning parameters of the communications channel to achieve a specified transmission quality, and (d) the amount of transmission delay acceptable to the user. Under these criteria a subscriber is afforded the transmission capacity to suit its particular communications needs.

94. Traditionally, transmission capacity has been offered for discrete services, such as telephone service. With the incorporation of digital technology into the telephone network and the inclusion of computer processing capabilities into both terminal equipment located in the customer's premises and the equipment making up a firm's "network," this is no longer the case. Telecommunications service is no longer just "plain old telephone service" to the user. A subscriber may use telephone service to transmit voice or data. Both domestic and international networks allow for voice and data use of the same communications path.[32] Thus in providing a communications service, carriers no longer control the use to which the transmission medium is put. More and more the thrust is for carriers to provide bandwidth or data rate capacity adequate to accommodate a subscriber's communications needs, regardless of whether subscribers use it for voice, data, video, facsimile, or other forms of transmission.

95. Accordingly, we believe that a basic transmission service should be limited to the offering of transmission capacity between two or more points suitable for a user's transmission needs and subject only to the technical parameters of fidelity or distortion criteria, or other conditioning. Use internal to the carrier's facility of compending techniques, bandwidth

[32] Digital modems or datasets are widely used domestically for the permissive transmission of data over leased voice grade lines and MTS circuits and the transmission of data over international MTS circuits is also allowed as a permissive use. See *Dataphone* decision FCC 79-842, released February 11, 1980. Similarly the IRCs offer the ability to transmit voice over their data conditioned circuits. See *Datel* decision FCC 79-843, released February 14, 1980. (These decisions are currently on appeal before the Court of Appeals for the District of Columbia, Case Nos. 80-1286, 80-1287, 80-1310 (1980)).

compression techniques, circuit switching, message or packet switching, error control techniques, etc. that facilitate economical, reliable movement of information does not alter the nature of the basic service. In the provision of a basic transmission service, memory or storage within the network is used only to facilitate the transmission of the information from the origination to its destination, and the carrier's basic transmission network is not used as an information storage system. Thus, in a basic service, once information is given to the communication facility, its progress towards the destination is subject to only those delays caused by congestion within the network or transmission priorities given by the originator.

96. In offering a basic transmission service, therefore, a carrier essentially offers a pure transmission capability over a communications path that is virtually transparent in terms of its interaction with customer supplied information. It is clear that in defining a basic service in this manner, we are in no way restricting a carrier's ability to take advantage of advancements in technology in designing its telecommunication network. Consistent with our *Tentative Decision*, a carrier maintains its flexibility to structure its communications network such that the network efficiently functions as the basic building block upon which it (in the form of a separate subsidiary in some cases) as well as other service vendors can add computer facilities to perform myriad combinations and permutations of information processing, data processing, process control, and other enhanced services.

97. Under this scenario, the regulatory demarcation between basic and enhanced services becomes relatively clear-cut. An enhanced service is any offering over the telecommunications network which is more than a basic transmission service. In an enhanced service, for example, computer processing applications are used to act on the content, code, protocol, and other aspects of the subscriber's information.[33] In these services additional, different, or restructured information may be provided the subscriber through various processing applications performed on the transmitted information, or other actions can be taken by either the vendor or the subscriber based on the content of the information transmitted through editing, formatting, etc. Morevover, in an enhanced service the content of the information need not be changed and may simply involve subscriber interaction with stored information. Many enhanced services feature voice or data storage and retrieval applications, such as in a "mail box" service.[34] This is particularly applicable in time-sharing services where the computer facilities are structured in a manner such that the customer or vendor can write its own customized programs and, in effect, use the time-sharing network for a variety of electronic message service applications. Thus the kinds of enhanced store and forward services that can be offered are many and varied.[35]

98. As we stated in paragraph 90, *supra.*, the "voice" category was intended to distinguish traditional telephone service consisting of real time human-to-human oral conversation from other basic and various enhanced services. At footnote 60 of the *Tentative Decision*, we stated that we are not foreclosing enhanced processing applications from being performed in conjunction with "voice" service. We indicated that "computer processing applications such as call forwarding, speed calling, directory assistance, itemized billing, traffic management studies, voice encryption, etc., may be used in conjunction with 'voice' service." *Id.* The intent was to recognize that while POTS is a basic service, there are ancillary services directly related to its provision that do not raise questions about the fundamental communications or data processing nature of a given service. Accordingly, we are not here foreclosing telephone companies from providing to consumers optional services to facilitate their use of traditional telephone service. Any option that changes the nature of such telephone service is subject to the basic/enhanced dichotomy and their respective regulatory schemes. For example, voice storage or automatic call answering within the network would be enhanced services. See para. 97, *supra.* Thus any tariffed optional services must not change the nature of traditional telephone service.[36]

99. A few comments question the legitimacy of not allowing code and protocol conversion as part of a basic service. While we have concluded that code and protocol conversion are enhancements to a basic service, we recognize that they also increase the utility of the communications channel by allowing disparate terminals to communicate with one another. Because the universe of terminals that can communicate with one another is larger where such capabilities are offered, arguments can be made that these functions should be allowed as part of a communications service. We have weighed the relative merits of permitting code and protocol conversion as part of a basic service and affirm our determination in the *Tentative Decision*, at para. 69, that these capabilities are more appropriately associated with the provision of enhanced services. This conclusion is premised on two factors. First, there is the likelihood of distorting the regulatory distinction between basic and enhanced services if protocol conversion is performed as part of a basic service. Second and more significant, however, is the fact that this determination has implications only for those carriers that remain subject to resale structure and the maximum separation policy. (See discussion in Part D, *infra.*) Entities not so subject may offer protocol conversion to all customers regardless of whether it is viewed under our rules as basic or enhanced. The most significant effect our decision will have is to require some carriers to offer protocol conversion and like enhancements to their basic services through separate subsidiaries. No compelling evidence has been submitted in this proceeding that this separation will impose significant efficiency losses on the carrier or the public it serves. If at some future time evidence to the contrary is submitted, we are free to re-examine the public interest ramifications and regulatory implications of allowing a given protocol conversion as part of basic services.[37]

[33] In this context, "code" means the binary representation of alphanumeric and control characters. Thus an enhanced service may modify the transmitted bit stream to change it from the ASCII code to the EBCDIC code, which a basic service may not. "Protocols" govern the methods used for packaging the transmitted data in quanta, the rules for controlling the flow of information, and the format of headers and trailers surrounding the transmitted information and of separate control messages.

[34] In a typical mail-box application Party A, intending to send a message to Party B, would compose a message at its terminal, and, over a communications line, direct the message to a computer memory location having the address, "Party B." Party B can periodically communicate with the computer at times of Party B's own choosing using its own terminal, and withdraw the contents of its memory location for display at the terminal.

[35] The offering of store and forward *services* should not be confused with the use of store and forward *technology* in routing messages through the network as part of a basic service. Message or packet switching, for example, is a store and forward technology that may be employed in providing basic services.

[36] As a practical matter this only affects those carriers subject to the resale structure for the provision of enhanced services since carriers not so subject may offer any enhanced service as a nontariffed option.

[37] While the comments in this proceeding do not address protocol conversion in any detail, the question arises as to whether some flexibility

Footnotes continued on next page

100. We believe that our adoption of a differentiation between basic and enhanced services best furthers the public interest because it comports with the actual development of this dynamic industry. As the market applications of computer technology increase, communications capacity has become the necessary link allowing the technology to function more efficiently and more productively. Transmission networks have benefitted from some of the productive breakthroughs which this relatively new field has made possible. As a result, the computer industry and the communications industry are becoming more and more interwoven. We believe, and the record shows, that this trend will become even more pronounced in the future. As it does, an increasing number of enhanced services will be developed to meet the need of the marketplace. Thus, the pressure on a set of administrative rules which fail to recognize the growth in operational sophistication demanded by our nation's economy will be inexorable.

101. The distinction we adopt today recognizes that development and indeed should encourage its continuation. We believe it will do so in several ways. First, it leaves undisturbed the provision of basic service, whether as a building block supporting the provision of enhanced services or by itself. Second, it allows the provider of these basic services to integrate technological advances conducive to the more efficient transmission of information through the network without the threat of a sudden, fundamental change in the regulatory treatment of that service or firm. Third, it draws a clear and, we believe, sustainable line between basic and enhanced services upon which business entities can rely in making investment and marketing decisions. Fourth, in conjunction with our decision on the regulatory scheme applicable to such services, it removes the threat of regulation from markets which were unheard of in 1934 and bear none of the important characteristics justifying the imposition of economic regulation by an administrative agency.

Footnotes continued from last page should be afforded a basic service provider that is subject to the separation requirement, in the view of the structure we are setting forth. It may be that certain low level protocol conversions should be allowed as part of a basic service. In the near future we will consider a Notice of Inquiry to examine in detail the implications of forbidding all protocol translation in such instances and whether the public interest requires some exceptions to this prohibition.

Enhanced Services: Communications/ Data Processing Classification

102. Having affirmed the dichotomy established between basic and enhanced services, we must now address the definitions proposed in the *Tentative Decision* for classifying enhanced services as either communications or data processing. It should be noted at the outset that implicit in the *Tentative Decision* is the recognition that the interstate telecommunications network should be exploited to its fullest potential. This means that restrictions on output, whether privately or publicly imposed, are contrary to the public interest when the effect is to lessen the utility of society's substantial investment in the telecommunications network. Consistent with this principle, we seek to remove unnecessary and inappropriate FCC regulation as an inhibiting barrier to the various combinations and permutations of enhanced services that may be offered over the nationwide telecommunications network. We affirm out conclusion that a need exists to re-examine the definitional scheme established in the *First Computer Inquiry* in order to provide greater market certainty. The question now is whether our statutory responsibilities and the public interest will best be served by adopting the definitional structure proposed in the *Tentative Decision.*

103. With the advent of distributed processing, we recognized the need for clearer delineations in order to minimize uncertainties for those making business decisions related to the provision of new and innovative enhanced services. We noted the need for a revised definitional structure to address this environment, rather than attempting to artificially construe the present § 64.702 with the prospect of ambiguity and uncertainty. The existing § 64.702(a) is inadequate primarily because it was formulated at a time when processing capabilities were limited to large-scale central computers; its inherent deficiencies rest with the fact that it thus does not take into account the type of services marketed in today's environment of distributed processing. See *Notice* at paras. 7–14, *Supplemental Notice* at paras. 7–8, and *Tentative Decision* at paras. 78–79.

104. We proposed a new definitional structure as a means of classifying enhanced services as either regulated communications or unregulated data processing services. [38] See para. 30, *supra.* Attention was focused on enhanced services because it is at this level that new and innovative computer services are offered and uncertainty exists as to the communications or data processing nature. [39] The definitional scheme would affect both communications common carriers and unregulated vendors of computer processing services. We noted that, as a practical matter, when Commission findings are made that certain computer services are or are not a communications offering, a guide is provided for service vendors as to what service may be offered without coming under our Title II regulatory umbrella. It is not surprising, therefore, that the definitional scheme advanced was the subject of substantial comment.

105. Comments filed in response to the *Notice* and *Supplemental Notice* stressed the importance of maintaining some degree of flexibility under any definitional attempt to distinguish communications and data processing. Taking these comments into consideration, we make an effort to devise workable criteria for distinguishing the communications or data processing nature of enhanced services. Specific definitions were proffered with the hope that greater regulatory certainty would prevail in the marketplace. Comments were sought on the public interest considerations relevant to adoption of the proposed definitions.

106. While there is some agreement among the parties as to the appropriateness of distinguishing between basic and enhanced services, there is no consensus that adoption of the proposed definitional scheme for distinguishing the communications/data processing nature of enhanced services would be in the public interest. Without exception, every element of the definitional structure we proposed was subject to criticism by one party or another, and various changes were suggested for rewording the definition of such terms as "computer processing," "data processing," "data processing service," and "hybrid data processing." Carriers argued that certain definitions should be altered or expanded to make clear that various computer services were communications services; unregulated service vendors found certain definitions too broad and argued that their adoption would result in regulation of data processing services.

[38] The communications/data processing controversy is not relevant to basic services by definition.

[39] Compare *Western Union Telegraph Company,* 11 FCC 2d 1 (1967) (found basic SICOM service to be a tariffable common carrier communciations service) and *Western Union Telegraph Company,* 59 FCC 2d 140 (1976) (found four collateral services to be data processing) *recon. denied* 62 FCC 2d 518 (1976).

107. After three attempts [40] to delineate a distinction between communications and data processing services and failing to arrive at any satisfactory demarcation point, we conclude that further attempts to so distinguish enhanced services would be ultimately futile, inconsistent with out statutory mandate and contrary to the public interest. In coming to this conclusion we are convinced that pursuing such a course of action would not accomplish the objectives of this proceeding, i.e., "to (a) foster a regulatory environment conducive to the stimulation of economic activity in the regulated communications sector with respect to the provisions of new and innovative communications-related offerings; and (b) enable the communications user to optimize his use of common carrier communication facilities and services by taking advantage of the ever increasing market applications of computer processing technology." *Tentative Decision*, at para. 59. It is apparent that, over the long run, any attempt to distinguish enhanced services will not result in regulatory certainty. At most, reliance on a definitional approach which uses a primary purpose standard is a stop-gap measure, which—even assuming we were able to define the services accurately—would only reflect the differences in these services as they are configured with today's technology. In a market as vibrant as enhanced services, however, this distinction may miss important new developments. Thus, the need for *ad hoc* determinations would continue. As the market applications of computer technology continue to envolve we believe that attempts to distinguish enhanced services either will fail or result in an unpredictable and inconsistent scheme of regulation. This is because a definitional structure is not independent of advances in computer technology and its concomitant market applications. A certain degree of flexibility must be maintained to accommodate these advances. To the extent flexibility is incorporated into the definitions, there is a corresponding degree of uncertainty. Thus the boundary line differentiating enhanced communications and data processing services can vacillate, and confidence in decisions made based on that distinction would be diminished.

108. In addition to the fact that the record in this proceeding does not support the conclusion that greater regulatory certainty would result by adopting the proposed definitional structure, there are other factors which militate against classifying enhanced services for regulatory purposes. Such a regulatory scheme would most likely result in the direct or indirect expansion of regulation over currently unregulated vendors of computer services and deprive consumers of increased opportunities to have services tailored to their individual needs.

109. To fully appreciate the significance of this, it is helpful to understand the dynamics of the marketplace in light of our current regulatory scheme. There are literally thousands of unregulated computer service vendors offering competing services connected to the interstate telecommunications network. The services they provide are many and varied. The only limitation on the types of services offered are those arising from the constraints of their own entrepreneurial capabilities and, in a very real sense, the implicit requirement that they structure their services so as to avoid crossing a regulatory boundary that would subject them to regulation. The former recognizes the fact that the potential for new and innovative services is merely a factor of the technical parameters of the computer equipment and the associated applications programs employed; the latter is a consequence of our *Resale* decision which subjected resale entities providing communications services to Title II regulation, but not vendors of data processing services. The interaction of the implicit requirement to avoid crossing the regulatory boundary and the competitive nature of the enhanced service market is crucial. Even with this barrier we have concluded that the enhanced services market is competitive, *GTE-Telenet Merger*, 72 FCC 2d 111 (1979).[41] By removing this barrier the entire market for enhanced services should be even more competitive than it has been in the presence of that barrier. In the *GTE-Telenet Merger* decision at paragraph 141, we discussed several potential entrants, large computer time sharing companies, that faced no barrier to entry other than the necessity to comply with the requirements of Title II. The record in this proceeding makes clear that even when the Commission's stated policies are in favor of open entry, the very presence of Title II requirements inhibits a truly competitive, consumer responsive market.

110. Computer technology is increasingly removing technical limitations as to the types of enhanced services that may be offered. Yet, a classification scheme which would categorize enhanced services as either communications or data processing inherently limits the types of services that an unregulated entity may offer. The reason for this is clear. Providers of data processing and other computer services acquire the necessary transmission facilities from communications common carriers pursuant to tariff, and resell this transmission capability as part of their enhanced offering. At the same time, an entity which acquires the same transmission facilities from a carrier and offers a "communications" service is presently regulated as a common carrier under Title II of the Act. See *Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities* (*Resale*), Docket No. 20097, 60 FCC 2d 261 (1976), recon. 62 FCC 2d 588 (1977), aff'd *AT&T* v. *FCC*, 572 F.2d 17 (2d Cir.), *cert. denied*, 439 U.S. 875 (1978). Accordingly, a resale entity is regulated as a common carrier only if it is providing a communications service.[42]

111. This has significant public interest implications in terms of the types of services that may be offered and the scope of our regulation. First, the vendor of unregulated enhanced services may not provide an enhanced "communications" service. This means that its services must be artificially structured so as to not come under our regulatory umbrella (the guidelines for which we have already concluded would be less than precise). To the extent services must be so structured there is a corresponding inability to fully tailor services to consumer needs. This has the result of artificially restricting the supply of services provided over the telecommunications network. In the final analysis both individual consumers and society in general bear unnecessary costs where such limitations exist. This becomes even more troublesome as new markets for enhanced services open and new services open up. While these services traditionally have been directed at the business sector,

[40] Differing definitions were proposed in the *Notice, Supplemental Notice*, and *Tentative Decision*.

[41] In the GTE-Telenet merger we discussed the "augmented data transmission services". These services are encompassed within the enhanced category.

[42] On reconsideration of the *Report and Order* in the Resale Decision we stated:

Thus, if what is ultimately offered to the public is data processing or anything other than "communications," this proceeding is not applicable to such activity. The question as to what is "data processing" or "communications" is at issue in Docket No. 20828. 62 FCC 2d at 600.

The more generic question of whether any resale entity should be regulated as a common carrier is undergoing re-examination in the *Competitive Carrier Rulemaking*, CC Docket No. 79-252, FCC 79-509 (released November 2, 1979).

increasing attention is being focused on residential markets.[43] It is apparent that technology and entrepreneurial incentives are directed toward new markets and new means of serving them. Thus restrictions on output, which would result from a classification scheme limiting those who wish to avoid the costs and delays of regulation, will increase as these new markets open up.

112. The second public interest implication is the increased potential for expansion of regulation over currently unregulated providers of information or data processing services. We noted in the *Tentative Decision*, at para. 152, that the tentative conclusion that a resale carrier would be able to offer both regulated and unregulated enhanced services (with the unregulated services offered on a nontariffed basis) carried with it significant regulatory and market implications for presently unregulated firms. A resale carrier could offer any enhanced service, whereas the unregulated vendor of computer services may offer only those enhanced services that are not regulated as "communications." The effect of this is that ". . . the communication common carrier would have tremendous flexibility to provide new and innovative services and to tailor these services to individual user needs, much more so than a currently unregulated entity. One result may be an indirect forcing of currently unregulated entities to acquire common carrier status in order to obtain the same degree of flexibility afforded a resale common carrier." *Id.* We perceive that the impetus for this to happen will increase as the computer processing applications and technologies continue to evolve and grow. In addition to increasing the scope of Commission regulation, the specter of potential regulation may impose artificial barriers to entry. Here also, this effect may grow in significance as technology advances.

113. We have gone to great length in this proceeding to build a record which would best enable us to render a decision consistent with the mandate of this Commission as set forth in Section 1 of the Communications Act, 47 U.S.C. 151. Based on this record, the mandate of this Commission in a rapidly changing technological environment, the market developments resulting from the confluence of technologies, the impossibility of defining at the enhanced level a clear and stable point at which "communications" becomes "data processing," the ever increasing dependence upon common carrier transmission facilities in the movement of information, the need to tailor services to individual user requirements, and the potential for unwarranted expansion of regulation, we conclude that the public interest would not be served by any classification scheme that attempts to distinguish enhanced services based on the communications or data processing nature of the computer processing activity performed. Accordingly, we conclude that all enhanced computer services should be accorded the same regulatory treatment and that no regulatory scheme could be adopted which would rationally distinguish and classify enhanced services as either communications or data processing.

Regulatory Scheme

114. Having concluded that there should be no regulatory distinction between enhanced services, we are left with two categories of services—basic and enhanced. The common carrier offering of basic transmission services are regulated under Title II of the Act. This proceeding does not address the nature and degree of regulation exercised over providers of basic services. Insofar as enhanced services are concerned, there are two options—subject all enhanced services to regulation, or refrain from regulating them *in toto*. We believe that, consistent with our overall statutory mandate, enhanced services should not be regulated under the Act.

115. We find the public interest benefits inherent in distinguishing basic and enhanced services and regulating only the former far outweigh any regulatory scheme that attempts to regulate some enhanced services and not others. Significant public interest benefits accrue to the Commission, carriers and other service providers, and consumers under this regulatory structure. Moreover, we are convinced that such a regulatory scheme offers the greatest potential for efficient utilization and full exploitation of the interstate telecommunications network. The basis for such conviction becomes apparent when the advantages of this structure are compared to the existing regulatory environment or that proposed in the *Tentative Decision*.

116. From the perspective of the regulator, a major benefit in not classifying services within the enhanced category is that the scope of Commission regulation is focused on those services which are clearly within the contemplation of the Communications Act and which serve as the foundation for all enhanced services. Moreover, the extent of our regulatory authority is not automatically expanded with advances in technology and the types of enhanced services that can be offered. Semantic distinctions are avoided as to whether a given service is data processing, information processing, process control, communications processing, or some other category. As such, the potential for the development of an inconsistent regulatory scheme to accommodate these services is eliminated; all enhanced services are accorded the same regulatory treatment. To the extent uncertainty creates a regulatory barrier to entry, that barrier is also removed. With the nonregulation of all enhanced services, FCC regulations will not directly or indirectly inhibit the offering of these services, nor will our adminstrative processes be interjected between technology and its marketplace applications. This structure enables us to direct our attention to the regulation of basic services and to assuring nondiscriminatory access to common carrier telecommunications facilities by all providers of enhanced services.

117. Service vendors also benefit under this structure. Providers of enhanced services are afforded tremendous flexibility because there is no restriction on the types of services they may provide, except those imposed by the demands of their customers. The boundary between basic and enhanced services raises no such barrier since we believe we have identified a common necessary element in our definition of basic services. The trend in technology is toward new and innovative enhancements that build upon basic services. For computer vendors and entrepreneurs the momentum is away from basic communications services, rather than toward it. As a result, the types of enhanced services they may provide is limited only by their entrepreneurial ingenuity and competitive market constraints. Services need not be artificially structured or limited so as to avoid transgressing a regulatory boundary.

118. The benefit to consumers is that service which depend on the electronic movement of information can be custom-tailored to individual subscriber needs. Moreover, information systems can be programmed so that users dictate the nature and extent of computer processing applications to be performed on any given amount of information. As greater flexibility is offered consumers

[43] The most apparent example of this is the potential offering of teletext and viewdata type services to residential consumers. Various telephone holding companies are actively pursuing the possibility of offering these information retrieval services to residential customers in conjunction with other store and forward message service applications.

to tailor their services, a broader spectrum of the marketplace can be expected to take advantage of information processing services. To the extent regulatory barriers to entry are removed and restrictions on services are lifted there is a corresponding potential for greater utilization of the telecommunications network through greater access to new and innovative service by a larger segment of the populace. Finally, this structure creates the proper economic incentives for vendors to segregate their services such that consumers need pay only for those services necessary for their own information processing requirements.

Legal Considerations

119. In defining the difference between basic and enhanced services, we have concluded that basic transmission services are traditional common carrier communications services and that enhanced services are not. Thus, while those who provide basic services would continue to be regulated, enhanced service vendors would not be subject to rate and service provisions of Title II of the Communications Act. Our decision here is not a radical departure from our previous policy in this area. Rather, it is a natural outgrowth of our decision in the *First Computer Inquiry* in which we declined to regulate both data processing and hybrid data processing services. And although we decided at that time to establish a set of definitions in order to distinguish regulated communications service from unregulated data processing services, we are convinced from our ongoing evaluation of this area, that such a framework can no longer be justified. In fact, we doubt that one could be established.

120. We have described our repeated unsucessful efforts to identify a discrete communications component (after the fashion of the *First Computer Inquiry)* in what we have finally come to label "enhanced service." We are faced with the reality that technology and consumer demand have combined to so overrun the definitions and regulatory scheme of the *First Computer Inquiry* that today no comparable, minimally enduring line of demarcation can be drawn. In enhanced services, communications and data processing technologies have become intertwined so thoroughly as to produce a form different from any explicitly recognized in the Communications Act. The forms of the Act should not control either the substance of enhanced service offerings to the public or the manner in which they are made available.

121. Because enhanced service was not explicitly contemplated in the Communications Act of 1934, there is no more a requirement to confront it with a specific traditional regulatory mechanism than there was, for example, in the case of cable television, which has formal elements of common carriage and broadcast television, or of specialized mobile radio services, which bears many formal similarities to radio common carriage. Precedent teaches that the Act is not so intractable as to require us to routinely bring new services within the provision of our Title II and III jurisdiction even though they may involve a component that is within our subject matter jurisdiction. In fact, in *GTE Service Corp.* v. *FCC,* 474 F.2d 724 (2nd Cir. 1973), the court substantially affirmed a Commission decision the underlying premise of which was that not all services involving the electronic transmission of information are communications services subject to regulation under Title II of the act.

122. Precedent teaches us, also, that all those who provide some form of transmission services are not necessarily common carriers. See, *e.g., AT&T* v. *FCC,* 572 F.2d 1725 (2d Cir. 1978) (sharing of communications services and facilities not common carriage and not subject to Title II); *National Association of Regulatory Utility Commissioners* v. *FCC,* 525 F.2d 630 (D.C. Cir. 1976) (NARUC I) (SMRS); *American Civil Liberties Union* v. *FCC,* 523 F.2d 1344 (9th Cir. 1976) (CATV); *Philadelphia Television Broadcasting Co.* v. *FCC,* 359 F. 2d 282 (D.C. Cir. 1966). (FCC not required to treat cable television systems as common carriers nor to employ Title II regulatory tools.) Although the term itself is difficult to define with any precision, a distinguishing characteristic is the quasi public undertaking to "carry for all people indifferently." *NARUC I,* 525 F.2d at 641; *National Association of Regulatory Utility Commissioners* v. *F.C.C.,* 533 F.2d 601, 608 (1976) (NARUC II) citing *Seamon* v. *Royal Indemnity Co.,* 279 F.2d 737, 739 (5th Cir. 1960) and cases cited therein. While one may be a common carrier even though the nature of the service offered is of use to only a segment of the population, *NARUC I,* 525 F.2d at 641, "* * * a carrier will not be a common carrier where its practice is to make individualized decisions, in particular cases, whether and on what terms to deal." *Id.* At the same time, we recognize certain inadequacies of any definition of common carriage which is dependent entirely on the intentions of a service provider. Instead, as the Court's opinion in *NARUC I* acknowledges, an element which must also be considered is any agency determination to impose a legal compulsion to serve indifferently, *NARUC I,* 525 F.2d at 642. We have specifically imposed no such obligation with respect to enhanced service providers.

123. Even this definition of common carriage cannot be readily applied to vendors of enhanced services. Inherent in the offering of enhanced services is the ability of service providers to custom tailor their offerings to the particularized needs of their individual customers. Thus, such services can vary from customer to customer as "individualized decisions" are made as to how best to accommodate the processing needs of their various subscribers. Admittedly, vendors of enhanced services also have the ability, if they so desire, to provide these services on an indiscriminate basis. Presumably, some do. But "this is not a sufficient basis for imposing the burdens that go with common carrier status." *NARUC I* at 644. We cannot conclude that under the common law providers of these services are common carriers or that Congress intended that these services be regulated under our Title II of the Act. Indeed, to subject enhanced services to a common carrier scheme of regulation because of the presence of an indiscriminate offering to the public would negate the dynamics of computer technology in this area. It would substantially affect not only the manner in which enhanced services are offered but also the ability of a vendor to more fully tailor the service to a given consumer's information processing needs.

124. This does not mean however that we are void of jurisdiction over enhanced services. Congress gave this agency the mandate "* * * to make available, so far as possible, to all people of the United States a rapid, efficient, nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges * * *." 47 U.S.C. 151. In carrying out this mandate Congress made clear that the Commission's jurisdiction extends "* * * to all interstate and foreign communication by wire or radio * * *" 47 U.S.C. 153 (a) and (b). The statutory language of 47 U.S.C. 152 U.S.C. 152(a). The Act defines "communication by wire" and "communication by radio" as "* * * the transmission of writing, signs, signals, pictures and sounds of all kinds * * * incidental to such transmission." 47 confers on this agency broad subject matter jurisdiction. The Supreme Court

has stated that this Commission was given "regulatory power over all forms of electrical communication * * *." *United States* v. *Southwestern Cable Co.*, 392 U.S. 157, 172 (1968), citing S. Rep. No. 781, 73d, long., 2d Sess., 1. *See* also *GTE Service Corp., General Telephone Company of Southwestern* v. *U.S.*, 449 F.2d 846 (5th Cir. 1971); *General Telephone Company of California* v. *FCC*, 413 F.2d 390 (D.C. Cir.), *cert. den.*, 396 U.S. 385 (1969).

125. Further, the Act was designed to provide the Commission with sufficiently elastic powers to readily accomodate new developments in the field of communications. In *FCC* v. *Pottsville Broadcasting Co.*, the Supreme Court recognized the fluidity of this environment "* * * and of the corresponding requirement that the administrative process possess sufficient flexibility to adjust itself to these factors." 309 U.S. 134, 138 (1940). It has been held that the Act must be read as granting the Commission "a comprehensive mandate," with "not niggardly but expansive powers." *National Broadcasting Co.* v. *United States*, 319 U.S. 190, 219 (1943). See also *United States* v. *Southwestern Cable Co.*, 392 U.S. 157 (1968); *Philadelphia Television Broadcasting Co.* v. *FCC*, 359 F.2d 282 (1966). Thus, Title II and Title III provide the principal regulatory forms of the Communications Act, but the Commission also has regulatory powers independent of Title II and Title III. *United States* v. *Southwestern Cable Co.*, 319 U.S. at 172. Accordingly we find that the enhanced services under consideration in this proceeding constitute the electronic transmission of writing, signs, signals, pictures, etc., over the interstate telecommunications network and, as such, fall within the subject matter jurisdiction of this Commission.

126. Even though an activity falls within our subject matter jurisdiction, our ability to subject it to regulation is not without constraints. The principal limitation upon, and guide for, the exercise of these additional powers which Congress has imparted to this agency is that Commission regulation must be directed at protecting or promoting a statutory purpose. In some instances, that means not regulating at all, especially if a problem does not exist. *Home Box Office* v. *FCC* 567 F.2d 9 (1977) *cert. denied*, 434 U.S. 829 (1977) (Commission's pay cable rules vacated, in the absence of evidence supporting the need for regulation). See also *City of Chicago* v. *FPC*, 458 F.2d 731, 742 (1971) *cert. denied*, 405 U.S. 1074 (1972) ("regulation perfectly reasonable and appropriate in the face of a given problem [is] highly capricious if that problem does not exist").

127. We have examined the extensive record in this proceeding to determine whether a comprehensive regulatory scheme for enhanced services is necessary to protect or promote some overall objective of the Communications Act. We find that it is not.[44] Our decision here is an affirmation of the *First Computer Inquiry* where we refused to impose regulation upon data processing services, stating:

> In view of all of the foregoing evidence of an effective competitive situation, we see no need to assert regulatory authority over data processing services *whether or not such services employ communication facilities* in order to link the terminals of the subscribers to centralized computers. We believe the market for these services will continue to burgeon and flourish best in the existing competitive environment.
>
> We expect the competitive environment within which data processing services are now being offered to result in substantial public benefit by making available to the public, at reasonable charges, a wider range of existing and new data processing services. We believe that these expectations will continue to be realized in the free give-and-take of the market place without the need for and possible burden of rules, regulations and licensing requirements.

First Computer Inquiry, Tentative Decision, 27 FCC 2d at 297–298. (emphasis added).

128. Nothing has transpired over the past decade which would lead us to alter these conclusions. On the contrary, we find that our perception of the market environment for these types of services was largely accurate. If anything, it was overly conservative as to the extent to which market applications of computer processing technology would evolve. Not only has there been an exponential growth in data information services for business purposes, but, as indicated above, the services are now being directed at residential consumers. The market is truly competitive. Experience gained from the competitive evolution of varied market applications of computer technology offered since the *First Computer Inquiry* compels us to conclude that regulation of enhanced services is simply unwarranted.[45]

129. In our judgment, regulation of enhanced communications services would limit the kinds of services an unregulated vendor could offer, restricting this fast-moving, competitive market. Regulation also would disserve the interest of consumers and the goals of the Communications Act. Expansion of regulation to cover or threaten to cover services and vendors that have not been regulated cannot be sustained in the absence of an overriding statutory purpose. Even the continuation of regulatory policies when the justification for them no longer exists can not be sustained. As the U.S. Court of Appeals for the D.C. Circuit recently observed:

> Even assuming that the rules in question initially were justified * * * it is plain that that justification has long since evaporated. The Commission's general rulemaking power is expressly confined to promulgation of regulations that serve the public interest * * *. Even a statute depending for its validity upon a premise extant at the time of enactment may become invalid if subsequently that predicate disappears.

Geller v. *FCC*, 610 F.2d 973 at 980 (D.C. Cir. 1979) (footnote omitted.) See also *HBO* v. *FCC*, *supra*. That our current regulatory framework is no longer appropriate is clearly demonstrated by the fact that it serves as an artificial barrier to entry preventing many companies from offering other enhanced services as offshoots of their highly competitive data processing services. Many of these companies are now providing various enhanced services under the Commission's current computer rules free from Title II regulation; but they are, under the Commission's current regulatory approach, prohibited from expanding to other activities which are a natural outgrowth of these services.

130. We appreciate there can be disagreement as to the line we have drawn between basic and enhanced services. Plausible arguments can be tendered for drawing it elsewhere. At the margin, some enhanced services are not dramatically dissimilar from basic services or dramatically different from communications as defined in *Computer Inquiry I*. But any attempt to draw the line at this margin potentially could

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[44] We recognize, of course, that occassional problems involving enhanced services could arise which would require us to invoke our subject matter jurisdiction and intervene. But we see no need to establish a comprehensive and burdensome regulatory scheme to deal with them. In our judgment, such matters can best be left for individual resolution.

[45] Under our *Resale Decision* the regulation of certain resale carriers (which may now be deregulated if they are only providing enhanced services) is a result of determinations as to the communication or data processing nature of these services pursuant to the definitional structure of the *First Computer Inquiry* (47 C.F.R. § 64.702). Because the communications/data processing boundary was being examined in this proceeding, the regulation of resale entities under Title II was contingent on the regulatory framework established here. See n. 42, *supra*. Accordingly, the prospect that some currently regulated resale entities might no longer be regulated under Title II has been recognized for some time.

subject both the enhanced services providers and us to the prospect of literally hundreds of adjudications over the status of individual service offerings. We have noted the danger that such proceedings could lead to unpredictable or inconsistent regulatory definitions. See para. 107 *supra*. Such proceedings also could consume a very significant proportion of the resources of this agency. The requirement to devote significant resources to try to make individual service distinctions would necessarily reduce the resources available for regulating basic services and ensuring non-discriminatory access to common carrier telecommunications facilities.

131. We have tried to draw the line in a manner which distinguishes wholly traditional common carrier activities, regulable under Title II of the Act, from historically and functionally competitive activities not congruent with the Act's traditional forms. We believe that the Communications Act and the jurisprudence which has grown up around it make it plain that Congress intended that substance not form govern the treatment of services within the Act's reach. We have acted upon that belief by applying traditional Title II regulatory mechanisms to basic services and applying no direct regulatory mechanism for enhanced services.

132. Finally, the nature of enhanced services and their market underscores the reasonableness of our decision. As indicated, we do not believe these are communications common carrier services within the meaning of Title II. We acknowledge, of course, the existence of a communications component. And we recognize that some enhanced services may do some of the same things that regulated communications services did in the past. On the other side, however, is the substantial data processing component in all these services. We never have imposed a scheme of regulation over data processing. Any agency regulatory decision in this area must assess the merits—as we do in this order—of extending regulation to an activity simply because a part of it is subject to the agency's jurisdiction where such regulation would not be necessary to protect or promote some overall statutory purpose. See *HBO* v. *FCC*, *supra*. We specifically reject any implication that in not regulating enhanced services under Title II we are abdicating our statutory responsibilities under the Act. *FPC* v. *Texaco, Inc.*, 417 U.S. 380 (1974). On the contrary, we have specifically concluded that our goals under Section 1 of assuring a "* * * Nation-wide * * * wire and radio communications service with adequate facilities at reasonable charges * * *" will be more effectively promoted by relying upon our ancillary regulatory power with respect to these emerging services. In exercising these ancillary powers, we can reasonably impose certain separate subsidiary requirements where required. We can also rely on the direct regulation we retain with respect to the independent provision of basic services. As we have stated basic services form one component of the charges for enhanced services—the remaining components of which are available from the competitive resources and capabilities of the data processing industry.

B. Customer-Premises Equipment (CPE)

Basic Media Conversion Critierion

133. The technological advancements affecting developments in computer applications for consumer services are also dramatically altering the types of terminal equipment used in conjunction with these services. See *Tentative Decision* at paras. 91–98. In a distributed rocessing environment computer processing applications can be performed anywhere—either within the offeror's network or within equipment located on the customer's premises. As a result, when carriers offer CPE with various information processing capabilities as part of their transmission services, we have been faced with determining whether the carrier is providing a regulated or unregulated service. *Dataspeed 40, supra*, n. 4.

134. In the *Supplemental Notice* we inquired into whether CPE with information processing capabilities should be offered as part of a common carrier service and the structure under which carriers should offer such equipment. In the *Tentative Decision* we concluded that CPE should not be subject to a definitional scheme which would classify either the device or its functions as communications or data processing.[46] We recognized that "there simply is no design stability in the terminal equipment field * * * [T]here is constant technological change, product innovation and refinement, and development of new markets and sub-markets in this field * * *" *Id.* at para. 102. Additionally, "[t]erminal devices are taking on more functions and intelligence and are increasingly incorporating data processing characteristics." *Id.* at para. 103. Thus the rapid pace of technological evolution would quickly render obsolete any attempt to draw distinctions among customer-premises equipment based on processing functions. We concluded that classifying CPE as either communications or data processing could impede a vendor's ability to refine and adapt its equipment offerings to user requirements through various processing applications accomplished by simple "software" or "hardware" changes to existing equipment. Implicit in this is the recognition that the uses to which CPE may be put are under the user's, not the carrier's, control. In the extreme case, we thought such an arbitrary distinction might result in multiple devices performing separate processing applications which otherwise could and should be performed economically within a single piece of equipment.

135. We attempted instead to draw a demarcation based on a standard independent of the communications/data processing applications CPE may perform. In so doing, consideration was given to the fact that the scope of the proceeding at that point in time did not address "unintelligent" CPE, such as the standard telephone handset, key telephone or simple PBX. We proposed that a distinction be made between CPE which performs only a basic media conversion (BMC) function and that which performs more than a BMC function. *Id.* at paras. 108–11. We concluded that carriers could provide only BMC devices as part of a "voice" or "BNV" service; CPE which performed more than a BMC function, if provided on a tariffed basis, could only be offered in conjunction with an ENV communications service under the separate subsidiary structure. There was no requirement, however, that a carrier tariff equipemnt which performs none than a BMC function. This proposal was designed to separate a carrier's provision of sophisticated CPE from its provision of basic services. This equipment was to be provided on a competitive basis, separate from a carrier's basic transmission services. The basic/enhanced dichotomy as proposed at that time would have allowed a carrier to provide sophisticated equipment on a tariffed basis if the carrier so desired. Sophisticated CPE could be marketed on a tariffed basis in conjunction with the offering of any enhanced services classified as communications.[47]

[46] See *Tentative Decision* at paras. 91–107 for a discussion of the technological developments and regulatory concerns that militate against classifying CPE as either communications or data processing equipment.

[47] As already discussed in the previous section, we have rejected any classification scheme that

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136. While this approach would have addressed the issues raised by the incorporation of distributed processing applications into CPE, we indicated that it also would impose the need for regulatory determinations which would not otherwise be required if all terminal equipment were to be accorded uniform regulatory treatment. Because the BMC classification scheme was offered to reflect the fact that the *Notice* and *Supplemental Notice* did not address a carrier's provision of simple devices, such as the basic telephone, and because over time this scheme would result in more equipment being offered on an unbundled basis, separate from that of the carrier's underlying transmission services, it was deemed appropriate to inquire into whether any distinction should be made between BMC and non-BMC equipment. Moreover, we noted that, because the *Tentative Decision* sought to isolate the facilities and costs of the carrier's underlying transmission services, identification of costs attributable to such services would be facilitated if all CPE were unbundled from the regulated communications service and provided on a separate basis. *Id.* at para. 160. Thus we sought comment on whether all carrier-provided CPE should be deregulated and the structure under which carriers should be allowed to provide it.

137. The BMC classification scheme received, at best, a mixed reaction from the commenting parties. The distinction was roundly criticized by a number of parties who characterized it as artificial and unworkable. They asserted that due to the basic fungibility of equipment no distinction between types of equipment was feasible. In particular data processing equipment vendors and their representatives argued that the artificiality of the distinction could lead to an unnecessary expansion in the scope of regulation and would increase the risk of improper cross-subsidization. The support which the BMC dichotomy did receive was, for the most part, qualified. Although some carriers such as AT&T supported the distinction in principle, definitional modifications were suggested which if implemented, would have substantially changed the concept. For example, AT&T suggested that the demarcation point between basic and sophisticated terminal equipment be moved so that carriers could continue to provide certain types of arguably sophisticated terminal equipment with basic services. Additionally, GTE was concerned that the distinction would potentially limit flexibility in the design of new customer-premises equipment.

138. The question of whether customer-premises equipment should be tariffed drew an equally mixed reaction. Divergent entities, such as AT&T and NATA, took the position that the Communications Act required that the provision of customer-premises equipment by underlying carriers be subject to tariff regulation. Without such regulation NATA saw no hope for the development of a genuinely competitive equipment market. Other parties contended that no CPE of any type should be subjected to tariff regulation, asserting that the CPE market was competitive and that regulation would be unduly burdensome. They recommended instead that the Commission deregulate all customer-premises equipment and prohibit the offering of such equipment pursuant to tariff as part of a basic service or otherwise.

139. Based on the record compiled in this proceeding we are not able to find that the public interest would be served by classifying CPE based on whether or not more than a basic media conversion function is performed. No strong endorsements of this classification scheme have been offered, and those comments that did not claim such a distinction would be unclear, arbitrary, artificial, unjustified, or inappropriate, suggested modifications which would have significantly altered the proposal. We conclude that in light of the increasing sophistication of all types of customer-premises equipment and the varied uses to which such equipment can be put while under the user's control, it is likely that any given classification scheme would serve to impose an artificial, uneconomic constraint on either the design of CPE or the use to which it is put. Moreover, to adopt a classification scheme now, having the benefit of comments that address issues generic to all carrier-provided CPE, would be to only partially address the regulatory concerns raised by a carrier's provision of CPE in conjunction with its transmission services. We conclude that the regulatory process, carriers, unregulated equipment vendors, and the public would be better served if all CPE were accorded uniform regulatory treatment.

Regulatory Scheme

140. Having concluded that we should not classify CPE, our attention is focused on the role of the communication common carrier in offering CPE. Specifically we address whether the objectives of the Communications Act would be better served if carriers were required to sell or lease CPE separate and apart from their regulated transmission services, and whether Title II regulation of carrier provided equipment is warranted. Upon review of the record in this proceeding, we believe that our statutory mandate can best be fulfilled if all CPE is detariffed and separated from a carrier's basic transmission services.

141. In weighing the merits of this conclusion, we have considered the nature of the terminal equipment market and the effects of advances in technology on equipment design and use (*Tentative Decision* at paras. 94–98), the benefits of competition, and our statutory responsibility to insure the reasonableness of rates charged for interstate services. Beginning with our *Carterfone* decision this Commission has embarked on a conscious policy of promoting competition in the terminal equipment market.[48] As a result of this policy the terminal equipment market is subject to an increasing amount of competition as new and innovative types of CPE are constantly introduced into the marketplace by equipment vendors. We have repeatedly found that competition in the equipment market has stimulated innovation on the part of both independent suppliers and telephone companies, thereby affording the public a wider range of terminal choices at lower costs. See, for example, *First Report in Docket No. 20003*, 61 FCC 2d at 867; *Phase II Final Decision and Order in Docket No. 19129*, 64 FCC 2d 1, 602. Moreover, this policy has afforded consumers more options in obtaining equipment that best suits their

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would attempt to distinguish the communications or data processing nature of enhanced services. Accordingly, CPE would no longer be tariffable as part of an enhanced service. The ability to optionally tariff CPE through the resale subsidiary would have removed the possibility that AT&T might be foreclosed from offering CPE under the terms of the 1956 consent decree solely because it was not regulated through the tariff process.

[48] See e.g., *Carterfone*, 13 FCC 2d 420, *recon den.* 14 FCC 2d 571 (1968); *Telerent Leasing Corp. et al.*, 45 FCC 2d 204 (1974) *aff'd sub nom. North Carolina Utilities Commission* v. *FCC*, 537 F. 2d 787 (4th Cir.), *cert. den.*, 429 U.S. 1027 (1976) (*NCUC I*); *Mebane Home Telephone Co.*, 53 FCC 2d 473 (1974), *aff'd Mebane Home Telephone Co.* v. *FCC*, 535 F. 2d 1324 (D.C. Cir. 1976); *First Report and Order in Docket No. 19528*, 56 FCC 2d 593 (1975); *on reconsideration*, 57 FCC 2d 1216 (1976), 58 FCC 2d 716 (1976) and 59 FCC 2d 83 (1976). *Second Report and Order in Docket No. 19528*, 58 FCC 2d 736 (1976); *on reconsideration, aff'd sub. nom. North Carolina Utilities Commission* v. *FCC*, 552 F. 2d 1036 (4th Cir.), *cert. den.* 434 U.S. 874 (1977) (*NCUC II*); *Phase II Final Decision and Order in Docket No. 19129*, 64 FCC 2d 1 (1977); *Implications of the Telephone Industry's Primary Instrument Concept* (*PIC*), 68 FCC 2d 1157 (1978); *Second Report in Docket No. 20003*, FCC 80–5, released January 29, 1980; *First Report and Order in CC Docket No. 79–143*, FCC 80–88, released March 19, 1980.

communication or information processing needs. Benefits of this competitive policy have been found in such areas as improved maintenance and reliability, improved installation features including ease of making changes, competitive sources of supply, the option of leasing or owning equipment, and competitive pricing and payment options.[49]

142. For the most part, these prior Commission decisions have been directed at removing tariff provisions that restricted non-carrier provided CPE from being attached to the network on a non-discriminatory basis. Our efforts culminated in a registration program which allows consumers to connect their own equipment to the network if that equipment conforms to certain technical standards and is properly registered with the Commission under Part 68 of the Rules. The Registration Program was an outgrowth of our *Hush-a-Phone* and *Carterfone* decisions which confirmed the existence of broad consumer rights under Section 201(b) and 202(a) of the Act. Along with such rights, corresponding carrier responsibilities were established by making unlawful any unjust or unreasonable interference with these consumer rights by the carrier. Consumers have the right to use the telecommunications network "* * * in ways which are privately beneficial without being publicly detrimental." *Hush-a-Phone Corp.* v. *U.S.*, 238 F.2d 266 (D.C. Cir. 1956). See also *Carterfone*, 13 FCC 2d at 423. In essence, our efforts up until now have focused on increasing consumer choice and have resulted in non-discriminatory access to the telecommunications network for connection of non-carrier provided equipment. This has allowed consumers to exercise their rights in the selection and use of terminal equipment that best suits their needs. Moreover, it has opened up various segments of the equipment market to new entrants.

143. The competitive potential of terminal equipment markets is reflected in the fact that there are hundreds of manufacturers and suppliers of modems, terminals, storage devices, front end processors, large and small central processing units, multiplexers, concentrators, and virtually innumerable related devices. While some segments of the CPE market may be more competitive than others, we have been given no evidence that, given certain modifications in the markets, any segment is inherently less competitive than another. In fact, the lack of any significant competition in some segments has been attributable not to any inherent monopoly characteristics, but to those artificial constraints imposed by carrier tariff restrictions which we have struck down as unlawful. There are multiple vendors for almost any type of equipment desired, and consumers are free to select equipment that best suits their needs.

144. Many different types of CPE are offered in the marketplace and it is virtually impossible for a single supplier to satisfy all the various equipment needs of a user. The number of suppliers in the marketplace and the variety of products they offer is evidence of the severability of CPE from a carrier's transmission service. Moreover, to a large extent, the technological revolution in terminal equipment has occurred independent of common carrier transmission services. Non-regulated equipment vendors have been instrumental in applying computer technology to CPE, and have been the primary leaders in innovation in this area. The degree to which innovation occurs independent of the telecommunications network also reflects the fact that CPE is clearly severable from the underlying utility service to which it is attached. There is nothing inherent in any carrier-provided CPE, including the basic telephone, that necessitates its provision as an integrated part of a carrier's regulated transmission service.[50]

145. NATA has argued, however, that continued regulation is necessary if competition is to have a chance, its concern being the extension of market power by monopoly-based telephone companies. While there may be some validity to NATA's concerns, there are other non-regulatory methods of addressing carrier extension of monopoly power. (See discussion, *infra.*) Continued regulation of CPE will not foster a competitive equipment environment. In the present environment in which CPE is marketed, we are hard pressed to proffer any statutory or public interest justification for rate regulation of carrier-provided CPE. Regulation is a substitute for deficiencies in the marketplace. As currently applied to carrier provided CPE, however, regulation may serve to maintain whatever market abberrations exist. From the perspective of this Commission and our overall statutory mandate, the regulation of carrier provided CPE has a negative effect on competition and the exercise of our responsibilities over rates consumers pay for interstate communication services. This is particularly applicable to CPE offered by monopoly-based telephone companies. Contrary to the arguments of NATA, the continued regulation of CPE by these carriers in conjunction with the regulated transmission service may serve to restrict competition in the relevant equipment markets and distort the basic/enhanced dichotomy since distributed processing allows for the placement of computer processing applications in CPE.

146. Moreover, it has a direct effect on the rates charged for interstate services. This becomes readily apparent when one considers the manner in which the communication ratepayer bears the costs associated with telephone company-provided equipment that is rate regulated.

147. Charges for carrier-provided equipment used exclusively for interstate or foreign telecommunications have been regulated by this Commission. Charges for carrier-provided equipment used exclusively for intrastate telecommunications have been regulated by the state commissions. Regulation of charges for equipment that is used in common for intrastate and interstate services—as almost all CPE is—has normally been divided. This Commission has regulated the interstate use portion and the state commissions have regulated the intrastate use portion.

148. Such divided regulation has occurred because terminal equipment charges have been bundled into the carrier's transmission service charges. Investments and expenses associated with terminal equipment have been allocated between the intrastate rate base and expenses and the interstate rate base and expenses in order to compute bundled intrastate and interstate rates for services and equipment. Divided regulation has also been feasible where charges have been bundled at one level and unbundled at the other level. Although the telephone companies traditionally included one

[49] See *PIC*, 68 FCC 2d at 1175; *Second Report and Order in Docket No. 19528*, 58 FCC 2d at 740; see also *First Report in Docket No. 20003*, 61 FCC 2d at 867.

[50] See *PIC*, 68 FCC 2d at 1163 where we rejected the notion that a telephone service must be linked with a carrier-supplied telephone handset, as opposed to a handset supplied by an independent vendor. While in some sense a service may be incomplete without some kind of terminal equipment, "[o]ther basic utility services, such as electricity and gas, are similarly incomplete until connected to some device such as a light bulb or gas furnace which is necessary to make the service useful." *Id.* Our statment, in the *Tentative Decision* at para. 107, to the effect that certain kinds of CPE may properly be provided as part of a communications offering was merely reflective of the fact that the scope of this proceeding did not at that time encompass the carrier provision of simple devices, such as the telephone handset.

basic telephone as part of the service provided to subscribers to local exchange service, telephone companies have imposed separate charges for optional equipment for many years. Inasmuch as those separate charges theoretically represent intrastate use charges, such charges have generally been tariffed with and regulated by the state commissions. Separate charges for optional equipment that is used exclusively in connection with interstate services have been tariffed with and regulated by this Commission. The Dataspeed 40/4 tariff is an example of such an interstate optional equipment tariff. The interstate use portion of optional equipment and basic telephones that are used for both intrastate and interstate services have been bundled into the interstate service rates that are tariffed with and regulated by this Commission.

149. In view of the many changes that have occurred in the telecommunications industry in recent years the validity of permitting carriers to bundle terminal equipment and transmission service charges at any level is highly questionable. In general, bundling of goods and services may restrict the freedom of choice of consumers and restrains their ability to engage in product substitution.[51] Unless the goods and services in the bundle exactly match the preferences of consumers, consumer satisfaction may be reduced by bundling. Thus, consumer satisfaction could be increased by changes in the marketing structure that allow the users, rather than the vendors, to determine the bundle of goods and services that get purchased. When the available choices of types and sources of CPE were limited to those offered by the service vendor, presumably the service providers had an incentive to offer consumers a choice of service/equipment bundles that included every combination. Today, however, with the range of diverse CPE options that are available from other sources, the continued provision of bundled offerings by the service vendors presents distinct potential for limiting the freedom of customers to be able to put together the service and equipment package most desired by them.[52]

150. Bundling of equipment and service charges obviously can inhibit competition because a subscriber to the carrier's service would not be likely to obtain equipment from a non-carrier vendor if the subscriber were required to pay for carrier equipment even if he elected not to use it. Such a pricing practice would at least arguably violate the Sherman Act prohibition of tie-ins that unreasonably restrain trade. See *Cantor v. Detroit Edison Co.*, 428 U.S. 579 (1976).[53]

151. Shortly after the *Cantor* decision the telephone companies revised their local exchange service tariffs filed with the state commissions to include a credit for subscribers who do not elect to use the carrier-provided telephone that has customarily been included with local exchange service. Such credits effectively create an unbundled intrastate use charge for the first carrier-provided telephone.[54] The carriers already had unbundled intrastate use charges for extension telephones and other optional equipment.

152. The unbundling of intrastate use charges would not solve the competition problems in the retail terminal equipment market if carriers established intrastate use charges that reflect the portion of the terminal equipment investments and expenses that are allocated to intrastate use under the *Separations Manual*. Inasmuch as 20 percent or more of those investments and expenses are allocated to intrastate use, such a charge would necessarily be substantially less than a charge which reflected the carrier's total terminal equipment investments and expenses and would presumably place competing non-carrier vendors at a severe disadvantage. In various proceedings some carriers have claimed that divided regulation does not in fact produce that result because their intrastate use charges are set at a level which reflects total terminal equipment investments and costs and the excess profits are used to set local exchange rates at levels which do not cover the allocable costs for that service. We examined such claims in the *First Report in Docket No. 20003*, 61 FCC 2d 766 (1976), and found that they may be unfounded. A New York Public Service Commission study had found that terminal equipment rates charged by the New York Telephone Company were not covering that company's terminal equipment costs. *Id.* at 772.

153. We have not attempted to determine whether the intrastate use charges of any telephone company are presently set at levels which could have a predatory effect upon competing non-carrier vendors. However, the bundling of a portion of carrier terminal equipment costs into interstate service rates clearly creates an opportunity to engage in predatory pricing. Unfortunately, the problems of predatory pricing and interservice cross-subsidy have created major regulatory difficulties for us. The problems of predatory pricing and cross-subsidy are real, although both the definitions and

[51] The economic analysis of "bundling" is a subset of the modern industrial organization literature on tying arrangements. An introduction to this literature is provided by F. M. Scherer, *Industrial Market Structure and Economic Performance* 582-584 (2d ed. 1980). Various viewpoints on the economics of tying contracts are provided in W. Bowman, "Tying Arrangements and the Leverage Problem," 67 *Yale Law Journal* 19 (1957), M. L. Burstein, "A Theory of Full-Line Forcing," 55 *Northwestern University L. Rev.* 62 (1960) and Posner, *Antitrust Law: An Economic Perspective* (1976). These references do not examine, however, the economics of tying contracts in markets where a rate-base regulated common carrier supplies a bundled common carrier communications service and a related product such as CPE. A formal economic analysis of bundling useful in the present context is provided by Adams and Yellen, "Commodity Bundling and the Burden of Monopoly," 90 *Quarterly Journal of Economics* 475 (1976) This reference does not consider, however, the specific case of a rate-base regulated monopoly firm.

[52] If the markets for the components of the commodity bundle are workably competitive, bundling may present no major societal problems so long as the consumer is not deceived concerning the content and quality of the bundle. The bundle either survives a market test or it does not, and competing vendors find it in their self-interest to make information available to consumers making this choice. More specifically, some consumers may believe that bundling reduces the "transactions cost" of determining the individual consumer's optimal commodity bundle, i.e., the seller rather than consumer performs the "search" for the optimal commodity combination. Alternatively, other consumers may not find the commodity bundle assembled by a vendor consistent with their individual preferences and may prefer to incur the "search costs" of assembling an optimal commodity bundle themselves. The latter alternative emphasizes the benefits of unbundling as a way of improving the consumer's freedom of choice. In technical terms, it can be shown more rigorously that bundling is inefficient in terms of a static welfare criterion. See Adams and Yellen, *supra*. Nevertheless, in many real-world, non-regulated, workably competitive markets, there exist sustainable markets for both bundled and unbundled commodities. In such cases consumers decide individually whether the benefits of packaging exceed the potential benefits of buying the components of a bundle individually. In regulated markets characterized by dominant firms, there may be an incentive, however, to use bundling as an anti-competitive marketing strategy, e.g., to cross-subsidize competitive by monopoly services, that restricts both consumer freedom of choice as well as the evolution of a competitive marketplace. Restricting bundling practices in such markets reduces these impediments to improve consumer welfare.

[53] Although the Court did not decide the tie-in question in that case the opinions indicate that a majority of the Justices believed that Detroit Edison probably did violate the Sherman Act by offering electricity service and light bulbs to its customers at bundled rates. That practice is obviously closely analogous to the offering of telephone service and terminal devices at bundled rates.

[54] Such credits may not be offered by all telephone companies in all states. However, we understand that the credit practice is now the norm. In some states the local service and equipment charges are separately stated. We have not determined whether credits or separate charges are included in state tariffs of all independents. We assume that this practice is the norm. Charges for extension telephones are bundled with the wiring charge in some states.

policy prescriptions for treating these problems vary in the academic literature.[55]

154. The bundling of equipment and service charges also produces distortions in interstate rates which would be difficult to remedy without requiring unbundling. At the present time a subscriber who does not use a carrier-provided telephone, a subscriber who uses a basic carrier-provided telephone, and a subscriber who uses a speakerphone that is provided by a carrier pay the same rate for an MTS call of comparable time and duration. Inasmuch as that MTS rate includes a substantial portion of the costs of all customer-premises equipment provided by the telephone companies, some subscribers are subsidizing other subscribers.[56] That discrimination problem conceivably could be solved by devising a rate schedule which varies with the equipment used by the subscriber, but it would be extremely difficult for carriers or regulators to implement such a solution and at the same time foster a competitive equipment environment. Unbundling appears to be the only feasible solution to this discrimination problem.

155. Moreover, in a regulated market, bundling introduces complexities that make it more difficult for regulators to achieve a rate structure for regulated services that is sufficiently aligned with cost differences among services to avoid discrimnation among users of different services. This Commission has repeatedly held that rates for major service categories must reflect the costs of providing those services. See AT&T (Docket 18128), 61 FCC 2d 587 (1976), *recon.*, 64 FCC 971 (1971), *further recon.*, 67 FCC 2d 1441 (1978); *ITT World Communications Inc.*, 29 FCC 2d 493, 495 (1971); *American Satellite Corp.*, Order F.C.C. 75–768, released July 2, 1975; *AT&T and Western Union Private Line Cases*, 34 FCC 234, 237 (1963). Keeping service charges closely related to costs is made very difficult if not impossible when those costs include both costs that do not vary with usage but that change frequently due to technological change and costs that are usage sensitive. Such bundling in turn enhances the danger that a misallocation of costs will produce service rates that will result in a misallocation of resources. Terminal equipment costs represent a large portion of the non-usage sensitive costs that are presently reflected in interstate service rates and are the non-usage sensitive portion that is subject to rapid technological change.

156. Unbundling in and of itself may not disassociate all costs of providing basic services from the provision of CPE. To the extent that such equipment is tariffed in a fashion that allows the carriers to earn a regulated return on their investment there is the potential for joint and common costs to distort either the price for the CPE or the basic service. While various unbundling mechanisms can be employed in this process, it is important that the costs attributable to the regulated utility service be separated from the competitive provision of equipment used in conjunction with the service by the removal of such equipment from a carrier's rate base. This is accomplished through detariffing.

157. Moreover, CPE should be detariffed lest the tariffed offering of both basic services and CPE result in the regulation of enhanced services where the computer processing applications would be performed in the terminal equipment. We have concluded that CPE should not be classified as to its communications or data processing characteristics and that no classification scheme should be adopted. Implicit in this is the fact that no demarcation can be drawn for differentiating CPE for tariff purposes. The detariffing of CPE provides a consistent scheme of regulation for computer processing applications that can be performed in conjunction with the offering of common carrier communications services.

158. Moreover, once unbundled, CPE should be detariffed because the provision of terminal equipment should be allowed to evolve on a competitive basis. The Communications Act does not subject non-carrier vendors to rate regulation. Yet, if carriers remain subject to tariff regulation when they provide CPE, it will be difficult for them to respond in a timely manner to competitive initiatives of non-carrier vendors because the carriers would be required to comply with various notice and information filing requirements, in addition to lacking flexibility to respond to competitive price initiatives. Thus, detariffing of CPE will allow all equipment vendors to compete on an equal basis in responding to market conditions.

159. In considering these matters we come to the following conclusions: First, we find that the offering of CPE in conjunction with regulated communications services has a direct effect on rates charged for interstate services when such equipment is subject to the separations process. To the extent rates for interstate service reflect costs attributable to carrier provided CPE, regulation serves to thwart the competitive provision of that CPE which is tariffed. Second, we find that a carrier should have the same regulatory status in marketing CPE as any other equipment vendor and this should be reflected in our regulatory scheme. While historically certain carriers may have offered equipment as part of an "end-to-end" common carrier service, we have rejected carrier arguments that they are necessarily entitled to provide equipment in this manner. See *Carterfone*, 13 FCC 2d at 424; *Second Report in Docket No. 19528*, 58 FCC 2d at 739–740. We have even rejected the equivalent argument that a device as basic as the telephone handset is an indispensable part of the carrier's complete telephone service. *PIC*, 68 FCC 2d at 1165. Third, we find that the continuation of tariff-type regulation of carrier provided CPE neither recognizes the role of carriers as competitive providers of CPE nor is it conducive to the competitive evolution of various terminal equipment markets. We find that CPE is a severable commodity from the provision of transmission services. The current regulatory scheme which allows for the provision of CPE in conjunction with regulated communication services does not reflect its severability from transmission services, or the competitive realities of the marketplace.

160. This separation of the provision of carrier-provided CPE from the carrier provision of regulated communications services complements the regulatory scheme we are adopting for basic and enhanced services. Trends in technology enable CPE to function as an enhancement to basic common carrier services and many enhanced service applications involve interaction with sophisticated terminal equipment. The uses to which these devices may be put are under the user's, not the carrier's control. The structure we are adopting for network services separates the costs of service enhancements from the underlying transmission service. Deregulation of carrier-provided CPE would separate the costs associated

[55] On definitions and analyses of predatory pricing, see P. Areeda and D. Turner, "Predatory Pricing and Related Practices under Section 2 of the Sherman Act," 88 *Harvard Law Review* 697 (1975); F. M. Scherer "Predatory Pricing and the Sherman Act: A Comment," 89 *Harvard Law Review* 869 (1976); and O. E. Williamson, "Predatory Pricing: A Strategic Welfare Analysis," 87 *Yale Law Journal* 284 (1977). On definitions and analyses of cross-subsidies, see Melody, "Interservice Subsidy: Regulatory Standards and Applied Economics", in *Essays on Public Utility Pricing and Regulation* 167–210 (H. Trebing ed. 1971) and E. Zajac, *Fairness or Efficiency: An Introduction to Public Utility Pricing*, Chapter 8 (1978).

[56] This would appear to be a factor of the number of long distance calls a subscriber makes.

with the provision, marketing, servicing and maintenance of CPE from the rates charged for interstate common carrier services. Thus, the deregulation of CPE fosters a regulatory scheme which separates the provision of regulated common carrier services from competitive activities that are independent of, but related to, the underlying utility service. In addition, the separation of CPE from common carrier offerings and its resulting deregulation will provide carriers the flexibility to compete in the marketplace on the same basis as any other equipment vendor.

161. Accordingly, we conclude that regulation of carrier-provided CPE under Title II of the Communications Act is no longer warranted.[57]

Transition Period

162. The implementation of our decision to require that CPE be provided on an untariffed unbundled basis will require substantial changes in existing tariffs, accounting practices, and settlements arrangements. In some instances it will also require substantial changes in the organization of entities that provide services and equipment. We have concluded that a substantial period of time should be allowed to enable carriers to make the necessary changes.

163. Although we can implement our decision without repealing *Separations Manual* provisions which will become obsolete when it will no longer be necessary to allocate terminal equipment between interstate and intrastate services, adjustments in other exchange plant allocations may be warranted to offset the indirect effects of unbundling upon residential subscribers who do not make many interstate calls. If such users are required to pay unbundled charges that reflect the terminal equipment investments and expenses that are presently included in the telephone company's combined intrastate and interstate accounts, such users would experience increased terminal equipment costs which would not be offset by the reduced interstate MTS rates. There are a number of means by which this consequence could be alleviated, for example by allocating a larger portion of other exchange plant accounts to interstate services in order to enable state commissions to reduce residential local exchange rates. We have concluded that a Joint Board should be asked to explore such possibilities in order to determine what revisions would be desirable and lawful. An appropriate notice will be issued in the near future.

164. We believe that the carriers and the Joint Board should be able to make the necessary adjustments and decisions in sufficient time to enable us to implement our decision on March 1, 1982. We will accordingly require that unbundled interstate service rates be filed on not less than 90 days notice to become effective upon that date and that all carrier terminal equipment be detariffed on that date.

165. At the same time we believe that residential subscribers should be insulated from any significant dislocations as a result of the transition to a non-regulated terminal equipment environment. As we explain below, we are prepared to undertake appropriate action, if necessary, to help smooth the transition. In our view, it is important that immediately after the detariffing of terminal equipment residental subscribers not be required to pay more for the combination of terminal equipment and local exchange service than they had immediately prior to it. The question of interstate contributions for the use of local exchange facilities, of course, is being dealt with in Docket 78-72, FCC 80-198, released April 16, 1980 and the Joint Board proceeding called for therein. Any socially undesirable distributional effects—assuming there are any—from terminal equipment deregulation will be considered in connection with other proceedings. See paras. 166-167, *infra*. We believe that the interests of the residential subscriber should be safeguarded in the following manner. By March 1, 1981 all telephone companies providing exchange service must unbundle their rates for residential service and file new local tariffs with the various state commissions showing a separate charge for the telephone instrument.[58] The rate level for residential service should be no higher following this subdivision than previously. After March 1, 1982, one option which each telephone company which chooses to remain in the CPE business (either individually or through an affiliate) must offer to existing residential subscribers in its franchise area is the opportunity to continue leasing the instrument(s) (including maintenance) in place at the terminal equipment tariff rate prevailing immediately prior to deregulation for the life of the instrument(s). We believe that this requirement will not only diminish any severe impact upon residential subscribers as a result of the adoption of a new economic mechanism for the supply of terminal equipment, but also will afford the telephone companies an incentive to unbundle the price of residential terminal equipment from local exchance service as fairly as possible. Carriers, of course, may in addition to this option offer any other lease of sales proposals to residential subscribers which they wish and are free to offer equipment on a deregulated basis prior to the dates we have established for deregulation.

166. The deregulating and detariffing of CPE raise a number of interrelated issues that we shall address in the near future. These include depreciation rates for terminal equipment, adequacy of investment recovery, and prices at which terminal equipment is removed from carriers' rate bases. We shall also consider the relationship of the residential subscriber option indicated in the preceding paragraph to these issues. Thus, prior to the date deregulation is to take effect, it may be necessary for this Commission to participate in a represcription of the depreciation rates for terminal equipment in order to anticipate the changed conditions and assumptions that would result from deregulation of such equipment. It may be necessary to allow for more rapid depreciation of terminal equipment because of the greater market uncertainties that may accompany such a step. Questions concerning a carrier's recovery of its investment in such equipment will also have to be addressed to the extent there is any shortfall or surplus of investment recovery. Because this is related to the price charged consumers choosing to purchase their telephone instrument, we

[57] Excluded from CPE is over voltage protection equipment, inside wiring, coin operated or pay telephones, and multiplexing equipment to deliver multiple channels to the customer. In addition, we are excluding CPE attached to residential party line service because such equipment cannot currently be registered under Part 68 of the Rules. Since the overall percentage of such carrier-provided equipment is very low this is of minimal significance, and will be less so over time as there is a trend among various carriers to phase out party line service. Moreover, the status of mobile telephone equipment is currently being examined in our *Cellular Mobile Radio* proceeding CC Docket No. 79-318, FCC 79-774, released January 8, 1980. Our action here in deregulating CPE under Title II is not intended to alter in any way the requirements imposed for the licensing of radio equipment under Title III of the Act, even though it may be separated from the carrier's provision of basic services. This decision applies to CPE provided in the 48 contiguous states, Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

[58] While we could require that tariffs for unbundled equipment be filed with this Commission such a requirement has obvioius practical drawbacks. Beyond that, we see no need to depart from the current practice of having telephone equipment tariffs filed with the various state commissions.

must also address the reasonableness of the transfer price of any unsold equipment from telephone companies to their separate subsidiaries or to their affiliated CPE marketing groups or to unaffiliated companies, as may be appropriate. Accordingly, we intend to initiate a proceeding that would examine into possible changes to depreciation schedules and also address the basis upon which unsold equipment should be removed from a carrier's regulated rate base and books of account.

167. The effect of this decision will be to restructure the manner in which carriers provide CPE. We have essentially set forth a mechanism whereby consumers are better able to ascertain the desirability of acquiring terminal equipment from a full range of equipment suppliers and regulators are better able to ascertain and regulate the charges for common carrier communications services. The overall economic impact on carriers should, on balance, be negligible since we are merely requiring separation of the costs of providing CPE, from the common carrier transmission offering. This is not to say that certain economic consequences may not ensue to the extent that some or all carrier-provided CPE may be currently overpriced or underpriced, but our convening of a Joint Board to look at the separations and settlement impact and the institution of a proceeding to examine into concerns relative to appropriate depreciation and capital recovery will address any significant problems that may arise.

Legal Considerations

168. The argument is made in the comments that CPE is part of common carriage and must be regulated as communications under the Act. It is argued that the Commission may not forbear the regulation of carrier-provided CPE because the Act mandates the regulation of "all instrumentalities" which are incidental to a carrier's regulated transmission service.

169. In the *Tentative Decision* we set forth our view of the statutory scheme of the Communications Act relative to our jurisdiction and statutory responsibilities over carrier-provided equipment. We specifically addressed the legislative history of the "all instrumentalities" provision of Section 3 of the Act. *Tentative Decision* at paras. 115–118.

170. Based on our examination we concluded that the legislative history demonstrates that this Commission has a mandate which compels, at a minimum, that any carrier charge, practice, classification or regulation in connection with the offering of a communications service be just and reasonable. In conferring jurisdiction upon this agency over "all instrumentalities * * * incidental to * * * transmission," the intent was "* * * to give the FCC ability to regulate any charge or practice associated with a common carrier service in order to insure that the carrier operated for the public benefit." *Id.* at 118. Moreover, we concluded that "* * * the legislative history of the Communications Act manifests no Congressional intent that all carrier-provided equipment be offered on a regulated basis subject to the tariff requirements of Section 203 of the Act, or that such equipment *must* be offered as 'part and parcel' of a communications service." *Id.* at 120.

171. The Commission is given "expansive powers" to appropriately tailor regulation to suit the needs of the highly complex and rapidly changing communications industry.[59] On numerous occasions we have exercised our jurisdiction over carrier-provided CPE when used in conjunction with an interstate communication service,[60] and it is well recognized that CPE used for both intrastate and interstate communications is not beyond federal jurisdiction should the need arise. *NCUC II*, 552 F.2d at 1050. This is not to say, however, that we are compelled to require the carrier provision of CPE as part of a communications service. For example, *NCUC II* itself upheld our specification of the terms of interconnection of CPE to the interstate network but did not require us to regulate the rates of such equipment. In fact, we have on occasion specifically required that terminal equipment not be provided as part of certain common carrier communications services.[61] Thus, the Communications Act does not require that the provision of terminal equipment be a common carrier service, "[n]or does the Act contain any requirement that the carrier furnish a terminal of any kind as part of any communications service." *PIC*, 68 FCC 2d at 1163. The fact that some carriers have traditionally furnished various types of equipment with their communications services does not establish that they are required to do so or warrant any universal inferences about the public interest. See *MIC Telecommunications Corp.* v. *FCC*, 561 F.2d 365, *cert. den.* 434 U.S. 1040 (1977).

172. Indeed, the Commission has never regarded the provision of terminal equipment in isolation as an activity subject to Title II regulation. Equipment manufacturers, distributors, and even regulated carriers routinely offer terminal equipment for sale or lease on an untariffed basis. Nevertheless, such activities are not necessarily beyond the jurisdiction of the Commission to the extent they are encompassed within the definition of wire or radio communications in Section 3(a) of the Act.

173. The definitions of wire and radio communications in Section 3 (a) and (b) are far-reaching and include "all instrumentalities, facilities, apparatus, and services[62] incidental to such transmission." Indeed we explicitly find that all terminal equipment used with interstate communications services are within the Act's definition of wire and radio communications. However, the fact that the provision of incidental "instrumentalities," etc. is within the subject matter jurisdiction of the Act does not mandate regulation of the "instrumentalities." The equipment, by itself, is not a "communication" service and thus is not required to be separately tariffed under Section 203. Any regulation by tariff or otherwise of terminal equipment must be demonstrated to be reasonably ancillary to the effective performance of the Commission's responsibilities under Title II or "imperative for the achievement of an agency's ultimate purposes."[63] The record here fails to

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[59] *NBC* v. *United States*, 319 U.S. 190, 219 (1943) *See also, United States* v. *Southwestern Cable Co.*, 392 U.S. 157, 172–73 (1968); *FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 138 (1940); *Philadelphia Television Broadcasting Co.* v. *FCC*, 123 U.S. App. D.C. 298, 300, 359 F.2d 282, 284 (1966); *NARUC* v. *FCC*, 525 F.2d 630, 638 (1976).

[60] *See, Use of Recording Devices*, 11 FCC 1033 (1947); *Katz* v. *AT&T*, 43 FCC 1328 (1953); *Jordaphone Corp.* v. *AT&T*, 18 FCC 644 (1954); *Hush-a-Phone Corp.* v. *United States*, 238 F.2d 266 (D.C. Cir. 1956), *decision on remand*, 22 FCC 112 (1957); *AT&T "Foreign Attachment" Tariff Revisions*, 15 FCC 2d 605 (1968), *recon. den.*, 18 FCC 2d 871 (1969); *Department of Defense* v. *General Telephone Co.*, 38 FCC 2d 803 (1973), *review denied*, FCC 73–854, *aff'd per curiam sub nom. St. Joseph Telephone & Telegraph Co.* v. *FCC*, 505 F.2d 476 (D.C. Cir. 1974).

[61] E.g., in the provision of MARISAT service we require that terminal equipment be offered on an unregulated, non-tariff basis and that MARISAT carriers providing such terminals completely separate the charges therefor from charges for the common carrier communications services. We found that "* * * the terminal and communication service offerings should be kept entirely separate, so that the costs of the terminal * * * are in no way recovered through the charges for the communications service and there is no other compulsory tie between the sale of the communication service and the provision of terminal equipment." *COMSAT General Corp.*, 52 FCC 2d 983, 992–93 (1975).

[62] Section 2(a) provides that "all interstate and foreign communication by wire or radio" is subject to Federal jurisdiction.

[63] *Permian Basin Area Rate Cases*, 390 U.S. 747, 780 (1968); *United States* v. *Southwestern Cable Co.*, *supra*, 392 U.S. at 178, *HBO* v. *FCC*, *supra*.

demonstrate the need for tariff-type regulation.

174. We have concluded that the provision of terminal equipment for interstate service is a highly competitive activity. It should no longer be regulated, as it has been in the past, as an offering bundled with interstate transmission services. However, we also believe that it is necessary to prescribe under our reasonably ancillary jurisdiction certain terms and conditions under which such equipment is offered to the public by certain dominant telephone companies such as AT&T or GTE.[64]

175. The provision of equipment has traditionally been subject to regulation both under Title II when offered as part of an end to end offering and under the Commission's ancillary jurisdiction when offered separately or in isolation. We do not believe that any parties to this proceeding have disputed that these pre-existing alternative regulatory approaches to terminal offerings are available to the Commission. The basic question before us, therefore, is whether the Commission can reasonably require certain carriers to terminate their present practice of offering terminal equipment as part of an end to end service and to make equipment available to their customers on a different basis.

176. The basic power to require this change in current practices by carriers offering interstate communications services inheres, we believe, in Section 205 of the Act. We have previously exercised our power under this provision broadly to promote competition in the provision not only of customer-provided equipment but also of interstate transmission services for purposes of resale.[65] We view the question before us as essentially a choice between two different approaches to regulation of charges for terminal equipment used in the provision of interstate services.

177. Under current procedures we engage in tariff-oriented review of these charges only to the extent that they are bundled into charges for interstate transmission services. We now believe that these charges for use of interstate services should be explicitly identified to a customer on a separate basis. We further believe that these charges in connection with interstate service should be cost-related and not stated on a usage sensitive basis. We also intend that these services should be provided by certain carriers through an entity separate from the provider of underlying transmission services. By so doing, we believe that we can more effectively than at present assure against cross subsidization of essentially competitive services by essentially distinct and separate transmission services.

178. While such an approach would not involve tariffing or service-by-service review of individual equipment offerings, we believe that we should be able more effectively to meet our responsibilities under the Act than under current arrangements. We now exercise little or no effective oversight over the offering of terminal equipment utilized jointly for interstate and intrastate communications. Faced with this choice between alternative regulatory approaches, we believe that there are extraordinarily compelling reasons for adopting a new regulatory approach to the interstate provision of terminal equipment.

179. We believe that the provision of terminal equipment on an unbundled and detariffed basis should enhance significantly our flexibility to assure cost-based provision of transmission services in an increasingly competitive marketplace. This step will also promote our objective of assuring a viable competitive market for terminal equipment. As a result of our actions in requiring interconnection in *Carterfone* and in subsequently establishing technical standards in this area, we are convinced that there has now developed a strong viable market for equipment which assures users a wide range of competitive alternatives.

180. Our action today is only another in a series of steps to isolate terminal from transmission offerings, increase consumer choice, and to open equipment markets to full and fair competition. By striking down carrier-imposed restrictions on requiring equipment interconnection over a decade ago, we foreclosed carriers from offering only the single option of end-to-end communications service. In implementing a registration program applicable both to carrier provided and customer provided equipment, we sought to isolate the technical standards for transmission and terminal offerings and assure competitive parity among all suppliers of customer provided equipment. In the same manner, in today requiring equipment to be made available to interstate users on a cost-based non-usage sensitive basis—with equipment investment fully isolated from transmission investment and from the separations process—we hope to strengthen further the prospects for comparing competitive equipment offerings in the market.

181. We are thus convinced our goals under the Act can be more effectively promoted by relying on a different set of regulatory tools. This choice of the most appropriate regulatory mechanism is, we believe, one entrusted to our discretion, especially with respect to terminal equipment where such offerings have historically been viewed as only within the Commission's ancillary jurisdiction, not its Title II jurisdiction, when offered separately from transmission services. Congress has recognized that communications services are highly dynamic and changing and that the Commission must have flexibility to respond to these changing conditions.[66]

182. The degree of discretion available to the Commission is not, moreover, fundamentally determined by the characterization of the offering of terminal equipment as merely the provision of an "instrumentality" or "facility"—not of a "common carrier service." Even if the provision of terminal equipment in conjunction with transmission service is regarded as part of the common carrier service, the Commission clearly has the authority to require "unbundling" of equipment from transmission service.[67] We do not believe that the Act requires an unbundled equipment offering to be made only under tariff. Section 203 of the Communications Act, 47 U.S.C. 203, does not expressly refer to terminal equipment. To the contrary, Section 203(a) requires that carriers file a schedule showing charges for "communication *between* points on its own system" and "*between* points on its own system and points on the system of [connecting or other] carrier[s]." (Emphasis added.) That language

[64] For example, for reasons set forth below, we will require that terminal equipment be offered by these carriers through a separate subsidiary. This requirement is intended to, and should, minimize the possibility that monopoly ratepayers will subsidize competitive terminal equipment offerings. Since these terminal equipment offerings will continue to be subject to our jurisdiction under the Act, we believe we retain ample discretion to take any action in the future with respect to practices which may be necessary to assure that our responsibilities under the Act can be adequately fulfilled. The mere potential exercise of our remedial powers may also act as an effective deterrent to anticompetitive conduct by dominant suppliers of terminal equipment.

[65] See *First Report & Order in Docket No. 19258*, 56 FCC 2d 593 (1975); *on reconsideration*, 57 FCC 2d 1216 (1976), 58 FCC 2d 716 (1976) and 59 FCC 2d 83 (1976); *Second Report and Order in Docket No. 19528*, 58 FCC 2d 736 (1976), *on reconsideration, aff'd sub nom. North Carolina Utilities Commission* v. *FCC*, 552 F.2d 1036 (4th Cir.), *cert. denied*, 434 U.S. 874 (1977) (NCUC II); *Resale and Shared Use of Common Carrier Services, supra; aff'd sub nom. AT&T* v. *FCC*, 572 F.2d 17 (2d Cir. 1978), *cert. denied*, 439 U.S. 875 (1978).

[66] *National Broadcasting Co.* v. *United States, supra*, 319 U.S. at 219; *United States* v. *Southwestern Cable Co., supra*, 392 U.S. at 173.

[67] See the discussion of the Commission's powers under Section 205, *supra*, at para. 169.

describes transmission services rather than terminal equipment charges.[68] While "communication" is defined in Section 3 (a) and (b) to include such equipment, Section 203 does not require the inclusion of equipment in an offering.

183. We believe that the extensive record of this proceeding amply supports our conclusion that terminal equipment markets can be workably competitive so long as constraints on competition are not tolerated. Moreover, on the record and on the basis of our informed judgment about likely competitive trends in the terminal equipment market we believe that we can reasonably conclude that according broad discretion to carriers to raise or lower terminal equipment rates or to enter into individual contractual arrangements with individual customers is not likely to result in users being charged unreasonable or unreasonably discriminatory rates.[69] We reject the contention that in adopting these regulatory policies we are abdicating any responsibility imposed on us under the Communications Act. We also believe that the broad structural safeguards we are instituting with respect to offerings by dominant carriers will implement a scheme of indirect regulatory controls which should reduce the likelihood of undetected cross-subsidization of competition by monopoly services.

184. We recognize, of course, that as a practical matter, the states may no longer be able to regulate, as they have in the past, the charges for terminal equipment used jointly in the provision of intrastate and interstate services. Divided regulation of equipment charges is not feasible if the equipment charges are unbundled from both interstate and intrastate services. Nevertheless, we do not believe that Section 2(b) of the Act forecloses us from taking actions which have this practical effect on the states.[70]

185. It is clear that the Commission has jurisdiction under Section 2(a) over all interstate communications services; and its powers include the authority to require unbundling of terminal equipment from interstate transmission services. As we have noted, the requirement that terminal equipment be unbundled allows the Commission to assure that rates are cost-based and, therefore, not anticompetitive or discriminatory. Precluding bundled or averaged usage-sensitive rates for terminal equipment used for interstate communications in whole or in part obviously will have an adverse impact on the states' ability to base rates for the intrastate usage of such terminal equipment on similar concepts. To this extent, the detariffing of terminal equipment required by this decision will affect the charges for intrastate communications services. This is because, as a practical matter, unless there were two separate phone systems with one being used wholly intrastate, unbundled cost-based pricing for a piece of equipment at the federal level necessarily precludes any other result by the states. But nothing on the face of Section 2(b) precludes this Commission from exercising its conceded regulatory authority over interstate communications service in ways that might have the practical effect of displacing state authority to regulate intrastate rates.

186. In *North Carolina Utilities Commission* v. *FCC*, 552 F.2d 1036 (4th Cir. 1977), it was argued by the telephone companies and state utility commissions that Section 2(b)(1) mandates state control over jointly used terminal equipment and that, therefore, the Commission lacked authority to establish its terminal equipment registration program. The court rejected the argument that Section 2(b)(1) deprived this Commission of jurisdiction, even though it was conceded that the equipment was used *predominantly* in purely intrastate communications. The court explained that if Section 2(b)(1) were construed to give the state primary authority over jointly used terminal equipment whenever state regulations conflicted with Federal rates applicable to interstate calls, the Commission would necessarily be prevented from discharging its statutory duty under Sections 1 and 2(a) to regulate interstate communication.

187. Rejecting the contention that the word "nothing" in Section 2(b)(1) overrides any potentially contrary language elsewhere in the Communications Act, the court explained that the argument misses the point. According to the court, "Section 2(b)(1) does not deny the FCC jurisdiction with respect to *interstate* facilities; it excludes only *intrastate* facilities from FCC jurisdiction".:[71] Therefore, the court explained that:

> The terminal equipment dealt with in the order appealed from is used for both interstate and intrastate communications. The withdrawal of jurisdiction over one cannot be read to mean the withdrawal as to the other. Based on the statutory policy of centralizing control over interstate communications in the FCC, the otherwise plenary jurisdiction conferred by Sections 201–205, and the recognition by 410(c) of federal supremacy in rate base allocation, we concluded in *North Carolina I* that the "intrastate" facilities of Section 2(b)(1) were those facilities "separable from and * * * not substantially affect[ing] the conduct of or development of interstate communications." 537 F.2d at 793. Congress' use of the word "nothing" in no way detracts from this analysis, nor does it suggest—as do petitioners—that the "intrastate" facilities of Section 2(b)(1) are those items of terminal equipment used "predominantly" for local communication.[72]

188. The State utility commissions also contended that Federal control of interconnection would deprive the States of "meaningful" ratemaking power reserved to them under Section 2(b)(1) because increased substitution of independently provided terminal equipment such as PBXs and key telephones will reduce revenues available to subsidized residence and one-phone consumer service. The court emphatically rejected this contention because:

> Recognition of federal primacy in the regulation of jointly used terminal equipment no more curtails state ratemaking power *as a matter of statutory jurisdiction* than would the denial of state authority to set rates for interstate calls in order to subsidize local exchange and intrastate services. In the end, the problem of subsidy reduces to the factual problem of obtaining sufficient revenues to cover the difference between providing subsidized service and the regulated price of subsidized service * * * Political expediency may encourage state commissions to defend their current option to bury subsidy costs in as many holes as possible, but this concern cannot be allowed to determine the allocation of jurisdictional competency between State and federal agencies."[73]

In short, the court concluded that even if FCC actions had the effect of rendering Section 2(b)(1) "meaningless" as a practical matter, the primacy of federal jurisdiction over interstate

[68] Section 203 also requires that tariffs show carrier "classification, practices and regulations affecting such charges" and "such other information" as this Commission may require.

[69] Indeed, we believe that given the degree of competition in this market some individualized negotiations among terminal equipment providers and customers will result in more vigorous and effective competition than currently when services are available only on a single schedule of charges. There may be even less of a danger of unreasonable or unreasonably discriminatory rates when customers are in a position to "comparison shop" among different suppliers.

[70] Section 2(b) provides that "nothing in this Act shall be construed to apply or give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier * * *."

[71] 552 F.2d at 1046.

[72] 552 F.2d at 1046.

[73] 552 F.2d at 1048.

communications under Sections 1 and 2 (a) must prevail.[74]

189. Likewise, the Commission's decision in this case to require that all terminal equipment be detariffed does not contravene the State's authority under Section 2(b)(1). Although the practical impact of our decision may be to render "meaningless" the jurisdiction of the States to establish charges for intrastate use of facilities, our decision is intended to implement our authority under Sections 1 and 2(a) over interstate service—not as a measure to deprive the States of authority. To the extent that our decision has such effect, it is only because terminal equipment is used jointly for interstate and intrastate communications. Certainly, as a legal matter, our action in this case stands on no different footing than our action which was sustained in *NCUC* in establishing a registration program. In both cases, even if the States are deprived of "meaningful" ratemaking power, there is "no statutory basis for the argument that FCC regulations serving other important interests of national communications policy are subject to approval by state utility commissions." 552 F.2d at 1046–1047.

D. Carrier Provision of Enhanced Services and CPE

1. Introduction

190. We now address the manner in which carriers may participate in the provision of enhanced services and CPE.

191. In the *First Computer Inquiry* we concluded that there should be complete separation of a carrier's regulated communications services from its unregulated data processing ventures. We adopted what has become known as a "maximum separation" policy under which carriers are required to offer unregulated data processing services through a separate corporate entity, with separate officers, operating personnel, computer facilities, and books of account.[75] This policy was established to set forth a structure under which carriers could compete in the provision of data processing services without adversely affecting either monopoly ratepayers or monopoly services. In imposing the conditions of maximum separation we believed that they would "be conducive to removing possible anticompetitive practices and avoid the invocation of corrective measures that might otherwise be called for." *Tentative Decision, First Computer Inquiry*, 28 FCC 2d at 303. Eschewing regulation of data processing, we sought to limit regulation "to requirements respecting the framework in which a carrier may publicly offer particular non-regulated services, the nature and characteristics of which require separation before predictable abuses are given opportunity to arise." *Final Decision, First Computer Inquiry*, 28 FCC 2d at 277. The maximum separation policy and the objectives [76] we sought to achieve were substantially affirmed in *GTE Service Corp.* v. *FCC*, 474 F.2d 724 (2d Cir. 1973). In so doing the court noted that "the expansive power of the Commission in the electronic communications field includes the jurisdictional authority to regulate carrier activities in an area as intimately related to the communications industry as that of computer services, where such activities may substantially affect the efficient provision of reasonably priced communications service." *Id.* at 731.

192. In the *Tentative Decision* we sought to modify this structure for carriers providing enhanced services. We proposed that carriers owning communications transmission facilities be required to offer enhanced services only on a resale basis, which would necessitate the acquisition of the underlying transmission facilities pursuant to tariff if they desired to offer enhanced services. As a result of this modification, underlying carriers would still be limited to the provision of regulated services, but resale carriers could offer both regulated and unregulated services with the latter being offered on a non-tariffed basis.

193. We found significant public interest benefits in this resale structure relative to our regulation of common carrier services and the types of enhanced services that could be offered to the public. As to common carrier regulation, availability of the telecommunications network would be a common denominator for any new entrant or existing provider of enhanced services; the same communications services would be available to all providers of enhanced services on the same terms and conditions. Moreover, the ability of carriers to engage in predation and other anti-competitive practices without detection through their control over transmission facilities would be reduced. Competition in provision of enhanced services would be fostered between carriers and other service vendors. As we stated in the *Tentative Decision:*

> [this] structure flows from a recognition that computer processing technology has substantial benefits for communications users and the desire to minimize regulatory obstacles to the full development of its market applications, and not solely from a concerted effort to force competition *per se* into the telecommunications market. It so happens that the potential for a competitive environment to evolve is very real, and such a possibility should be viewed as a positive contribution. *Tentative Decision* para. 149.

194. Significant benefits would also accrue to consumers under this structure because a resale carrier would be able to offer any service through its computer facilities. Services would not have to be artificially structured so that only regulated services are offered through one computer and unregulated services offered through a separate computer; any computer processing application could be performed at the resale level through the same computer.

195. Thus, we proposed to eliminate the maximum separation requirements for resale entities providing enhanced services. We also expressed concern that indiscriminate application of the resale structure policy to all owners of transmission facilities might not be warranted. With the relatively recent introduction of competition into selected segments of the telecommunications market, we questioned the need to subject to the resale requirement any carrier that lacks the inherent potential to cross-subsidize or to engage in anti-competitive conduct to the detriment of the communications ratepayer in a significant way. Accordingly, we inquired whether all carriers owning or controlling transmission facilities should be required to offer enhanced services through a resale subsidiary, and whether the resale structure should be extended to the international arena. In essence, we inquired as to the continued necessity for applying the maximum separation policy to all such carriers—the net result being that our maximum separation rules would not be applicable to any carrier not subject to the resale structure. A carrier not so subject could engage in both regulated and

[74] The court pointed out that its construction of the statute rendered Section 2(b)(1) "meaningless" not because exclusively intrastate facilities cannot be built or imagined * * * but because state commissions prefer to avoid the economic and political costs of forcing the consumer to buy two sets of terminal equipment." 552 F.2d at 1049.

[75] 47 CFR 64.702(c). A carrier or holding company with revenues under one million dollars is exempt from the "maximum separation" requirements.

[76] Our objectives were to assure: (a) that such [non-regulated] services will not adversely affect the provision of efficient and economic common carrier services; (b) that the costs related to the furnishing of such services will not be passed on, directly or indirectly, to the users of common carrier services; (c) that revenues derived from common carrier services will not be used to subsidize any data processing services; and (d) that the furnishing of such services will not inhibit free and fair competition between communication common carrier and data processing companies or otherwise involve practices contrary to the policies and prohibitions of the antitrust laws. *Tentative Decision* at para. 34.

nonregulated services without regard to its corporate organization.

196. In addition, we also sought comment on the appropriate degree of separation to be imposed upon a carrier that is subject to the resale requirement for the provision of enhanced services. We noted that there are various cost/benefit factors associated with different levels of separation, and the same degree of separation may not be necessary for all entities operating under a resale structure. On the other hand, we recognized the need to ensure that the competitive subsidiary competes fairly in the marketplace and is not the recipient of improper cross-subsidization from monopoly services offered by the underlying carrier. *Tentative Decision* at para. 132.

197. Similar considerations were raised with respect to the carrier provision of customer-premises equipment. We concluded that the public interest would best be served if customer-premises equipment that performed more than a basic media conversion function was offered separate from the basic services of the underlying carriers and marketed through a separate resale or other subsidiary. This structure, we believed, would ensure that basic communications services were not burdened by improper subsidization to sophisticated terminal offerings while at the same time providing flexibility and incentives for new and efficient terminal offerings. *Tentative Decision*, at para. 122. At the same time we sought comment on whether the provision of other customer-premises equipment should be separated, especially if uniform regulatory treatment is accorded all CPE.

198. As was to be expected, the commenting parties took divergent positions on each of these areas. For example, carriers such as AT&T and GTE argued for a fairly flexible, non-restrictive approach toward separation. They recommended that the Commission avoid stringent separation requirements and instead rely on measures such as internal organizational separation and accounting systems to provide effective controls on anti-competitive activity. This approach, it was argued, would permit the resale entity and ultimately the consumer to enjoy the benefits of vertical integration. This suggestion was strongly opposed by a number of parties who asserted that there were no particular economies to be gained through vertical integration and urged the Commission to require complete separation between the underlying carrier and its affiliate. They argued that such separation was the minimum measure necessary to limit the incentive and opportunity for underlying carriers to engage in anticompetitive activities. For its part, NTIA took a more moderate approach in that it recommended against total separation. It recommended instead that the resale entity be able to undertake joint ventures with the underlying carrier as well as obtain certain information and receive logistical support from the carrier.

199. Likewise, there was little unanimity among the parties regarding the issue of the applicability of the resale structure. AT&T advocated organizational separation and use of accounting mechanisms as opposed to a separate corporate entity. AT&T further posited that, if the separate resale subsidiary is required, the Communications Act requires that all carriers be treated equally and, accordingly, the resale structure should be equally applicable to all carriers. Otherwise, it argued, those carriers subject to the separation requirement would be placed at a competitive disadvantage with regard to those carriers not so subject. Although their reasoning was different, a number of the data processing and equipment vendors also recommended that all underlying carriers should be subject to the resale structure. These parties argued that all underlying carriers possess sufficient market power to permit them to engage in anticompetitive practices unless restrained by the resale structure. Other parties, in particular the specialized common carriers, asserted that the resale structure should not apply to non-dominant, or competitive, carriers. Such carriers, they submitted, do not possess sufficient market power to engage in anticompetitive practices. The application of the resale structure to such carriers, they stated, would be unduly burdensome.

200. With respect to carrier provision of CPE, various parties urged the Commission to require that all carriers offer CPE separate from their communications services. Going one step further, IDCMA suggested that underlying carriers should be required to establish separate subsidiaries to manufacture customer-premises equipment as well as separate subsidiaries to market it. AT&T, on the other hand, argued that a carrier should be given the flexibility to determine how equipment is to be provided.

2. Structural Separation

201. Because of the importance of the issues addressed in this proceeding, we believe it is useful to describe our perception of the advantages, limitations, and mechanics of separate subsidiary requirements in a general way before setting out the specific terms and conditions we believe should govern carrier provision of enhanced services and CPE.

202. Mechanically, the separate subsidiary requirement operates on the vertically integrated structure of the firms subject to it. It attempts to preserve as many of the putative advantages of integration as possible and to limit the disadvantages. In undertaking the task of identifying the possible advantages and disadvantages and fashioning conditions to deal with each, we take as a starting point the hypothesis that vertical integration normally represents a benign, efficiency-producing method of organizing production insofar as it permits avoidance of production and transaction costs.[77] But it is also necessary to take account of the companion hypothesis that, as to a regulated firm's movement into non-regulated areas, vertical integration may be motivated more by a desire to avoid rate-of-return constraints than to achieve efficiencies. See F. R. Warren-Boulton, *Vertical Control of Markets: Business and Labor Practices* (1978).

203. Thus, the general learning on vertical integration counsels an effort to find some acceptable middle ground between potential economies of integration derived from more efficient production and lowered transaction costs and potential diseconomies stemming from abuses of special positions made possible by integration.

204. The essence of the separate subsidiary proposal that we are adopting today, and indeed of all such approaches,[78] then, is compromise. It offers advantages, but it also has limitations. A separate subsidiary requirement, from a purely structural perspective, does not guarantee a competitive marketplace because it does not significantly change the incentives of a firm upon which it is imposed. The requirement does not impart an incentive to operate the subsidiary in a

[77] See, e.g., E. Williamson, "The Vertical Integration of Production: Market Failure Considerations,"—*American Econ. Rev.* Teece, "Vertical Integration in the U.S. Oil Industry," *AEI* (1976). Transaction costs generally include information, bargaining and administrative costs.

[78] The separate subsidiary mechanism is not unique to this proceeding but is one with which we have developed considerable experience in recent years. See, e.g., *GTE Service Corp.* v. *FCC*, 474 F.2d 724 (2d Cir. 1973); *CML Satellite Corp.* 51 FCC 2d 14 (1975), *appeal dismissed sub nom. RCA Global Communications, Inc.* v. *FCC*, Nos. 75-1236, 75-1241 (D.C. Cir. 1976).

manner that would detract from the overall profitability of the parent corporation. Thus, in general, if the parent has an incentive to exercise its market power to the disadvantage of consumers and competitors in the absence of a separate subsidiary, it has the same incentive to do so after one is required.

205. Although the subsidiary requirement does not alter incentives, it reduces the ability of dominant firms to engage in predation or to do so without detection. The principal mechanisms employed are the reduction in the extent of joint and common costs between affiliated firms, the requirement that transactions move from one set of corporate books to another, and, particularly apt where communications common carriers are concerned, the publication of rates, terms, and conditions on which services will be available to all potential purchasers. The result of requiring such arrangements in the commercial affairs of corporate affiliates may be to eliminate some competitive controversies and to narrow others, but it obviously does not foreclose the possibility of predatory conduct altogether. In reality, then, a separate subsidiary requirement is a pragmatic and moderate attempt to enable dominant producers or suppliers whose participation in a given market raises special problems to participate, while reducing the risks that their customers or competitors will be disadvantaged by such participation. It balances communications consumers' interest in open entry and full utilization of the telecommuncations network and related facilities with their equally strong interest in not being the source of cross-subsidies and the victims of efficiency-reducing discrimination.

206. Finally, it may be helpful to describe the calculus implicit in the determination of the specific requirements governing the separate subsidiaries. As the remainder of this Order indicates, we have attempted to examine several of the more important functions that must be performed in organizing the production and distribution of enhanced services and CPE to distinguish those whose manipulation would produce the greatest gains to a dominant common carrier inclined toward anticompetitive activity from those of less importance. We have tried to assess the benefits and disadvantages of permitting or prohibiting each to be performed on an integrated basis. With those functions that weighed heavily in the process—the sharing of operating personnel or of facilities for example,—we inclined toward disallowing integrated activities altogether; with those functions that seemed less decisive, the sharing of research and development, for example, we inclined toward assuming the risk that vertical integration poses.

207. Key to this pragmatic effort, as to any other, is its provisional quality. We have attempted to fashion a set of conditions governing the relationship of subsidiaries and affiliates that will maximize the long term welfare of consumers of communications services. The judgments embodied in this Order of necessity are premised upon existing and foreseeable circumstances and upon available evidence. Apart from the possibility that some of these decisions may be mistaken, circumstances will change and new evidence may come to light. These factors may demand changes in the conditions, just as experience may teach that we have incorrectly struck the balance between the asserted danger of carrier participation and the supposed efficiency losses brought about by the conditions. Implicit in this effort, then, is the obligation to change the conditions, or to abandon the effort altogether, as experience and changed circumstances warrant. Stated differently, the cost/benefit analysis embodied in this decision cannot be fixed. It must be recalculated from time to time to assure, in the first instance, that the balance was correctly struck here and, second, that important events have not caused a disequilibrium to develop.

Costs and Benefits of Separation

208. In relying on a structural approach to address our regulatory concerns, the primary benefits of the policy are protection for the regulated market ratepayer against costs transferred from the competitive market by the parent corporation, and protection for the general public against such anticompetitive activities as denial of access and predatory pricing. The magnitude of these benefits is not susceptible to precise quantification, but we do expect it to be substantial. The opportunities for undetected cross-subsidization that prevail in the absence of a separation requirement are so substantial that, at a minimum, protection from such abuses is very important to the telephone ratepayer. The general public would realize benefits equally substantial, if less immediate. We are making an investment today in the vitality of a competitive industry that may be important in serving the needs of the public well into the future. The cost of any avoidable anticompetitive activity permitted in the enhanced services market today may be expected to compound itself throughout the life of the industry. A denial of access, for example, by a parent corporation owning basic transmission facilities, may create a bottleneck in the supply of enhanced services—an artificial shortage that could force prices to a supranormal level. Similarly, this artificial "bottleneck" could produce a tendency to monopoly by forcing competitors of the carrier's separated affiliate to leave the market or by persuading potential entrants that the extraneous risks of participation are too great. In both cases, the user would be the ultimate victim.

209. In addition, an active and healthy enhanced services market should stimulate demand for underlying facilities owned by the parent corporation. Revenues from the leasing of such facilities will help to defray the cost of providing monopoly services if there are scale economies or over investment in the underlying network. Increased demand and utilization of unused capacity in the underlying facilities should also serve to lower the unit costs of transmitting information. This will only be true, however, to the extent that the market structure prevents such anticompetitive activities as predatory pricing and denial of access from diminishing utilization of the network.

210. The argument is advanced that a requirement that enhanced services or CPE be provided through a separate corporate entity is not necessary and that reliance on accounting tools is sufficient to satisfy regulatory concerns. While accounting has always been a fundamental regulatory tool utilized by this Commission in the exercise of our statutory responsibilities, its use has by no means been recognized as a substitute for structural separation. When used in conjunction with the separate subsidiary concept, accounting serves as a useful regulatory tool for identifying certain abuses. We view separation and accounting as part and parcel of a single regulatory mechanism. At a minimum, a carrier with market power and control over communications facilities essential to the provision of enhanced services could distort the competitive evolution of the enhanced services markets at the expense of the communications ratepayer through cross-subsidization and other anticompetitive behavior. Where a carrier has the incentive and ability to engage in sustained cross-subsidization, or predatory pricing, accounting may be employed to assist in the identification

of such practices, but it cannot prevent the misallocation of joint and common costs associated with the provision of basic and enhanced services if provided by the same entity. On the other hand, the separation requirement serves as a structural check on the proper allocation of costs between basic and enhanced services.

211. The major cost of separation, it is argued, is a diminished rate of innovation. The degree to which vertical integration impacts upon rates of innovation, however, is far from settled. Both the economic literature and the comments received in this proceeding leave the issues unresolved. AT&T advances the conclusion that "(t)here surely can be no doubt that the Bell System, with its integrated structure, has been a major source of innovation."[79] We have little reason to quarrel with this conclusion, but we likewise have been given little reason to accept the implied statement of causality embedded in it. The extent to which the Bell System's integrated structure contributes to its role in innovative research and development is very problematical. In the absence of competition, there is no objective measure for the performance of the integrated firm. As has been suggested, "(w)hat appears to the outsider to be a sensible, prudent, even a progressive policy of the monopolist, may in fact reflect a lower scale of adventurousness and less intelligent risk taking than would be the case if the enterprise were forced to respond to stronger industrial challenge."[80]

212. AT&T offers a variety of studies to demonstrate its leadership in innovation.[81] This evidence, however, is strongly disputed by other studies conducted by AT&T[82] and by others.[83] Moreover, the economic literature does not confirm AT&T's argument that its vertically integrated structure has yielded greater rates of innovation. One of our country's leading authorities in regulatory economics has noted that while AT&T has mounted a significant defense of vertical integration, it does not take into account the likely contributions which competition can bring, and has brought, to innovation. A. Kahn, *The Economics of Regulation* (1971). Dr. Kahn also notes that the generalized case for vertical integration by a monopolist is not without serious dangers, particularly where the company is rate-regulated and seeking to engage in unregulated activity. With the effect of vertical integration on innovation rates within the Bell System unestablished, we are unwilling to forego the likely stimulus to innovation that a "competitive" structure will yield.[84]

213. In any event the issue here is not the value of the Bell System's integrated structure in the design and operation of the nationwide switched network. the issue in this proceeding is whether the structural requirements that we are imposing on the provision of enhanced services and CPE by AT&T and GTE will diminish their ability to innovate, and whether the user public will suffer adverse consequences. We believe not. Our maximum separation policy should not result in significant changes in either the incentives or the ability of AT&T and GTE to innovate in these areas. As discussed above the record with respect to the importance of vertical integration on innovation is ambiguous. But it is clear that the benefits of vertical integration are less in the specialized discrete areas of enhanced services and CPE than in the design and operation of a unified, integrated facility offering basic services. Further, any advantages that the operating companies now enjoy from their access to the innovative research of AT&T or GTE will also be enjoyed by a separated subsidiary providing enhanced service and CPE. As explained, *infra*, except as to software development the only restriction being applied at this time is that the subsidiary, if it shares the research and development product of its parent corporation, must do so on a fully compensatory basis. By the same token, AT&T and GTE will not be prevented from realizing any mass production economies that may presently exist. AT&T and GTE will presumably be active participants in a competitive technology market with a growing demand for telecommunications products, and any separated subsidiary would have the option of creating its own research and development facilities.

214. The comments raise issues of other costs which a separation requirement may effect. We have considered these costs in our evaluation of the degree of separation to be imposed, and have addressed those issues *infra*, where we discuss the appropriate degree of separation that should exist between the subsidiary and its parent.

Applicability

215. In ascertaining which carriers should be subject to the resale structure the decision must be based not only on a carrier's ability to engage in anti-competitive activity but also on its resources. The latter is relevant because we have no desire to foreclose entry into the enhanced services and CPE markets by any carrier. Hence, we must give due recognition to the ability of carriers to cover the costs of separation. Such costs include not only the capital expenditures involved, but also some increased risks associated with separation which would presumably be greater for the small carrier. For these smaller carriers, separation may also result in more limited access to capital markets. Another important factor is that if separation does cause some economic inefficiency, the measure of this inefficiency will decrease as the size of the firm increases. This is so because greater size corresponds to greater flexibility in effectuating the separation, thus permitting closer approximation to an economically efficient outcome.[85]

216. As stated above, structural separation will aid to diminish the likelihood of abuses of monopoly power through either (1) denial of access to the "bottleneck," i.e., local exchange and toll transmission facilities or (2) cross-subsidization from the monopoly service to competitive enhanced and CPE markets. Both of these activities can generally occur where the monopolist perceives a substantial opportunity to extend its power into the adjacent markets. As explained in detail below, the abilities and incentives to attempt such conduct vary significantly among carriers.

217. In its reply, NTIA contends that the best measure of a carrier's potential for anti-competitive activity is its "total revenue generated from monopoly services—the sources of funds for the

[79] Reply comments of AT&T, at A-36.

[80] *U.S.* v. *United Shoe Machinery Corp.*, 110 F. Supp. 295, 347. (D. Mass. 1953) (Wyzanski, J.)

[81] See, e.g., Reply Comments of AT&T, at A-35, A-39.

[82] See Bell Labs, License Contract Study, Docket 19129, Trial Staff Exhibit No. 146.

[83] See, e.g., M. R. Irwin, *Implementing Competition in Intercity Communications Services*, A.C.C.T., Sept. 1977.

[84] M. Kamien and N. Schwartz, "Potential Rivalry, Monopoly profits and the Pace of Innovative Activity," Review of Economic Studies (Oct. 1978); K. Arrow, "Economic Welfare and the Allocation of Resources for Invention," *Rate and Direction of Inventive Ability* (1962). There is, however, some authority to the contrary. See J. Schumpeter, *Capitalism, Socialism and Democracy* (1962), criticized by F. Fisher and P. Temeri, "Return to Scale in Research and Development: What does the Schumpeter Hypothesis Imply?" Journal of Political Economy (Jan. 1973).

[85] A rigorous statement of the measure of inefficiency and of this result may be found in K. J. Arrow and F. H. Hahn, *General Comptitive Analysis*, at 385ff., especially Theorem 10 at p. 399, citing R. Starr, "Quasi-Equilibria in Markets with Nonconvex Preferences," *Econometrica* (1969), and references therein. Simple numerical examples may also be construed to illustrate this point.

cross-subsidization of competitive services." [86] While this might be a good measure of a carrier's ability (though not necessarily its incentive) to cross-subsidize, the measure of a carrier's ability to gain advantage by denying access is not accounted for by this test. A carrier's ability and incentive to engage in anticompetitive conduct in adjacent markets must be measured with some recognition of the parameters of those markets. Thus, what must be recognized is that while market power in the provision of telephone service may be appropriately measured within both local and national geographic markets, the provision of enhanced services and CPE has been largely undertaken, and increasingly so, on a national basis. These services, in essence, are and will continue to be directed at residential and business users spread over broad geographical markets. A carrier such as AT&T, with a nationwide network of transmission systems and local distribution plant in major metropolitan areas, could obviously harm a competitor through its control over these facilities in an anti-competitive manner. GTE, serving over 8 percent of the nation's telephones (see Table 1) and several major population and business centers, would also have significant ability to engage in predatory or discriminatory practices.[87] On the other hand, a carrier like Continental, with most of its resources concentrated in rural distribution plant, would not be able to deny competitive access to any significant portion of the potential customers for enhanced services. The diminished likelihood of success in such attempts also serves to diminish the incentive to try.

218. To the extent that all firms offering enhanced services and CPE are not yet marketing their services on a nationwide basis, we believe this is largely a function of the infant yet promising nature of these markets. Regional markets, centering around large urban industrial cities where the large business users are located may currently be another appropriate area in which competition for these services can be measured. But here, too, we note that only AT&T and GTE appear to have significant abilities and incentives to engage in anticompetitive conduct, since it is in these areas where they control the local facilities. In contrast, the rural telephone companies would be hard pressed to attempt to bankrupt competitors in their local areas where such competitors may flourish in the major metropolitan areas, or throughout the nation generally. Again, we believe that the unlikely prospects of their success will in turn diminish their incentives to attempt predation, leaving the local ratepayer at much less risk than those captive to AT&T and GTE local services.

219. The importance of the control of local facilities, as well as their location and number, cannot be overstated. As we evolve into more of an information society, the access/bottleneck nature of the telephone local loop will take on greater significance. Although technological trends suggest that hard-wire access provided by a telephone company will not be the only alternative, its existing ubiquity and the amount of underlying investment suggest that whatever changes do occur will be implemented gradually. Moreover the monopoly rent that a company can extract from such bottleneck facilities is likely to bear some relation to the number of subscribers served. It is probable that many of the new information services that will be offered over telephone lines will incur developmental expenses that will require large customer bases. As we observed, many of them are likely to be national in scope. A telephone company serving a relatively small proportion of the nation's homes and businesses is perhaps less likely to pursue such activities independently. For the most part, long-term profitable entry into the enhanced services field will probably require penetration of the market on a national scale, and it is unlikely that such a national operation could be effectively subsidized from a small pool of monopoly revenues, or that it could gain any significant competitive advantage by restricting the access of its competitors to a very limited network of underlying facilities. The effectiveness of other regulatory tools available to this Commission and other authorities is also considerably improved when they are applied to smaller telephone carriers.

220. The need, then, does not exist to subject carriers to the resale structure if such entities lack the potential to cross-subsidize or to engage in anticompetitive conduct to any significant degree. We believe that with the changes taking place in the competitive makeup of the communications industry our regulatory concerns which give rise to the need for structural separation should be directed at monopoly telephone companies exercising significant market power on a broad geographic basis.

221. Non-telephone carriers do not have the kind of market power we are concerned with here. Specialized carriers, such as MCI and SPCC, lack local distribution facilities entirely, and have no reservoir of monopoly ratepayers from which to extract the excess profits necessary to cross-subsidize other services. Such carriers would be in a position to deny access on only a limited number of interexchange transmission systems. Any private advantages from such conduct would be short-lived, as customers could readily avail themselves of alternative suppliers. Domestic satellite carriers also have no local distribution plant, and no ability to monopolize interexchange transmission systems. They are in competition not only with terrestrial systems, but also with each other, and thus, with the possible exception of their video service offerings, their market power is limited. Similarly Western Union does not possess local monopoly facilities which could be employed to deny or reduce access to enhanced services competitors nor does it generate profits or cash flow comparable to that of the larger telephone holding companies which could be employed as a source of cross-subsidies. Moreover, we would expect our recent *PMS* decision to result in a further diminution of any capacity Western Union might possess to engage in anticompetitive conduct on a substantial basis.[88]

222. Weighing the competitive changes which have occurred in the communications sector since the *First Computer Inquiry*, we do not believe that broad application of the resale structure is necessary to satisfy the regulatory objectives set forth there. Moreover, we have been able to monitor the development of new and innovative services, and conclude that the potential for these services to reach a greater segment of society would be substantially increased if we exercised restraint in the exercise of our discretion in applying the resale structure. Weighing these factors, and recognizing the risks involved, we find that the separation requirement should be applied only to those telephone companies having sufficient market power to engage in effective anti-competitive activity on a national scale and which possess sufficient resources to enter the competitive market through a separate subsidiary.

[86] Reply comments of NTIA, at 16.

[87] Major cities served by GTE telephone companies include Long Beach and West Los Angeles, California; Tampa and St. Petersburg, Florida; Honolulu, Hawaii; Lexington, Kentucky; Fort Wayne, Indiana; and Erie, Pennsylvania.

[88] *Domestic Public Message Services*, 71 FCC 2d 471 (1979). *Review pending sub nom. Western Union Telegraph Co. v. FCC*, D.C. Cir. No. 79-1352 (1979).

223. An objective standard upon which a determination can be made as to which telephone companies possess these characteristics is not easily established. However, when we examine Table 1, we see that only four companies have more than 1% of industry revenues, and a fifth is above the 1% level in terms of number of telephones. As the Table exhibits, there is a sharp distinction with respect to these shares between AT&T and the rest of the industry and between GTE and the rest of the independents. The companies ranked 3, 4 and 5 in terms of revenues from an approximate group of their own. The remaining companies possess a combination of size, geographic service area(s), and monopoly revenue base (which is typically a small fraction of the total operating revenues shown in Table 1) such that we are not convinced that the benefits of separation outweigh the costs. Even when we consider the market penetration of the top five carriers listed in Table 1, a fairly clear distinction can be drawn between AT&T and GTE on the one hand, and the other telephone companies on the other hand. Because of the relative size of AT&T and GTE and the diverse national markets they serve, we conclude that, at present, the resale structure should be applied to AT&T and GTE. We realize that an argument could be made for subjecting other telephone companies to this structure, but we conclude that it would better serve the public interest to take a restrictive approach at this juncture in applying the resale structure and wait to see if competitive abuses develop which warrant further application of this structure for either enhanced services or CPE.

224. Some of the concerns in this regard may be mitigated by the fact that some of the larger telephone companies have already made independent judgments that there are benefits that derive from some organizational separation of regulated and unregulated activities. Although the rules established in the *First Computer Inquiry* have undoubtedly been a factor as well, as discussed below the observed organizational changes go beyond what is required by the "maximum separation" policy. We believe that such decisions regarding organizational structure comport with technological and marketplace realities, and they suggest that our limited imposition of an analogous structure may yield even greater benefits than those we have explicitly addressed. Moreover, that such steps have been taken by companies appreciably smaller than AT&T and GTE increases our confidence in our analysis that the separation requirement will not be unduly burdensome to the nation's two largest telephone companies. As noted, we are reluctant to impose regulation where it may not be necessary, and our reluctance is compounded by our desire to provide flexibility to companies that are beginning to participate in a meaningful manner in the enhanced services and CPE markets. If the factual predicate changes, we may revisit this determination. Nor, of course, does this determination preclude us from imposing conditions under our Title II, Title III or ancillary jurisdictional authority in response to specific applications as circumstances may warrant.[89]

[89] *U.S. Transmission Systems*, 48 FCC 2d 859 (1974); *ITT Domestic Transmission* 62 FCC 2d 236 (1976); *Communications Satellite Corp.*, 45 FCC 2d 444 (1974); *CML Satellite Corp.*, 51 FCC 2d 14 (1975); *RCA Global Communications*, 56 FCC 2d 660 (1975); *Satellite Business Systems*, 62 FCC 2d 997 (1977); and *Domestic Satellite*, 35 FCC 2d 844 (1972); *GTE-Telenet Merger Authorization*, 72 FCC 2d 111 (1979), *modified* 72 FCC 2d 516 (1979), *recon. denied*, 74 FCC 2d 561 (1979).

Table 1.—*AT&T and 10 Largest Independent U.S. Telephone Companies

	Total operating revenue	Share of industry total (percent)	Total telephone	Share of industry total (percent)
AT&T	$41,952,941,000	83.7	137,478,000	81.3
GTE	3,894,000,000	7.8	14,341,000	8.5
United Telecommunications	1,084,956,000	2.2	4,074,100	2.4
Continental Telephone	765,000,000	1.5	2,862,900	1.7
Central Telephone and Utilities	461,384,000	.9	1,837,900	1.1
Mid-Continent Telephone	184,723,500	.4	877,000	.5
Puerto Rico Telephone	168,294,900	.3	545,000	.3
Rochester Telephone	163,645,000	.3	637,500	.4
RCA Alaska Communications [1]	134,088.000	.3	550	—
Lincoln Telephone and Telegraph	75,002,800	.2	309,100	.2
Winter Park Telephone [2]	45,540,500	.1	165,900	.1
Total Independent	8,147,000,000	16.3	31,548,500	18.7
Total U.S.	50,099,941,000	100.0	169,026,500	100.0

[1] In 1979, RCA sold Alascom to Pacific Power and Light.
[2] In 1979, Winter Park was purchased by United Telecommunications.
*Source: "PhoneFacts '79," published by the U.S. Independent Telephone Association. Data are for 1978.

225. Illustrative of the ability to maintain enhanced services and CPE subsidiaries are GTE, United, and Continental, which have already entered the data processing market through separate subsidiaries. These three companies, in fact, presently own more than a dozen subsidiaries operating in unregulated markets, and have been providing enhanced services through subsidiaries for more than a decade. GTE Data Services, Inc., formed in 1967, has primarily served GTE operating telephone companies; but United Computing Systems, also dating from 1967, with data centers in London and Zurich, as well as Kansas City, is clearly hoping to reach a wide market.

226. As indicated in its 1978 Annual Report, GTE divides its principal operations into a telephone operating group and a products group (which includes communications products). More recently, GTE formed a new group, GTE Communications Network Systems, to consolidate its operations in the data communications market.[90] Units of the group are GTE Telenet, GTE Telecommunications Systems, and GTE Information Systems. Similarly, United Telecommunications "has reorganized itself into three operating groups as part of its program to diversify its operations beyond traditional telephone industry operations."[91] The groups' division of responsibilities will be (1) regulated telephone operations, (2) competitive telecommunications services and distribution activities, and (3) interactive graphics, remote computing services, and international computer services activities. The current thrust of Continental Telephone is carrying it into activities different from traditional telephone operations. A newspaper article reports on Continental's recent acquisitions and credits the company with recognizing "early that deregulation presented an opportunity, rather than a stumbling block."[92] The

[90] "New GTE Unit Merges Data Network Offerings," *Telephony*, December 24, 1979, at 9.
[91] "United Telecom Reorganizes, Prepares for Diversification", *Telephony*, March 3, 1980, at 11.
[92] "Continental's New Connections," New York *Times*, February 29, 1980.

1978 Annual Report of Central Telephone & Utilities continues the theme of expansion into non-traditional areas and reorganization. With regard to the first, the letter to shareholders states, "* * * we are actively seeking new investment opportunities. In view of our marketing and technical experience in the communications equipment and operations fields, we believe the most attractive and promising growth area for us is expansion into related communications businesses where such expertise can be utilized to our best advantage. Ideally, these are businesses which operate under little or no regulation." Concerning the latter, "Effective January 1, 1979, Centel realigned its three major business activities under the newly created positions of Group Vice Presidents to distinctly separate the Company's traditional utility operations from its new endeavors."

227. The rationale for imposing a separation requirement only on AT&T and GTE has even greater force when considering CPE. Only these two U.S. telephone companies have basic manufacturing operations producing large quantities of a wide range of telecommunications equipment. Both AT&T and GTE hold substantial market positions, if not market power, in the provision of certain kinds of CPE. Their significant participation in these markets indicates that these companies have substantial incentives to sustain their market positions by thwarting the provision of such equipment on a competitive basis. Their local monopoly positions, in turn, provide the opportunity (without maximum separation) to engage in such anticompetitive conduct—with the monopoly ratepayer being forced to subsidize below cost pricing of CPE. United and Continental, on the other hand, have shown little inclination to participate in the equipment manufacturing market, apparently due to the cyclical nature of profits in that market. Continental Supply and Service Corporation does provide centralized purchase and distribution of equipment and parts for Continental's operating telephone companies, and Continental Telephone Laboratories tests and recommends practical applications for equipment; but the carrier sold its primary manufacturing subsidiary (Vidar Corporation) in 1975, explaining to stockholders that "[T]he cyclical nature of manufacturing operations and other considerations have led to the conclusion that the Company and its stockholders would benefit by withdrawal from the field of manufacturing and by concentration of investment and manpower in telephone operations."[93] The following year Continental completed its divestiture of manufacturing operations with the sale of the Cable Division of Superior Continental Corporation, and again cited the "volatility of earnings inherent in the cyclical nature of these operations."[94] Similarly, United's subsidiary, North Supply Company, an international distributor of telecommunications products with more than a quarter of a billion dollars in annual sales, was formerly a division of North Electric Company. United sold the manufacturing division of North Electric in 1977, incurring a $2.3-million loss on the transaction, and notified stockholders that the sale, together with the 1978 sale of Central Kansas Power Company, left "United Telecom's resources concentrated in three activities—telephone service, computer services and distribution services. All are strong markets and United is well positioned in each of them."[95]

228. Thus we believe that continued application of our maximum separation policy to all carriers is inappropriate in the face of the present and foreseeable market applications of computer processing technology and increased competition in the provision of regulated communications services. Contrary to the approach in the *Tentative Decision*, we conclude that not all carriers owning transmission facilities should be required to provide enhanced services through a separate corporate entity. Separation is appropriate in those cases in which there is a substantial threat of injury to the communications ratepayer and where other regulatory tools would not suffice. Both AT&T and GTE provide franchised monopoly telephone service and competitive services. Moreover, both are vertically and horizontally integrated with affiliated equipment manufacturers which supply the preponderant share of the equipment needs of the affiliated telephone companies. Thus, both AT&T and GTE have significant market positions in various equipment product lines as well as certain service categories in certain large geographic markets. We are thus concerned that both companies could exploit their dominance in these product lines to support below cost prices in more competitive markets. Weighing the public interest benefits of our objectives and the economic tradeoffs of the separate subsidiary requirement, we have determined that restricting the requirement to AT&T and GTE will best serve the monopoly and other communications ratepayers and the public interest more generally. Accordingly, we are removing the maximum separation requirements for all carriers except those under direct or indirect common control of AT&T or GTE.

229. The thrust of applying the resale structure to AT&T and GTE is to establish a structure under which common carrier transmission facilities are offered by them to all providers of enhanced services (including their own enhanced subsidiary) on an equal basis. Inherent in the resale structure is the fact that the separate corporate entity may not construct, own, or operate its own transmission facilities. In essence, the resale subsidiary must acquire all its transmission capacity from an underlying carrier pursuant to tariff. This means that the same transmission facilities or capacity provided the subsidiary by the parent, must be made available to all enhanced service providers under the same terms and conditions. Requiring the subsidiary to acquire its transmission capacity from other sources pursuant to tariff provides a structural constraint on the potential for abuse of the parent's market power through controlling access to and use of the underlying transmission facilities in a discriminatory and anticompetitive manner.

230. The separate subsidiary for enhanced services and CPE also provides a structural mechanism for the separation of these carriers' regulated and nonregulated activities, thereby lessening the potential that the communications ratepayer will be subsidizing their unregulated ventures. While we discuss below the relationship between the subsidiary and affiliated entities, the subsidiary itself is not regulated. Thus the subsidiary may not provide basic transmission services for to do so would subject it to regulation and negate the structural separation of regulated and non regulated activities.

231. By removing other carriers from the separate subsidiary requirements of the *First Computer Inquiry*, they are now able to offer basic and enhanced services through common computer and transmission facilities. However, an essential thrust of this proceeding has been to provide a mechanism whereby non-discriminatory access can be had to basic transmission services by all enhanced service providers. Because enhanced services are dependent upon the common carrier offering of basic

[93] Continental Telephone Corporation, *Annual Report to Stockholders*, 1975, at 5.

[94] *Id.*, 1976, at 3.

[95] United Telecommunications, Inc., *Annual Report to Stockholders*, 1978, at 2.

services, a basic service is the building block upon which enhanced services are offered. Thus those carriers that own common carrier transmission facilities and provide enhanced services, but are not subject to the separate subsidiary requirement, must acquire transmission capacity pursuant to the same prices, terms, and conditions reflected in their tariffs when their own facilities are utilized. Other offerors of enhanced services would likewise be able to use such a carrier's facilities under the same terms and conditions.

232. We have already noted our belief that, while the establishment of separate subsidiaries cannot be relied on to absolutely prevent subsidization, it can make it more readily detectable by competitors and regulators. On the other hand, the provision of certain complementary goods or services by the same company may not pose unacceptable dangers of this kind while generating efficiencies in the form of reduced operating expenses or other legitimate cost savings. Consumers of telecommunications products and services should not be required to forego such economies unless they are clearly outweighed by other costs which joint operation would impose. It is in this context that we specify the particular form in which AT&T and GTE may sell or lease CPE and enhanced services.

Degree of Separation

233. Having concluded that the resale structure and the maximum separation policy are applicable to carriers affiliated with AT&T and GTE, we now address the degree of separation that should exist between separated entities. In the *First Computer Inquiry* we established certain minimum separation requirements which were necessary in order to meet the regulatory objectives necessitating a separate subsidiary. In this regard we required that the separate entity maintain its own books of account, have separate officers and separate operating personnel, and utilize computer equipment and facilities separate from those of the carrier in providing unregulated services. Moreover, a carrier subject to the separation requirement was prohibited from engaging in the sale or promotion of the separate entity's services and from making available any computer capacity or computer system component, used in the provision of its communications service, to others for the provision of unregulated services. See 47 CFR 64.702(c) and (d). We now undertake to examine, in light of experience gained since these separations requirements were adopted, whether this degree of separation should be maintained and whether other separation requirements are warranted.

234. We requested that the parties comment on the relative costs and benefits of various degrees of separation that might be relied upon to reduce the likelihood of anticompetitive activity. While many parties discussed the probable cost-benefit tradeoffs of a separation policy, few have addressed, with the specificity we would have wished, the costs and benefits associated with various degrees of separation. The comments of NTIA and the reply comments of AT&T are notable exceptions. In addressing the implications of a separate subsidiary requirement, the comments generally intermingle the separation concept with the degree of separation in discussing the various costs and benefits. The most thorough discussion of possible costs is found in the reply comments of AT&T which argued against the separate subsidiary requirement for enhanced services and CPE while emphasizing alleged efficiencies of vertical integration. We will endeavor to address the arguments it has raised. We note, however, that the costs of separation are difficult to quantify. The parties to this proceeding have addressed them in qualitative terms, just as we will here.

235. Various parties to this proceeding have argued stringent separation where a separate subsidiary is imposed. It is even argued that interactions between the subsidiary and affiliated entities should be the same as those between the parent and other third parties or nonaffiliated entities. In certain situations this type of relationship may be warranted, but we are not prepared to adopt this standard for all inter-corporate transactions between the subsidiary and affiliates. AT&T and GTE are vertically integrated corporations. To the extent there may be efficiencies within their structures they should not be precluded from capitalizing on them where countervailing regulatory considerations do not demand stringent separation. Accordingly, in addressing the appropriate degree of separation we take care to impose only the minimum necessary to address those regulatory concerns where sole reliance on accounting is an inappropriate safeguard against potential anticompetitive behavior.[96]

[96] For an extensive discussion of the safeguards we have applied in GTE Telenet with respect to its relationship to other GTE companies see *General Telephone and Electronics*, 70 FCC 2d 2249 (1979), *recon. denied*, 72 FCC 2d 91 (1979); *GTE-Telenet Merger Authorization*, 72 FCC 2d 111 (1979), modified 72 FCC 2d 516 (1979); *recon. denied*, 74 FCC 2d 561 (1979).

236. Our structural approach is predicated on the use of accounting mechanisms to complement the separate subsidiary requirement. Accounting is an important regulatory tool to aid in the effective regulatory oversight not only of those carriers subject to the separate subsidiary requirement, but also of those carriers that engage in unregulated activities without structural separation. Accordingly, the separate subsidiary must maintain its own books of account, and non-separated carriers must maintain separate books of account for their unregulated activities.

237. An essential thrust of the structural approach is to separate joint and common costs associated with the provision of regulated and unregulated activities. Ideally, the parent and subsidiary should have no joint or common costs to allocate, since the simplest mechanism for transferring competitive market costs to the regulated market is the misallocation of joint and common costs. Yet, there may be circumstances where joint undertakings should not be foreclosed based on efficiency or practical considerations. To this extent a balancing process is involved.

238. The manner in which enhanced services are provided and marketed are two areas where the potential for anticompetitive behavior and misallocation of cost is great. Because of the inherent difficulties in allocating joint and common costs, we conclude that effective regulation requires eliminating the allocations by prohibiting joint activities in these areas.

239. More specifically, the separation of regulated and unregulated activities and associated costs requires that the subsidiary have its own operating, marketing, installation and maintenance personnel for the services and equipment it offers. This means that the unregulated subsidiary must do its own marketing, including all advertising related to the offering of any service or equipment it offers. Affiliated entities may not advertise on behalf of the subsidiary. We are cognizant of AT&T's assertions that maintenance and training costs will be increased by a separation requirement. However, to the extent that the separated entity uses specialized facilities, the cost savings from sharing maintenance and training functions with AT&T affiliates would be minimal. Moreover we are not foreclosing the subsidiary from obtaining support services for sophisticated equipment purchased from any affiliated manufacturing entity on a compensatory basis. For example, the

subsidiary could contract with the manufacturer for the installation, maintenance or repair of equipment, or the manufacturer could train personnel of the subsidiary to perform these functions. Aside from this, however, we are precluding entities or organizations affiliated with the parent from performing any function related to the training, operation, installation, marketing, and maintenance services associated with the subsidiary's offerings.

240. The separation of these functions, combined with the above-stated requirement that all enhanced service providers have equal access to basic transmission facilities, compels that we address the relationship between the enhanced service subsidiary and the underlying carrier. A key issue here is the joint use of physical space. In this regard we conclude that the enhanced service subsidiary should be precluded from using in common any leased or owned physical space or property with an affiliated carrier on which is located transmission equipment or facilities used in the provision of basic transmission services. The reasons for this are two-fold. First, it is imperative that there be nondiscriminatory access to AT&T's and GTE's basic transmission services. To allow the subsidiary to share physical space with an affiliated carrier is to significantly increase the potential for the carrier to discriminate in favor of its affiliated subsidiary. For example it also offers the potential for a carrier to establish a means by which it may discriminate against other enhanced service vendors through such mechanisms as the manner in which the subsidiary is able to interconnect or through its charges for the facilities necessary to interconnect enhanced services with the underlying network where the need for such facilities by its own subsidiary might be eliminated. Separation in this area creates an environment conducive to ensuring that all vendors of enhanced services are afforded the opportunity to access a carrier's network on a nondiscriminatory basis. Second, the sharing of physical space again raises the inherently difficult problems associated with the allocation of joint and common costs.

241. In addition, our existing separation rules require that unregulated services be provided through computer facilities separate from those of the carrier. Various parties have argued that sharing of computer capacity should be allowed. In its Response to the *Tentative Decision*, NTIA contends that, "most carriers . . . will need computer facilities capable of performing data processing functions to assist them in providing the basic communication services, and a separate entity with separate computer facilities will be pure duplication. Moreover, basic communications usage generally is characterized by extreme peaking, and the inability to use computer facilities to provide enhanced services during off-peak hours could result in a great deal of wasted processing capacity."[97] Bell goes a step further—arguing that the resale entity should not only be permitted to share the underlying carrier's computer capacity, but also the information in the computers.[98]

242. Although there may be some operational inefficiencies associated with a policy prohibiting the sharing of excess computer capacity, [99] there are also some likely inefficiencies associated with a policy permitting sharing, even if other vendors were afforded comparable access. First, it is unrealistic to believe that non-Bell or non-GTE entrants in the competitive market will avail themselves of the opportunity to use AT&T's or GTE's excess computer capacity. If they did not there would be no way to establish whether the rates AT&T and GTE charged their subsidiaries for the use of the computer capacity were compensatory, thereby potentially burdening the communications ratepayer. Second, the existence of a regulatory policy permitting the sharing of excess capacity would tend to generate that capacity. Third, such a policy would create large non-market incentives to rely exclusively on the parent's computer capacity, because it would enlarge the monopoly rate base.[100] Together, these three effects of a permissive sharing policy introduce a greater than tolerable risk of the inefficiencies of a Bell or GTE subsidiary operating below real cost in a competitive market. The regulated services would be carrying the burden of an unnecessarily high unit cost to their subscribers' disadvantage, while the risks of failure facing the non-Bell and non-GTE entrants in the competitive market would be increased, along with all the costs associated with higher risk. Moreover, if sharing of computer capacity by the subsidiary were allowed, any structural mechanism for ensuring nondiscriminatory access to the network would be negated. It should also be remembered that computers are not as large or expensive as they once were, and they almost certainly will be even smaller and less expensive in the future. Therefore, the size of any inefficiencies resulting from the maximum separation policy is not likely to be large. Further, the cost of obtaining the computer capacity necessary for operation in the data communications market is not likely to be prohibitive of entry. Accordingly, we affirm our present proscription against the sharing of excess network computer capacity. Moreover, whatever degree of "wastefulness" might legitimately be argued to exist will be attenuated by the preponderant cost and specialized nature of software in the totality of enhanced services.

243. Intimately related to issues concerning computer facilities are those dealing with software development. Because of the significance of software in the provision of enhanced services and sophisticated CPE, there is a need to address the allocation of its costs. Electronic equipment such as that used for computers and communications is becoming more and more software driven. At the same time, relative costs are shifting from hardware to software. This reflects the rapidly declining cost of hardware as well as the human capital intensive nature of programming. Because software development, operations, and maintenance constitute such a substantial cost factor, involving the association of joint and common costs, in the provision of these services, we will require that the underlying carrier (including its affiliates) and the resale subsidiary not perform software work for each other. Moreover, we find this requirement reasonable, i.e., not onerous because software needs may be separable, based on (1) the specialized nature of the software that would be applicable to the activities of the separate subsidiary, (2) the general diseconomies of scale experienced in writing software, and (3) the continuing ability of the underlying carrier to spread the fixed cost of software development for underlying operations to its telephone companies (*see*, Reply Comments of AT&T, A-18 through A-24). The subsidiary is, of course, free to contract with non-affiliated sources for

[97] Response of NTIA, at 9.

[98] See Reply Comments of AT&T at A-23, A-26.

[99] We note that telephone companies do have pricing options that could reduce the peaking that is responsible for much of the excess computer capacity. Moreover, unless the usage pattern of enhanced services over time were highly negatively correlated with basic communications usage, the peaking phenomenon and the underutilization of facilities would continue even if sharing were permitted.

[100] Professor Scherer suggests that such deliberately maintained excess capacity may be useful to monopoly, in "scaring off new entrants or fighting them more effectively if they do enter." F. Scherer, *supra* n. 55, at 876.

software development, but not on a joint basis with an affiliated entity.

244. We appreciate that software will be embedded in some of the CPE distributed by the subsidiary. The condition that the subsidiary and its affiliates not perform software design and development for one another is not intended to preclude the subsidiary from marketing software integral to CPE obtained from affiliated entities. Moreover, other enhanced services hardware may be provided with the generic software (such as operating systems), but not applications programs.

245. Another area of significant concern involves the exchange of information between the separate subsidiary and other affiliated entities. There is little doubt that AT&T and GTE would be able to confer a significant competitive advantage on their separate subsidiaries and further extend their market power, if the subsidiaries are provided access to certain information that is not equally available to other vendors of enhanced services or CPE.

246. In this regard there are three areas of information flow which deserve attention. The first type of information is that which AT&T and GTE possess by virtue of their control over communication facilities essential to the nation-wide transmission of information. Within this category falls information relating to network design and technical standards, including interface specifications, information affecting changes which are being contemplated to the telecommunications network that would affect either intercarrier interconnection or the manner in which CPE is connected to the interstate network, and information concerning construction plans. This type of information must be disclosed to the public by AT&T and GTE. Moreover, when it is disclosed to an enhanced services or CPE separate subsidiary, such information must be disclosed to competitors of the subsidiary at the same time and under the same terms and conditions. It is essential to the competitive provision of CPE and enhanced services that this type of information be disclosed, just as it is essential to assuring that monopoly ratepayers are afforded their statutory right to efficient service by reducing the possibility that use of the network will be restricted for anticompetitive purpose, with resulting negative effects on unit costs.

247. The second area of information flow that offers the potential for distorting the competitive evolution of enhanced service markets is that dealing with research and development. We recognize that technological innovation will be very important to the enhanced services market, and that the established carriers are capable of making significant contributions to the emerging technology. We have no desire to restrict their participation in research and development for the competitive market beyond the extent necessary for the protection of the communications ratepayer. While we have indicated that software design or development work for a separate subsidiary must be undertaken by the subsidiary, or an outside contractor on behalf of the subsidiary, we do not intend at this time to prohibit the exchange of work products in other areas of research and development between the parent and its subsidiary, provided such exchanges take place on a completely cost compensatory basis. This assumes appropriate records of account are established for research and development performed for the subsidiary. Such exchanges must be monitored, and if it is determined that research and development is being performed for the subsidiary on a less than a compensatory basis, further exchanges will be prohibited.

248. The primary concern in allowing joint research and development rests in the fact that, through such mechanisms as the Bell System license contract arrangements with the operating companies, monopoly derived revenues are used to fund research and development. To the extent misallocations of these costs occur, it is the monopoly ratepayer that is burdened. We are allowing sharing of research and development by affiliated entities at this time, but we intend to examine into the license contract arrangements and other issues generic to the use of monopoly revenues to support competitive research and development. At the conclusion of this process we are free to modify the approach we have set forth here, if the facts so warrant.

249. While research and development purchased from an affiliated entity by the separate subsidiary need not be shared with other competitive service or equipment vendors, information which finds a principal use in marketing, such as customer proprietary information, must be disclosed to other competitive vendors at the same time the subsidiary receives the information and under the same terms and conditions if it is shared with the subsidiary. By "customer proprietary information" we mean any information which an affiliate acquires by virtue of the corporation's common carrier activities. Such information constitutes the third area of information flow. Because of the anticompetive advantage that can accrue to the separate subsidiary from advance information in these areas, we are maintaining our requirement that the subsidiary have separate officers.

250. The principle upon which we have relied in our consideration of the most appropriate corporate structure for GTE and AT&T in the provision of CPE and enhanced services is that a firm with a dominant market position—either in terms of a market position insulated from effective competition or as a result of effective control of facilities essential to the operation of its competitors, or both—must be prevented from exploiting that position by extracting supra-competitive profit from the customers of one service to price another service at below cost levels. Simply relegating certain activities to a separate subsidiary may not, however, prevent abuses of market power and anticompetitive conduct. Since both AT&T and GTE have significant market positions in various equipment product lines as well as certain service categories, there are other conditions which we will require that offer substantial benefits in return for costs that are likely to be small.

251. As to the provision of CPE, we have determined that AT&T's and GTE's dominant position in the terminal equipment market requires some special treatment. There has been some concern that requiring a separate entity for the provision, installation, and maintenance of CPE will be unduly costly, especially for residential users with "plain old telephone service." For the companies to which our separate subsidiary requirement applies, we reject this argument. In the first place these functions are performed by hundreds of equipment vendors and are part and parcel of participation in the equipment business. Implicit in the argument is the assumption that the telephone company employee responsible for maintaining the transmission line actually functions or is qualified to function as the installation, maintenance, and repair person for CPE, including sophisticated computer terminals. While we do not believe this is borne out by experience, even if it were true, costs associated with the provision of CPE should be divorced from the cost associated with a carrier's provision of basic services. In point of fact, the Bell System now dispenses more than half its new phones through almost 2,000 Phone Center Stores.[101] We recognize, however, that it is precisely in the case of smaller telephone companies serving smaller

[101] 1979 AT&T Annual Report at 12.

numbers of subscribers that there may be validity to the claim that separate maintenance and installation staffs may be inefficient. In such instances, indivisibilities may cause economies of scale in the provision of such service.[102] In such cases, a separation requirement might be unduly costly, but we do not comtemplate applying the requirement to the small carriers. Moreover, consideration will be given to possible waivers for the truly rural operations of carriers under direct or common control of AT&T or GTE.

252. We believe that any AT&T or GTE resale subsidiary which provides enhanced services should also be able to lease or sell terminal equipment. It may also engage directly in the manufacturing of CPE. However, this CPE/enhanced service provider will be required to deal at arm's length with any other affiliated equipment manufacturer.[103] The transfer of any products between this CPE/enhanced service provider and any affiliated equipment manufacturer must be done at a price that is compensatory. To police this requirement we will require that any transaction between the enhanced services subsidiary and any other affiliate which involves the transfer (either directly or by accounting or other record entries) of money, personnel, resources or other assets be recorded in auditable form. Moreover, any contract entered into between such entities must be filed with the Commission, where it will be made available for public inspection. (This requirement will not apply to any transaction governed by the provisions of an effective state or federal tariff.) We will monitor these contracts and, should abuses be discovered, we will re-examine our determination with regard to the appropriate degree of separation.

253. Moreover, a subsidiary which provides both CPE and enhanced services may not market any other equipment, e.g., transmission or other network equipment, because of the potential for the communications ratepayer to bear the cost of non-compensatory intracorporate transfer pricing that may inure to the benefit of the enhanced subsidiaries. By this proscription we are not altering the present arrangement whereby manufacturing affiliates sell directly to affiliated carriers, nor does this requirement preclude either firm from providing any of its terminal equipment product lines through another arm's length subsidiary. Thus, if either AT&T or GTE, or both, would prefer to offer certain types of terminal equipment (e.g. telephones) through the enhanced service subsidiary (perhaps for sales primarily to customers of its enhanced services) as well as through another subsidiary (perhaps for sales to residence and business customers not served by the enhanced services subsidiary), that form of corporate organization is acceptable under our decision today.

254. AT&T in its Reply Comments, has cited a number of administrative and operational costs that it would expect to result from the creation of a separate subsidiary. However, it is not altogether clear whether many of these costs would be incurred in the process of entering the enhanced market even without a separate subsidiary requirement. In its analysis of operational cost effects, AT&T has clearly failed to consider the full cost of entering a competitive market without a separation requirement. In assessing the advisability of a separation requirement, only the marginal costs of the policy are important, not the full cost of entering the competitive market; these marginal costs are generally negligible. In discussing the marginal operating costs it is important to keep three additional points in mind. First, the regulated market will continue to interact with the competitive market; commerce will remain between the two, permitting regulated carriers to continue providing transmission and distribution facilities to carriers in the competitive market, and protecting any scale economies that presently exist in underlying facility production. Second, the separated entities will be providing services unique to the competitive market, relying, for the most part, on highly specialized facilities. Third, we are not applying the separation requirement to small carriers.

255. In addition, we are allowing the sharing of administrative services, such as legal services, by the parent and the subsidiary on a cost reimbursement basis. This assumes, of course, the existence of an accounting system which accurately reflects the costs of administrative services provided by an affiliated entity. With an appropriate accounting system, whatever administrative efficiencies may exist are preserved. As to the scope of efficiencies alleged to exist in this area, however, we think it useful to point out the distinction between scale economies and the spreading of fixed costs over a larger base. The examples provided by AT&T generally fall into the latter category. If there truly are economies of scale, nothing in our separation requirements would preclude a non-related entity from providing services to both the underlying carrier and its separate subsidiary. If the unaffiliated entity can attract additional customers for the same service (e.g., payroll accounting and check preparation), it may be able to offer greater economies than those available to the telephone company alone. At the same time it should be noted that we are not foreclosing bulk purchase savings among affiliated entities as long as the costs are shared on a pro rata basis.

256. Addressing a different matter, we have previously noted that the separate subsidiary requirement, *per se*, does not change the incentives for a firm to engage in predation. One effective means of deflecting such incentives and providing protection to the communications ratepayer is to require the infusion of some independent equity financing for the subsidiary with the concomitant securities law obligations owed to minority shareholders.

257. No one, however, argues for an immediate infusion of outside capital. NTIA suggests that outside capital be "phased in over a period of years."[104] We are not at this time mandating that there be outside financing for several reasons.[105] First, outside financing would subject the subsidiary to the costs of securities regulation and disclosure regulation. Second, it may affect the cost of obtaining outside equity and debt. Third, the corporate and regulatory implications of outside financing have not been addressed in any significant detail in the course of this proceeding. Prior to imposing such a requirement we believe these areas deserve further exploration. Fourth, under the structure we have set forth, AT&T and GTE are provided flexibility as to the manner in which enhanced services and CPE can be provided within parameters of their existing coporate structures. To impose an outside financing requirement at this

[102] See C. Frank, Jr., *Production Theory and Indivisible Commodities*, 48–49 (1969), and T. Koopmans "The Construction of Economic Knowledge" in *Three Essays on the State of Economic Science*, 152 (1957).

[103] The Commission has discussed the issue of "arm's length" dealings in a number of its past decisions. See *ITT Domestic Transmission, Inc.* 62 FCC 2d 236 (1976); *Communications Satellite Corporation*, 45 FCC 2d 444 (1974); *CML Satellite Corporation*, 51 FCC 2d 14 (1975); *RCA Global Communications*, 56 FCC 2d 660 (1975); *Satellite Business Systems, et al.*, 62 FCC 2d 997 (1977); *Docket 19129 (Phase II)*, 64 FCC 2d 1 (1977); *National Aeronautics and Space Administration*, 61 FCC 2d 56 (1976); and *GTE-Telenet Merger Authorization*, 72 FCC 2d 111 (1979), *modified*, 72 FCC 2d 516 (1979), *recon. denied*, 74 FCC 2d 561 (1979).

[104] Response of NTIA at 24.

[105] In the *Tentative Decision* we inquired as to whether separate directors should be required. Were we to require some degree of outside financing, the argument for separate directors would be compelling. Since we are not requiring independent financing here, we defer consideration of this issue.

time may serve to constrain their flexibility and foreclose certain structural options. Therefore, we believe that it would be appropriate to wait until the carriers actually submit their capitalization plans to the Commission and ascertain at that time if further action is warranted.

258. We are interested, however, in the manner in which the subsidiary is capitalized. In the *Second Report and Order* in Docket No. 16495, the *Domestic Satellite* policy proceeding, 35 FCC 2d 844 (1972), we determined that the public interest required that Comsat engage in competitive ventures through a separate subsidiary. There, as here, our concerns were, first, that transfers of assets during capitalization not serve as vehicles for inappropriate subsidies, to the detriment of basic service ratepayers, *See, e.g., Comsat*, 45 FCC 2d 444, 451 (1974), and, second, that the subsidiary, at the end of some determined period, "be in a position to establish its financial independence and assume for itself the risks associated with" its competitive ventures. *Comsat*, 42 FCC 2d 677, 681 (1973). We do not intend to prescribe here the manner in which the carriers subject to the resale structure may formulate the financial structure of the separate subsidiary. As in the case of Comsat, we believe this to be an appropriate area for the exercise of management judgment subject to ultimate Commission approval of the proposed capital structure. *See Second Report and Order*, 35 FCC 2d at 853. To the extent costs are incurred in the development of enhanced services prior to the establishment of the separate subsidiary, such costs must be accounted for in the capitalization plan.

259. Our authority to examine into the relationships between carriers and "persons directly or indirectly * * * controlled by" them is explicitly set forth in the Act. *See* Section 218; 219(a). These sections are further enhanced by our authority to examine relationships between carriers and *any* other persons, Section 211(b), and our general plenary powers under Section 4(i).[106] Specifically, Section 219(a) authorizes us to require reports from all carriers subject to the Act, and from persons controlled by them, with regard to the manner in which such "persons" are capitalized, including shareholder interests, and the general financial operations of such "persons." Further, 218 authorizes the Commission to obtain from such persons "full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created."

260. Our decision here to require carriers subject to the resale structure to obtain prior approval of plans for capitalization of separate subsidiaries is necessary in furtherance of our statutory obligation to insure that rates for communications services be "reasonable". 47 U.S.C. 151. Subsidies flowing from the parent to separate subsidiary, in the form of transfer of assets on capitalization, or by means of the parent underwriting, for an indeterminate period, the risks of the subsidiary's competitive ventures, would inevitably be passed through to the communications ratepayer. Our broad powers "to employ a full range of remedies, including restrictions, conditions, nonrenewal of licenses, or divestitures * * *" have been previously established. See *United States* v. *FCC*, ——— F.2d ——— (D.C. Cir. No. 77–1249, March 7, 1980), slip op. at 72. *See also* 47 U.S.C. 154(i).

Conclusion

261. We have essentially retained the degree of separation required in the current rules but have also specified other areas where interaction between the separate subsidiary and other affiliated entities would undermine the "separateness" of the resale subsidiary requirement. We have attempted to avoid as much as possible the problems associated with allocating joint and common costs, related to facilities, personnel services, and software development. We have singled out software and joint research and development as deserving special attention over and above what is addressed by the existing rules. We have concluded that the separate subsidiary must maintain its own books of account, have separate officers, utilize separate operating, marketing, installation and maintenance personnel, and utilize separate computer facilities in the provision of enhanced services. We have proscribed the joint sharing of computer capacity and software development. At the same time we have delineated the condition under which certain transfers of information must be disclosed to prevent anticompetitive behavior. We have also weighed the costs and benefits associated with sharing various administrative expenses and have concluded that the separate subsidiary may obtan administrative services from the parent on a compensatory basis and share in whatever savings may be derived from bulk purchases. However, we reserve judgment as to whether outside financing should be required.

262. In restricting the resale structure and our maximum separation requirements to AT&T and GTE, the structural remedy is limited to those carriers having significant market power and the ability to exercise it to the detriment of the communications ratepayer and the competitive evolution of enhanced services on a national scale. We believe the approach we have taken here is, on balance, a moderate one. Our broad discretion to choose between structural remedies or solely conduct regulation is already established. *GTE Service Corp.* 474 F.2d at 731. Moreover, our ability to impose and administer different regulatory schemes among a wide variety of carriers under our jurisdiction is similarly without question.[107]

263. Numerous regulatory agencies have imposed differing regulations on their regulatees, and have been sustained on these grounds. *See Permian basin Area Rate Cases*, 390 U.S. 747 (1968); *American Airlines* v. *CAB*, 359 F.2d 624 (D.C. Cir. 1966). Also, *see FPC* v. *Texaco*, 417 U.S. 380 (1974) (affirming as to agency authority to order different treatment of "small" and "large" producers, reversing on other grounds). There is no question, then, that our "broad discretion in choosing how to regulate * * *" *AT&T* v. *FCC*, 572 F.2d 17, 26 (2d Cir. 1978), includes discretion to select different schemes for different regulatees. See *U.S.* v. *FCC*, —— F.2d ——, slip op. at 73 (D.C. Cir. No. 77–1249, Mar. 7, 1980).

264. In selecting only certain carriers to whom the structural requirements apply we are not unaware of the risks associated with exempting other carriers. However, potential abuses not safeguarded by structural requirements can currently be safeguarded by our broad authority to regulate the conduct of these carriers. All of the entities offering basic services, of course, remain subject to the dictates of the full range of Title II regulation. Moreover, we remain free to re-examine our current approach should such potentials for abuse actualize, or as circumstances change generally.[108] *See e.g., FCC* v.

[106] Section 215(a), in addition to the other sections cited, covers reports by the Commission to Congress regarding, *inter alia*, transactions between carriers and their subsidiaries. It has been previously ruled that this section is not a limitation on the "expansive grant of power" given by Congress to this agency. *GTE Service Corp.* v. *FCC*, *supra*, n. 9.

[107] Our Computer Inquiry I separation requirements did not apply to all carriers. Carriers whose operating revenues did not exceed $1,000,000 were exempted from those rules. *See GTE Service Corp.*, 474 F.2d at 730, n. 7.

[108] The range of available responses to abuse of the letter or spirit of the requirements specified in this Order is, of course, quite broad. Should experience show it is necessary, we are prepared, for example, to prohibit all information flows, to

Footnotes continued on next page

WOKO, Inc., 329 U.S. 223 (1946); *Pocket Phone Broadcast Service* v. *FCC*, 538 F.2d 447 (D.C. Cir. 1976). *See generally*, K. Davis, *Administrative Law Text* ch. 17 (3d ed. 1972). Indeed, the D.C. Circuit Court of Appeals has indicated that we are obligated to re-examine our rules if circumstances change substantially. *Geller* v. *FCC*, 610 F.2d 973 (1979).

Transition Period

265. Various comments urge that there be a transition period to the extent structural changes are adopted. GTE is currently subject to the maximum separation rules, and although § 64.702(c) specifically excepts companies of the Bell System, the exception was predicted on the belief that the Bell System would not be offering unregulated services over the telecommunications network. *See Tentative Decision, First Computer Inquiry*, 28 FCC 2d at 305. However, our adoption of a regulatory scheme which distinguishes between basic and enhanced services dictates that current enhanced services offered by either GTE or the Bell System through facilities used in interstate communications be provided pursuant to the resale structure. Moreover, because we are requiring the separation of CPE from the provision of basic services, the Bell System and GTE will be required to restructure their current method of marketing terminal equipment. Accordingly, we believe that a transition period shoud be established to accommodate the potential restructuring of certain existing services, future services, and the offering of CPE.

266. Insofar as a transition period for enhanced services is concerned, we distinguish between services that are currently being offered and new services that are offered subsequent to the adoption of this order. Any new enhanced service which is offered after the effective date of this order must be provided pursuant to the resale structure. With respect to existing services, however, carriers subject to the resale structure will have until March 1, 1982 to restructure the manner in which they are provided. As of March 1, 1982 carriers under direct or indirect common control of AT&T and GTE shall not offer enhanced services or CPE except as set forth in this decision.[109] We appreciate that a great deal of effort, particularly on the part of carriers, will be required to effect the transition. We are confident that the attainment of the new approach to the provision of CPE and enhanced services we have specified today will more than justify the effort from the viewpoint of the consuming public. At the same time, it is important that the transition be accomplished in a manner which will not disadvantage the affected carriers, their shareholders, or their employees. As we have indicated, see, *e.g.* paras. 165–166 *supra*, we are prepared to assist in smoothing the transition. But it is abundantly clear to us that the burdens of working out the transition must be borne in the largest measure by the affected carriers. They much more than any other entities involved have the ability to implement the transition in a timely and efficient manner or to retard its achievement and raise the costs of attaining it for all concerned. We hope that they share our view that society's interest in efficient communications will be well served by proceeding as rapidly as possible to the arrangements described here. But, even if they do not, we hope that they do not fail to see that a cooperative approach to achieving the new arrangements is essential if significant institutional and personal dislocations are to be avoided.

International

267. In the Tentative Decision we sought comment on whether we should extend the resale structure to the IRCs. We were concerned that our failure to extend the resale structure into the international area would, over the long term, create problems with respect to the possible expansion of enhanced services internationally, particularly on a competitive basis. *Tentative Decision* at para. 15. Since the resale principle is implicit in the separation requirement that we adopt today, the basic issue still remains whether resale should be extended into the international area. We conclude that it is inappropriate for us to address this issue in the current proceeding.

268. First, any decision we make in this proceeding with regard to international resale would be premature. In our recently released *CCI Order*, we stated that "the Commission has not adopted a general policy one way or the other as to the resale of international facilities and * * * has made no findings as to the lawfulness of international tariff provisions which restrict the third party use of international facilities."[110] We indicated that an appropriate notice initiating a proceeding to assess the applicability of resale principles to international communications would be forthcoming. Consequently, any determination that we make in this Inquiry would have the effect of prejudging some of the basic issues to be considered in that proceeding. We believe that issues generic to the international arena should be addressed prior to imposing a resale requirement for enhanced services. We will defer consideration of this issue until completion of the international resale inquiry.

269. Second, the need for an immediate determination as to whether the IRCs should be subject to the resale structure is, to a certain extent, mitigated by our recent actions directed at the market power of the IRCs. On December 12, 1979 we decided several important matters both reflecting and affecting the market structure of the IRC industry.[111] We stated our belief "that the combined effect of these decisions will be an improved international communications system with more choices for consumers, more diverse service offerings, and lower rates."[112] During the pendency of our broad inquiry on international resale, we will have an opportunity to observe whether these actions have, in fact, resulted in an improved market environment for the provision of communications and enhanced services. Depending on the outcome of the international resale inquiry and the characteristics of the market at that time, we are free to examine whether the IRCs should be subject to the resale structure.

270. We are also aware that Comsat is a major facilities provider for international services. Many of the concerns that we address in this proceeding, however, are not relevant to Comsat since it does not provide communications services or enhanced

Footnotes continued from last page
require some measure of third party equity financing for the separate subsidiary, or, in the extreme case, to ban dominant common carriers from the provision of some enhanced services or CPE altogether.

[109] We note that GTE Telenet is currently subject to various separations requirements which are undergoing re-examination by the staff. Where those requirements are less restrictive than what we are setting forth here, GTE Telenet may act in accordance with the already established separation requirements until the staff review is completed and any modifications are made.

[110] *ITT Worldcom et al.* v. *Consortium Communications International, Inc.* at para. 18 (released February 12, 1980).

[111] See *Preliminary Audit and Study of Operations of International Carriers and Their Communications Services*, Docket No. 20778, FCC 79–840; *International Record Carriers Scope of Operations*, Docket No. 19660, FCC 79–841; *Dataphone*, Docket No. 19558, FCC 79–842; *Datel*, Docket No. 19558, FCC 79–843; *Western Union, New Telex Service Arrangements via Mexico and Canada*, File No. C–L–2 FCC 79–845; *ITT World Comm. et. al.* v. *CCI*, File Nos. TS–9–78, TS–10–78, TS–78–1945, FCC 79–846; *PMS*, CC Docket No. 78–96, FCC 79–847; *Interface of the International Telex Service with the Domestic Telex and TWX Services*, Docket No. 21005, FCC 79–844 (adopted December 12, 1979).

[112] *International Telex, at para. 6.*

services directly to consumers. To the extent this premise should change, we are not foreclosed from subjecting Comsat to the resale structure if the facts so warrant. Moreover, any action in this proceeding with regard to Comsat's corporate structure could be duplicative as Comsat is already subject to a separation requirement in that we have required Comsat to form a separate corporate entity to engage in any domestic satellite ventures and in any other non-INTELSAT related activities.[113] Additionally, we are currently studying, pursuant to congressional mandate, whether Comsat is optimally structured to engage in a variety of activities involving different markets as well as whether the validity of the separation requirement imposed on Comsat remains valid.[114] We expect that this report, which must be transmitted to Congress no later than May 1, 1980, will provide additional insight as to whether Comsat should be subjected to further separation requirements. If, after the Comsat report is compiled and various international proceedings are concluded it appears that Comsat should be subjected to further separation requirements, we will take appropriate action at that time.

E. 1956 AT&T Consent Decree

271. In the *Tentative Decision* we addressed the possible effects the 1956 AT&T Consent Decree might have on AT&T's ability to offer certain types of services and equipment, absent regulation under the Act. We explained the regulatory dilemma created by the Decree as presently informally construed by DOJ. *Tentative Decision* at para. 140–141. At the same time we set forth our perception of permissible activity under the Decree as evidenced in the actual practices of the Bell System. *Id.* at paras. 142–144. In so doing we focused on Sections IV and V of the Decree and stated our belief that the terms of the Decree contain sufficient flexibility to allow significant deregulation of terminal equipment and enhanced services without foreclosing AT&T participation in various markets. With respect to enhanced services we read the exception contained in Section V(g) of the Decree, which exempts from the Decree's constraints "businesses or services incidental to the furnishing by AT&T or such subsidiaries of common carrier communications services," as allowing AT&T to engage in the provision of various enhanced services. In order to resolve the dilemma caused by the Decree—the possible choice between unnecessary regulation and foreclosing equipment and service options to the consumer—we stated that it was our intent to resolve our public interest determinations based on the assumption that a given activity falls within the Section V(g) exception where a particular nonregulated processing activity associated with the provision of an enhanced service is in the public interest. *Id.* at para. 147.

272. In its comments, DOJ disagreed with our treatment of the consent decree. DOJ stated:

> As consistently interpreted by the Department of Justice, AT&T, as well as the courts, the Bell System companies generally have been considered to be limited by this final judgment to offering 'common carrier communications services,' defined in the decree to mean 'communications services and facilities * * * the charges for which are subject to public regulation.' (citations omitted)

Comments at 13. It also criticized the Commission for construing the decree (rather than deferring to DOJ or the judgment court) and stated that the FCC has no legal authority to render a definitive interpretation of the decree, arguing that under Section XVII of the decree, the judgment court retained jurisdiction to render such interpretations. DOJ concluded that it would regard any FCC determination that AT&T's diversification into the unregulated data processing field is permissible under the decree as it now stands as without determinative effect on the Department's exercise of prosecutorial discretion.

273. AT&T, on the other hand, has taken the position that:

> To the extent that an unregulated activity were to be provided by Bell under Section V(g) of the Decree, the "incidental" interpretation by the Commission is consistent with the language and spirit of the Decree, particularly in view of changing circumstances, such as the confluence of computer and communications technologies. (citation omitted) The Consent Decree has to be interpreted flexibly in order to reflect changes in technology and business circumstances.

Comments at 90. AT&T indicated that, because of the convergence of communications and data processing, in order to be responsive to the demands of communications users, the Bell System at some time may need to offer a service or equipment that is incidental to Bell System communications services but not itself regulated. The service or equipment may be of a communications sort in the broader sense but not well suited to regulation. Comments at 105. AT&T also stated that the Commission "wisely observes" that regulation should not compel an artificial structuring of services where the public interest requires otherwise, and that the Commission's observation reflects recognition of the practical realities associated with advancements in computer processing technology.

274. Various parties argue it is most important that the Commission not adopt a regulatory scheme premised on the desire to avoid foreclosing AT&T from services and markets; the focus should be what is best for the public benefit. There are other parties to this proceeding that take a stronger position and advocate that AT&T should not be allowed into the unregulated data processing business and that it is not the responsibility of the Commission to construe the decree so as to enable it to do so.

275. In the *Tentative Decision* we stated that our basic premise is that the consent decree should not constrain this Commission in the adoption of regulatory policies necessary for carrying out our mandate under the Communications Act. "Our fundamental concern is the availability of services and equipment to the communications consumer and, to that end, creation of an environment wherein regulation does not artificially restrict the diversity of services or equipment available the public." *Id.* at para. 135. Contrary to the suggestions of various commenters, no attempt is being made to render a definitive construction of the decree, or to render it meaningless. As we stated in the *Tentative Decision* at para. 148.

> We recognize that the court with jurisdiction over the decree is the proper body to render any definitive construction of the decree. Absent a definitive construction, the approach detailed here seems reasonable and consistent with current Bell System practices.

In essence, we stated that, absent a definitive determination to the contrary by the judgment court, we were going to view the 1956 consent decree in the stated manner for purposes of implementing our regulatory responsibilities under the Act. Such a course of action is not without precedent where the Department of Justice has refused to render a construction or, as here, where its constructions are less than illuminating in terms of what activity is proscribed by the decree. Cf. *The Connecticut Water Co.*, 25 FCC 1367 (1958).

276. We have concluded that enhanced services and CPE should not be subjected to Title II regulation. This

[113] *Communications Satellite Corporation*, 45 FCC 2d 444 (1974).

[114] See *Interim Report and Notice of Inquiry, Implementation of Section 505 of the International Maritime Satellite Telecommunications Act*, CC Docket No. 79–266 (released October 19, 1979).

determination was made based on our statutory responsibilities and the broad public interest mandate given us by Congress. We firmly believe that the regulatory structure we have set forth herein will best serve the public. The structure is conducive to the provision of new and innovative enhanced services and CPE and participation by all vendors on a competitive basis. Moreover, we believe that this decision does not, when read in conjunction with the terms of the 1956 Consent Decree foreclose AT&T from providing either CPE or enhanced services.

277. While it has been argued by various parties that AT&T is foreclosed from engaging in activities which are not regulated, it is by no means clear that this is in fact so. We note that Section IV of the decree describes permissible activities of Western Electric and Section V describes the permissible business activities of AT&T and all of its subsidiaries, except Western Electric and Western Electric's subsidiaries.[115] Based on our reading of these sections we stated in the *Tentative Decision*, at para. 142, our belief that excluding CPE from tariff-type regulation would not foreclose Bell System participation in the CPE market. We read Section IV of the decree as permitting Western Electric to sell or lease any type of equipment to the general public which it sells or leases to Bell System companies either for service to others or for their own use. In addition, we perceived enhanced services as being incidental to the provision of common carrier communications services under Section V(g) of the decree. Nothing has been presented to us in the course of this proceeding which would lead us to conclude otherwise. Nothing in Section V(g) requires that the incidental service be provided by the same entity which owns the underlying transmission facilities. Indeed, we have found that the record supports our belief that both enhanced services and CPE are within our subject matter jurisdiction although that jurisdiction is of the "reasonably ancillary" type rather than Title II jurisdiction. As such, these services and equipment reasonably fall within the "incidental to common carrier communications" language of the consent decree. We therefore affirm our earlier conclusions. See *Tentative Decision* at paras. 135–148. But we do not believe it necessary to rely upon this "incidental" proviso to Section V of the decree. That Section plainly permits AT&T to furnish "common carrier communications services" which are defined in Section II(i) as "communications services and facilities . . . the charges for which are *subject to* public regulation under the Communications Act of 1934 . . ." (Emphasis added.) Section II(i) does not require that the "regulation" to which it refers take any particular form other than that it be "public" and that it be "under the Communications Act of 1934." Both criteria are satisfied by the regulatory regime which we impose in this decision. The obvious purpose of the "regulation" requirement is to ensure, through the scrutiny of an independent body, that AT&T neither destroys competition nor charges consumers excessive prices. These purposes are fully achieved here, in our view, without the necessity for strict, tariff-type regulation. Moreover, we believe that these purposes can be more fully realized under the separation structure and through the medium of competition than if AT&T were allowed to offer enhanced services as part of its regulated common carrier offerings.

278. We do not believe that the reference to "communications" in the defined phrase "common carrier communications services" was intended to have any separate prohibitory function so long as the services and facilities remain "subject to" regulation under the *Communications* Act. If the services and facilities are a proper regulatory subject of that Act in the eyes of the expert agency charged with enforcing that Act, it should make no difference to an antitrust court, inclined to avoid duplicating or interfering with that agency's judgment, that some of the services "subject to" regulation may include a larger element of data processing than basic transmission. So long as the service is not wholly data processing and devoid of any communications elements, the Commission's jurisdiction reaches it. *GTE Service Corp.* v. *FCC*, 474 F. 2d 724 (2d Cir. 1973).

279. In coming to these conclusions we are guided by the principles of consent decree construction. We understand that the 1956 AT&T consent decree is to be construed as one would a written contact, such that any command of the decree must be found within its four corners. See *United States* v. *Armour & Co.*, 402 U.S. 673 (1971); *United States* v. *ITT Continental Baking Co.*, 420 U.S. 223 (1975). We have previously indicated that DOJ's reliance on the "regulation" criterion as a benchmark for permissible activity does not comport with actual practices of the Bell System.[116] The courts have previously refused to accept any "strained construction" by the Government that is inconsistent with the "normal meaning" of the language used. *United States* v. *Atlantic Refining Co.*, 360 U.S. 19, 22–23 (1959). In effect, DOJ would read "tariff regulation" into Section II(i) of the decree in place of "public regulation," the term actually employed. We believe our interpretation is the more consistent with the learning of *Armour* and *ITT Continental*. We believe our reading of the decree is similarly compatible with fundamental antitrust principles—the laws under which the judgment court took jurisdiction—which favor open entry. *See Nothern Pacific Railway* v. *U.S.*, 356 U.S. 1,4 (1958). Moreover, such principles have increasingly gained critical significance in the communications regulatory environment. *See United States* v. *FCC*, — F.2d —, slip op. at 73. (D.C. Cir. No. 77–1249, Mar. 7, 1980). Further, we believe that the prohibition in the consent decree should be narrowly construed, because an expansive reading would be restrictive of a free economy. *Cf. United States.* v. *McKesson & Robbins*, 351 U.S. 305, 316 (1956) [117]

[115] Section IV(A) enjoins Western Electric and AT&T from manufacturing any kind of equipment for sale or lease "which is not of a type sold or leased or intended to be sold or leased to companies of the Bell System, for use in furnishing common carrier communications services, * * *"; Section IV(B) permits Western Electric to engage in any business "of a character or type engaged in by Western or its subsidiaries for companies of the Bell System * * *" Section V(g) exempts from the constraints of the decree "business or services incidental to the furnishing by AT&T or such subsidiaries of common carrier communications services"; and Section II(i) defines "common carrier communications services" as: "* * * communications services and facilities, * * * the charges for which are subject to public regulation * * *."

[116] The most recent example of this is evidenced in a letter to Mr. Jerome L. Dreyer, Executive Vice President of ADAPSO from John L. Wilson, Attorney, Antitrust Division, dated November 21, 1979, wherein DOJ sanctions AT&T's ability to market computer software programs which generated almost $1.6 million in 1978. There is no direct regulation of AT&T's activities in this area.

[117] As Chairman Emanuel Cellar of the House Antitrust Subcommittee stated in the 1958 congressional investigation of the consent decree: An additional effect of the decree is to remove Western from markets where it is an actual or potential competitor, and thus to secure the markets of General Electric, RCA and Westinghouse from the threat of penetration by Western. A private agreement * * * to achieve this result clearly would be contrary to public policy and unlawful under the antitrust laws.

Consent Decree Program of the Dept. of Justice, Hearings before the Antitrust Subcommittee of the House Judiciary Committee, 85th Cong., 2d Sess. at 2022. While we do not read the decree as having such a severe effect in the "enhanced" and CPE markets, it is plain that if it had such a restrictive effect on Bell's participation in emerging competitive markets (despite the availability of less restrictive safeguard such as separate subsidiaries), the purposes of the antitrust laws would be disserved.

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280. We recognize that companies of the Bell System are faced with making corporate decisions in the presence of uncertainty. We obviously cannot guarantee that the consent decree does not impose some constraint on their activities in these areas. At the same time, however, removal of the uncertainty rests primarily with AT&T, should AT&T deem it necessary. As we perceive the situation, the choice rests with AT&T either to seek clarification from the judgment court as to the limits of permissible activity in these areas, or, weighing the risks, to proceed with its marketing plans for various types of CPE and enhanced services.

281. We believe that the purposes of both our regulatory statute and the antitrust laws are further by our adoption of a regulatory scheme requiring separation of basic telecommunication services and enhanced ancillary services and equipment so that customers in both markets are given the benefit of the best service and the lowest cost. It is a regulatory scheme that is conducive to the fullest exploitation of this country's telecommunications networks, and will best serve all segments of society. Even though uncertainty may exist for the Bell System under this structure due to the consent decree, we believe that the costs to society in general would be too great were there to be regulation in these areas. It would be far worse to subject CPE and enhanced services to regulation. However, should a decision of the judgment court disagree with our reading of the decree and foreclose AT&T from the provision of enhanced services or CPE, we would feel compelled to reassess the situation to ascertain whether any revision to decisions made here would be warranted in light of our statutory mandate. *See Geller* v. *FCC*, 610 F.2d 973 (D.C. Cir. 1979).

F. Conclusion

282. In reaching a final decision in this proceeding, we have considered our broad statutory mandate as set forth in Section 1 of the Act and our regulatory responsibilities under Title II. We find that adoption of the regulatory scheme which we have delineated is well within our statutory authority and would best serve the public interest by providing greater regulatory certainty to the marketplace, creating an environment conducive to the provision of CPE and enhanced services on a competitive basis, and by removing artificial restrictions on services that may be offered consumers through the use of computer technology where such restrictions are not necessary for meeting our statutory purpose.

283. In the *Tentative Decision* we offered numerous options for consideration in reaching a final decision. *See* paras. 32 and 35, *supra*. With respect to network services, Option 1 entailed adoption of the proposal set forth in the *Tentative Decision*. This approach would have necessitated making distinctions as to the communications or data processing nature of enhanced services. It also would have required the application of the resale structure to all carriers owning transmission facilities. We have rejected this option because it would unnecessarily expand the scope of regulation, fail to provide regulatory certainty to the marketplace by attempting to delineate communications and data processing services at the enhanced level, subject services to Title II regulation that are not necessarily subject to, nor even susceptible to a common carrier scheme of regulation, and maintain the maximum separation policy for all underlying carriers.

284. Option 2 is deficient for the same reasons as Option 1, except that it would distinguish between carriers that should be subject to maximum separation. While Option 3 is better than Options 1 and 2 in that enhanced services would not be subject to regulation under Title II, it is also lacking because no distinction is made between carriers in terms of applying the maximum separation requirement. Finally, we reject Option 5, the "optional tariffing" proposal, because it does not provide sufficient certainty in the marketplace and would result in disparate regulatory treatment with respect to services that would be regulated under Title II. This option would also result in subjecting to Title II regulation enhanced services, as to which common carrier regulation might well prove to be counter productive.

285. In view of the foregoing, and upon consideration of the entire record in this proceeding, we have concluded that adoption of Option 4 is warranted in the public interest. Moreover, with respect to CPE we have concluded that all CPE should be removed from Title II regulation and separated from the provision of basic services.

G. Ordering Clauses

286. Accordingly, it is ordered, pursuant to Sections 4(i), 4(j), 201–205, 403, 404, and 410 of the Communications Act of 1934, as amended, that the policies and rules set forth herein are adopted as a final decision in Docket No. 20828.

287. It is further ordered that § 64.702 of the Commission's Rules is hereby amended, effective June 13, 1980, as reflected in the Appendix.

288. It is further ordered that carrier-provided CPE shall be unbundled in accordance with this decision, and all carrier-provided customer-premises equipment shall be detariffed and removed from the jurisdictional separations process and the rate base of all carriers no later than March 1, 1982.

289. It is further ordered that, in accordance with paragraph 163, the Chief, Common Carrier Bureau is hereby directed to prepare an order convening a Joint Board to explore what revisions, if any, to the separation process are warranted as a result of our action with respect to carrier-provided CPE.

290. It is further ordered that the time period set forth herein for the structural separation and provision of enhanced services and CPE shall be adhered to by AT&T and GTE.

291. It is further ordered that Docket No. 20828 is hereby terminated.

292. It is further ordered that the Secretary shall cause a copy of the decision to be published in the **Federal Register.**

(Secs. 4, 201–205, 403, 404, 410; 48 Stat., as amended, 1066, 1070–1072, 1094, 1098; (47 U.S.C. 154, 201–205, 403, 404, 410))

Federal Communications Commission.[118]

William J. Tricarico,

Secretary.

Appendix

1. In Part 64 the headnote of Subpart G and the text and headnote of § 64.702 are amended to read as follows:

Subpart G—Furnishing of Enhanced Services and Customer-Premises Equipment by Communications Common Carriers

§ 64.702 Furnishing of enhanced services and customer-premises equipment.

(a) For the purpose of this subpart, the term "enhanced service" shall refer to services, offered over common carrier transmission facilities used in interstate

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When an unstrained interpretation of the decree, holding out some reasonable promise *both* of avoiding such an anticompetitive result *and* of preventing possible controversies regarding AT&T's competitive activities from spreading beyond the range of markets "incidental" to common carrier communications is available, we believe it would be unreasonable to adopt rules premised upon the assumption that either the Justice Department or the District Court in New Jersey would subscribe to a less attractive interpretation.

[118] See attached Statements of Chairman Ferris, Commissioner Quello, Commissioner Washburn, Commissioner Fogarty, Commissioner Brown and Commissioner Jones.

communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under Title II of the Act.

(b) Communications common carriers subject, in whole or in part, to the Communications Act may directly provide enhanced services and customer-premises equipment; provided, however, that the Commission may prohibit any such common carrier from engaging directly or indirectly in furnishing enhanced services or customer-premises equipment to others except as provided for in paragraph (c) of this section, or as otherwise authorized by the Commission.

(c) A communications common carrier prohibited by the Commission pursuant to paragraph (b) of this section from engaging in the furnishing of enhanced services or customer-premises equipment may, subject to other provisions of law, have a controlling or lesser interest in, or be under common control with, a separate corporate entity that furnishes enhanced services or customer-premises equipment to others provided the following conditions are met:

(1) Each such separate corporation shall obtain all transmission facilities necessary for the provision of enhanced services pursuant to tariff, and may not own any network or local distribution transmission facilities or equipment.

(2) Each such separate corporation shall operate independently in the furnishing of enhanced services and customer-premises equipment. It shall maintain its own books of account, have separate officers, utilize separate operating, marketing, installation, and maintenance personnel, and utilize separate computer facilities in the provision of enhanced services.

(3) Each such separate corporation which provides customer-premises equipment or enhanced services shall deal with any affiliated manufacturing entity only on an arm's length basis.

(4) Any research or development performed on a joint or separate basis for the subsidiary must be done on a compensatory basis. Software used by the subsidiary in the provision of enhanced services or equipment may only be developed by the separate subsidiary or non-affiliated contractor, except for utility software (such as operating systems, compliers, and debugging aids) and "firmware" that is an integral part of the hardware design.

(5) All transactions between the separate corporation and the carrier or its affiliates which involve the transfer, either direct or by accounting or other record entries, of money, personnel, resources, other assets or anything of value, shall be reduced to writing. A copy of any contract, agreement, or other arrangement entered into between such entities shall be filed with the Commission within 30 days after the contract, agreement, or other arrangement is made. This provision shall not apply to any transaction governed by the provision of an effective state or federal tariff.

(d) A carrier subject to the proscription set forth in paragraph (c) of this section:

(1) Shall not engage in the sale or promotion of enhanced services or customer-premises equipment, on behalf of the separate corporation, or sell, lease or otherwise make available to the separate corporation any capacity or computer system component on its computer system or systems which are used in any way for the provision of its common carrier communications services. (This does not apply to communications services offered the separate subsidiary pursuant to tariff);

(2) Shall disclose to the public all information relating to network design and technical standards and information affecting changes to the telecommunications network which would affect either intercarrier interconnection or the manner in which customer-premises equipment is attached to the interstate network prior to implementation and with reasonable advance notification. When such information is disclosed to the separate corporation it shall be disclosed and be available to any member of the public on the same terms and conditions;

(3) May not provide to any such separate corporation any customer proprietary information unless such information is available to any member of the public on the same terms and conditions; and

(4) Must obtain Commission approval as to the manner in which the separate corporation is to be capitalized, prior to obtaining any interest in the separate corporation or transferring any assets, and must obtain Commission approval of any modification to a Commission approved capitalization plan.

(e) Except as otherwise ordered by the Commission, after March 1, 1982, the carrier provision of customer-premises equipment used in conjunction with the interstate telecommunications network shall be separate and distinct from provision of common carrier communications services and not offered on a tariffed basis.

April 7, 1980.

Separate Statement of Chairman Charles D. Ferris

Re Second Computer Inquiry

Today we have removed the barricades from the door to the information age. The supply of communications products and services will be limited only by the ingenuity of businessmen and scientists. Government will no longer be a barrier that prevents or delays the introduction of innovations in technology.

We have all read a great deal about the marvelous inventions that the convergence of computer and communications technology will make possible. Consumers and businessmen will have highly intelligent communications products and services in their homes and offices that will increase productivity, save energy and improve the quality of life.

As long as the development of new telecommunications products was subject to the whim of the regulatory process, however, the evolution of this industry was subject to uncertainty. Now communications business entrepreneurs can be sure that the marketplace and not the government will decide their fate. They will be willing to invest more money, and the communications market will develop more rapidly.

In a very real sense this proceeding began in 1966 with the initiation of the *First Computer Inquiry*. The rules developed there were intended for the world of the large capacity central processing unit, accessed by telephone lines from remote unintelligent terminals. In that world, a line between communications and data processing was defensible.

The advent of distributed data processing, however, made the *Computer I* rules obsolete. With the minicomputer it became possible to process data accessed from a central computer memory. The new "smart" terminals were both data processors and communications devices. Smart networks, such as Telenet's packet switched service, were next.

It became clear that the Commission would be called upon more and more to make arbitrary decisions. These decisions were made more difficult by the desire to allow AT&T to participate in the evolving communications/data processing markets in spite of the *1956 Consent Decree*. It became clear that there was a very real danger that in

extending the grasp of regulation to allow AT&T to compete, its competitors would be ensnarled in needless regulation.

Moreover, AT&T was subjected to inevitable delays in introducing new products and services along the boundary line. Clearing the regulatory hurdle was only the first step. Appeals from competitors inevitably followed.

Thus, to deal with these problems, we have today's *Final Order* in the *Second Computer Inquiry*.

In brief, we have decided to free all of the new, enhanced services from Title II regulation. We accomplish this result by recognizing that the new products made possible by the convergence of computers and communications are outside the scope of Title II of the Communications Act. Indeed, the "rapid, efficient, nationwide" communication service "at reasonable prices" called for in Section I of the Act is most likely to be fostered by limiting our traditional regulatory activities to the basic transmission and switching activities that are the building blocks upon which the new products and services will be erected.

Just as I am convinced that this result is in the public interest, I am convinced that the Commission's charter is flexible enough to allow it.

I believe the line we draw today between basic and enhanced services is a sound one that will stand the test of time. It comports with marketplace and technological realities. Moreover, it does not affect the provision of basic service by any existing basic carrier, because AT&T does not offer enhanced services and GTE-Telenet already complies as a result of the *GTE-Telenet* decision. If future developments dictate a change, however, we will make it.

We began this proceeding in 1976 by recognizing that the boundary between data processing and communications that had been drawn five years ealier in our *First Computer Inquiry* was already obsolete. In our *Tentative Decision* last year we supported a distinction of a similar kind between simple customer premises telephone equipment that could continue to be regulated as a part of "basic service" and the more sophisticated equipment that embodies advanced technology and allows customers to do more than just engage in conversation.

The comments on the *Tentative Decision* convinced us that this distinction was no more useful than the computer/data processing dichotomy of the *First Computer Inquiry*. The realities of the marketplace and the likely evolution of technology simply do not support such a distinction.

Therefore, we have decided to deregulate all customer equipment, including the simple rotary dial telephone found in most homes.

State jurisdiction is preempted. Charges for equipment must be unbundled by all carriers. AT&T and GTE will be required to market customer equipment through a separate subsidiary. The scheduled date for deregulation is March 1, 1982. In the meantime a Federal-State Joint Board is to be convened to determine whether adustments in other exchange plan allocations may be warranted in light of the deregulation of customer equipment.

The deregulation of terminal equipment can only benefit consumers. Consumers have benefited by our 1968 *Carterphone* decision, which for the first time allowed home and business users to choose the supplier of their equipment. Deregulation will encourage even greater competition and innovation in telephone equipment.

We are taking steps to ensure that on the date customer equipment deregulation becomes effective, no consumer will be required to change his or her relationship with the local telephone company. Consumers can, if they wish, continue to be billed by their telephone company for existing equipment. It is our expectation and intent that a customer's total bill for communications equipment and service will not increase.

We will take up the issue of access charges in just two days time. That item is designed, in part, to solve many of the transitional issues related to terminal equipment deregulation. Over time, because of competition, we anticipate that consumers, in general, will pay less than they otherwise would and at the same time will have available a much broader array of products from which to choose.

We are also taking steps to ensure that competition in provision of this technology will be fair to all parties—to AT&T and GTE as well as their competitors. The ability of the two industry giants to cross-subsidize will be largely eliminated, because we are imposing some structural safeguards on them. But these safeguards are designed to be consistent with technological and marketplace realities so that the costs of these monopoly carriers will not rise.

We have carefully considered the costs and benefits of the structural separations we are imposing on AT&T and GTE. Many parties commented on this issue. On most issues the evidence in support of vertical integration advanced by AT&T was simply not persuasive. In those instances where it was persuasive, we do not require separation.

AT&T's subsidiary may, for example, rely on AT&T for administrative support and R&D not related to software. In other areas only AT&T has access to the detailed quantitative information needed to demonstrate economies from vertical integration. The fact that it was not offered by AT&T in this docket can only be used by us as evidence that those economies do not exist. It should be remembered that for all *existing* services, AT&T may deal with the general departments, Bell Labs, and Western Electric just as they do today.

It might be argued that our initial structural conditions should be loosened and then made more strict at a later date if conditions warrant. The problem with this approach is that the evidence of the need for stricter conditions might well be the corpses of competitors on the field of competition and higher ratepayer charges. We have proposed the minimum conditions necessary to prevent this result.

AT&T and GTE will, I am certain, have the incentive and ability to improve their basic networks. We do not prevent them from using any technology. Indeed, if AT&T wishes to be a supplier of the building blocks for enhanced services, it will be required to update its basic network. If it fails to do so, the competition we authorized in our *Domestic Satellite*[1] and *Specialized Common Carrier*[2] decisions will justifiably overwhelm AT&T. And if circumstances change, and we have not provided adequate flexibility to AT&T and GTE to meet them, we will not hesitate to revisit the structural conditions we impose.

Finally, I believe AT&T will be able to participate aggressively in markets where our traditional regulation is being withdrawn. I do not believe the 1956 Consent Decree prevents this. Participation by AT&T in these markets appears to be consistent with the language of the Decree and, given the structural safeguards we have imposed, it is certainly consistent with the spirit of the Decree. We will, of course, continue to subject the structural means we have adopted to allow AT&T to compete in these markets to regulatory scrutiny within the Communications Act. The public costs of a contrary interpretation of the Decree, requiring us to regulate these markets, and extending the government's reach into the data processing field, is far too high.

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[1] *Domestic Communications Satellite Facilities*, Second Report and Order, 35 FCC 2d 844 (1972).

[2] *Specialized Common Carrier Decision*, 29 FCC 2d 890 (1971).

The *Final Order* in the *Second Computer Inquiry* is a giant step forward for consumers and for the industry. Faced with the choice of solving a problem by either extending or reducing government regulation, we have chosen to reduce regulation. As a result, I believe the information age will arrive sooner, and I welcome the changes it will bring.

Concurring Statement of FCC Commissioner James H. Quello

In re: Docket No. 20828—"Second Computer Inquiry"

I believe that the Commission's approval of this *Final Order* was an important watershed in the process of moving the national telecommunications system into a new and exciting era. I must point out, however, that the *Final Order* is anything but final. It is a first step along the road to full participation of AT&T and GTE in the provision of "enhanced" telecommunications services. I share with the Chairman and my colleagues a commitment that the Commission will remain sensitive to the needs of the carriers who wish to participate fully in the competitive arena.

I am in full accord with the acknowledgment of the Staff that this is not a perfect document. I am confident that we can and will move closer to perfection as we all gain experience on this uncharted terrain. I regard as a keystone of the Final Order the premise that the Commission remains willing and able to change course should our perception of the future prove to be in error. I encourage the affected carriers to demonstrate where and how they perceive we have erred and to propose alternative courses where appropriate.

I share many of Commissioner Fogarty's concerns with regard to the degree of separation required and the extent to which information flow should be restricted. I believed that we, as regulators, bear a heavy responsibility to encourage the strongest possible competition in the provision of enhanced services. I suspect that—out of an abundance of caution—we have erected too many structural barriers. While I recognize the need to protect the monopoly service ratepayers and the competitive environment, I continue to be concerned that we might be to some extent inhibiting the potential for innovative and efficient service.

To strike a proper balance between barriers to anti-competitive behavior and encouragement of full and fair competition requires an infinitely delicate touch. It requires a confidence that I believe we can and will develop as we move forward. I expect that we will choose to abandon some of our heavier weapons as we proceed through the jungle trails and become more familiar with the environment. Once we begin to distinguish shadow from substance, our perceptions are likely to change.

I am gratified that the Commission has agreed to broaden the language of the Order to permit affiliates of the competitive entities to provide the necessary firmware in both network and customer premises equipment. That concession relieved some of my concerns about restricted information flow. Some concerns remain, however, and I would hope and expect that they, too, will be eased in the months just ahead.

I look forward to the inquiry regarding code and protocol conversion. I assume that we can resolve questions about the appropriateness of including such services within the basic network quickly and in the best interest of the public.

The public should expect to reap great benefit in the near future from a range of services including many as yet undreamed of. I believe that the dominant carriers—through their subsidiaries—must play an important role in reaching those expectations. Since the Commission chose to forbear overt Title II regulation and to rely instead upon the forces of vigorous competition in the provision of enhanced services, I feel confident that we will be able and willing to remove any remaining barriers to full and fair competition as the need is demonstrated.

Therefore, I concur.

Statement of Commissioner Abbott Washburn Approving Final Decision and Concurring on Degree of Separation With Respect to Software Development and Information Flow

Re Computer Inquiry II

I heartily approve today's action which will enable AT&T and GTE to actively participate in the dynamic new technologies of the future. The addition of their expertise, skill and strong tradition of service to these markets holds promise for significant public benefits. I fully realize that their entry also entails risks and I fully share the concerns set forth in today's Final Decision. In the area of information flows and joint software development I recognize that vertically integrated rate regulated carriers have opportunities to gain anticompetitive advantages by virtue of their monopoly status. However, I do not agree that the mere opportunity for abuse is sufficient to spark governmental intervention in business judgments of private competing parties. Any future evidence of anticompetitive activity or other abuse would be quickly brought to our attention by the parties who were harmed. These abuses would be reachable by either an antitrust court or this Commission.

While I would have preferred deferring the imposition of regulatory constraints on information flow and software development, I find assurance in the fact that despite its title today's decision is not "final" but rather is a step in an ongoing Commission process. I will welcome additional data submitted on reconsideration, or later, whenever there are changes to the determinations upon which today's decision is premised. Change is the keystone of progress and adaption to that change is the hallmark of enlightened regulation.

Statement of Commissioner Joseph R. Fogarty Dissenting in Part

In re Computer Inquiry II—Final Decision

This decision is indeed a "landmark" in the history of telecommunications. Perhaps no other decision since the passage of the Communications Act of 1934 and the creation of this Commission is so momentous in terms of impact on industry, regulation, and the public interest. It represents in principal part significant progress and achievement in resolving the critical issues of telecommunications development in the computer age which have now confronted us for a decade and a half. The essence of the basic/enhanced service dichotomy and resale structure, together with dominant carrier structural regulation and forebearance from regulation for the rest of the competitive participants, is, I believe, well-conceived and supported by sound policy determinations. The unbundling and detariffing of CPE is also premised on strong legal and policy considerations.

While I join the Commission's decision to this extent, I am constrained to question the adequacy of the Commission's consideration and determination in several critical areas. Central to my dissenting views is the concern that while the majority's decision purports to implement an almost pristine devotion to economic theories of "marketplace competition," its actual effect will be anticompetitive in terms of denying certain entities and, most importantly, the public they serve, the benefits of "full and fair"

competition. I am also concerned that in certain key areas the real-world consequences of the decision have not been perceived or anticipated in sufficient detail to give assurance that the public interest will be served in fact, as well as in theory, by these actions. I cannot emphasize too strongly that under our existing statutory mandate, it is the public interest—the interest of consumers and ratepayers—which must be our paramount concern and responsibility.

This proceeding was initiated because technological developments which have taken place since our decision in Computer Inquiry-I [1] have rendered the rule, which was adopted in that earlier proceeding, largely obsolete. The convergence of the technologies used to provide communications services, which we regulate, and data processing services, which have not been regulated, has continued at accelerated pace since 1971. The major issue now, as it was then, is the extent to which carriers subject to our jurisdiction can use computer and communications *technologies* to provide communications *service* or some combination of communications and data processing *service*.

The Former Rule

The former rule used a definitional structure to identify these network services:

(1) Remote Access data processing,
(2) Hybrid Data processing,
(3) Hybrid Communications, and
(4) Message and Circuit Switching.

Items (1) and (2) were exempted from regulation under Title II, whereas we found that even if computers are used for the provision of (3) and (4), such services nevertheless are subject to our jurisdiction. The rule also stated that any common carrier who wishes to provide services (1) and (2) can do so only under a fully separated subsidiary. The rule permitted a separate unregulated subsidiary to acquire communications facilities from the parent, but did not place any limitations upon the ownership of transmission facilities. The rule did not permit carriers which own computer facilities used in communications to "sell, lease, or otherwise make available" such facilities to any other entity. The rule did not address the situation of implicit computer leasing or sharing when a communications *service* using a computer switching facility is resold.

The old rule thus established a regulatory boundary based upon the dichotomy between data processing services (Items 1 and 2) and communications services (3 and 4) which was delineated by the definitional structure.

The New Rule

The former rule, having been overtaken by technological advance, created a climate of ambiguity which has limited the participation of providers of these services. The rule adopted in this *Final Decision* purports to "address these matters in a manner which gives clear direction to the marketplace, but without restricting the types of services that may be offered to consumers" (Para. 83). In addition, it seeks to extend this Commission's policy of encouraging meaningful competition in new technology areas by decreasing the regulatory burden where deemed appropriate.

This *Final Decision* presents a marked and substantial departure from the *Tentative Decision* and the Commission consensus which supported it. While I agree with a large part of this decision as a significant and well-conceived step in the right direction, I do not believe that the new rule has wholly succeeded in giving a clear direction to the marketplace. Moreover, from a public policy and consumer-oriented point of view, I believe that the new rule raises serious questions which unfortunately the *Final Decision* does not answer.

The Structural Solution

The new rule forebears from regulation of enhanced services and deregulates the provision of CPE. In order to compete in these markets, only AT&T and GTE are required to establish separate subsidiaries operating on an arm's length basis. Any other carrier now subject to our jurisdiction can offer these services without such restrictions. In addition, any AT&T and GTE subsidiary must acquire its facilities on a tariffed basis from an underlying carrier and thus operate as a resale entity. The resale subsidiaries are prohibited, furthermore, from owning their own transmission plant.

If we look further into the significance of these structural requirements, we can see that they impact AT&T more significantly than they do GTE. AT&T is a vertically integrated entity which is now the major supplier of interstate digital and analog transmission facilities. GTE is a less vertically integrated entity whose primary communications investment is in its local operating companies. GTE's separate Telenet subsidiary already obtains most of its digital transmission facilities from AT&T. It is of necessity a resale carrier.

In addition to the resale requirement, the following degree of separation is required of AT&T and GTE resale and CPE subsidiaries:

- Separate maintenance of records, accounting.
- Separate operating personnel and officers.
- Separate marketing.
- Separate installation and maintenance.
- No sharing of computer capacity.
- Limited joint software development.

Further,

- A subsidiary providing enhanced services and/or CPE may not provide communications hardware used in a network. Such subsidiaries must also deal at arm's length with any other affiliated equipment manufacturers.
- Marketing information made available to the subsidiary by the parent must also be disclosed to non-affiliated competitors.
- Information relating to changes in network design and technical standards must be disclosed to the public.

The necessity of separate subsidiaries for the provision of enhanced services and CPE was designated a key issue in the *Tentative Decision and Further Notice of Inquiry.* [2] In a separate statement, I indicated the concern that "[w]e have never assed the critical cost benefit trade-offs inherent in these various degrees of separation, nor have we examined the question of whether the economies which may flow to the ratepayer from vertical integration outweight potential abuses * * * Certainly, we owe it to the ratepayer to conduct this analysis before we reach a final decision in this inquiry." [3]

I regret that such an analysis has not been performed in reaching this decision. The Commission's *Final Decision* purports to find the "middle ground" of "compromise." However, the proposed specific degree of separation reflects an approach in which all assumptions pertaining to the benefits of separation are treated as givens

[1] *Regulatory & Policy Problems Presented by the Interdependence of Computer & Communications Services & Facilities*, 28 FCC 2d 291 (1970) (Tentative Decision); 28 FCC 2d 267 (1971) (Final Decision), *aff'd in part sub. nom. GTE Service Corp. v. FCC*, 474 F. 2d 724 (2d Cir. 1973), *decision on remand*, 40 FCC 2d 293 (1973).

[2] 72 FCC 2d 358 (1979).

[3] *Id.*, Separate Statement of Commissioner Joseph R. Fogarty, 72 FCC 2d 450, 452; *See also* GTE-Telenet Merger Authorization, 72 FCC 2d 111 (1979), Concurring Statement of Commissioner Joseph R. Fogarty, *Id.* at 194, *modified* 72 FCC 2d 516 (1979), Concurring Statement of Commissioner Joseph R. Fogarty in which Commissioners James H. Quello and Anne P. Jones Join, *Id.* at 531, *recon. denied* — FCC 2d — (1979), Concurring Statement of Commissioner Joseph R. Fogarty in which Commissioners James H. Quello and Anne P. Jones Join, *Id.* at —.

whereas any countervailing arguments pertaining to the benefits of vertical integration are treated as unproven hypotheses subject to considerable doubt. In particular, Paragraph 206 states:

> We have tried to assess the benefits and disadvantages of permitting or prohibiting each [of the important production and distribution functions] to be performed on an integrated basis. With those functions that weighed heavily in the process [i.e., those whose manipulation would produce the greatest gains to a dominant common carrier inclined toward anticompetitive activity]—the sharing of operating personnel or of facilities for example—we inclined toward disallowing integrated activities altogether; with those functions that seemed less decisive, the sharing of research and development, for example, we inclined toward assuming the risk vertical integration poses.

In other words, wherever substantial risk of anticompetitive abuse is perceived in vertical integration, the decision opts for complete separation. However, this calculus totally fails to give any comparative weight to the substantial benefits of vertical integration as against the competitive risks perceived. This calculus presents no rational cost/benefit balancing at all; instead, it indulges in wholly presumptive preference. In doing so, it egregiously ignores the Commission's paramount responsibility under its existing statutory mandate—that is, to protect and promote the public interest of the *ultimate consumer of telecommunications*, not merely the private interests of individual competitors.

In this connection, the main thrust of the degree of separation prescribed by the item appears to be directed at severing all joint and common costs. Yet it is precisely in joint and common costs that significant economies are realized. The *Final Decision* concedes that the benefits of separation are "not susceptible to precise quantification," but are expected to be substantial. The same courtesy of speculation is not extended to the benefits of vertical integration despite the volumes of industrial organization literature to the contrary.

For example, the case for innovation through vertical integration is no less "Problematical" or "ambiguous" than the case against, and yet it is the latter that is given a presumptive preference by the Commission's decision. In this regard, the decision generally cites Dr. Alfred Kahn's treatise on *The Economics of Regulation* in support of the propositions that " * * * while AT&T has mounted a significant defense of vertical integration, it does not take into account the likely contributions which competition can bring, and has brought, to innovation," and that "the generalized case for vertical integration by a monopolist is not without serious dangers, particularly where the company is rate-regulated and seeking to engage in unregulated activity." However, fuller reference to Dr. Kahn's work is more instructive:

> But, in the last analysis, the plunge into competition is inescapably a plunge into the unknown. The essense of the case of competition is that the potential performance of an industry is unknowable; it is the rivalry of independent suppliers that offers the greatest possible assurance that all economically feasible avenues for cost reduction and service innovation will in fact be explored and their results subjected to the impartial test of the marketplace.
>
> This is not, however, a sufficient guide to public policy in all times and places, as the institution of regulated public utility monopoly itself indicates.
>
> It remains possible that the manufacture of equipment for the central core of the natural monopoly, the communications network, is a "natural" part of that monopoly. *This writer would find it extremely difficult himself, in the face of the objective record of good performance and the qualitative arguments that provide at least a highly plausible basis for attributing those results in important measure to vertical integration, to recommend the plunge into the unknown.*[4]

It is also worthwhile to examine recent antitrust law doctrine as a guide to a proper resolution of the degree of separation issues presented. In *Berkey Photo, Inc.* v. *Eastman Kodak Co.*,[5] The Court of Appeals for the Second Circuit addressed the question of what restraints should be placed upon a monopoly firm's activities in non-monopoly markets. While the court concluded that a firm may not use its monopoly market position as a lever to create or attempt to create a monopoly in another market, it also held that—

> [A] large firm does not violate Section 2 [of the Sherman Act] simply by reaping the competitive rewards attributable to its efficient size, nor does an integrated business offend the Sherman Act whenever one of its departments benefits from association with a division possessing a monopoly in its own market. So long as we allow a firm to compete in several fields, we must expect it to seek the competitive advantages of its broad-based activity—more efficient production, greater ability to develop complementary products, reduced transaction costs, and so forth. These are gains that accrue to any integrated firm, regardless of market share and they cannot by themselves be considered uses of monopoly power.[6]

While we are here engaged in forging communications policy, not anti-trust law, the Commission's public interest standard and, indeed, this proceeding carry a heavy antitrust policy component. The Commission would be well-advised to pay closer attention to this fundamental teaching.

The separation requirements adopted by the Commission have been imposed ostensibly to prevent any possible subsidization of the competitive entities by the so-called "monopoly services," this theme appearing throughout the Commission's decision. It should be noted, however, that as a result of the *Execunet* decisions,[7] interstate MTS and WATS are no longer monopoly services. If the Commission's ultimate decision in the *MTS/WATS Market Structure Inquiry*[8] affirms the desirability of what is now the *status quo*, we can expect vigorous competition to develop in this "monopoly service" marketplace. Under these circumstances, it will make much less sense to invoke the cross-subsidy argument as the case in chief for the degree of separation required by this decision.

I am well aware of the serious continuing *potential* for cross-subsidization and predatory pricing implicit in the dominant carriers' position in the MTS/WATS market. However, I believe that it would be far wiser policy for the Commission to balance the potential for cross-subsidization and the potential benefits of vertical integration in favor of cost-accounting systems and continuing Commission surveillance, rather than in favor of the rigid and total separation approach adopted by the decision. Our primary purpose here should be to *reconcile* the competing policy values in such a way as to maximize the ultimate benefits accruing to the consumer public from *both* competition and vertical integration. While I recognize a dispute exists as to the efficacy of accounting mechanisms in checking cross-subsidization and anticompetitive abuses, I believe we have an obligation to try less drastic safeguards *first* where significant economies may be present. I concede that the task of developing adequate accounting systems is a heavy one; however, I believe the effort should be required before we sacrifice benefits

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[4] A. KAHN, THE ECONOMICS OF REGULATION (1971), 305 (Emphasis added).

[5] 603 F.2d 263 (1979), *cert. den.*, —U.S.—(Feb. 19, 1980).

[6] 603 F.2d at 276.

[7] *MCI Telecommunications Corp. v. FCC (Execunet I)*, 561 F.2d 365 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 1040 (1978); *MCI Telecommunications Corp. v. FCC (Execunet II)*, 580 F.2d 590 (D.C. Cir. 1978) *cert. denied*, 439 U.S. 980 (1978).

[8] *Notice of Inquiry and Proposed Rulemaking*, CC Docket 78-72, 67 FCC 2d 757 (1978); and *Supplemental Notice of Inquiry and Proposed Rulemaking*, 73 FCC 2d 222 (1979).

of vertical integration to which the public is entitled.

Our dedication to "full and fair" competition should mean that *all* competitors—not just the small and the weak—are entitled to compete as vigorously as possible. It is a curious kind of "pro-competition" policy that frees one class of competitor and hobbles another. To refer again to the *Berkey Photo* decision of the Second Circuit Court of Appeals:

> * * * it would be inherently unfair to condemn success when the Sherman Act itself mandates competition. Such a wooden rule * * * might also deprive the leading firm in an industry of the incentive to exert its best efforts. Further success would yield not rewards but legal castigation. The antitrust laws would thus compel the very sloth they were intended to prevent. We must always be mindful lest the Sherman Act be invoked perversely in favor of those who seek protection against the rigors of competition.[9]

The formulation and implementation of our pro-competitive *communications* policies should be no less consistent.

Network Services

The new rule abandons a definitional scheme based upon the communications service/data processing service dichotomy and, instead, establishes a dichotomy between basic communications services and enhanced services. The two problem areas which concern me here are the interactions between: (1) The definition of the basic/enhanced regulatory boundary,[10] and (2) the effect upon AT&T and GTE (and ultimately upon the consumer) of the structural and separation requirements—in particular those relating to: (i) the requirement that transmission facilities be acquired on a resale basis coupled with a prohibition against the ownership of these facilities; (ii) the various corporate separation requirements.

The enhanced service/basic service boundary definition would preclude AT&T and GTE from offering protocol and code conversion in conjunction with basic service, except under the resale and corporate separation principles. It is not clear, however, whether certain other computer-provided enhancements, such as multiple addressing, which are related solely to the communications process, would be permitted to be offered in conjunction with a basic service. In this respect, § 64.702(a) of the new rule is inadequate. The relevant paragraphs of the *Final Decision* (86–118) not only do not shed much light but also contain contradictions. For example, Paragraph 95 classifies message switching as a basic service; Paragraph 97 classifies one of its intrinsic features, "mail box," as an enhanced service. The classification of "mailbox" as an enhanced service seems, however, to be in conflict with the definition of enhanced service as set forth in the proposed § 64.702(a). Mailbox can be provided without acting upon either the "format, code, content, protocol, or similar aspects of the subscriber's transmitted information." Nor does mailbox provide a subscriber with "additional, different, or restructured information."

With further regard to proposed § 64.702(a), I think that this provision somewhat arbitrarily removes protocol and code conversion from the ambit of basic service. It is difficult for me to see why protocol or code conversion is an *enhancement* to a communications service. It is, rather, as much a necessity to the provision of any communications service at all, for customers who happen to have disparate terminals, as is the presence of a local loop. In this connection, I endorse the proposal, as set forth in Paragraph 99 of the Commission's *Order*, to consider issuance of a Notice of Inquiry to examine the matter of permissible levels of protocol conversion. This proposal should be a commitment.

A possible serious consequence of the new regulatory boundary could be its effect upon the provision of inexpensive, nationwide digital core network service by underlying carriers. For example, the proposed AT&T ACS service, even in rudimentary form, would have to be offered as an enhanced service. This could lead to two problems: first, significant cumulative diseconomies could result if such a system were not provided on a nationwide core network, but had, instead, to be replicated on a separate resale network. In fact, these restrictions might even discourage the construction of a nationwide, digital core network. Second, an unfavorable interpretation of the Consent Decree would totally preclude AT&T from offering these services even as an enhanced carrier.

In light of these observations, I think that it is critical that the Commission: (1) rethink the matter of the definitional boundary; and (2) clarify the definition of enhanced service—in order to resolve ambiguities. Terms such as "format," "content," "similar aspects of subscriber's transmitted information," and "restructured information" are not defined—either in the Appendix or in the text; nor are sufficient examples given to illuminate their meaning.

I also believe that we should re-examine the prohibition relating to the procurement of software and software development. I concur with the statement in Paragraph 244 that the resale subsidiary may purchase, from the underlying carrier and its affiliates, the software and software development which is intrinsic to CPE and other hardware used in the provision of enhanced network services. The rationale for maintaining a prohibition against the provision of applications program software to the resale entity, and the provision of *any* software service by the resale subsidiary to its affiliates, evades me. Given that any kind of hardware, as well as operating system software, can be purchased by the resale entity, the arguments set forth in Paragraph 243 are not convincing.

Provision of Customer Premises Equipment (CPE)

The *Final Decision* in Computer Inquiry-I did not address the provision of CPE, even implicitly, because of the rudimentary state of the art of CPE technology in 1971. Subsequently, the attempt by AT&T to provide the DataSpeed 40/4 terminal under tariff, coupled with the untariffed marketing of a similar device by IBM (IBM 3270), introduced the issue of whether or not the provision of so-called "smart" terminals by a carrier, constitutes an unregulated data processing service within the context of § 64.702 of the rules. Since little regulatory guidance in this matter could be provided by that rule, the Commission was forced to make an *ad hoc* decision in the DataSpeed 40/4 matter (ruling that DataSpeed 40/4 is a communications device).[11] At that time, we quite properly incorporated the terminal issue into the then on-going Computer Inquiry II.

The Commission's decision here will now require the provision of all CPE—from black telephones to super terminals—on a deregulated basis. Carriers may provide these only on an un-bundled, de-tariffed basis. In addition, AT&T and GTE may only offer CPE through separate subsidiaries.

I agree in principle with the position reached on CPE. However, I am not sure that the Commission has addressed properly a serious problem which might ensue—the upward rate pressures on local exchange rates due to the removal of terminal equipment revenue requirements from the separations process.

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[9] 603 F.2d at 273.

[10] A vertically integrated entity could offer basic service within that corporate structure subject to Title II regulation. Thus the application of the definition determines the circumstances under which the separation requirements will be invoked.

[11] *DataSpeed 40/4 Order*, 62 FCC 2d 21 (1977).

The Order would require all interstate revenue requirements now attributable to CPE to be removed from the separations process by March 1, 1982. By that time, if local exchange rates are to remain un-affected, it will be necessary to have arrived at some remedial action to compensate for the loss of toll service revenue contributions. This action of the Commission will have a domino effect in the state jurisdictions. The CPE investments of the local operating companies will also have to be removed from the *interstate* rate base. Local operating companies will thus lose toll service revenue contributions from both jurisdictions. The amount involved is formidable. In 1978, the Bell System total revenues attributable to the provision of CPE were approximately $4.4 billion. Of this amount, $1.2 billion came from the assignment of CPE costs to the intrastate jurisdiction. The remainder came from the assignment of costs to the intrastate toll jurisdiction and from local service revenues. Under terminal deregulation, a local operating company would, in the short run, probably retain the local service revenue component. On the other hand, the carrier would no longer be able to obtain the interstate and intrastate toll contributions. The loss of these toll service contributions will, in most circumstances, lead to an upward pressure on local exchange rates.

It should be noted that this effect will be most pronounced in those states (e.g., New York, California, and others) where the state commissions require that CPE be priced to the local exchange user at 100 percent of its revenue requirement. Under these circumstances, the toll pool revenues attributable to these terminals can be used as a direct subsidy to reduce local exchange rates by the amount of these attributable toll revenues.

The disallowance of CPE toll revenue requirements will also result in a *reduction* in toll rates equivalent to the upward pressure on local exchange rates. This occurrence does not, however, have a break-even impact on all consumers. Those consumers who make infrequent toll calls will indeed see higher total monthly telephone bills. Those consumers who now are heavy users of toll service will see lower total telephone bills.

In recognition of this possible effect, the *Final Decision* would have the Commission convene a Joint Board to investigate the possibility of remedial action involving changes in the separations procedures. However, I see a substantial question as to whether such a Board could lawfully re-insert these lost revenue requirements into the interstate pool by arbitrarily changing the allocation of the remaining non-traffic-sensitive plant.[12] The record built in the Joint Board proceedings in Docket Nos. 20981, 21263, and 21264, as well as actions already taken by those Joint Boards, indicates that efforts to rely upon a separations-oriented approach to counteract potential or actual economic harms may be fruitless.[13]

I therefore believe that the scope of the proposed Joint Board should be broadened to include the consideration of remedies based on access charges and exchange maintenance fund concepts—or, alternatively, that this issue be specifically incorporated into our access charge proceeding in FCC Docket No. 80–198.

The Consent Decree

I believe the Commission has set forth a construction of the 1956 AT&T/Department of Justice (DOJ) Consent Decree which is persuasive and compelling from the standpoint of *both* antitrust law and telecommunications policy. The fact remains, however, that if this interpretation does not prevail, it is possible that AT&T would be precluded from providing either enhanced services, or CPE, or both, given the new industry structure which is now prescribed. Here, it must be observed that the comments of DOJ and, to a certain extent, AT&T, who are the parties to the Decree, dispute our interpretation. The Commission's decision acknowledges the "uncertainty" of the proferred interpretation, but states that removal of the uncertainty rests primarily with AT&T, should AT&T deem it necessary.

This assignment of responsibility for the impact of the Consent Decree is technically correct, as far as it goes. However, I believe in a more fundamental sense the larger *public interest* in a *fully* competitive telecommunications marketplace would be grossly disserved if AT&T were estopped from being an active and full participant in that competitive marketplace. In a real sense, these implications are *our* responsibility. The Commission's decision takes some pains to observe that an adverse Consent Decree ruling will trigger a re-evaluation of the structure, terms, and conditions for telecommunications competition which are now prescribed. And, the prospect for the clearest possible resolution of the critical Consent Decree issues—that is, for legislation—may be brightening. Nonetheless, we must address the situation as it now exists and be guided by our own interpretation of our existing public interest mandate. Therefore, I believe the Commission must foresee and minimize the risk of uncertainty to the fullest extent possible, and to this end, I would: (1) Give AT&T the option of tariffing in the provision of enhanced network services, or modify the definition of enhanced service to broaden the scope of basic service, and (2) give AT&T the option to tariff terminal equipment which would be supplied to basic services or tariffed enhanced services.

In summary, the following points have not been adequately addressed and treated by the majority's decision:

(1) Without a more adequate cost/benefit analysis, there is no assurance that the proposed separate subsidiary structure, with the recommended degree of separation and information flow requirements, will not force the public to obtain enhanced services and CPE at substantially higher cost than if such services and equipment were provided by more vertically-integrated entity;

(2) The deregulation of CPE may lead to significant upward pressure on local exchange rates, pressure which may not be effectively alleviated by a Joint Board established to investigate separations changes only;

(3) The proposed industry structure and deregulation could totally preclude AT&T from offering either CPE or enhanced services if the proposed interpretation of the Consent Decree is not accepted; and

(4) The basic/enhanced dichotomy may be a serious disincentive or impediment with respect to the construction of a nationwide digital core network; and we may be faced with the prospect of a myriad of interconnected sub-networks, owned by many entities, with no one entity in a position to assert overall technical planning authority.

I am certain that the Commission will have the opportunity—if not also the duty—to reconsider the *Final Decision* and to attend to these deficiencies. Specifically, I believe the Commission should consider the following alternatives:

(1) The degree of separation proposed by the item for the enhanced service/CPE subsidiaries should be relaxed in favor of cost-based, fully-compensatory, auditable contract/accounting systems with respect to installation and maintenance and software development. Subject to resale and accounting requirements, sharing of transmission computer capacity should be permitted. The separate marketing requirement should make an exception for

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[12] A change in the allocation of *traffic sensitive plant* might be inconsistent with the principles of *Smith* v. *Illinois*, 282 U.S. 133 (1930), since such plant is now allocated under unambiguous relative use principles.

[13] *See Impact of Customer Provision of Terminal Equipment on Jurisdictional Separations*, 63 FCC 2d 202 (1976); *Puerto Rico/Virgin Islands Rate Integration*, 64 FCC 2d 1033 (1977); and *Hawaii/Alaska Rate Integration*, 64 FCC 2d 1036 (1977).

institutional advertising and subject to the resale requirement, the subsidiary should be allowed to market the facilities of the parent when they are combined with the services of the subsidiary. These modifications would permit the more efficient and competitive provision of CPE and enhanced services by carrier subsidiaries to the benefit of the consumer public, while at the same time guarding against potential cross-subsidization or other anti-competitive conduct;

(2) The jurisdictional impacts of the proposed CPE deregulation (unbundling and detariffing) should be examined in detail. In particular, we should indicate a better understanding of the possible limitations of the traditional separations and settlements procedures in dealing with these impacts and whether broader mechanisms, such as exchange maintenance fund concepts, are feasible and available to the Commission;

(3) Carriers and their subsidiaries should be afforded the option of continued tariffing of enhanced network services and provision of CPE, on an unbundled basis, in conjunction with basic service or enhanced services. This modification would assure that an adverse ruling on our Consent Decree interpretation will not preclude AT&T from offering ordinary, as well as sophisticated, CPE; and

(4) The definition of enhanced services should be clarified to resolve the ambiguity in the basic/enhanced dichotomy. The ambit of "basic" services should be expanded to include code conversion, protocol conversion, and other functions that are exclusively related to communications service. This alternative would allow the option of encouraging the formation and development of a nationwide, centrally planned, and economical digital core network; it would also ensure against an adverse ruling on the proposed Consent Decree interpretation precluding AT&T from offering sophisticated digital network services.

As a final matter of not insignificant moment, I believe that the adopted effective date of March 1, 1982 for CPE deregulation and for the establishment of AT&T and GTE separate subsidiaries is unrealistic in the extreme. The necessary corporate, financial, and logistical transitions will be highly complicated and difficult enterprises. For example, the potential impact of the decison on over one million AT&T and GTE employees in terms of wage structure, benefits, pension rights, seniority and collective bargaining rights is substantial and has not been addressed thus far by the Commission. Similarly, I expect that the impact of the proposed CPE de-tariffing on the interests of bondholders will raise significant legal issues.

Obviously, the Commission must give the parties an opportunity to address the several substantial problems which remain unresolved before the Second Computer Inquiry can be terminated.

To the extent of these separate views, I dissent.

Separate Statement of Commissioner Tyrone Brown

Re "Second Computer Inquiry" (Docket No. 20828)

The decision and order we adopt today is probably the most important the Commission will issue during my time here. There have been days during the past 2½ years when I feared that this agency lacked the machinery to reach a final decision in this very complex proceeding. I compliment the staff of our Common Carrier Bureau and the other offices that participated for presenting the Commission with an approach and order that will, in my judgment, serve the long-term interests of the two "dominant" carriers, AT&T and GT&E, the interests of their competitors in the enhanced services and equipment markets, and the interests of the consuming public.

1. *What does today's decision accomplish? First,* it establishes a clear line of demarcation between "basic" communications (or pure transmission) services and enhanced "communications" services, permitting traditional common carriers and their competitors in new enhanced offerings to know beforehand whether their service will be regulated by the FCC. *Second,* our decision, after a transition period, provides for uniform deregulation of customer premises equipment—ranging from the "plain old telephone" to the smartest of the "smart terminals"—so that the marketplace rather than this agency will decide what equipment and which providers will attract the consumer's dollars. *Third,* the decision frees AT&T to compete, on a nontariff basis, with other regulated and unregulated firms in the rapidly growing enhanced services and equipment markets, so long as AT&T's offerings fall within the broad subject-matter jurisdiction of this agency. *Fourth,* the decision requires AT&T and GT&E each to establish a separate subsidiary for their enhanced services and equipment offerings, to assure customers of their monopoly services, and their competitors, that monopoly ratepayers will not fund their entry into the enhanced markets.

2. *Do we possess authority to act as proposed?* I recognized that today's decision involves novel interpretations at the outer boundaries of the Communications Act; we pour new wine into an old bottle. It is a measure of the wisdom of Congress that in 1934 we were given a mandate that has been sufficiently broad to permit a flexible approach to regulating a field that has been marked by an ever-quickening pace of technological innovation. Recent proposals that have come before Congress point in the same direction as our decision. Without the benefit of the debate that has occurred in the House and Senate Communications Subcommittees over the past two years, I doubt that the FCC would be ready to act. I would welcome congressional confirmation—or modification—of any aspect of our decision, particularly our construction of the 1956 Consent Decree. Without such confirmation, full implementation of our decision may be delayed by years of litigation. In any event, I wish to emphasize that my vote in favor of the decision rests in substantial part on the view that, as a legal matter, regulated carriers including AT&T can compete in unregulated fashion in the enhanced services and equipment markets.

Our action today raises several legal questions. Perhaps the most fundamental step we take is the assertion that, with respect to "communications", our subject matter jurisdiction is broader than the sum of our jurisdiction under Titles II and III of the Communications Act. This approach is not new. It was taken—and affirmed by the courts—when we asserted jurisdiction over cable television systems. Similarly, today we are saying that "communications", when offered by an underlying carrier, though clearly within our subject-matter jurisdiction, need not be regulated as though such services were Title II offerings. I believe we possess sufficient discretion, based on an exhaustive record, to make this judgment.

A related issue involves our construction of the 1956 Consent Decree as it concerns the provision of Customer Premise Equipment. To date, we have asserted jurisdiction over, and required tariffing of, CPE on the theory that such equipment was regulable as an "instrumentality" incidental to transmission services within the meaning of Sections 3(a) and 3(b) of the Act. Our decision to require the unbundling and detariffing of such equipment should not be read as a retreat from our belief that CPE when offered by a carrier is regulable by this Commission. Nor do I view our decision not to require tariffing to mean that such equipment is not "subject to" our regulation. Definitive interpretation of the Consent Decree must be left to the Court that issued that decree. However, as a matter of communications law, we affirm that CPE is within our subject-matter jurisdiction. We have chosen not

to regulate CPE through tariffing, but it remains subject to our regulation.

3. *Why the distinction between basic and enhanced services?* For 14 years, this agency has been struggling with "regulatory and policy questions that appeared to be emerging from the growing interdependence of computers and communications services and facilities." *First Computer Inquiry, Tentative Decision,* 27 FCC 2d 291 (1970). For most of that time, we have attempted to draw a line between two classes of services which possess elements of both communications and data processing. Theoretically, on one side of the line, to be regulated under our tariff authority, we have placed "communications" services in which the communications component was the most significant; on the other side we have placed services in which the communications component was only "incidental."

This attempt at line-drawing, while theoretically the soundest approach, simply has not worked in practice. Under the regime we adopted in the *First Computer Inquiry,* we will be forced to adjudicate each major new offering of enhanced services on an *ad hoc* basis. The results would be that firms that heretofore have been free of FCC regulation would fall under our purview, that much of the battle among competitors will take place before us rather than in the marketplace, and that this agency's processes would to a large extent determine the timing of introduction of innovative offerings. Faced with this prospect, I believe the dominant carriers, their competitors and the general public will be much better served by the relatively bright line we draw today between basic transmission services on one side and all enhanced (or hybrid services) on the other.

4. *Why deregulation of terminal equipment?* For all practical purposes, natural monopolies exist today in local telephone *transmission* services. However, we have posited, at least since our *Hush-A-Phone* decision, 22 FCC 112 (1957), that meaningful competition is possible in the provision of terminal equipment. Ensuing years have proven the hypothesis. Rate-based regulation is at best a costly and cumbersome substitute for competition and consumer sovereignty. Given the actuality of competition as it exists today and the potential for much greater competition in the future, there is no longer a reason for the Commission to permit the joint tariffing of services and equipment, especially considering the risks of cross-subsidization that such joint tariffing entails. Under our interpretation of the 1956 Consent Decree, AT&T gains authority to compete for any enhanced equipment customer. But, importantly, consumers will be in a better position than they are today to determine what equipment offerings will best serve their needs. Finally, I am confident that during the transition period the Joint Board of FCC and State regulators will be able to arrive at a separations approach that will not mean a significant increase in telephone bills for any customer as a result of deregulation of terminal equipment.

5. *Why permit regulated carriers to provide unregulated enhanced services?* AT&T, GT&E and 1500 smaller telephone companies have cooperated to assemble an integrated communications network that I consider to be a wonder of the modern world. For its universality, its versatility and its economy, our telecommunications network is unmatched by any in the world. I believe it would ill-serve the public interest if AT&T, GT&E or any other participant in the network were denied the opportunity and the challenge of bringing their financial resources, their tradition of universal service and importantly their in-place research capabilities to the rich new communications field.

6. *Why separate subsidiaries for AT&T and GT&E?* While permitting AT&T and GT&E (and carriers under their direct or indirect common control) to provide enhanced services, we are requiring them to do so only through a separate subsidiary on a resale basis. In addition, we are prohibiting AT&T and GT&E from marketing, installing, servicing or maintaining CPE except through a separate corporate subsidiary, which itself may not provide transmission equipment. These steps are taken to protect the monopoly ratepayer from the potential evils of cross-subsidization and anti-competitive conduct. They are taken only with respect to AT&T and GT&E because they are the only two communications firms now in a position to exercise monopoly power in the national enhanced services markets. Given the ineffectiveness of accounting measures standing alone to monitor anti-competitive practices, the need for a separate subsidiary, in addition to accounting requirements, is obvious.

On the other hand, I recognize that we have little experience on which to structure such separate subsidiaries. For this reason, I would be surprised if, either by way of reconsideration or at a later date, the Commission does not make some adjustments in the separation conditions in the light of actual experience.

Further, in this connection it should be kept in mind that our action today is taken in the context of today's technology and the record now before us. The Commission has the ability and the obligation to respond to changing circumstances with a fresh examination of our policies and the means we have chosen to implement them. Congress intended this agency to be flexible in its responses under the broad mandate of the Communications Act. I am committed to this flexible and pragmatic approach to this rapidly evolving area of the law.

Statement of Commissioner Anne P. Jones Dissenting in Part

In re Second Computer Inquiry Docket No. 20828

Because I firmly believe that it is in the public interest that AT&T and GT&E be allowed to participate actively in the enhanced services marketplace, I agree with much of today's action by the Commission, including the basic decision to forebear from directly regulating the provision by Title II carriers of enhanced services and customer premises equipment.

To my mind the arguments advanced in this proceeding as to the stultifying effect of direct regulation of these highly competitive markets and the lack of any need for such regulation in the public interest are convincing. I am also persuaded that, in the absence of adequate accounting mechanisms to ensure that competition in these markets by AT&T and GT&E does not involve unlawful cross-subsidies from their monopoly activities, the separate subsidiaries requirement is justified. I am not, however, satisfied that the degree of separation imposed on these companies is justified, and I dissent for that reason.

In its discussion of arguments made by AT&T, GT&E and others as to the virtues of vertical integration, the Commission seems to vacillate. For example, argument that the Bell System's integrated structure contributes to its role in innovative research and development is dismissed in paragraph 204 as "very problematical." On the other hand, it seems to be conceded in paragraph 223 that the provision of certain complementary goods or services by the same company may generate "efficiencies in the form of reduced operating expenses or other legitimate cost savings" and that consumers of telecommunications products and services "should not be required to

forego such economies unless they are clearly outweighed by other costs which joint operation would impose." I suspect that this vacillation results from the fact that we do not really know to what extent, if any, the generally excellent performance of AT&T and GT&E results from their high degree of vertical integration. For my part, I am inclined to give some credence to their arguments on this point.

On the assumption that operation by AT&T and GT&E on a vertically integrated basis may benefit both them and their customers, I believe we should not now impose on their enhanced services and CPE subsidiaries the degree of separateness contained in today's decision. Two of the limitations which seem especially problematical are those on sharing of computer facilities and joint design and development of software. As to software, I agree with Commissioner Fogarty that there is no demonstrated rationale for denying a subsidiary the option of purchasing software development from a parent in addition to the options of performing it in-house. As to computer facilities, I find persuasive NTIA's argument that "separate computer facilities will be pure duplication" and that "inability to use computer facilities to provide enhanced services during off-peak hours could result in a great deal of wasted processing capacity."

I understand the argument that the limitations established by today's decision are required by the difficulty of correctly identifying and allocating costs involved in the proscribed activities. Since, however, it is precisely the difficulty of identifying and allocating such joint and common costs which underlies the separate subsidiary requirement, I fail to see why both that requirement and the prohibitions are necessary. In my view, the better and less costly approach would be to impose the barest minimum of prohibitions while testing the adequacy of the separate subsidiary requirement. If experience demonstrates that additional safeguards are needed, prohibitions or limitations on joint and shared activities could then be added based on experience rather than conjecture.

In addition to my objections to the separations requirement, I have reservations about a number of other aspects of today's decision. Of these I will note here only my strong reservation concerning the March 1, 1982, deadline established for compliance with the requirement. It seems to me that 23 months is an unreasonably short period of time to allow for all that must be done to implement today's decision, including corporate reorganization by the carriers and the necessary Joint Board actions. It may be that the deadline can be met, but I doubt it, and I hope we will not be unduly insistent on it.

Despite my objections to portions of today's decision I am, as I have indicated, in agreement with much of it, and certainly with its basic purposes. I am also gratified by the express recognition in paragraph 200 of the decision that "some of these decisions may be mistaken" and that they will be reconsidered if experience teaches that we have "incorrectly struck the balance between the asserted danger of carrier participation and the supposed efficiency losses brought about by the conditions." If I am correct that some of today's decisions are indeed mistaken, I assume that we will not be slow to reexamine and correct them.

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INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1021, 1022, 1131, 1131a

Consumer Assistance Oriented Compliance/Enforcement Program

AGENCY: Interstate Commerce Commission.

ACTION: Final rule, nomenclature change.

SUMMARY: The Interstate Commerce Commission is issuing amendments to 49 CFR Part 1021, "Administrative Collection of Enforcement Claims," 49 CFR Part 1022, "Cooperative Agreements with States," 49 CFR Part 1131; "Temporary Authority Applications under Section 210a(a) of the Interstate Commerce Act" and 49 CFR Part 1131a, "Temporary Authority Applications under Section 311(a) of the Interstate Commerce Act." These amendments are necessary because of the merging of the Bureau of Operations and the Bureau of Investigations and Enforcement into the Office of Consumer Protection. Title 49 of the Code of Federal Regulations will be revised to reflect the name change.

EFFECTIVE DATE: May 18, 1980.

FOR FURTHER INFORMATION CONTACT: Robert S. Turkington, Associate Director, Office of Consumer Protection, Interstate Commerce Commission, Washington, D.C. 20423; (202) 275-7849.

SUPPLEMENTARY INFORMATION: On April 4, 1980, the Commission voted to merge the Bureau of Operations and the Bureau of Investigations and Enforcement into a single organizational entity to be known as the Office of Consumer Protection. The reorganization will simplify lines of authority for the field and regional staff and will allow effective implementation of a consumer assistance oriented compliance/enforcement program. The new office will retain all of the functions of the two predecessor bureaus.

The amendments set forth below reflect the change of name of the new office.

Prior public notice and opportunity for hearing have been dispensed with because this document deals with internal organizational changes and does not affect the rights of the public. Therefore, comment upon the notice of name change is unnecessary.

PART 1021—ADMINISTRATIVE COLLECTION OF ENFORCEMENT CLAIMS

1. Section 1021.3 is revised as follows:

§ 1021.3 Enforcement collection designee.

The Director, Office of Consumer Protection, Interstate Commerce Commission, is the Commission's designee to take all necessary action administratively to settle by collection, compromise, suspension or termination, enforcement claims within the contemplation of the Federal Claims Collection Act of 1966.

(Sec. 3, 80 Stat. 309; 31 U.S.C. 952)

PART 1022—COOPERATIVE AGREEMENTS WITH STATES

2. Section 1022.4 is revised as follows:

§ 1022.4 Exchange of information.

States furnishing information to Interstate Commerce Commission. Information that comes to the attention of a duly authorized agent of the State in the course of his official duties of examination, inspection, or investigation of the property, equipment, and records of a motor carrier or others, and that is believed to be in violation of any provision of the economic laws of the United States concerning highway transportation or the regulations of the Interstate Commerce Commission prescribed thereunder, shall be communicated to the Regional Director of the Interstate Commerce Commission's Office of Consumer Protection.

3. Section 1022.5 is revised as follows:

§ 1022.5 Requests for assistance.

(a) *State request for Interstate Commerce Commission assistance.* Upon written request of the appropriate State authority, the Office of Consumer

Protection Regional Director of the Interstate Commerce Commission for that State shall, as time, personnel and funds permit, obtain evidence for use by said State in the enforcement of its laws and regulations concerning unauthorized or otherwise illegal motor carrier operations. Evidence obtained in this manner shall be transmitted to the appropriate State authority together with the name and address of an agent or employee, if any, have knowledge of the facts, who shall be made available when necessary to testify as a witness in an enforcement proceeding or other action.

(b) *Interstate Commerce Commission request for State assistance.* Upon written request from a Regional Director of the Interstate Commerce Commission's Office of Consumer Protection, the appropriate State authority shall, as time, personnel, and funds permit, obtain evidence in the State for use by the Interstate Commerce Commission in its enforcement of the economic laws and regulations of the United States concerning highway transportation. Evidence obtained in this manner shall be transmitted to the Regional Director of the Interstate Commerce Commission's Office of Consumer Protection, together with the name and address of an agent or employee, if any, having knowledge of the facts, who shall be made available when necessary to testify as a witness in an enforcement proceeding or other action.

4. Section 1022.6 is revised as follows:

§ 1022.6 Joint examination, investigation or inspections.

Upon agreement by the Regional Director of the Interstate Commerce Commission's Office of Consumer Protection and the appropriate State authority, there will be conducted a joint examination, inspection, or investigation of the property, equipment, or records of motor carriers or others, for the enforcement of the economic laws and regulations of the United States and the State concerning highway transportation. The Regional Director of the Interstate Commerce Commission and the appropriate State authority shall decide as to the location and time, the objectives sought, and the identity of the person who will supervise the joint effort and make the necessary decisions. Any agent or employee of either agency who has personal knowledge of pertinent facts shall be made available when necessary to testify as a witness in an enforcement proceeding or other action.

5. Section 1022.7 is revised as follows:

§ 1022.7 Joint administrative activities related to enforcement of economic laws and regulations.

To facilitate the interchange of information and evidence, and the conduct of joint investigation and administrative action, the Regional Director of the Interstate Commerce Commission's Office of Consumer Protection and the appropriate State authority shall, when warranted, schedule joint conferences of staff members of both agencies. Information shall be exchanged as to the nature and extent of the authority and capabilities of the respective agencies to enforce the economic laws of the State or of the United States concerning highway transportation. The Interstate Commerce Commission and the State (or appropriate State authority) shall use their best efforts to inform each other of changes in their rules and regulations.

(Sec. 1, 49 Stat. 546 as amended, 550, as amended; 49 U.S.C. 304, 305)

PART 1131—TEMPORARY APPLICATIONS UNDER SECTION 210a (a) OF THE INTERSTATE COMMERCE ACT

6. Section 1131.4(c)(1)(ii) is revised as follows:

§ 1131.4 [Amended]

* * * * *

(c) * * *

(i) * * *

(ii) Where a fitness proceeding has been instituted against a carrier applicant, or where the Office of Consumer Protection has been ordered to intervene in a pending proceeding because the applicant's fitness is in issue, and no final decision has been entered, temporary authority shall normally not be denied, unless a fitness flag has been raised against applicant in accordance with the Commission's Fitness Flagging Procedures, 49 CFR Part 1067. Notwithstanding the existence of the fitness flag, an applicant may attempt to show that there is no nexus between the issues raised in the flagged proceeding and in the involved application for temporary authority or that other good cause exists for granting temporary authority.

(49 U.S.C. 10321, 5 U.S.C. 553)

PART 1131a—TEMPORARY AUTHORITY APPLICATIONS UNDER SECTION 311(a) OF THE INTERSTATE COMMERCE ACT

7. Section 1131a.2(a) is revised as follows:

§ 1131a.2 [Amended]

(a) *General.* All temporary authority applications are filed at, and processed by, the Commission's Regional Offices. The filed staff of the Commission's Office of Consumer Protection conducts preliminary reviews of applications for temporary authority and transmits recommendations as to their disposition to the decisionmaker. The Office's Regional Offices maintain records of authorized carriers with headquarters in their region and of their operating authorities. Staff members are available for consultation and to give assistance on the obtaining of water carrier service, and guidance in the preparation of temporary authority applications and related supporting material, and in making rate and other required filings. Regional and field offices will furnish copies of necessary forms upon request.

(49 U.S.C. 10321, 5 U.S.C. 553)

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-14674 Filed 5-12-80; 8:45 a.m.]

BILLING CODE 7035-01-M

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49 CFR Part 1033

[Directed Service Order Nos. 1453 and 1456; Supplemental Orders No. 2]

St. Louis Southwestern Railway Co.—Directed Service—Chicago, Rock Island & Pacific Railroad Co., Debtor, (William M. Gibbons, Trustee) Between Santa Rosa, NM, and St. Louis, Mo. and Between Memphis, Tenn. and Fordyce, Ariz; Petition To Fix Compensation for Use of Tracks—Tucumcari and Memphis-Fordyce Lines

Decided: April 25, 1980.

AGENCY: Interstate Commerce Commission.

ACTION: Supplemental Order No. 2 to Directed Service Orders Nos. 1453 and 1456; supplement to final rule.

SUMMARY: Pursuant to 49 U.S.C. 11125, the Commission authorized the St. Louis Southwestern Railway Company (SSW) in Directed Service Orders Nos. 1453 and 1456 to provide service as a "directed rail carrier" (DRC)—without federal subsidization under 49 U.S.C. 11125(b)(5)—over the "Tucumcari Line" and the "Memphis-Fordyce Line" of the Chicago, Rock Island & Pacific Railroad Company, debtor (William M. Gibbons, Trustee) ("Rock Island" or "RI").

Both directed service orders provide that the SSW and the Trustee negotiate terms of compensation for use of RI lines and facilities. In the event the parties should be unable to reach

agreement, we reserved the right to set reasonable terms of compensation.

SSW has filed a petition asserting that it has not been able to reach agreement with the trustee regarding terms of compensation and requesting that the Commission determine and fix, or deny, compensation.

We conclude that reasonable compensation for use of the Memphis-Fordyce Line and related facilities under DSO No. 1456 should be calculated in accordance with the formula established in Finance Docket No. 29305, *St. Louis-San Francisco Railway Company—Compensation for Use of Terminal Tracks—Chicago, Rock Island & Pacific Railroad Company, Debtor (William M. Gibbons, Truestee),* —— I.C.C. —— (decided April 7, 1980), 45 FR 25401 (April 15, 1980), (*Frisco Compensation* case). For the Tucumcari Line, reasonable compensation is rent based on the agreed sale price of the property and, producing a rate of return 2 percent below the yield on 90-day U.S. Treasury bills less expenditures which preserve value of the property (up to 50 percent of the total rental payment).

DATES: *Effective Date:* This decision shall be effective on its service date.

Expiration Date: Unless otherwise modified by the Commission, this decision will expire at 11:59 p.m. (Central time) on May 31, 1980.

FOR FURTHER INFORMATION CONTACT: Richard J. Schiefelbein (202) 275–0826 or Joel E. Burns (202) 275–7849.

SUPPLEMENTARY INFORMATION:

Decision of the Commission

Background

The Rock Island has been in bankruptcy proceedings since 1975. In September 1979 its cash flow position became so severe as to prevent the continuation of normal rail operations. Accordingly, we issued Directed Service Order No. 1398 (and supplements thereto) authorizing the Kansas City Terminal Railway Company (KCT) to provide service under 49 U.S.C. 11125 as a subsidized "directed rail carrier" (DRC) over the Rock Island rail system. *Kansas City Term. Ry. Co.—Operate—Chicago, R.I. & P.*, 360 I.C.C. 289, 478, 718 (1979–80); 44 FR 56343, 70733, and 45 FR 14578 (1979–80). That order expired on March 23, 1980.

In order to permit the continuation of essential rail services without federal subsidy, we subsequently issued several service orders, under 49 U.S.C. 11123, authorizing various railroads to operate over described RI lines. We authorized the SSW to operate over RI's Tucumcari Line, from Santa Rosa, NM, to St. Louis, MO, in Service Order No. 1411, and to operate over RI's Memphis-Fordyce Line, from Memphis, TN, to Fordyce, AR, in Service Order No. 1415.

The U.S. Court of Appeals for the Seventh Circuit reversed and remanded Service Order No. 1411, finding that order's jurisdictional basis under 49 U.S.C. 11123(a) (2) and (4) to be defective. *See* Nos. 79–2461 and 79–2478, *Atchison, Topeka, & Santa Fe Railway Company* v. *United States of America.* In response to that decision we issued Directed Service Orders Nos. 1453 and 1456, under 49 U.S.C. 11125. These orders authorized SSW to operate over the lines described in Service Orders Nos. 1411 and 1415, conditioned upon waiver of federal subsidization under 49 U.S.C. 11125(b)(5).

The terms of the directed service orders require SSW and the RI Trustee to negotiate terms of compensation for use of RI lines and facilities. We reserved the right to fix compensation in the event the parties should be unable to reach agreement.

The parties have not been able to reach agreement regarding terms of compensation and SSW has requested an order determining and fixing, or denying, compensation. SSW contends that it should not be required to pay compensation to the Trustee for use of RI properties unless its operations over the involved lines are profitable.

The Trustee has replied to SSW's petition. In his reply, the Trustee asserts that the RI estate should be compensated for use of Rock Island properties whether or not temporary operations by SSW are profitable. The Trustee proposes that reasonable compensation should be the greater of either (1) 1.2 percent per month of gross salvage value of improvements and fair market value of the real estate, or (2) 1.2 percent per month of the going concern value of the property, measured by 1978 RI gross station revenues, adjusted for rate increases since 1978. SSW and the RI Trustee have entered into an agreement for the sale of the Tucumcari Line, subject to Commission approval, for a price of $57 million. *See* Finance Docket No. 28799 (and sub-numbers thereunder), *St. Louis Southwestern Railway Company—Purchase (Portion)—William M. Gibbons, Trustee of the property of Chicago, Rock Island & Pacific Railway Company, Debtor.* The Trustee maintains that the fair value of the Memphis-Fordyce Line is $19.5 million. Trustee asserts that these figures reflect the fair value of the lines and that under his proposed formula the monthly rental for the Tucumcari Line should be $684,000 and for the Memphis-Fordyce Line $234,000.

Discussion and Conclusions

DSO Nos. 1453 and 1456 were issued pursuant to 49 U.S.C. 11125. These orders were not intended, however, to be substantively different from the prior SSW service orders issued pursuant to 49 U.S.C. 11123. Unlike DSO No. 1398, the provisions of DSO Nos. 1453 and 1456 are permissive rather than mandatory. Further, operation under the authority of these orders by SSW is conditioned upon waiver of federal subsidization under 49 U.S.C. 11125(b)(5). Therefore, Commission precedents defining reimbursable costs for DRCs operating under mandatory directed service orders, under 49 U.S.C. 11125, are not controlling here.

In DSOs Nos. 1453 and 1456 we directed SSW and the RI Trustee to negotiate regarding terms of compensation for use of Rock Island properties and reserved the right to settle disputes if the parties could not reach agreement. In exercising authority under this reserved right, we act as an arbitrator settling a dispute, not as a regulator fixing compensation to be paid under federally subsidized operations. Our duty in settling a compensation dispute is essentially the same under our reservation of authority in DSO Nos. 1453 and 1456 as it would be under 49 U.S.C. 11123(b)(2).

In the *Frisco Compensation* case, we fixed terms of compensation for use of Rock Island tracks and related facilities operated by Frisco under Service Order No. 1451, issued under 49 U.S.C. 11123. The *Frisco Compensation* case adopted a two-part formula for determining compensation to be paid for use of Rock Island lines. The first part of the formula is a base rental assessed on route miles. The second part of the formula is a percentage share of net revenues, if any, derived from operations over the line.

The *Frisco Compensation* case formula is designed to make a reasonable accommodation of the competing interests of the Trustee and the DRCs. The base rental payment provision assures the trustee of some payment for the use of Rock Island properties, even if temporary directed operations are not profitable. The percentage of profits provision provides the trustee with a return on the going concern value of the properties, if the involved lines generate net revenues from temporary interim operations.

The Rock Island properties operated by the various interim operators include a wide range of types of lines and line segments, from relatively short terminal tracks with high profit potential to long lines with doubtful profit potential during temporary interim operation.

Interim operators operating only terminal tracks would pay relatively little compensation to the Trustee under the base rental provision. Operations of terminal tracks, however, should be highly profitable and the percentage of profits payments to the trustee should be significant. Long lines, on the other hand, will have a substantial base rental, although they may produce little or no net revenues for the interim operator under temporary operations.

The base rental of $1250 per route mile per year established in the *Frisco Compensation* case is a mid-range figure between extreme high and low track rentals set in past agreements. In the *Frisco Compensation* case we chose this intermediate approach because that proceeding involved the use of facilities for which a sale agreement had not been reached. Therefore, the parties had not agreed to the value of the line. These circumstances also exist with respect to the Memphis-Fordyce Line. Further, we believe that the percentage of profits provision in the *Frisco Compensation* case is reasonable for use of the Memphis-Fordyce Line, based on the considerations discussed in that decision.

We conclude that the formula set forth in the *Frisco Compensation* case would make a reasonable accommodation of the opposing interests of the SSW and the RI Trustee regarding use of RI properties not subject to a sale agreement. Accordingly, the SSW should pay the RI Trustee, for the use of the Memphis-Fordyce Line and related facilities operated under DSO No. 1456, compensation calculated under the following formula:

(1) The sum of $1,250 per route mile per year, payable on a monthly basis, in advance; and

(2) 14.4 percent of net revenues derived from operations over the involved lines. Net revenues shall be calculated in accordance with the Commission's regulations applicable in abandonment proceedings (49 CFR 1121.41–1121.43), subject only to the following exceptions: (a) The casualty reserve account is eliminated; (b) rehabilitation expenses are reported under maintenance of way and structures costs; and (c) bridge traffic revenues and costs are eliminated.

In determining the share of traffic attributable to RI at former RI–SSW reciprocal switching points, RI's share shall be considered to be the same as the share handled by KCT in its operations under Directed Service Order No. 1398.

The formula specified in the *Frisco Compensation* case is designed to accommodate the interests of the Trustee and the DRC with respect to temporary operations over a line for which a sale agreement has not been reached. We do not believe that the same rationale and formula is appropriate for determining the reasonable compensation for the use of lines, like the Tucumcari Line, as to which the parties have entered into a purchase and sale agreement setting a value on the line. In such circumstances, we believe that an appropriate rental for the Tucumcari Line should provide the Trustee with a reasonable return on the agreed value of the property ($57 million) pending approval and consummation of the sale.

The Trustee asserts that a rate of return of 14.4 percent per year on the value of the line would be reasonable. That rate of return is reasonable in today's financial markets for conservatively invested liquid assets. The Tucumcari Line, however, is not a liquid asset. It is commercial rail property subject to sale agreement. Therefore, it is not readily disposable for cash. We believe, that the rate of return on the value of the line should be lower than that for liquid assets. We also recognize that rates of return on investments have fluctuated greatly in recent months. Considering these factors, we conclude that a reasonable return on the value of the Tucumcari Line should be set at a rate 2 percentage points below the average yield (adjusted to a monthly basis on the first business day of each month) of marketable securities of the The United States Government having a duration of 90 days.[1]

The sums expended by SSW during temporary operations for maintenance and security, to the extent necessary to preserve the value of the property, should be credited toward the rental payments. This allowance for maintenance and security expenditures shall not exceed 50 percent of the total rent.

One-half of the monthly rental for the Tucumcari Line shall be payable in advance. The balance of the monthly rental shall be paid within 30 days of the end of the month and payment shall be accompanied by an itemized statement of maintenance and security expenses claimed as credits against the rental.

We find: 1. SSW and the RI Trustee have been unable to agree upon terms for compensation of the RI estate for the use of RI property by SSW under Directed Service Order Nos. 1453 and 1456.

2. The terms of compensation set forth in this decision will be reasonable and will accommodate the interests of SSW and the RI Trustee.

3. This action will not significantly affect either the quality of the human environment or the conservation of energy resources. *See* 49 CFR Parts 1106 and 1108 (1978).

It is ordered: 1. SSW shall compensate the Rock Island estate for the use of RI tracks and related facilities, operated under Directed Service Order Nos. 1453 and 1456, in accordance with the terms of this decision.

2. This decision shall be effective on April 28, 1980.

(49 U.S.C. 11125)

By the Commission. Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum, Alexis and Gilliam. Vice Chairman Gresham not participating. Commissioner Stafford absent and not participating. Commissioner Trantum concurring with a separate expression. Commissioner Gilliam not participating.

Agatha L. Mergenovich,

Secretary.

Commissioner Trantum (Concurring)

I reluctantly concur in this decision because the Commission is in the unfortunate position of having to set compensation. If either the RI trustee or the SSW disagrees with the formulas adopted today, I would welcome hearing about a more reasonable solution.

[FR Doc. 14653 Filed 5–12–80 8:45 am]

BILLING CODE 7035–01–M

[1] This monthly rental may be expressed by the formula (Y − .02) P ÷ 12; where Y equals the average yield of 90-day U.S. Government securities on the first business day of the month and P equals the agreed purchase price for the line.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

Foreign Fishing Regulations; Corrections

AGENCY: National Marine Fisheries Service (NOAA)/Commerce.

ACTION: Final rule.

SUMMARY: The United States Coast Guard is now guarding additional radio bands in Guam. The foreign fishing regulations are corrected to include the new bands.

EFFECTIVE DATE: May 10th, 1980.

FOR FURTHER INFORMATION CONTACT: Roland Smith, Acting Chief, Permits and Regulations Division (F/CM7), National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235 (202) 634–7432.

SUPPLEMENTARY INFORMATION: The United States Coast Guard Station in Guam is monitoring four additional radio bands. The foreign fishing regulations are corrected to include the new bands.

The Assistant Administrator for Fisheries, NOAA, finds and determines that these additions are not significant within the meaning of E.O. 12044, and do not require the formulation of an Environmental Impact Statement under the National Environmental Policy Act of 1969, as amended.

Signed at Washington, D.C., this 6 day of May, 1980.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

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

50 CFR Part 611 is amended as follows:

§ 611.4 [Amended]

1. In § 611.4(b), Table II, the entry for Guam is revised to read as follows:

Table II

Station	Call signal	Radiotelegraphy		Voice: Duplex high-frequency single-sideband channels guarded GMT [2]
		Bands guarded	Times [1]	
Guam	NRV	500 kHz	H24	B(0900–2100) D(2100–0900)
		8,12 mHz	HN	
		12,16 mHz	HJ	

[FR Doc. 80-14772 Filed 5-12-80; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 45, No. 94
Tuesday, May 13, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

Reduction in Force

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: These regulations would clarify the applicability of the transfer of function provisions of OPM's reduction in force regulations. These regulations would also clarify the rights of employees covered by the transfer of function provisions. These changes, that reflect present policy, are being proposed in response to requests by agencies for clarification of the transfer of function provisions.

DATE: Written comments will be considered if received no later than July 14, 1980.

ADDRESS: Send or deliver written comments to Associate Director, Staffing Services, Office of Personnel Management, 1900 E Street, N.W., Room 6526, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Theodore R. Dow or Thomas A. Glennon, (202) 632–4422.

SUPPLEMENTARY INFORMATION:

Background

The transfer of function provisions found in Subpart C of Part 351 are derived from section 12 of the Veterans Preference Act of 1944, as presently codified in 5 U.S.C. 3503. Additional instructions that implement the transfer of function provisions of Part 351 are contained in Federal Personnel Manual Chapter 351.

Explanation of Proposed Regulations

These proposed regulations do not represent a change of OPM's present policies concerning the transfer of function provisions of part 351.

OPM proposes to make the following specific changes in Part 351:

(1) Section 351.203(h) is reorganized for clarity.

(2) Section 351.301 is revised to include new material that clarifies the applicability of the transfer of function provisions of Part 351.

(3) A new § 351.302 is added. Section 351.302(a) contains material formerly contained in § 351.301 that is now reorganized and revised for clarity.

(4) Section 351.302(b) also contains material formerly contained in § 351.301. Again, the material has been reorganized and revised for clarity.

(5) Section 351.302(c) contains new material providing that an employee has no right to transfer with his or her function unless the alternative in the agency losing the function is separation or demotion.

OPM has determined that this is a significant regulation for the purposes of E.O. 12044.

Office of Personnel Management,

Beverly M. Jones,

Issuance System Manager.

Accordingly, OPM proposes to amend Part 351 as follows:

(1) Section 351.203(h) is revised to read as follows:

§ 351.203 Definitions.

* * * * *

(h) "Transfer of function" means:

(1) The transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas; or

(2) The movement of the competitive area in which the function is performed to another commuting area.

(2) Section 351.301 is revised to read as follows:

§ 351.301 Applicability.

The transfer of function provisions set forth in § 351.203.(i)(1) are applicable when the work of one or more employees is moved from one competitive area to another, regardless of whether or not the movement is made under authority of a statute, Executive Order, reorganization plan, or other authority.

(3) Section 351.302 is added as follows:

§ 351.302 Transfer of employees.

(a) Before a reduction in force is made in connection with the transfer of any or all of the functions of a competitive area to another continuing competitive area each competing employee in a position identified with the transferring function or functions shall be transferred to the continuing competitive area without any change in the tenure of his or her employment.

(b) An employee whose position is transferred under this subpart solely for liquidation, and who is not identified with an operating function specifically authorized at the time of transfer to continue in operation more than 60 days, is not a competing employee for other positions in the competitive area gaining the function.

(c) Regardless of an employee's personal preference, an employee has no right to transfer with his or her function, unless the alternative in the competitive area losing the function is separation or demotion.

(5 U.S.C. 1302, 3503)

[FR Doc. 80-14645 Filed 5-12-80; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 550

Pay Administration (General)

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Mangement is proposing revised regulations which would liberalize and simplify current allotment regulations to allow for greater flexibility and discretion at the agency level in determining appropriate types of allotments which Federal employees may make from their pay. The proposed regulations more closely reflect the original intent of the legislation governing allotment of pay by civilian employees.

DATE: Comments must be received on or before July 14, 1980.

ADDRESS: Send or deliver written comments to Mr. Craig B. Pettibone, Director, Office of Pay and Benefits Policy, Compensation Group, Office of Personnel Management, Room 4351, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, 202–632–4634.

SUPPLEMENTARY INFORMATION: In considering requests for authorization to permit allotments, OPM traditionally applied the general standard that the purpose of the allotment must be a

Government-wide program encouraged or promoted by the Federal Government. Federal employees were barred from making allotments of their pay for any purpose not specifically permitted by law or Executive order.

Extensive review of the policies and criteria employed in approving allotment purposes under OPM's present regulations has shown that these regulations are unduly restrictive and should be amended to expand the number of purposes for which allotments may be permitted.

OPM's proposal to relax its rigid allotment policy was influenced by three principal factors:

(1) Compatibility with Treasury Department regulations;

(2) Computerization of payrolls; and

(3) OPM's policy of delegating authority, where appropriate, to agencies.

Federal employees are able to circumvent OPM's restrictive policy by taking advantage of the savings allotment option in Treasury regulations (codified at 31 CFR Part 209). Since Federal agencies have no authority under law or regulation to look behind the purpose of an allotment to a financial institution in terms of how the employee intends to dispose of his or her savings, employees may legitimately, through private organizations or otherwise, make sub-allotments through these financial institutions to effectuate payments for a number of purposes presently disallowed by the regulations in 5 CFR Part 550, Subpart C. The effect of this policy has been the proliferation of employees' sub-allotments for car payments, life insurance premiums, dental plans, purchase of stocks and mutual funds, etc., through the expedient of allotments for an approved purpose and subsequent splitting. The proposed revisions would eliminate the seeming conflict between the Treasury Department's and OPM's regulations.

The restrictive nature of OPM's past policy not to permit employees to make any allotments they wish reflected not so much an ethical concern as to propriety of the allotment purpose as an administrative concern over whether a liberal policy warranted the total Government-wide expense and effort associated with the establishment of separate, special deductions from employees' paychecks. It was feared that a more liberal policy in relation to the types of allotments permitted would substantially increase the number of withholdings requested by employees and impose an oppressive administrative burden on individual agencies. However, we now believe that the head of an agency is in the best position to determine whether the administrative costs of a deduction are offset by the benefit obtained by permitting the allotment.

Two factors should serve to allay concerns that a liberalization of the allotment regulations will precipitate a drastic increase in the number of employee allotments and impose an untenable administrative burden on an agency's finance office. First, the proposed regulations provide that the head of an agency may limit the number of allotments which an employee may make. Second, current computerized methods for handling payroll transactions should help expedite the processing of allotments and maintain within acceptable limits the administrative costs of implementing such withholdings.

The proposed revisions to Subpart C of Part 550 of Title 5, Code of Federal Regulations recognize the original intent of section 5525 of Title 5, United States Code. by authorizing individual agencies to determine the number and types of allotments which employees may make from their pay, within the parameters of law, Executive order, and regulations. The language of the present regulations would be strengthened as necessary to clarify that agencies must authorize allotments for certain specific purposes, including payment of certain State or local income taxes, union dues, dues to an association of management officials and/or supervisors, contributions to a Combined Federal Campaign, and payment into a savings account (two such allotments are permitted) under regulations issued by the Treasury Department. OPM would continue to issue guidance to agencies through the Federal Personnel Manual concerning typical uses of optional allotments and procedures for implementation of the allotment regulations. (For example, the Federal Personnel Manual would specifically recommend that agencies permit employees to make allotments for the purchase of United States Savings Bonds in accordance with the voluntary payroll savings plan established by Executive Order 9135.) Still, the primary responsibility for determining appropriate allotment purposes will rest with the agencies themselves.

OPM has determined that this is a significant regulation for the purpose of Executive Order 12044.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, the Office of Personnel Management is proposing to amend the table of contents and revise Subpart C of Part 550 of Title 5, Code of Federal Regulations, to read as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart C—Allotments and Assignments From Federal Employees

Definitions

Sec.

550.301 Definitions.

General Provisions

550.311 Authority of agency.
550.312 General limitations.

Labor Organization

550.321 Authority.
550.322 Savings provision.

Association of Management Officials and/or Supervisors

550.331 Scope

Combined Federal Campaign

550.341 Scope.
550.342 Limitation of allotment.

Income Tax Withholding

550.351 Scope.

Foreign Affairs Agency Organizations

550.361 Scope.

Authority: 5 U.S.C. 5527; E.O. 10982, 3 CFR, 1959–1963 Comp., p. 502.

Subpart C—Allotments and Assignments From Federal Employees

Definitions

§ 550.301 Definitions.

In this subpart:

"Agency" means an Executive agency as defined by section 105 of Title 5, United States Code.

"Allotment" means a recurring, specified deduction for a legal purpose from pay authorized by an employee to be paid to an allottee.

"Allottee" means the person or institution to whom an allotment is made payable.

"Allotter" means the employee from whose pay an allotment is made.

"Association of management officials and/or supervisors" means an association composed of either management officials and/or supervisors with which the agency has established official relationships.

"Combined Federal Campaign" means an organization of voluntary health and welfare agencies authorized to solicit charitable contributions in a local area in accordance with arrangements prescribed by the Director of the Office of Personnel Management under Executive Order 10927.

"Dues" means the regular, periodic amount specified by an allotter to be withheld from his or her pay which is required to maintain the allotter as a member in good standing in a labor organization or association of management officials and/or supervisors or other organization.

"Employee" means an employee of an agency, unless otherwise provided.

"Foreign affairs agency" means the Department of State, the International Communications Agency, the Agency for International Development and its successor agency or agencies.

"Labor organization" means a labor organization as defined by section 7103(a)(4) of Title 5, United States Code, unless specified otherwise.

"Pay" means the net pay due an employee after all deductions authorized by law (such as retirement or social security deductions, Federal withholding tax, and others, when applicable) have been made.

General Provisions

§ 550.311 Authority of agency.

(a) An agency may permit allotments under section 5525 of Title 5, United States Code, in accordance with Subchapter III of chapter 55 of Title 5, United States Code, and this subpart.

(b) An agency must honor an employee's request for:

(1) An allotment for dues to a labor organization under section 7115 of Title 5, United States Code;

(2) An allotment for dues to an association of management officials and/or supervisors under § 550.331 of this subpart;

(3) An allotment for charitable contributions to a Combined Federal Campaign under §§ 550.341 and 550.342 of this subpart;

(4) An allotment for income tax withholding under § 550.351 of this subpart; and

(5) Up to two allotments for savings under Department of Treasury regulations as codified at Part 209 of Title 31, Code of Federal Regulations.

(c) In addition to those allotments provided for in paragraph (b) of this section, an agency may permit an empolyee to make an allotment for any legal purpose deemed appropriate by the head of the agency.

(d) The head of an agency may prescribe such additional regulations governing allotments as appropriate which are consistent with subchapter III of chapter 55 of Title 5, United States Code, and this subpart. Discretionary allotments under this subpart may be limited in number as determined appropriate by the head of the agency.

(e) An agency may permit an employee to authorize an allotment to be effective on the issuance of an order of evacuation under section 5522 or 5523 of Title 5, United States Code. Payment of such an allotment may not be made until the issuance of the order.

§ 550.312 General limitations.

(a) The allotter shall specifically designate the allottee and the amount of the allotment in writing in an allotment authorization.

(b) An allotment shall be disbursed on one of the regularly designated paydays of the employee and in accordance with the conditions of the allotment authorization, except when the agency and the allotter agree on a later date.

(c) An employee may have only one allotment payable to the same allottee at the same time.

(d) The total amount of allotments may not exceed the pay due the allotter for a particular period.

(e) An employee shall request in writing a change in or the revocation of an allotment.

(f) The effective date of a change in or revocation of an allotment shall be in accordance with applicable provisions of law, Executive order, and regulation.

Labor Organization

§ 550.321 Authority.

Section 7115, Title 5, United States Code, authorizes an empoloyee to make an allotment for dues to a labor organization as defined in subchapter 1 of chapter 71 of Title 5, United States Code. Such an allotment shall be effected in accordance with rules and regulations prescribed by the Federal Labor Relations Authority.

§ 550.322 Saving provision.

An agency shall permit a supervisor who so desires, to continue a allotment of dues to a labor organization as defined by section 2(e) of Executive Order 11491, as amended, which was permissible when the supervisor was excluded from a formal or exclusive unit by reason of the requirements of former section 24(d) of this Order.

Association of Management Officials and/or Supervisors

§ 550.331 Scope.

An agency shall permit an employee to make an allotment for dues to an association of management officials and/or supervisors when the employee is a supervisor or management official, and the employee is member of an association of management officials and/or supervisors with which the agency has ageed in writing to deduct allotments for the payment of dues to the association.

Combined Federal Campaign

§ 550.341 Scope.

An agency shall permit an employee to make an allotment for charitable contributions to a Combined Federal Campaign. Allotments for contributions to the Department of Defense Overseas Combined Federal Campaign shall be permitted in accordance with a special agreement between the Office of Personnel Management and the Department of Defense which may contain any necessary exceptions to these regulations.

§ 550.342 Limitation of allotment.

(a) An agency shall permit an employee to make an allotment for a charitable contribution to a Combined Federal Campaign only when the employee is employed in an area in which a Combined Federal Campaign authorized by the Office of Personnel Management is established.

(b) An allotment to a Combined Federal Campaign shall be:

(1) For a term of 1 year beginning with the first pay period which begins in January and ending with the last pay period which begins in December; and

(2) An equal amount deducted each pay period minimum deductions will be estabiiished by agreement between OPM and officials of the Combined Federal Campaign.

(c) The allotter may not change the amount deducted each pay period during the term of an allotment to a Combined Federal Campaign. The allotter shall be informed of this restriction before the allotment is requested.

Income Tax Withholding

§ 550.351 Scope.

When the Secretary of the Treasury has entered into an agreement to withhold income or employment taxes from the pay of employees under section 5516, 5517, or 5520 of Title 5, United States Code, an agency shall permit an employee to make an allotment for:

(a) The payment of State or District of Columbia income taxes when the employee is employed outside of, but is a resident in, the State or the District of Columbia.

(b) The payment of the city or county income or employment taxes when the employee is employed outside of, or is not a resident in, the State in which the city or county is located.

Foreign Affairs Agency Organizations

§ 550.361 Scope.

A foreign affairs agency may permit an employee to make an allotment for dues to a foreign affairs agency organization in accordance with the provisions of section 15 of Executive Order 11636. Such an allotment shall be subject to the following restrictions:

(a) For the purposes of this section, "employee" and "organization" mean an "employee" and "organization" as defined by section 2(b) and (f), respectively, of Executive Order 11636.

(b) The employee must be a member of a recognized organization with which the foreign affairs agency has agreed in writing to deduct allotments for the payment of dues.

(c) An allotment for the payment of dues to an organization may be revoked by an employee only in writing at stated 6-month intervals, as provided by section 15 of Executive Order 11636.

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5 CFR 532

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Proposed Rule Making.

SUMMARY: The Office of Personnel Management is proposing regulations to establish common policies, systems, and practices for fixing and administering pay of prevailing rate employees as required by prevailing rate systems legislation.

DATE: Comments must be received on or before July 14, 1980.

ADDRESS: Send or deliver written comments to Mr. Jerome Julius, Assistant Director for Pay Programs, Compensation Group, Room 3353, 1900 "E" Street NW, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Mr. Windsor Eagan (202) 632-5454.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management, under sections 5343 and 5346 of title 5, United States Code, as amended by Pub. L. 92-392, dated August 19, 1972, is responsible for the overall administration of the Prevailing Rate Systems. This part provides common policies, systems, and practices for uniform application by all agencies subject to section 5342 of title 5, United States Code, in fixing pay for prevailing rate employees as nearly as is consistent with the public interest in accordance with prevailing rates. These provisions would apply to appropriated fund and nonappropriated fund prevailing rate employees and agencies covered by section 5342 of title 5, United States Code.

During the development of these proposed regulations the prevailing rate systems have been administered under guidelines and instructions published in the Federal Personnel Manual Supplements 532-1 (appropriated fund) and 532-2 (nonappropriated fund). The supplements, recommended by the Federal Prevailing Rate Advisory Committee, were prepared and issued by the Office of Personnel Management. These proposed regulations reflect the policies established for the Federal Wage System and require no systems changes or departure from the guidelines and instructions published in the Federal Personnel Manual Supplements.

Office of Personnel Management.

Beverly M. Jones,

Issuance Systems Manager.

Accordingly, the Office of Personnel Management proposes to revise 5 CFR Part 532 to read as follows:

PART 532—PREVAILING RATE SYSTEMS

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532.207 Agency wage committee.
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532.229 Minimum rates for hard-to-fill positions.
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532.701 General.
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Authority: 5 U.S.C. 5343, 5346.

Subpart A—General Provisions

§ 532.101 Scope.

This part provides common policies, systems, and practices for uniform application by all agencies subject to section 5342 of title 5, United States Code, in fixing pay for prevailing rate employees as nearly as is consistent with the public interest in accordance with prevailing rates.

§ 532.103 Coverage.

The provisions of this part shall apply to prevailing rate employees and agencies covered by section 5342 of title 5, United States Code.

§ 532.105 Pay fixing authority.

The head of each agency shall authorize application of the rates established by the lead agency or the Office of Personnel Management to prevailing rate employees within the appropriate wage area, in accordance with the provisions of this part.

Subpart B—Prevailing Rate Determinations

§ 532.201 Definitions.

For the purposes of this part:

"Full-scale survey" means a survey conducted at least every 2 years in which data are collected from a current sampling of establishments in the private sector by personal visit of data collectors.

"Host activity" is the local Federal activity designated by the lead agency to obtain employment statistics from other Federal activities in the wage area and to provide support facilities and clerical assistance for the wage survey.

"Lead agency" means the agency designated by the Office of Personnel Management to plan and conduct wage surveys, analyze wage survey data, and determine and issue required wage schedules for a wage area.

"Survey area" means that part of the wage area where the private enterprise establishments included in the wage survey are located.

"Wage area" means that geographic area within which a single set of regular wage schedules is applied uniformly by Federal installations to covered occupations.

"Wage change survey" means a survey in which rate change data are collected from the same establishments and for the same establishment occupations represented in the full-scale survey. These data may be collected by telephone, mail, or personal visit.

§ 532.203 Structure of regular wage schedules.

(a) Each nonsupervisory and leader regular wage schedule shall have 15 grades, which shall be designated as follows:

(1) "WG" means an appropriated fund nonsupervisory grade:

(2) "WL" means an appropriated fund leader grade;

(3) "NA" means an nonappropriated fund nonsupervisory grade; and

(4) "NL" means a nonappropriated fund leader grade.

(b) Each supervisory regular wage schedule shall have 19 grades, which shall be designated as follows:

(1) "WS" means an appropriated fund supervisory grade; and

(2) "NS" means a nonappropriated fund supervisory grade.

(c) The step 2 or payline rate for each grade of a leader regular wage schedule shall be equal to 110 percent of the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the area.

(d) The step 2 or payline rate for each grade of an appropriated fund supervisory regular wage schedule shall be:

(1) For grades WS–1 through WS–10, equal to the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the area, plus 30 percent of the rate for step 2 of WG–10;

(2) For grades WS–11 through WS–19, based on a parabolic curve linking the WS–10 rate to the WS–19 rate, which latter rate is equal to the minimum rate in effect for General Schedule grade GS–14 at the time of the area wage schedule adjustment.

(e) The step 2 or payline rate for each grade of a nonappropriated fund supervisory regular wage schedule shall be:

(1) For grades NS–1 through NS–8, equal to the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the area, plus 20 percent of the rate for step 2 of NA–8;

(2) For grades NS–9 through NS–15, equal to 120 percent of the rate for step 2 of the corresponding grade of the nonsupervisory regular wage schedule for the area;

(3) For grades NS–16 through NS–19, the rates will be 25, 30, 35 and 40 percent, respectively, above the step 2 rate of NA–15;

(f) The number of within-grade steps and the differentials between steps for each nonsupervisory grade on a regular wage schedule shall be established in accordance with 5 U.S.C. 5343(e)(1). Each grade on a leader and supervisory regular wage schedule shall have 5 within-grade steps with step 2 set according to paragraphs (c), (d), or (e) of this section as appropriate, and—

(1) Step 1 set at 96 percent of the step 2 rate;

(2) Step 3 set at 104 percent of the step 2 rate;

(3) Step 4 set at 108 percent of the step 2 rate; and

(4) Step 5 set at 112 percent of the step 2 rate.

§ 532.205 The use of Federal, State and local minimum wage requirements in determining prevailing rates.

(a) Wage schedules shall not include any rates of pay less than the higher of—

(1) The minimum rate prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, or

(2) The highest State or local minimum wage rate in the local wage area which is applicable to the private industry counterparts of the single largest Federal industry/occupation in the wage area.

(b) Wage data below the minimum wage rates prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, shall not be used in determining prevailing rates.

(c) Adjustments to regular wage schedules to comply with the minimum wage rate determined to be applicable under paragraph (a) of this section shall be computed as follows:

(1) The step 2 rate of grade 1 of the nonsupervisory wage schedule shall be set at the rate which will place the applicable minimum wage rate at 96 percent of that rate,

(2) An intergrade differential shall be determined as 5 percent of the rate established as the step 2 rate of grade 1, rounded to the nearest whole cent. This intergrade differential shall be added to the step rate of each grade, beginning with grade 1, to determine the step 2 rate for the succeeding grade until the grade is reached at which the step 2 rate established through the wage survey process equals or exceeds the rate determined under this procedure. Rates of all grades above that point shall be computed in accordance with § 532.219(b).

(3) Steps 1, 3, 4, and 5 of each grade adjusted under paragraph (c) of this section shall be set at 96, 104, 108, and 112 percent of the step 2 rate, respectively.

(4) The leader and supervisory wage schedule grades corresponding to each nonsupervisory grade adjusted under paragraph (c) of this section shall be constructed in accordance with the procedures of § 532.203, on the basis of the step 2 rates established under this paragraph for the nonsupervisory wage schedule grades.

(d) All wage schedule adjustments made under this section shall be effective on the effective date of the applicable minimum wage rate.

§ 532.207 Agency wage committee.

(a) Each lead agency shall establish an agency wage committee for the purpose of considering matters relating to the conduct of wage surveys, the establishment of wage schedules and making recommendations thereon to the lead agency.

(b) The Agency Wage Committee shall consist of five members, with the chairperson and two members designated by the head of the lead agency, and the remaining two members designated as follows:

(1) For the Department of Defense Wage Committee, one member shall be designated by each of the two labor organizations having the largest number of wage employees covered by exclusive recognition in the Department of Defense; and

(2) For other lead agencies, two members shall be designated by the labor organization having the largest

number of wage employees by exclusive recognition in the agency.

(c) Recommendations of agency wage committees shall be developed by majority vote. Any member of an agency wage committee may submit a minority report to the lead agency along with the recommendations of the committee.

§ 532.209 Local wage survey committee.

(a)(1) A lead agency shall establish a local wage survey committee in each wage for which it has lead agency responsibility and in which a labor organization represents by exclusive recognition wage employees subject to the wage schedules for which the survey is conducted.

(2) The loal wage survey committee shall assist the lead agency in the conduct of wage surveys and make recommendations to the lead agency thereon.

(b)(1) Local wage survey committees shall consist of three members, with the chairperson and one member designated by the lead agency, and one member recommended by the labor organization having the largest number of wage employees under the regular wage schedule who are under exclusive recognition in the wage area.

(2) All members of local wage survey committees for appropriated fund surveys shall be Federal employees appointed by their employing agencies.

(3) Members for nonappropriated fund surveys shall be nonappropriated fund employees appointed by their employing agencies.

(4) The member recommended by the labor organization must be an employee of a Federal activity for appropriated fund surveys or nonappropriated fund activity for nonappropriated fund surveys who is covered by one of the regular wage schedules in the wage area in which the activity is located.

(c) A local wage survey committee shall be established before each full-scale wage survey. Responsibility for providing members shall remain with the same agency and the same labor organization until the next full-scale survey.

(d) Recommendations of local wage survey committees shall be developed by majority vote. Any member of a local wage survey committee may submit a minority report to the lead agency along with the recommendations of the committee.

(e) The lead agency shall establish the type of local wage survey organization it considers appropriate in a wage area which does not qualify for a local wage survey committee under paragraph (a) of this section.

§ 532.211 Responsibilities of participating organizations.

(a) The Office of Personnel Management:

(1) Defines the boundaries of wage and survey areas;

(2) Prescribes the required industries to be surveyed;

(3) Prescribes the required job coverage for surveys;

(4) Designates a lead agency for each wage area;

(5) Establishes, jointly with lead agencies, a nationwide schedule of wage surveys;

(6) Arranges for technical services with other Government agencies;

(7) Considers recommendations of the national headquarters of any agency or labor organization relating to the Office of Personnel Management's responsibilities for the Federal Wage System; and

(8) Establishes wage schedules and rates for prevailing rate employees who are United States citizens outside of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, the Territories and Possessions of the United States, and the Trust Territory of the Pacific Islands.

(b) Federal Prevailing Rate Advisory Committee. This committee functions in accordance with the requirements set forth under section 5347 of title 5, United States Code.

(c) Employing agencies.

(1) Heads of agencies. The head of an agency is responsible, within the policies and procedures of the Federal Wage System, for authorizing application of wage schedules developed by a lead agency and fixing and administering rates of pay for wage employees of his organization.

(2) Heads of local activities. The head of each activity in a wage area is responsible for providing employment information, wage survey committee members, data collectors, and any other assistance requested by the local wage survey committee.

(d) Lead agencies. In accordance with the practices and procedures prescribed by the Office of Personnel Management, each agency assigned lead agency responsibility for a designated wage area is responsible for:

(1) Planning and conducting the wage survey for that area;

(2) Developing survey specifications and providing or arranging for the identification of establishments to be surveyed;

(3) Officially ordering wage surveys;

(4) Establishing wage schedules, applying wage schedules authorized by the head of the agency; and

(5) Referring pertinent matters to the agency wage committee and the Office of Personnel Management.

(e) Agency wage committees. As appropriate, agency wage committees consider and make recommendations to the lead agency on wage schedules and any matters involving survey specifications for full-scale surveys if the lead agency chooses not to accept recommendations of the local wage survey committee or those in a minority report filed by a local wage survey committee member.

(f) Local wage survey committees. The local wage survey committee plans and conducts the wage survey in the designated wage area.

§ 532.213 Preparation for full-scale wage surveys.

(a) The local wage survey committee, prior to each full-scale survey:

(1) Shall hold a public hearing to receive recommendations from interested parties concerning the area, industries, establishments and jobs to be covered in the wage survey.

(2) Shall prepare a summary of the hearings and submit it to the lead agency together with the committee's recommendations concerning the survey specifications prescribed in paragraph (c) of this section.

(3) May make any other recommendations concerning the local wage survey which it considers appropriate.

(b) The lead agency shall refer the local wage survey committee's report to the agency wage committee for its consideration and recommendation if:

(1) The lead agency proposes not to accept the recommendations of the local wage survey committee concerning the specifications of the local wage survey; or

(2) The local wage survey committee's report is accompanied by a minority report.

(c) The lead agency shall develop survey specifications after taking into consideration the reports and recommendations received from the local wage survey committee and, if applicable, the agency wage committee. The survey specifications shall include:

(1) The counties to be surveyed;

(2) The industries to be surveyed;

(3) The standard minimum size of establishments to be surveyed;

(4) Establishments to be surveyed with certainty; and

(5) The survey jobs.

(d) A list of establishments and alternative establishments to be surveyed shall be prepared through use of statistical sampling techniques in accordance with the specifications

developed by the lead agency. A copy of this list shall be forwarded to the local wage survey committee.

(e) Selection and appointment of data collectors:

(1) Wage data for appropriated fund surveys shall be collected by teams consisting of one local Federal wage system employee recommended by the committee member representing the qualifying labor organization and one Federal employee recommended by local government activities. The data collectors shall be selected and appointed by the head of their employing agency.

(2) Wage data for nonappropriated fund surveys shall be collected by teams, each consisting of one local nonappropriated fund employee recommended by the committee member representing the qualifying labor organization and one nonappropriated fund employee recommended by local nonappropriated fund activities. The data collectors shall be selected and appointed by the head of their employing activity.

(f)(1) Each member of a local wage survey committee, each data collector, and any other person having access to data collected must retain this information in confidence, and is subject to disciplinary action by the employing agency or activity if the employee violates the confidence of data secured from private employers.

(2) Any violation of the above provision by a Federal employee must be reported to the employing agency and, in turn, in the case of a participant designated by a labor organization, to the recognized labor organization and its headquarters, and shall be cause for the lead aency immediately to remove the offending person from participating in the wage survey function.

§ 532.215 Conduct of full-scale wage survey.

(a) Wage survey data shall not be collected before the date the survey is ordered by the lead agency.

(b) Required data shall be obtained by personal visit.

(c) Alternate establishments shall be surveyed if data cannot be obtained from the primary establishment selected to be surveyed.

(d) The data collectors shall submit the data they collect to the local wage survey committee together with their recommendations about the use of the data.

§ 532.217 Review by the local wage survey committee.

(a) The local wage survey committee shall review all establishment information and survey job data collected in the wage survey for completeness and accuracy and forward all of the data collected to the lead agency together with a report of its recommendations concerning the use of the data. The local wage survey committee may make any other recommendations concerning the wage survey which it considers appropriate.

§ 532.219 Review by the lead agency.

(a) The lead agency shall review all material and wage survey data forwarded by the local wage survey committee to:

(1) Assure that the survey was conducted within the prescribed procedures and specifications;

(2) Consider matters included in the local wage survey committee report and recommendations;

(3) Exclude unusable data;

(4) Resolve questionable job matching and wage data; and

(5) Verify all computations reported on wage data collection forms.

(b) The lead agency shall determine whether the usable data collected in the wage survey are adequate for computing paylines, according to the following criteria:

(1) The wage survey data collected in an appropriated fund wage survey are adequate if the unweighted job matches include at least one survey job in the WG–01 through 04 range, one survey job in the WG–05 through 08 range, and two survey jobs in the WG–09 and above range, each providing at least 20 samples; and at least six other survey jobs, each providing at least 10 samples.

(2) The wage survey data collected in a nonappropriated fund wage survey are adequate if the unweighted job matches include at least two survey jobs in the NA–01 through 04 range providing 10 samples each, one survey job in the NA–01 through 04 range and three survey jobs in the NA–05 through 15 range providing five samples each; two other survey jobs, each providing at least five samples, and at least 100 unweighted samples for all survey jobs combined are used in the computation of the final payline.

(c)(1) If the wage survey data do not meet the adequacy criteria in paragraph (b) of this section, the lead agency shall analyze the data, construct lines and wage schedules, submit them to the agency wage committee for its review and recommendations and issue wage schedules, in accordance with the requirements of this subpart, as if the adequacy criteria were met.

(2) The lead agency may determine such a wage area to be adequate if the quantity of data obtained is large enough to construct paylines even though it was obtained for fewer than the prescribed number of jobs, or at different grade levels, or in different combinations than prescribed in paragraph (b) of this section.

(3) The lead agency may not determine a nonappropriated fund wage area to be adequate if fewer than 100 usable unweighted job matches were used in the final computation.

(d) If the lead agency determines a wage area to be inadequate under paragraph (c) of this section, it shall promptly refer the problem to the Office of Personnel Management for resolution.

§ 532.221 Statistical analysis of usable wage survey data.

(a)(1) The lead agency shall compute a weighted average rate, in accordance with the instructions issued by the Office of Personnel Management for each appropriated fund survey job having at least 10 usable matches and for each nonappropriated fund survey job having at least five usable matches before establishment weights are applied.

(2) Incentive and piece-work rates shall be excluded when computing weighted average rates if, after establishment weights have been applied, 90 percent or more of the total usable wage survey data reflect rates paid on a straight-time basis only.

(b) The lead agency shall compute paylines from the weighted average rates computed under paragraph (a) of this section, as follows:

(1) Linear unit and frequency lines shall be computed according to the least squares statistical formula, based on all of the weighted average rates.

(2) Under the appropriated fund wage system a key point line shall be computed using the computed average rates for wage grades 3, 5, 10, and 13.

(3) Either or both of the lines computed according to paragraph (b)(1) of this subsection may be recomputed after eliminating data which cause distortion in the lines. If data for any of the grade points used under paragraph (b)(2) of this section are eliminated under this provisions, the line computed under paragraph (b)(2) shall be recomputed with the same data eliminated.

(c) Usable data obtained from a particular establishment may not be modified or deleted in order to reduce the effect of an establishment's rates on survey findings, i.e., data will not be deleted or modified to avoid establishment domination.

§ 532.223 Consultation with the agency wage committee.

(a) The lead agency shall submit to the agency wage committee:

(1) The data collected in the wage survey;

(2) The report and recommendations of the local wage survey committee concerning the use of the data;

(3) The lead agency's analysis of the data; and

(4) The lines computed from the data.

(b) After considering the information available to it, the agency wage committee shall report to the lead agency its recommendation for a proposed wage schedule derived from the data.

§ 532.225 Selection of payline and issuance of wage schedules.

(a) The lead agency shall select a payline and construct wage schedules therefrom for issuance as the regular wage schedules for the wage area, after considering all of the information, analyses, and recommendations made available to it pursuant to this subpart.

(b)(1) The lead agency shall prepare and maintain a record of all of the analyses and deliberations made under this subpart, documenting fully the basis for its determination under paragraph (a) of this section.

(2) The lead agency shall include in the record all of the wage survey data obtained and the recommendations and reports received from the local wage survey committee and the agency wage committee.

(c)(1) The lead agency shall issue the nonsupervisory, leader, and supervisory regular wage schedules for the local wage area, showing the rates of pay for all grades and steps.

(2) The wage schedules shall have a single effective date for all employees in the wage area, determined by the lead agency in accordance with 5 U.S.C. 5344.

(d) The head of each agency having employees in the local wage area to whom the regular wage schedules apply shall authorize the application of the wage schedules issued under paragraph (c) of this section to those employees, effective on the date specified by the lead agency.

§ 532.227 Wage change surveys.

(a) Wage change surveys shall be conducted in each wage area in years during which full-scale wage surveys are not conducted.

(b) Data shall be collected in wage change surveys only from establishments which participated in the preceding full-scale survey. Information concerning pay adjustments of general application in effect for jobs matched in each establishment which participated in the preceding full-scale survey shall be obtained.

(c) Data may be obtained in wage change surveys by telephone, mail, or personal visit. The chairperson of the local wage survey committee shall determine the manner in which establishments will be contacted for collection of data. Data may be collected by the local wage survey committee members or by data collectors appointed and assigned to two member teams in accordance with § 532.213(g).

(d) Wage change survey data may not be collected before the date ordered by the lead agency.

(e) The local wage survey committee shall review all wage change survey data collected and forward the data to the lead agency. Where appropriate, the committee shall also forward to the lead agency a report of unusual circumstances of the survey.

(f) The lead agency shall review the wage change survey data and, if applicable, the report filed by the local wage survey committee.

(g)(1) The lead agency shall recompute the line selected under § 532.225(a) in the preceding full-scale survey using the wage change survey data and shall construct wage schedules therefrom in accordance with § 532.203 and, if appropriate, § 532.205.

(2) The lead agency shall consult with the agency wage committee in accordance with § 532.223.

(3) Records of this process shall be maintained in accordance with § 532.225(b).

(h) The wage schedules shall be issued and authorized in accordance with § 532.225(c) and (d).

§ 532.229 Minimum rates for hard-to-fill positions.

(a) The lead agency for a wage area may establish the rate of the second, third, fourth, or fifth step of one or more grades of an occupation as the mandatory minimim rate or rates payable by any agency for the occupation at one or more locations within a wage area based on findings that:

(1) The hiring rates prevailing for an occupation in private sector establishments in the wage area are higher than the rate of the first step of the grade or grades of the occupation; and

(2) Federal installations and activities in the wage area are unable to recruit qualified employees at the rate of the first step of the grade or grades of the occupation.

(b) Any authorizations made under paragraph (a) of this section shall be indicated on the regular wage schedule for the wage area.

(c) Any authorizations made under paragraph (a) of this section shall be terminated with the issuance of a new regular wage schedule unless the conditions that warrant the authorizations continue and the new regular wage schedule continues that authorization.

(d) The lead agency, prior to terminating any authorization made under paragraph (a) of this section, shall require the appropriate official or officials at all installations or activities to which the authorization applies to discuss the termination with the appropriate official or officials of exclusively recognized employee organizations representing employees in the affected occupation. The agency officials shall report the results of these discussions to the lead agency.

(e) No employee shall have his/her reduced because of cancellation of an authorization made under paragraph (a) of this section.

§ 532.231 Special rates and special schedules.

(a) A lead agency, with the approval of the Office of Personnel Management, may establish special rates or special schedules for use within an area for specific occupations which are critical to the mission of a Federal activity based on findings that:

(1) Serious recruitment and retention problems exist;

(2) Rates on the authorized regular schedule are inadequate for the recruitment and retention of qualified employees; and

(3) Authorization of increased minimum rates under § 532.229 will not solve the problems.

(b) Special rates shall be based on industry wage data for the specific occupations. A single rate shall be used when this represents industry practice; five rates with intervals of four percent between successive rates shall be used when rate ranges are used by industry, with the rate of the second step representing the weighted average of the industry rates.

(c) Any special rates established under paragraph (b) of this section shall be shown on the regular schedule which shall indicate each occupation and grade for which the rates are authorized. These rates shall be paid by all agencies having these occupations within the wage area.

(d)(1) Special schedules will ordinarily have the same grade, job ranking, and

step-rate structure as regular schedules; only the wage rates will differ.

(2) If the use of grades is not appropriate, rates only shall be specified for each individual job.

(3) In other situations which require departure from regular schedule practices, the Office of Personnel Management authorization for the special schedule shall include instructions for its construction, application, and administration.

(4) Unless otherwise specified, positions covered by special wage schedules shall be subject to the general provisions of this part and to other applicable rules and regulations of the Office of Personnel Management.

Subpart C—Determining Rates for Principal Types of Positions

§ 532.301 Definitions.

For purposes of this subpart:

"Nearest similar wage are" means the nearest wage area which is most similar to the local wage area in terms of private employment, population, relative numbers of private employers in major industry categories, and kinds and sizes of industry establishments and in which adequate private establishments exist in the survey area whose activities are similar to those in the dominant industry.

"Principal types of appropriated or nonappropriated fund positions" means those groups of occupations which require work of a specialized nature and which are peculiar to a specific Government industry which is the dominant industry among the total wage employment in the wage area.

"Specialized private industry" means private industry establishments in those industry groups, comparable to the specialized government industries listed in § 532.303, which must be included in a wage survey in order to obtain data comparable to a dominant industry.

§ 532.303 Specialized industry.

(a)(1) Under the appropriated fund wage system, a "specialized industry" is a Federal activity engaged in the production or repair of aircraft, ammunition, artillery and combat vehicles, communications equipment, electronnics equipment, guided missiles, heavy duty equipment, shipbuilding, sighting and fire control equipment, or small arms.

(2) Under the nonappropriated fund wage system a "specialized industry" includes only nonappropriated fund operated eating and drinking places. Additional industries may be considered as specialized industries upon approval of the Office of Personnel Management.

§ 532.305 Dominant industry.

(a)(1) A specialized industry is a "dominant industry" if the number of wage employees in the wage area who are subject to the wage schedule for which the survey is made and employed in occupations which comprise the principal types of appropriated or nonappropriated fund positions in the specialized industry comprise:

(i) For appropriated fund activities,

(A) At least 25 percent of the total wage employment or

(B) 1,000 or more employees in a wage area having more than 4,000 wage employees; and

(ii) For nonappropriated fund activities

(A) At least 25 percent of the total wage employment or

(B) 100 or more wage employees in a wage area having 400 or more wage employees.

(2) It two or more specialized industries in a wage area qualify as dominant industries, the two specialized industries having the largest number of wage employees shall be the dominant industries for purposes of applying the requirements of this subpart.

§ 532.307 Determing whether a dominant industry exists in a wage area.

(a) The chairperson of the local wage survey committee shall, before a full-scale wage survey is scheduled to begin, notify all appropriated or nonappropriated fund activites having employees subject to the wage schedules for which the survey is conducted that organizations and individuals may submit written recommendations and supporting evidence to the local wage survey committee concerning principal types of appropriated or nonappropriated fund positions in the area. Each appropriated or nonappropriated fund activity shall publicize the opportunity to make such recommendations in accordance with the instructions issued by the Office of Personnel Management.

(b)(1) Before conducting a full-scale wage survey an occupational inventory of employees subject to the wage schedules for which the survey is conducted shall be obtained from each appropriated or nonappropriated fund activity in the area having such employees.

(2) After reviewing the occupational inventory and considering the recommendations received pursuant to paragraph (a) of this section, the local wage survey committee shall formulate its recommendations and prepare a written report concerning the existence of specialized industries within the wage area.

(3) The report of the recommendations, the occupational inventory, and the recommendations and supporting evidence received pursuant to paragraph (a) of this section shall be forwarded to the lead agency.

(c) The lead agency shall refer the occupational inventory and the reports received pursuant to paragraph (b) of this section to the agency wage committee for its consideration and recommendation if:

(1) The lead agency proposes not to accept the recommendation of the local wage survey committee concerning the specifications of the local wage survey; or

(2) The local wage survey committee's report is accompanied by a minority report.

(d) The lead agency shall determine, in writing, after taking into consideration the reports and recommendations received under paragraphs (b) and (c) of this section, and prior to ordering a full-scale wage survey to begin, whether the principal types of appropriated or nonappropriated fund positions in a local wage area comprise a dominant industry. The determination shall remain in effect until the next full-scale wage survey in the area.

§ 532.309 Determining adequacy of specialized private industry.

(a) Specialized private industry comparable to an appropriated fund dominant industry is adequate when:

(1) The survey area is one of the 25 largest Standard Metropolitan Statistical Areas, or the total number of employees of private industry establishments in the specialized private industry located in the survey area is at least equal to the total number of appropriated wage employees in occupations which comprise the principal types of appropriated positions in the dominant industry who are subject to the wage schedules for which the survey is made; or

(2) For any dominant industry except "ammunition," the job matches obtained from the specialized private industry include one regular survey job in the WG–01 through 04 range, one regular survey job in the WG–05 through 08 range, one regular servey job in the WG–09 and above range, and one special survey job in the WG–09 and above range, all providing at least 20 unweighted samples each; and three other regular or special survey jobs, each providing at least 10 unweighted samples.

(3) For the dominant industry "ammunition," the job matches obtained from the specialized survey industries

include one regular survey job in the WG–01 through 08 range, one special survey job in the WG–05 through 08 range, and one regular survey job in the WG–09 and above range, all providing at least 20 unweighted samples each; and three other regular or special jobs, each providing at least 10 unweighted samples.

(b) Specialized private industry comparable to a nonappropriated fund dominant industry is adequate when:

(1) The total number of employees of private industry establishments similar to the dominant industry located in the survey are at least equal to the number of nonappropriated fund wage employees in positions which comprise the principal types of nonappropriated fund positions in the dominant industry who are subject to the wage schedules for which the survey is made; and

(2) The job matches obtained from all industries surveyed for regular survey jobs related to the dominant industry include one regular survey job in the NA–01 through 04 range providing at least 10 samples; and one regular survey job in the NA–05 through 15 range and one other regular survey job, each providing at least five samples.

§ 532.311 Survey of specialized private industry related to a dominant industry.

If it is determined that there are one of more dominant industries within a wage area, the lead agency shall insure that the survey includes the industries and survey jobs related to the dominant industries, in accordance with instructions in the Federal Personnel Manual. When the related industry within the local wage survey area fails to meet the criteria in § 532.309 of this subpart, the lead agency shall obtain data related to the dominant industry from the survey area of the wage area which is determined to be the nearest similar area which will provide adequate data under the criteria in § 532.309.

§ 532.313 Use of data from the nearest similar area.

(a)(1) The lead agency shall, in establishing the regular schedule under the provisions of this subpart, analyze and use the acceptable data from the nearest similar wage area together with the data obtained from inside the local wage survey area.

(2) The total number of job matches obtained from the nearest similar wage area to be used in establishing the regular wage schedule shall not exceed the number of job matches used which were obtained from inside the local wage survey area.

(3) If there are two dominant industries for which data are obtained from nearest similar areas, the total number of outside area job matches used for both specialized industries may not exceed the total number of job matches obtained in in the local wage survey area.

(b)(1) The wage rates established for a grade by using data from the nearest similar area may not exceed the wage rates for the same grade in the nearest similar area.

(2) If data are obtained from two nearest similar areas for two dominant industries, the wage rates established for a grade by suing these data may not exceed the higher of the wage rates for the same grade in the two nearest similar areas.

(c) The wage data obtained from the nearest similar area or areas may not be used to reduce the wage rates for any grade in the local area below the rates that would be established for that grade without the use of the data from the nearest similar area or areas.

Subpart D—Pay Administration

§ 532.401 Definitions.

In this subpart:

"Change to a lower grade" means a change of an employee, while continuously employed, to a job or grade level with a lower representative rate.

"Equivalent increase" means an increase or increases in an employee's scheduled rate of pay, equal to or greater than the amount of a within-grade increase in the grade which the employee is serving except in certain situations specified by the Office of Personnel Management.

"Existing scheduled rate of pay" means the scheduled rate of pay received immediatedly before the effective date of a transfer, reassignment, promotion, change to a lower grade, within-grade increase, or revision of a wage schedule.

"Highest previous rate" means the highest scheduled rate of pay previously paid to a person while employed in a job in any branch of the Federal Government under one or more appointments.

"Promotion" means a change of an employee, while continuously employed, to a job or grade level with a higher representative rate.

"Rate of basic pay" means the scheduled rate of pay plus any night shift or environmental differential.

"Reassignment" means a change of an employee, while serving continuously in the same agency, from one job to another without promotion or change to a lower grade.

"Representative rate" means the going rate, ie., the rate or step keyed to the prevailing rate determination for example:

(1) The established rate on a single rate schedule;

(2) The second rate on a five-rate regular wage schedule;

(3) The fourth rate on the General Schedule; or

(4) The fourth rate of a class under the Foreign Service Officer and Foreign Service Staff schedule.

"Retained rate" means the rate of pay an employee is receiving which is higher than the maximum scheduled rate of pay of the Federal Wage System grade or pay level to which the employee is assigned.

"Scheduled rate of pay" means the rate of pay fixed by law or administrative action, including a retained rate of pay, for the job held by an employee before any deductions and exclusive of additional pay of any kind.

§ 532.403 New appointments.

(a) Except as provided in paragraphs (b) and (c) of this section, a new appointment to a position shall be made at the minimum rate of the appropriate grade.

(b) An agency may make a new appointment at a rate above the minimum rate of the appropriate grade in recognition of an appointee's special qualifications.

(c) An agency shall make a new appointment at a step-rate above the minimum rate of a grade if the lead agency for the wage area has designated, in accordance with § 532.229 of Subpart B, a step-rate above the first step-rate of a grade as the minimum step-rate at which a position may be filled.

§ 532.405 Use of highest previous rate.

(a)(1) Subject to the provisions of § 532.407 and Part 536 of this chapter, when an employee is reemployed, reassigned, transferred, promoted, or changed to a lower grade, the agency may fix the pay at any rate of the new grade which does not exceed the employee's highest previous rate.

(2) However, if the employee's highest previous rate falls between two step-rates of the new grade, the agency may fix the pay at the higher of the two.

(b)(1) When an employee's type of appointment is changed in the same job, an agency may continue to pay the existing scheduled rate or may pay any higher rate of the grade which does not exceed the employee's highest previous rate.

(2) However, if the highest previous rate falls between two step rates of the

grade, the agency may pay the higher rate.

(c)(1) The highest previous rate, if earned in a wage job, is the current rate of the grade and step-rate of the former job on the same type of wage schedule in the wage area in which the employee is being employed, or the actual earned rate, whichever is higher.

(2) If earned on a General Schedule or another pay system other than the Federal Wage System, it is the current rate for the same grade and step-rate of that schedule.

(d) The highest previous rate may be based upon a rate of pay received during a period of temporary promotion, but may not be based on rates established under §§ 532.229 and 532.403(b) or sections 3109 and 5303 of title 5, United States Code.

§ 532.407 Promotion.

(a) An employee who is promoted is entitled to be paid at the lowest scheduled rate of the grade to which promoted which exceeds the employee's existing scheduled rate of pay by at least four percent of the representative rate of the grade from which promoted.

(b) If there is no step-rate in the grade to which an employee is promoted which meets the above requirement the employee shall be entitled to the higher of: (1) the existing scheduled rate of pay in accordance with Part 536 of this Chapter; or (2) the maximum scheduled rate of the grade to which promoted.

(c) If the promotion is to a position in a different wage area, the agency shall determine the employee's pay entitlement as if there were two pay actions—a promotion and a reassignment—and shall process them in the order which gives the employee the maximum benefit.

§ 532.409 Grading or regrading of positions.

Except as provided in § 532.703(b)(10), a change in an employee's rate of basic pay as a result of the grading or regrading of the employee's position shall be effective on the date the grading or regrading action is finally approved by the agency or on a subsequent specifically stated date.

§ 532.411 Details.

(a) An employee detailed to a position other than the position to which appointed shall be paid at the rate of the position to which appointed.

(b) An employee detailed, beyond 120 days without prior approval of the Office of Personnel Management, to a higher graded position for an extended period will be allowed a retroactive temporary promotion with back pay.

§ 532.413 Simultaneous action.

(a) If an employee becomes entitled to more than one pay change at the same time, the employing agency shall process the pay changes in the order which will provide the maximum benefit, except as required by paragraph (b) of this section.

(b) If an employee becomes entitled to an increase in pay and subject to a personnel or appointment change at the same time, the increased rate of pay is deemed to be the employee's existing scheduled rate of pay when the personnel or appointment change is processed.

§ 532.415 Application of new or revised wage schedules.

(a) The head of each installation or activity in a wage area shall place new or revised wage schedules into effect at the beginning of the first full shift on the date specified on the schedule by the lead agency.

(b) No agency may retroactively change any personnel or pay actions taken between the effective date of a new or revised wage schedule and the date it is actually put into effect if the personnel or pay actions taken during this period of time are more advantageous to an employee than the same personnel or pay action would have been had the new or revised wage schedule been placed into effect on the date specified by the lead agency.

(c) In applying a new or revised wage schedule the scheduled rate of pay of an employee paid at one of the rates of the employee's grade on an old wage schedule shall be adjusted to the rate of pay established on a new revised wage schedule for the same grade and step, regardless of whether the adjustment results in an increase or a decrease in the employee's scheduled rate of pay.

§ 532.417 Within-grade increases.

(a) An employee paid from a regular Federal Wage System schedule with a work performance rating of satisfactory or better shall advance automatically to the next higher step within the grade in accordance with section 5343(e)(2) of title 5, United States Code.

(b) Waiting periods for within-grade increases shall begin:

(1) On the first day of a new appointment as an employee subject to this part;

(2) On the first day of a period of service after a break in service or time in a nonpay status in excess of 52 weeks; or

(3) On receipt of an increase or increases in an employee's scheduled rate of pay, equal to or greater than the amount of the within-grade increase for the employee's grade.

(c) Creditable service. The following periods of time shall be considered creditable service for purposes of waiting periods for within-grade increases:

(1) Time during which an employee is in receipt of pay, including periods of leave with pay;

(2) Time during which an employee with a prearranged regular scheduled tour of duty is in a nonpay status to the extent that the time in a nonpay status does not exceed, in the aggregate:

(i) One workweek in the waiting period for step 2;

(ii) Three workweeks in the waiting period for step 3; or

(iii) Four workweeks in the waiting period for steps 4 and 5;

(3) Time during which an employee or former employee is on leave of absence or is separated from Federal service and is entitled to continuation of pay or compensation under subchapter I of chapter 81 of title 5, United States Code. This does not apply to prevailing rate employees within a Department of Defense or Coast Guard nonappropriated fund instrumentality;

(4) Time during which a former employee is serving with the armed forces during a period of war or national emergency if the former employee left a civilian position to enter the armed forces and:

(i) Is reemployed no later than 52 weeks after separation from active military duty, or

(ii) Is restored to the civilian position after separation from active military duty or release from hospitalization following separation from active military duty;

(5) The time between an employee's separation from an earlier position and the date of the employee's return to a civilian position through the exercise of a reemployment right granted by law, Executive order, or regulation;

(6) Essential non-government civilian employment in the public interest during a period of war or national emergency when it interrupts otherwise creditable service;

(7) The time during which an employee is detailed to a non-Federal position under subchapter VI of chapter 33 of title 5, United States Code; and

(8) Nonworkdays intervening between an employee's last regularly scheduled workday in one position and the first regularly scheduled workday in a new position.

(d) Effective date. A within-grade increase shall be effective on the first day of the first day period that begins on

or after the day an employee becomes eligible for the increase.

§ 532.419 Grade and pay retention.

(a) In accordance with section 9(a)(1) of Pub. L. 92–392, an employee's initial rate of pay on conversion to a wage schedule established under the provisions of subchapter IV of chapter 53, title 5, United States Code, shall be determined under conversion rules prescribed by the Office of Personnel Management.

(b) Except as provided in paragraph (a) of this section, an employee's eligibility for grade and/or pay retention shall be determined in accordance with the provisions of Part 536 of this chapter.

(c) An employee receiving a retained rate of pay prior to the first day of the first pay period beginning on or after January 11, 1979, who is not eligible for grade retention under the provisions of Part 536 of this chapter, shall continue to receive retained pay under the same provisions which initially entitled the employee to pay retention until that pay retention period terminates or the employee becomes entitled to greater benefits under Part 536 of this title.

Subpart E—Premium Pay and Differentials

§ 532.501 Definitions.

In this subpart:

"Administrative workweek" means a period of seven consecutive calendar days.

"Basic workweek" for full time employees means the days and hours within an administrative workweek which make up the employee's regularly scheduled 40-hour workweek.

"Environmental differential" means a differential paid for a duty involving unusually severe hazards or working conditions.

"Irregular or occasional overtime work" means overtime work which is not scheduled as a part of the regularly scheduled administrative workweek.

"Night shift differential" means the differential paid the employee when the majority of regularly scheduled nonovertime hours worked fall between 3 p.m. and 8 a.m.

"Overtime work" means authorized and approved hours or work performed by an employee in excess of eight hours in a day or in excess of 40 hours in an administrative workweek, and includes irregular or occasional overtime work and regular overtime work.

"Regular overtime work" means overtime work which is scheduled as a part of the regularly scheduled administrative workweek.

"Regularly scheduled administrative workweek" means:

(1) For full time employees the period within an administrative workweek within which employees are scheduled to be on duty regularly.

(2) For part time employees it means the days and hours within an administrative workweek during which these employees are scheduled to be on duty regularly.

"Tour of duty" means the hours of a day, i.e., a daily tour of duty and the days of an administrative workweek, i.e., a weekly tour of duty, that are scheduled in advance and during which an employee is required to perform on a regularly recurring basis.

§ 532.503 Overtime pay.

(a)(1) Employees shall be paid overtime pay in accordance with sections 5544 and 5550 of title 5, United States Code or, if eligible, under the provisions of the Fair Labor Standards Act of 1938, as amended, whichever provides the greater benefits.

(2) Hours of work in excess of eight in a day are not included in computing hours of work in excess of 40 hours in an administrative workweek.

(b) Effect of leave on overtime pay.

(1) Hours during which an employee is absent from duty on paid leave during time when the employee otherwise would have been required to be on duty shall be considered hours of work in determining whether the employee is entitled to overtime pay for work performed in excess of eight hours a day or 40 hours a week.

(2) For the purposes of paragraph (b)(1) of this section paid leave includes but is not limited to:

(i) Annual or sick leave;

(ii) Authorized absence on a day off from duty granted by executive or administrative order; or

(iii) Authorized absence on a legal holiday;

(3) Hours during which an employee is absent from duty on leave without pay during time when he/she otherwise would have been required to be on duty shall not be considered hours of work in determining whether he/she is entitled to overtime pay for work performed in excess of eight hours in a day or 40 hours in a week.

(c) Callback overtime work. Irregular or occasional overtime work performed by an employee on a day when work was not regularly scheduled for the employee or for which the employee has been required to return to the place of employment shall be considered to be at least two hours in duration for the purpose of overtime pay, regardless of whether the employee performs work for two hours.

(d)(1) An employee regularly assigned to a night shift, who performs overtime work which extends into or falls entirely within a day shift, shall be entitled to overtime pay computed on the night rate.

(2) When the overtime is performed on a nonworkday the employee shall be entitled to overtime pay computed on the rate of the employee's last previous regularly scheduled shift.

(e)(1) An employee regularly assigned to a rotating schedule involving work on both day and night shifts who performs overtime work which extends or falls entirely within the succeeding shift shall be entitled to overtime pay computed on the rate of the employee's regularly scheduled shift in effect for that calendar day.

(2) When the overtime is performed on a nonworkday, the employee shall be entitled to overtime pay computed on the average rate of basic pay for all regularly scheduled shifts worked by the employee during the basic workweek.

§ 532.505 Night shift differentials.

(a) Employees shall be entitled to receive night shift differentials in accordance with section 5343 of title 5, United States Code.

(b) Absence of holidays. An employee regularly assigned to a shift for which a night shift differential is payable shall be paid the night shift differential for a period of excused absence on a legal holiday or other day off from duty granted by Executive or administrative order.

(c) Travel status. An employee regularly assigned to a shift for which a night shift differential is payable shall be paid the night shift differential for hours of the employee's tour of duty while in official travel status, regardless of whether the employee is performing work.

(d) Temporary tour of duty:

(1) An employee regularly assigned to a night shift who is temporarily assigned to a day shift or to a night shift having a lower night shift differential shall continue to receive the regular night shift differential.

(2) An employee regularly assigned to a night shift, who is temporarily assigned to another night shift having a higher differential, shall be paid the higher differential if a majority of the employee's regular scheduled nonovertime hours of work on the temporary shift fall within hours having the higher differential.

(3) An employee regularly assigned to a day shift who is temporarily assigned

to a night shift shall be paid a night shift differential.

(e) Leave with pay:

(1) An employee regularly assigned to a night shift shall be paid a night shift differential during a period of leave with pay.

(2) An employee regularly assigned to a day shift who is temporarily assigned to a night shift shall be paid a night shift differential for any leave with pay taken when scheduled to work night shifts.

(3) An employee assigned to a regular rotating schedule involving work on both day and night shifts shall be paid a night shift differential only for any leave with pay taken when scheduled to work night shifts.

(4) An employee who is not regularly assigned to a day shift or a night shift but whose shift is changed at irregular intervals shall be paid a night shift differential during leave with pay if the employee received a night shift differential for the last shift worked preceding leave with pay.

§ 532.507 Pay for holiday work.

(a) An employee who is entitled to holiday premium pay and who performs work on a holiday which is not overtime work shall be paid the employee's rate of basic pay plus premium pay at a rate equal to the rate of basic pay.

(b) An employee shall be paid for overtime work performed on a holiday at the same rate as for overtime on other workdays.

(c) An employee who is entitled to holiday premium pay and who is required to report for work on a holiday shall be paid at least two hours of holiday pay whether or not work is actually performed.

§ 532.509 Pay for Sunday work.

A wage employee whose regular work schedule includes an 8-hour period of service a part of which is on Sunday is entitled to additional pay under the provisions of sections 5544 and 5550 of title 5, United States Code.

§ 532.511 Environmental differential pay.

(a) Entitlement of environmental differential pay:

(1) In accordance with Section 5343(c)(4) of title 5, United States Code, an employee shall be paid an environmental differential when exposed to a working condition or hazard that falls within one of the categories approved by the Office of Personnel Management.

(2) Each installation or activity must evaluate its situations against the guidelines issued by the Office of Personnel Management to determine whether the local situation is covered by one or more of the defined categories.

(b) Amount of environmental differential payable:

(1) An employee entitled to an environmental differential shall be paid an amount equal to the percentage rate authorized by the Office of Personnel Management for the category in which the working condition or hazard falls, multiplied by the rate for the second step of WG–10 for the appropriated fund employees and NA–10 for the nonappropriated fund employees on the current regular non-supervisory wage schedule for the wage area for which the differential is payable, counting one-half cent and over as a whole cent.

(2) An employee entitled to an environmental differential on an actual exposure basis shall be paid a miminum of one hour's differential pay for the exposure. For exposure beyond one hour, the employee shall be paid in increments of one quarter hour for each 15 minutes or portion thereof in excess of 15 minutes. Entitlement begins with the first instance of exposure and ends one hour later, except that when exposure continues beyond the hour, it shall be considered ended at the end of the quarter hour in which exposure actually terminated.

(3) An employee entitled to environmental differential pay because of exposure to a working condition or hazard falling within a category approved by the Office of Personnel Management shall be paid environmental differential pay for all of the hours in the employee's shift.

(4) An employee may not be paid more than one environmental differential for a particular period of work.

(5) The payment of environmental differential pay is computed on the basis of the highest environmental differential rate authorized during the period of entitlement.

(6) The number of hours an employee is paid environmental differential shall not exceed the number of hours of duty performed by the employee on the day of exposure except as required by paragraph (b)(3) of this section.

(c) Basic pay. Environmental differential pay shall be considered basic pay for all purposes except for lump-sum annual leave payments and severance pay.

Subpart F—Job Grading System

§ 532.601 General.

The Office of Personnel Management shall establish a job grading system in accordance with section 5346 of title 5, United States Code. Appropriate instructions to agencies on the application of the job grading system shall be published by the Office of Personnel Management. Agencies are required to grade all jobs subject to this part in accordance with such instructions.

Subpart G—Job Grading Reviews and Appeals

§ 532.701 General.

A prevailing rate employee may at any time appeal the occupational series, grade or title to which the employee's job is assigned, but may not appeal under this subpart the standards established for the job, nor other matters such as the accuracy of the job description, the rate of pay, or the propriety of a wage schedule rate.

§ 532.703 Agency review.

(a) Each agency shall establish a system for processing an employee's application for review of the correctness of the grade of the employee's job.

Note.—Application for review will be hereafter referred to as an "application".

(b) In establishing the system required by this subpart, an agency, as a minimum, shall provide that the following requisites be met.

(1) The provisions of the system shall be published and the agency's employees shall be informed where a published copy is available for review.

(2) An application shall be in writing and contain the reasons the employee believes the position is erroneously graded.

(3) An application may be filed at any time. However, when the application involves a downgrading or other job-grading action which resulted in a reduction in grade or loss of pay, in order to be entitled to retroactive corrective action:

(i) An employee not covered by Part 536 of this Chapter who is covered by Subparts C and D of Part 752 of this Chapter must appeal the change to lower grade under the provisions of § 752.405 of this Chapter. An appeal under Subpart C and D of Part 752 of this Chapter precludes the employee from filing an application under this section; or

(ii) An employee not covered by Subparts C and D of Part 752 of this Chapter must request review under the provisions of this subpart within 15 calendar days of the effective date of the change to lower grade. An employee receiving grade retention under Part 536 of this Chapter has no appeal rights under Part 752 of this Chapter.

(4) An employee may select a representative, and the employee and

the representative, when the representative is also employed by the same agency, shall be granted a reasonable time in presenting the application and shall be assured freedom from restraint, interference, coercion, or reprisal in presenting the application.

(5) An employee shall promptly furnish such facts as may be requested by the agency.

(6) An application shall be cancelled and the employee so notified in the following circumstances:

(i) On receipt of a written request by the employee;

(ii) Failure of the employee to furnish required information or otherwise fail to proceed with the advancement of his application in a timely manner; however, instead of cancellation for failure by the employee to prosecute, the application may be adjudicated by the agency if the information is sufficient for that purpose; or

(iii) On notice that the employee has left the job, except when the employee would be entitled to the retroactive benefits including benefits allowable after the death of an employee appellant.

(7) The application shall be processed and decided promptly. No more than one level of review may be established within an agency before a final decision is issued, and that level of review, when possible, must be above the level of classification authority which classified the position.

(8) When an employee not subject to Subparts C and D of Part 752 of this title applies for a review of a downgrading or other job-grading action that resulted in a reduction of pay, and the decision of an agency reverses in whole or in part the downgrading or other job-grading action, the effective date of that decision shall be retroactive to the effective date of the action being reviewed when the initial application to the agency was submitted in accordance with paragraph (b)(3)(ii) of this section. However, when the agency decision raises the grade or level of the job above its grade or level immediately preceding the downgrading, retroactivity shall apply only to the extent of restoration to the grade or level immediately preceding the downgrading.

(9) The right to a retroactive effective date is preserved when an agency finds that an employee was not notified of the applicable time limit for review and was not otherwise aware of the limit or that circumstances beyond the employee's control prevented filing the application within the prescribed time limit.

(10) The effective date of a change in the grade of a job shall be specified in the agency decision and, unless otherwise required by this subpart, may not be earlier than the date of the decision. However, in no case may it be later than the beginning of the first pay period which begins after the 60th calendar day from the date the application was filed. However, when the agency decision will result in a downgrading or other job-grading action that will reduce the pay of the incumbent of the job, the effective date may not be set earlier than the date on which the decision can be effected in accordance with procedures required by applicable law and regulation. The retroactive reclassification may be based only on duties and responsibilities existing at the time of downgrading or loss of pay and not on duties and repsonsibilities later assigned.

(11) When an application has been properly filed before the death of an employee who dies before the application has been processed, and a favorable decision would entitle the employee to retroactive corrective action, the application will be processed to completion after the employee's death and any appropriate corrective action made by amending the records of the agency.

(12) The decision on an application shall:

(i) Be based on the record,

(ii) Be in writing,

(iii) Inform the employee either in the decision or as an attachment to the decision of the reasons for the decision, including an analysis of the employee's job, i.e., comparing the job with the appropriate standard, and

(iv) Inform the employee of the right to appeal the decision to the Office of Personnel Management and of the time limits within which the application must be filed.

(c) The agency is responsible for compiling and maintaining a job-grading review file which will constitute the record and which will not contain any document or information which the employee has not been given an opportunity to review.

§ 532.705 Appeal to the Office of Personnel Management.

(a)(1) An employee may appeal the grade of the job to the appropriate office of the Office of Personnel Management only (i) after the agency has issued a decision under the system established under § 532.703; and (ii) if the employee files the appeal with the Office of Personnel Management within 15 calendar days after receipt of the decision of the agency.

(2) The Office of Personnel Management may extend this time limit if it is shown that the employee was not notified of the applicable time limit and was not otherwise aware of the limit, or that circumstances beyond the employee's control prevented failing an appeal within the prescribed time limit.

(b) An employee shall make the appeal in writing and shall identify specifically the portions of the decision or job analysis of the agency with which the employee disagrees.

(c) The Office of Personnel Management shall base its decision on the record established in the agency, except that when the Office of Personnel Management investigates or audits the job it may take the results of the investigation or audit into consideration. In the event the Office of Personnel Management audits the job, the employee's representative may not be present.

(d) The Office of Personnel Management shall notify the employee and the agency in writing of its decision. The effective date of a change in the grade of a job directed by the Office of Personnel Management shall be specified in the decision of the Office of Personnel Management, computed from the date the employee filed the application with the agency, and determined under § 532.705(b)(10).

(e) The appeal of an employee shall be canceled and the employee so notified in the following circumstances:

(1) On receipt of the employee's written request;

(2) On failure to prosecute, when the employee does not furnish requested information and duly proceed with the advancement of the appeal; however, instead of cancellation for failure to prosecute, an appeal may be adjudicated if the information is sufficient for that purpose. The Office of Personnel Management may reopen a canceled appeal on a showing that circumstances beyond the control of the employee prevented the employee from prosecuting the appeal; or

(3) On notice that the employee has left the job, except when entitled to retroactive benefits, including benefits allowable after the death of an appellant.

(f) The head of an agency or authorized representative of the head of an agency may seek review of any job-grading decision made by the Office of Personnel Management with respect to any job subject to the provisions of this subpart.

(g) The Office of Personnel Management may, at its discretion, reopen and reconsider any job-grading decision made by a regional office. This

authority may be used under circumstances such as the following:

(1) An employee or an agency presents material facts not previously considered by the regional office involved;

(2) There is room for reasonable doubt as to the appropriateness of a regional office decision; or

(3) The potential impact of a regional office decision on similar jobs under other regional offices is sufficiently significant to make central office review of the decision desirable.

(h) The Director of the Office of Personnel Management, may, in his discretion, reopen and reconsider any previous decision when the party requesting reopening submits written argument or evidence which tends to establish that:

(1) New and material evidence is available that was not readily available when the previous decision was issued;

(2) The previous decision involves an erroneous interpretation of law or regulation or a misapplication of established policy; or

(3) The previous decision is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand, or is otherwise of such an exceptional nature as to merit the personal attention of the Director of the Office of Personnel Management.

(i) A final decision by the Office of Personnel Management constitutes a certificate which is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government.

[FR Doc. 80-14647 Filed 5-12-80; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 760

Beekeeper Indemnity Payment Program (1978-81)

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Lengthen comment period on proposed rule.

SUMMARY: On April 11, 1980, a notice was published in the **Federal Register** (45 FR 24899) that the Agricultural Stabilization and Conservation Service proposed to amend its regulations relating to the Beekeeper Indemnity Payment Program by terminating the program on May 15, 1980. This action was taken because of a lack of funds for a program which has been determined to be of low priority. The new proposed date for termination of the program is July 1, 1980. The comment period is being lengthened to allow interested parties time to familiarize themselves with the information, determine the impact and prepare their responses. This notice invites further comments on the proposed termination.

DATE: Comments must be received on or before June 12, 1980.

ADDRESS: Send comments to Director, Emergency and Indemnity Programs Divisions, ASCS, USDA, P.O. Box 2415, Room 4095 South Building, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Robert Cook, Emergency and Indemnity Programs Division, ASCS, USDA, P.O. Box 2415, Room 4095 South Building, Washington, D.C. 20013, (202) 447-7997.

SUPPLEMENTARY INFORMATION: The Food and Agriculture Act of 1977, 91 Stat. 921, 7 U.S.C. 284, extended the authority of the Secretary to conduct the Beekeeper Indemnity Payment Program through September 30, 1981. On July 14, 1978, the Department published final regulations (43 FR 3026) to govern the conduct of the program through September 30, 1981. It is not mandatory that the program be conducted.

The proposed 1980 budget for the Department of Agriculture contained no funding for the Beekeeper Indemnity Payment Program. On June 15, 1979, the Beekeeper Indemnity Payment Program Regulations were amended to provide that payment of claims filed after that date would be conditioned upon the availability of funds. Claims for 1978 losses, approved for approximately $2.10 million, were unpaid because of the lack of funds. The Agriculture Appropriations Act for Fiscal Year 1980 authorized $2.89 million for the beekeeper indemnity program.

The public is invited to submit written comments regarding the proposed termination, to the Director, Emergency and Indemnity Programs Division, ASCS, USDA, P.O. Box 2415, Room 4095 South Building, Washington, D.C. 20013. Persons submitting comments should include their names and address and give reasons for the comments. Copies of all written comments received will be available for review by interested persons in Room 4095 South Building, USDA, during regular business hours.

Accordingly, the comment period is lengthened and public comments must be received by June 13, 1980, in order to be assured of consideration.

Proposed Rule

The Department proposes to amend 7 CFR Part 760, by revising the title of the Subpart—Beekeeper Indemnity Payment Program (1978-1981)—and § 760.101(b) to read as follows:

Subpart—Beekeeper Indemnity Payment Program (1978-80)

* * * * *

§ 760.101 Definitions.

* * * * *

(b) "Application period" means any period with respect to which application for payment is made beginning not earlier than January 1, 1978, and ending not later than July 1, 1980.

This regulation has been determined significant under the USDA criteria implementing Executive Order 12044 "Improving Government Regulations." An approved impact analysis on the proposal to terminate the program is available from the Emergency and Indemnity Programs Division.

Signed at Washington, D.C., on May 7, 1980.

Ray Fitzgerald,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 80-14566 Filed 5-12-80; 8:45 am]
BILLING CODE 3410-05-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 60

Technical Criteria for Regulating Geologic Disposal High-Level Radioactive Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: In the December 6, 1979 edition of the **Federal Register** (44 FR 70408), the Commission published its proposed licensing procedures for the disposal of high-level radioactive wastes (HLW) in geologic repositories. This advance notice is the next stage in the HLW rulemaking process. This notice informs the public and interested parties concerning the status of efforts related to the development of technical criteria to become part of 10 CFR Part 60. It invites public comment on issues related to such development; on the approach being considered, including partitioning of the problem into workable elements and statements of underlying principles and technical considerations. Attached to this notice are draft technical criteria. These criteria are a result of the efforts

of the staff to accommodate and include the best thinking which has been made available to the staff from technical experts in the form of technical points, suggestions and criticisms on previous drafts of technical criteria. However, these criteria do not necessarily represent staff positions with respect to rulemaking on this subject.

DATE: Comments must be received by July 14, 1980.

ADDRESS: Written comments or suggestions on the advance notice should be sent to the Secretary of the Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments, may be examined in the U.S. Nuclear Regulatory Commission Public Document Room, 1717 H Street, NW., Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT: I. Craig Roberts, Assistant Director for Siting Standards, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone 301–443–5985.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1979, the Nuclear Regulatory Commission published for comment in the **Federal Register**, proposed regulations for licensing geologic repositories for disposal of HLW (44 FR 70408). The proposed regulations contained only the procedural requirements for licensing: Subparts A, B, C, D, concerning general provisions, licenses, participation by State governments, and records, reports, tests and inspections, respectively. The technical criteria against which a license application will be reviewed were and are still under development. However, the technical and scientific understanding concerning the scope of the technical criteria were regarded as sufficiently developed to enable an appropriate licensing procedure to be established for their implementation. Thus, the Commission was able to propose a procedural rule to establish the necessary regulatory framework for licensing.

Since then the staff of the Commission has made further progress is focusing more sharply on the technical and scientific issues and problems related to licensing geologic disposal of HLW, in partitioning the problem so as to facilitate the development of practicable technical criteria; in articulating principles which might reasonably underlie the technical criteria; and in considering these principles in the identification of approaches to specifying the technical criteria. The Commission seeks comment from all interested parties in order to provide the Commission and its staff the opportunity to obtain public assessment of the general direction being taken in the development of the technical criteria.

The formative work on the technical criteria has been conducted in as public a manner as possible. Numerous drafts of the technical criteria have been developed, and widely circulated to interested agencies, groups, and individuals to obtain input. These drafts, prepared by the licensing staff, have formed the basis for this interaction with outside groups. They started with a fairly diffuse set of principles and ideas and have evolved with an increasing concreteness through 14 staff drafts. Technical reviews of early drafts of the criteria have been conducted by the Keystone Radioactive Waste Review Group and at a workshop held at the University of Arizona. The results of these reviews have been placed in the NRC public document room. Other Federal agencies and groups which have been involved in the review of one or more of the drafts include DOE, EPA, USGS, NRDC, Atomic Industrial Forum, Bureau of Mines, and a host of individual Scientists, engineers, and public interest groups.

The technical criteria include specific numerical criteria in certain areas in order to further stimulate the thoughts and commentary of the public. The staff is preparing a document explaining the basis and rationale for these technical criteria. It is anticipated that this document will be available as a NUREG report at the time that the technical criteria are published in the form of a proposed rule. A working draft of the bases and rationale document has been placed in the NRC Public Document Room for inspection.

Nature of the Problem

To best comprehend regulation of geologic disposal of HLW it is useful to note that such disposal of HLW is separable into five distinct problem areas: lifetime of the repository, physical extent, waste/rock interaction, treatment of uncertainties, and the problem of human intrusion. In turn, each of these areas can be further separated into fairly distinct regimes over which certain aspects or characteristics of the problem area dominate. Each of these regimes then can be treated more-or-less individually, not as specific criteria, but as functional elements addressed by the criteria. What is described below is essentially a matrix for the technical criteria cutting across the five areas above.

1. Lifetime of the Repository

The operational life of a geologic repository for the disposal of HLW quite naturally divides into three periods—the period of construction and emplacement of the wastes; the period during which the shortlived fission products dominate the hazard posed by the wastes; and the long term during which the hazard is dominated by the very long-lived isotopes including the actinides. The technical criteria must reflect the different physical conditions of the repository during these periods and be responsive to the specific nature of the hazard posed by the wastes.

During site selection, the ongoing program is one of probing and testing to find an appropriate site for a repository and develop a compatible design. Construction has not yet begun, and no radiologic hazard is posed. Nonetheless, technical criteria are needed (1) to indicate site features which clearly render a site suitable or unsuitable (site suitability criteria), and (2) to allow a judgment as to whether a proposed site can accommodate an effective repository design and together provide the protection sought (site acceptability criteria). The nature of the criteria is changed to fit the particular needs of the periods as explained below.

Construction and emplacement of wastes is the next period which the criteria must address. During this period the immediate radiologic hazard is to those who are working at the repository and to a much lesser extent those who reside nearby. (There are also the hazards of construction to workers. Criteria which address these hazards would be expected to follow the regulations of the Mine Safety and Health Administration.) In addition, there is the actual design and construction of the repository to be considered for the long term. But the more proximate problem during this phase is that the construction and emplacement methods used will not compromise the ability of the repository to protect future populations. Thus, the technical criteria directed at this period deal with construction techniques, emplacement techniques, operations procedures, and designs for radiological protection of workers and persons living nearby (accidents).

The third period begins following closure of the repository, and will persist for the time that the relatively short-lived fission products dominate the hazard. During this time there will be a substantial heat output from the wastes which if not properly accommodated by site selection and engineering could compromise the

integrity of the repository. In addition, the chemical species and makeup of the emplaced wastes are rapidly changing due to radioactive decay. Criteria applicable to this period will focus on selecting sites and generating designs to accommodate these two major features.

By the time the short-lived fission products no longer dominate the hazard, the wastes are no longer generating significant amounts of heat. Moreover, the short-lived elements have for the most part decayed away and the chemical properties of the waste have greatly stabilized—generally dominated by the actinides. However, for this final period it would be imprudent to rely on engineering to contain the emplaced wastes; and final protection is achieved by the ability of the geologic setting to inhibit migration of the wastes leached from the waste form in a controlled manner. Properties which affect leaching of the waste and which affect transport of the wastes such as fractures, porosity, sorption, hydraulic gradient, and thermal gradient, and determination of the long-term stability of the geologic setting will dominate the criteria addressed to this period.

2. Physical Extent

A repository also can be divided physically into two broad categories—surface and subsurface. The subsurface can be further divided into the area affected by excavation and emplacement of waste and the broad geologic environment into which the repository is set.

The surface portion is comprised of the surface facilities and operations areas needed to support construction and emplacement of wastes. Generally, the criteria which apply here are those which address the construction and emplacement period.

The criteria which pertain to the broad geologic environment address those geologic and hydrologic features which if too close to the excavated area can produce effects on the integrity of the repository that are not readily understood; and, therefore, lead to doubt that the waste can be safely disposed at the repository. The thrust of these criteria would be to assure that such features are far enough away so that they either present no problem, or the prolem they do present can be made tractable.

The last division in the subsurface is the area affected by excavation and emplacement of wastes. It is here that the wastes are emplaced and that the engineering is expected to be used during the first period following closure. It is also here that the construction and emplacement activities must be carried out in a manner which assures that the integrity of the repository is maintained. Hence, criteria applicable to the excavated area address siting, design, operations and the first two periods of concern.

3. Waste/Rock Interaction

The chemical and thermal properties of the wastes undoubtedly will have a significant interaction with the rock unit into which they are emplaced. To assure that the repository will function as planned, siting, designing, emplacement methods, engineering and waste form criteria will be needed to understand, control, and assess the effect of the waste upon its surroundings. These criteria are the complement to the excavated area criteria above. Those criteria are to protect the emplaced wastes from their surroundings; whereas these protect the repository from the effects of waste themselves.

4. Treatment of Uncertainties

If there is to be confidence that wastes disposed in a geologic repository will not pose a significant hazard to the health and safety of future populations, then two factors which pose fundamental difficulties must be addressed satisfactorily. First, geologic disposal is an entirely new enterprise—no experience exists with geologic disposal. Second, there will be no opportunity to observe behavior over the long term—the decisions to close the repository in effect will be a statement of its expected behavior based upon inference, deduction, and extrapolation from results of tests and experiments carried out for a comparatively short period and upon predictions of future geologic, hydrologic, and climatologic conditions based upon observations of the past. These facts impose very definite constraints as to how confidence is achieved that the expectation of behavior will match actual behavior over the long term. These constraints fairly clearly define the items of uncertainty which arise because qualitative descriptions and models necessarily approximate nature rather than exactly describe or predict nature; uncertainties which arise, because the data used as input to those descriptions and models upon which our understanding of the natural processes in question are based, are the result of tests and measurements which themselves have degrees of uncertainty. Finally, there are uncertainties which arise simply because of the large number of geologic and hydrologic elements which must be identified, measured, and combined to determine the expected behavior of a repository—in fact, the very process of combining those elements compounds the uncertainties associated with them. Thus, criteria are needed to assure that those uncertainties are identified, understood, and compensated. Avoiding potentially adverse features is one way of compensating for uncertainities. Placing constraints on design and performance of components is another. Siting criteria which tend to lead toward relatively geologically simple sites are a third. Finally, developing criteria which address individually the separable aspects (temporal and spatial) of geologic disposal is perhaps the surest means of dealing with uncertainties.

5. Human Intrusions

To this point the discussion has focused upon the processes of nature—how the repository can be expected to behave over the long term. However, the problem of human intrusions, intentional or inadvertent moots much of the previous discussions since there is no way to reasonably limit the variety of conceivable human activities which might compromise a forgotten repository. The only logical recourse, since engineering against human intrusion is impossible practically,[1] is to avoid targets, i.e., sites which may invite such intrusion. Mineral resources, water resources, interesting geologic or hydrologic features are sure to attract the developer or the explorer. Shallow repositories would more easily be intruded upon than deep ones. Therefore, what is needed are site suitability criteria which would lead toward uninteresting sites of little resource value, and design criteria which would yield designs that present minimal "targets."

Underlying Principles

The efforts of the Commission staff to develop the technical criteria have been guided by the following principles:

(1) Under Reorganization Plan Number 3 of 1970, the Environmental Protection Agency (EPA) was given the authority under the Atomic Energy Act of 1954 as amended to set the generally applicable standards for radiation in the environment. Such standards represent a broad social consensus concerning the amount of radioactive materials and levels of radioactivity in the general environment that are compatible with

[1] Actually, containing the wastes within a canister for the period that the relatively short-lived fission products dominate the hazard does tend to lessen the impact of drilling into the repository by localizing the waste (i.e., keeping the "target" small) and making a smaller quantity available for dispersion during that period should drilling penetrate a waste cannister.

protection of the health and safety of the public. This EPA authority extends to the setting of the standard and not to the implementation of such standards or to the establishing of requirements concerning how they are to be met. The Commission is bound to implement these standards in its regulations, thus assuring that they will be met by activities authorized by the Commission's licensing decisions. The Commission may not substitute its judgment for that of the EPA, but the Commission may, and must, determine whether particular proposed disposal activities will conform to the EPA standard.

The EPA has published its generally applicable environmental standard for all of the fuel cycle except waste storage and disposal, 40 CFR 190, which expresses the limit in the form of a quantitative dose limit to the individual. The EPA is in the process of developing its HLW standard. The Commission expects this standard (40 CFR 191), to be similar in approach to that followed in 40 CFR 190.

(2) As noted above, although the Commission is bound to implement the EPA HLW standard, it has the authority and discretion to determine how that standard will be achieved. In particular, the Commission must decide how it will develop its regulatory requirements, viz., the technical criteria of 10 CFR Part 60, and carry out its decision process to show that in each particular licensing case, the EPA standard will be met.

(3) In order to establish the technical criteria for meeting the EPA standard and to make individual licensing decisions as to whether such criteria are met, the Commission needs to carry out conservative analyses because of the many uncertainties associated with HLW waste disposal in geologic repositories. These uncertainties arise from the inability, given the present and expected state of science and technology, to determine precisely the degree to which wastes, under credible conditions for the time periods involved, will be contained and isolated. Further, in order to carry out such analyses the Commission may require measures which may not directly enter into the analyses, but will add to confidence in those analyses, thus adding to the Commission's confidence in the degree to which the EPA standard can be or has been met. Such measures are likely to be aimed at simplifying the problem: such as requiring that precepts of simplicity and stability of the geologic settings govern the site selection process in order to reduce the overall uncertainty and thus render more tractable the problem of demonstrating that the criteria and the EPA standard are met.

(4) Because the scientific and technical problems associated with HLW waste disposal are sufficiently understood, it is possible, even in the absence of an EPA standard, to identify relevant areas of regulation. These are the areas which contribute to: protection of the public health and safety or the environment; the reduction of uncertainty; or the confidence in any decision as to whether the EPA standard and NRC regulations are met.

(5) The natural divisions of the problem in time and space and the separation of the problem of human intrusion from natural events aid in understanding which areas should be regulated, facilitate the analyses which will serve as the decision-bases, and so will increase confidence in regulating and licensing decisions.

(6) The analyses and requirements must reflect a degree of examination and control which corresponds to the importance to safety of any given technical area. Thus, the technical criteria must address not only questions of site suitability, but—to the extent possible—address questions of site/facility acceptability.

Considerations

In the course of developing technical criteria a number of considerations have arisen. The Commission believes that the program to develop the technical criteria for HLW disposal in geologic repositories would benefit from comment on them:

(1) *Systems Approach.* The term "systems approach" relates to the set of natural and engineered barriers which would function to contain and isolate the waste from the biosphere for the periods of time required, to increase the degree of the Commission's confidence that indeed such containment and isolation would be achieved, or to permit appropriate and conservative analyses to be performed which would form the decision bases.

It is evident that for a geologic repository, the geologic setting must be one barrier. In considering whether there should be other barriers, a key question which needs to be answered is whether it is prudent, in view of the nature of the problems and the uncertainties involved, to rely on the geologic setting alone to accomplish the functions stated above. The state-of-the-art in the earth sciences is such that all of the uncertainties associated with these functions cannot be resolved through consideration of the geologic setting.

It is appropriate, therefore, to consider how engineering—in the broadest sense of anything used to effect a purpose—might be used to compensate for, reduce, or eliminate at least some of the uncertainties inherent in reliance on the geologic setting alone. Engineering can be used to narrow the extent of geologic processes which need to be considered in the rulemaking and licensing processes; that is, engineering can be used to bound and/or diminish the importance of certain geologic processes. Engineering also can be used to make the containment of emplaced waste as insensitive as possible to potential changes in the geologic environment. For example, the use of buffering materials to retain radionuclides is one possible way to compensate for uncertainties in the sorption capabilities of a particular medium and site.

In light of these considerations, therefore, the Commission staff believes that it is reasonable to couple a prudently and cautiously selected geologic setting (natural barrier) with a set of engineered barriers capable of performing or assisting the performance of the functions stated above. Further, the Commission staff believes that sites which are relatively easily understood and can be expected to be stable for long times, are the most desirable; and that engineered systems which are compatible with and make the least adverse impacts upon the geologic and hydrologic characteristics of the site will contribute most to the performance of the overall disposal system. Similarly, to the greatest extent possible, the performance of engineered systems should be insensitive to changes in those characteristics and should provide a high degree of protection by themselves.

Given the nature of the problems, as discussed earlier, the Commission staff has identified the following as composing the set of three primary barriers of the waste disposal system: the geologic setting; the design and configuration of the repository, including the waste emplacement scheme and engineered barriers; and the waste package.

(2) *Use of Minimum Performance Standards for Major Regulatory Elements.* Determining the expected evolution of a geologic repository in time is the key to understanding the consequences of emplacing wastes in a repository. Such expectation of the effects of pertubations and changes, both natural and man-caused to the the hydrologic environment, serves to identify the kinds of events, including

institutional failures, which might cause a radioactive release to the biosphere. Assessment of such events that reasonably can be assumed to occur and their likely consequences permits the identification of the "credible" events which should be considered in the design of the repository and evaluated in rulemaking and licensing decisions: Identification of these "credible" events permits development of performance requirements for both the natural and engineered barriers to assure that such events are avoided where possible for their consequences mitigated when these performance requirements are met. Such describes the deterministic approach the Commission staff has been taking in development of the performance requirements for HLW disposal in geologic repositories, and defense-in-depth approach to provide assurance and confidence that the EPA standard can be met.

(3) *The Nature of the Major Regulatory Elements.* The regulatory elements selected should be either important to safety, that is, contain and isolate the waste from the biosphere for the periods of time required, or contribute to confidence in the functioning of the repository system or individual components. As discussed above, the repository is conceived as a system of multiple barriers, both natural and engineered. The two most important attributes of the natural barrier are that the site should be geologically simple and stable so that the site can be easily understood and so that there can be confidence that the ability of the site to contain and isolate the wastes will remain viable for long times.

The three most important attributes of the engineered barriers must be their compatibility with the geologic and hydrologic characteristics of the site so that the engineered barriers will have the least adverse impact on the site's ability to retain the emplaced wastes; their insensitiveity to any changes in the site characteristics so that there can be confidence in the predictability of their performance over time; and their ability to complement the performance of the site so as to increase confidence in overall repository performance to supplement the performance of the site—where possible—to increase the overall margin of safety.

(4) *Adequacy of Favorable and Unfavorable Site Characteristics to Impose Proper Technical Resrictions.* Consideration of site characteristics is important to the development of technical requirements for HLW disposal from several aspects. The first relates to question of site suitability, that is, to the potential of a site to serve as the location for a repository. Unfavorable site characteristics are identified to eliminate from consideration sites which would not be acceptable under any circumstances for a HLW geologic repository or which would present insuperable difficulties in terms of understanding the geology and hydrology of the site or would introduce or compound uncertainties which would affect negatively confidence in any licensing decisions. Favorable site characteristics are identified where the likelihood of a site/facility combination (repository) being acceptable is greater or which would contribute to increased understanding of the geology and hydrology, permit uncertainties to be better handled, and increase confidence in any licensing decisions. However, neither kind of site suitability characteristics say anything about the ultimate acceptability of the repository system as a means to safely contain and isolate the wastes for the time required with the degree of confidence necessary to a licensing decision. Criteria by which the acceptability of the site/facility combination can be assessed are needed for this determination.

Specifically, this second aspect relates to questions of whether or not, given the present state-of-the-art in the earth sciences, it is possible to identify on a generic basis site characteristics the presence of which at an otherwise suitable site would render the site/facility combination unaccepatable for HLW disposal. The question of general site acceptability criteria is an open one in the sense that the staff has not identified to date such criteria. Should general site acceptability criteria not be developed, it will be necessary to determine the site acceptability question on a case-by-case basis.

(5) *Codification of Models in Licensing Process.* The question of whether regulations should codify models to be used in licensing disposal of HLW or whether the criteria shoud only allow the use of models is a controversial one. In considering these questions the staff recognizes that it is necessary to: (a) Use descriptions (models) of the behavior of geologic processes and of the repository and of the consequences associated with that behavior; (b) Acknowldege that these descriptions are approximations to nature and as such introduce uncertainties into the process; (c) Recognize that for the foreseeable future, the "old" models, in which there is the greatest confidence because of their "proven" use appear to be as qualitative as they are quantitative; (d) Consider that the judgement of the appropriateness of these models for their intended purpose will be supported largely through expert opinion; (e) Confront and explore fully these uncertainties and their ramifications including "uncertainties" arising from differences in expert opinion; (f) Judge the acceptability of the consequences of events in the light of these uncerainties; and (g) assure that the judgment itself will be detailed in the public record.

If one views the realization of our understanding in geologic disposal from successively more nearly complete and accurate qualitative descriptions of the observed phenomenon in question through more precise and semi-quantitative and quantitative approximations where uncertainties are better understood and can be treated mathematically, to an elegant theory embodied in a mathematical description which represents a culmination of human thought, the present state of modeling for geologic repositories is closer to qualitative than quantitative. This fact does not make whatever understanding we have less valid—we know what we know. Rather this means that neither the process by which the technical criteria should be developed nor the process by which a licensing decision should be made should rely solely on quantitative calculations and assessments. It means that when analytical techniques are used, care must be taken not to apply those techniques outside their established region of validity. Finally, it means that confidence in a licensing finding is inextricably linked to uncertainty; and the validity of any licensing finding is linked to the means by which uncertainty is uncovered, explored, and treated.

There are a number of considerations that need to be taken into account before establishing whether qualitative/quantitative models will be codified in the regulations or their use merely permitted: (1) If modeling is used as the primary decision tool then demonstration of whether the geologic setting at a particular site can fulfill the stated purpose of the geologic barrier relies fundamentally on the predictive power of the particular transport model appropriate to that site; (2) The less stable the site geologically and hydrologically, the less reliable the transport model as a description of the steady-state; (3) The more complex with respect to geologic and climatology processes, the poorer the model is as an approximation to nature and the greater the uncertainty of any prediction; (4) The more complex the site or less stable

the site, the greater the difficulty in modeling long-term behavior at the interface between the geologic barrier and the set of engineered barriers; (5) The lack of empirical data on the performance of engineered barriers or the inability to obtain credible data may preclude the development or use of credible quantitative models in the showing that either the uncertainties are addressed properly in the performance standards or the performance standards are met in a particular licensing action. In light of these considerations, the staff's thought has been not to require modeling to be the primary decision tool to determine the capability of the geologic repository to contain and isolate waste from the biosphere. The staff believes, however, that quantitative models can be used to compare sites and designs.

In sum, the staff considers the following to be a reasonable position with respect to the use of models:

Technical criteria must be developed through a rulemaking process in which the logic and factual basis is clearly articulated and can withstand challenge. Hence, where appropriate, quantitative models should be used to develop technical criteria. However, because of the limitations discussed above, it is desirable to specify technical criteria associated with the regulatable elements in such a manner as not to predicate their technical justification on the results of quantitative modeling, except in those instances where quantitative modeling can contribute to their technical justification. Where quantification is not possible, without meaning, incomplete or ambiguous, the process must rely on expert opinion to provide insight and alternatives. This process is particularly appropriate to the development of criteria for which neither direct experience nor recourse to experimental verification exists to provide the basis for the criteria. Through expert opinion in public proceedings, and the exercise of judgment by the Commission, a satisfactory if imprecise margin of safety for site characteristics and engineering design can be realized. This is particularly important where quantitative modeling and experimental verification alone cannot be used to establish a sound record. When these qualitative and semiquantitative considerations are combined with quantitative models to develop a scheme for comparison, the staff believes the result will lead to a sound regulation and to sound licensing decisions.

(6) *Retrievability.* Selection of a suitable site for a geologic repository for HLW disposal and the design, construction and operation of a repository is a new human enterprise. In undertaking such a venture for the first time, it is reasonable to expect that, whatever the care exercised and however advanced the techniques, mistakes will occur, improved technologies developed, better designs created, and operational procedures improved. It is reasonable, therefore, to assume that it might be desirable to postone any irreversible (or not easily reversible) decisions until the maximum amount of reasonably obtainable information about how well the repository is functioning and can be expected to function to contain and isolate the waste for the periods of time required is at hand. The staff believes that it may be desirable to maintain the option to retrieve the wastes for a period of time after the last waste is emplaced and is developing criteria to require it. The draft technical criteria contain a requirement that the repository be assigned to preserve the option to retrieve the wastes for a period of years following emplacement. This option, however, is not without impact, particularly in the areas of repository design and waste emplacement. However, it would allow monitoring and taking corrective actions if required, including removal of the wastes, before the repository is sealed.

(7) *Human Intrusion Problem.* For geologic repositories, the human intrusion problem is not a simple or straightforward extension of natural events and may require different standards as well as a different approach. Simply stated, human intrusion cannot be prevented; In spite of all efforts to avoid sites which may prove attractive to humans, there may be deliberate or inadvertent intrusion. In the former instance, it is reasonable to assume that the intruder has access to information which makes it attractive to intrude. For example, the intruder may know of the location and contents of the repository itself and may regard the HLW as a resource of some value. How should such an intrusion be regarded as an event to be considered in the design of the repository? That is, should attempts to be made to protect future generations from the deliberate intruder? What are the consequences of intrusion to the intruder? To the general population? In the latter instance, where the event is one of inadvertent (accidental) intrusion other questions occur. Did the intrusion occur beyond the time that it is reasonable to expect that knowledge of the existence of the repository is known? What is a reasonable period of time? What steps in repository design and enforcement can be taken to mitigate the consequences of an accidental intrusion? Is one kind of intrusion more likely than the other? Are the consequences of inadvertent intrusions different from those for deliberate intrusions? The human intrusion issue is a difficult one that is far from having been resolved.

Questions: In particular, we are seeking comment on the following questions.

(1) Does the list of considerations above clearly, adequately and fully identify the relevant issues involved in disposal of HLW?

(2) Would a rule structured along the lines of the referenced draft rule reasonably deal with issues in an appropriate manner?

(3) In light of the fact that EPA has the responsibility and authority to set the generally applicable environmental standard for radiation in the environment from the disposal of HLW, with what factors/issues should an NRC environmental impact statement on technical criteria deal?

(4) What are the environmental impacts of criteria constructed in accordance with the above cited principles? What alternative criteria exist and what are their impacts?

Draft Technical Criteria for 10 CFR Part 60

Subparts E–I are proposed to be added to Part 60 as set forth below:

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

Subpart E—Technical Criteria

Sec.

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§ 60.2 Definitions.

For the purpose of this part—

"Accessible Environment"—means those portions of the environment directly in contact with or readily available for use by human beings. It includes the earth's atmosphere, the land surface, surface waters, and the oceans. It also icludes presently used aquifers which have been designated as underground sources of drinking water under the Environmental Protection Agency's proposed rule 40 CFR Part 146.

"Aquifer"—means a distinct hydrogeologic unit that readily transmits water and yields significant quantities of water to wells or springs.

"Barrier"—means any material or structure which prevents or substantially delays movement of radionuclides from the radioactive wastes towards the accessible environment.

"Candidate area"—means a geologic and hydrologic system within which a geologic repository may be located.

"Container"—means the first major sealed enclosure that holds the waste form.

"Containment"—means keeping radioactive waste within a designated boundary.

"Confining unit"—means a distinct hydrogeologic unit which neither transmits ground water readily nor yields significant quantities of water to wells or springs.

"Decommissioning"—means final backfilling of subsurface facilities, sealing of shafts, and decontamination and dismantlement of surface facilities.

"Department"—means the U.S. Department of Energy (DOE) or its duly authorized representatives.

"Disposal"—means permanent emplacement within a storage space with no intent to retrieve for resource values.

"Expected processes and events"—means those natural processes or events that are likely to degrade the engineered elements of the geologic repository during a given period after decommissioning. As used in this part, expected processes and events do not include human intrusion.

"Floodplain"—means the lowland and relatively flat areas adjoining inland and coastal waters including flood prone areas of offshore islands including at a minimum that area subject to a one percent or greater chance of flooding in any given year.

"Geologic repository"—means a system for the disposal of radioactive wastes in excavated geologic media. A geologic repository includes (1) the geologic repository operations area, and (2) all surface and subsurface areas where natural events or activities of man may change the extent to which wastes are effectively isolated from the accessible environment.

"Geologic repository operations area"—means an HLW facility that is part of a geologic repository, including both surface and subsurface areas, where waste handling and emplacement activities are conducted.

"High-level radioactive waste" or "HLW"—means (1) irradiated reactor fuel; (2) liquid wastes resulting from the operation of the first-cycle solvent extraction system, or equivalent and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuel, and (3) solids into which such liquid wastes have been converted.

"HLW facility"—means a facility subject to the licensing and related regulatory authority of the Commission pursuant to Sections 202(3) and 202(4) of the Energy Reorganization Act of 1974 (88 Stat. 1244).

"Host rock"—means the geologic medium in which the waste is emplaced.

"Hydrogeologic unit"—means any soil or rock unit or subsurface zone that has a distinct influence on the storage or movement of ground water by virtue of its porosity or permeability.

"Important to safety" with reference to structures, systems, and components, means those structures, systems, and components that provide reasonable assurance that radioactive waste can be received, handled, and stored without undue risk to the health and safety of the public.

"Intrinsic permeability"—means a measure of the relative ease with which a porous medium transmits a liquid under a potential gradient. It is a property of the medium alone and is independent of the nature of the fluid.

"Isolation"—means segregation of waste from the accessible environment within acceptable limits.

"Overpack"—means any additional, receptable, wrapper, box or other structure which becomes an integrated part of a waste package and is used to enclose a waste container for purposes of providing additional protection or meeting the requirements of an acceptance criteria.

"Packaging"—means the container, and any overpacks, and their contents excluding radioactive materials and their encapsulating matrix, but including absorbent material, spacing structures, thermal insulation, radiation shielding, devices for absorbing mechanical shock, external fittings or handling devices, neutron absorbers or moderators and other supplementary equipment.

"Stability"—means the rate of natural processes affecting the site during the recent geologic past are relatively low and will not significantly change during the next 10,000 years.

"Radioactive waste"—means HLW and other radioactive materials that are received for emplacement in a geologic repository.

"Transuranic wastes" or "TRU wastes"—means radioactive waste containing alpha emitting transuranic elements, with radioactive half-lives greater than one year, in excess of 10 nanocuries per gram.

"Underground facility"—means the civil engineered structure, including backfill materials, but not including seals, in which waste is emplaced.

"Waste form"—means the radioactive waste materials and any associated encapsulating or stablizing materials.

"Waste package"—means the physical waste form, its container and any ancillary enclosures, including its shielding, packing, and overpack.

§ 60.101 Purpose.

(a) This subpart states the performance objectives to be achieved and the technical criteria to be met by the Department of Energy in order for the Commission to make the findings called for in Subpart B.

(b) The Commission will apply the technical criteria in this subpart in making findings that the activities authorized by a license, or any amendment thereof, will not constitute unreasonable risk to the health and safety of the public.

(c) The Commission will also apply the technical criteria in this subpart, insofar as they may be pertinent, in making determinations with respect to the issuance of a construction authorization.

(d) Omissions in the General Design Criteria do not relieve an applicant from the requirement of providing the necessary safety features in the design of a specific facility.

(e) The requirements and conditions in subsequent sections assume that disposal will be in saturated media. The Commission does not intend to exclude disposal in the vadose zone or any other method by promulgating these creteria; however, different criteria may need to be developed to license other disposal methods.

§ 60.111 Performance objectives.

(a) *Overall repository perform- ance.* (1) *Radiation exposure or releases during operation.* The Department of Energy shall design and operate the geologic repository operations area to provide reasonable assurance that radiation exposures and releases or radioactive materials are within the limits set forth in Part 20 of this Chapter.

(2) *Releases after decommissioning.* The Department of Energy shall provide reasonable assurance that after decommissioning the geologic repository will isolate radioactive wastes to such a degree that quantities and concentrations of radioactive waste in the accessible environment will conform to such generally applicable environmental standards as may have been established by the Environmental Protection Agency.

(3) *Retrievability.* The Department of Energy shall design the geologic repository operations area so that the radioactive waste stored there can be retrieved for a period of 50 years after termination of waste emplacement operations, if the geologic repository operations area has not been decommissioned. If during this period a decision is made to retrieve the wastes the Department shall insure that wastes could be retrieved in compliance with Part 20 of this Chapter and in about the same period of time as that during which they were emplaced.

(b) *Required barriers.* In the design and construction of a geologic repository, the Department shall utilize (1) an engineered system including waste package and an underground facility, and (2) the geologic environment.

(c) *Performance of required barriers and engineered systems.* (1) *Waste Packages.*[2] The Department shall design waste packages so that there is reasonable assurance that radionuclides will be contained for at least the first 1,000 years after decommissioning and for as long thereafter as in reasonably achievable given expected processes and events as well as various water flow conditions including full or partial saturation of the underground facility.

(2) *Underground facility.* The Department shall design the underground facility to provide reasonable assurance of the following:

(i) An environment for the waste packages that promotes the achievement of § 60.111(c)(1) above under conditions resulting from expected processes and events.

(ii) Containment of all radionuclides for the first 1,000 years after decommissioning of the geologic repository operations area and as long thereafter as is reasonably achievable, assuming expected events and processes and that some of the waste dissolves soon after decommissioning.

(3) *Overall performance of the engineered system after containment.* The Department shall design the engineered system to provide reasonable assurance that:

(i) Starting 1,000 years after decommissioning of the geologic repository operations area, the radionuclides present in HLW will be released from the underground facility at an annual rate that is as low as reasonably achievable and is in no case greater than an annual rate of one part in one hundred thousand of the total activity present in HLW within the underground facility 1,000 years after decommissioning assuming expected processes and events.

(ii) Starting at decommissioning radionuclides present in TRU waste will be released at a rate that is as low as reasonably achievable and is in no case greater than one part in one hundred thousand of the total activity present in TRU waste within the underground facility at the time of decommissioning assuming expected processes and events.

(4) *Performance of the geologic environment.* (i) The Department shall provide reasonable assurance that the degree of stability exhibited by the geologic environment at present will not significantly decrease over the long term.

(ii) The Department shall provide reasonable assurance that the site exhibits properties which promote isolation and that their capability to inhibit the migration of radionuclides will not significantly decrease over the long term.

(iii) The Department shall provide reasonable assurance that the hydrologic and geochemical properties of the host rock and surrounding confining units will provide radionuclide travel times to the accessible environment of at least 1,000 years assuming expected processes and events.

§ 60.121 Site and environs ownership and control.

(a) *Ownership and control of the geologic repository operations area.* The Department shall locate the geologic repository operations area in and on lands that are either acquired lands under the jurisdiction and control of the Department or lands permanently withdrawn and reserved for its use. The Department shall hold such lands free and clear of all significant encumbrances (including rights arising under the general mining laws, easements for right-of-way, and all other rights arising under lease, rights of entry, deed, patent, mortgage, appropriations, prescription, or otherwise).

(b) *Establishment of a control zone.* The Department shall establish a "Control Zone" surrounding the geologic repository operations area. The Department shall exercise such jurisdiction and control with respect to surface and subsurface estates in the control zone as may be necessary to prevent adverse human actions that could significantly reduce the ability of the natural or engineered barriers to isolate radioactive materials from the accessible environment. The Department's rights may take the form of appropriate possessory interests, servitudes, or withdrawals from location or patent under the general mining laws.

(c) *Long-term control.* The Department shall identify the geologic repository operations area by the most permanent markers and records practicable. The markers shall be inscribed in several languages as well as English. In addition, the Department shall deposit records of the location of the geologic repository operations area and the nature and hazard of the waste in the major archives of the world. For the purpose of demonstrating compliance with § 60.111 (Performance Objectives), the Department shall assume that other institutional controls will not persist for more than one hundred years.

§ 60.122 Siting requirements.

(a) *General requirements.* (1) The Department shall select the site and environs so that they are not so complex as to preclude thorough investigation and evaluation of the site characteristics that are important to demonstrating that the performance objectives of § 60.111 will be met.

(2) The Department shall investigate and evaluate the natural conditions and human activities that can reasonably be expected to affect the design, construction, operation, and decommissioning of the geologic repository operations areas. The natural conditions include geologic, tectonic, hydrologic, and climatic process. The Department shall evaluate the stability of the geologic repository and the isolation of radionuclides after decommissioning.

(i) The Department shall conduct investigations on the order of 100

[2] Sections 60.111(c)(1) and 60.111(c)(2) apply only to HLW.

kilometers horizontal radius from the geologic repository operations area.

(ii) The Department shall emphasize those natural conditions active anytime since the start of the Quaternary Period in their investigations.

(iii) The Department shall emphasize the first 10,000 years following decommissioning in their prediction of changes in natural conditions and the performance of the geologic repository.

(3) The Department shall conduct investigations that adequately characterize and provide representative and bounding values for those human activities and natural events and conditions that may affect any of the following:

(i) The design, construction, operation, and decommissioning of the geologic repository operations area.

(ii) Demonstration of the stability of the geologic repository after decommissioning.

(iii) Demonstration of the isolation of radionuclides from the accessible environment after decommissioning.

(4) The Department shall evaluate reasonably likely future variations in the site characteristics which may result from natural processes, human activities, construction of the repository, or waste/rock/water interactions.

(5) The Department shall conduct the site investigations in such a manner as to obtain the required information with minimal adverse effects on the long-term performance of the geologic repository.

(6) The Department shall validate analyses and modeling of future conditions and changes in site characteristics using field tests, in situ tests, field-verified laboratory tests, monitoring data, or natural analog studies.

(7) The Department shall continuously verify and assess any changes in site conditions which pertain to whether the performance objectives will be met.

(8) The Department shall perform a resource assessment for the region within 100 km of the site using available information. The Department shall include estimates of both known and undiscovered deposits of all resources that (i) have been or are being exploited on (ii) have not been exploited but are exploitable under present technology and market conditions. The Department shall estimate undiscovered deposits by reasonable inference based on geologic and geophysical information. The Department shall estimate both gross and net value of resource deposits. The estimate of net value shall take into account development, extraction and marketing costs.

(9) The Department shall determine by appropriate analyses the extent of the volume of rock within which the geologic framework, ground-water flow, ground-water chemistry, or geomechanical properties are anticipated to be significantly affected by construction of the geologic repository or by the presence of the emplaced wastes, with emphasis on the thermal loading of the latter. In order to do the analyses required in this paragraph, the Department shall at a minimum conduct investigations and tests to provide the following input data:

(i) The pattern, distribution and origin of fractures, discontinuities, and heterogeneities in the host rock and surrounding confining units;

(ii) The presence of potential pathways such as fractures, discontinuities, solution features, unsealed faults, breccia pipes, and other permeable anomalies in the host rock and surrounding confining units.

(iii) The *in situ* determination of the bulk geomechanical properties, pore pressures and ambient stress conditions of the host rock and surrounding confining units;

(iv) The *in situ* determination of the bulk hydrogeologic properties of the host rock and surrounding confining units;

(v) The *in situ* determination of the bulk geochemical conditions, particularly the redox potential, of the host rock and surrounding confining units;

(vi) The *in situ* determination of the bulk response of the host rock and surrounding confining units to the anticipated thermal loading given the pattern of fractures and other discontinuities and the heat transfer properties of the rock mass.

As a minimum, the Department shall assume that the volume will extend a horizontal distance of 2 kilometers from the limits of the repository excavation and a vertical distance from the surface to a depth of 1 kilometer below the limits of the repository excavation.

(b) *Potentially adverse conditions.* The following paragraphs describe human activities or natural conditions which can adversely affect the stability of the repository site, increase the migration of radionuclides from the repository, or provide pathways to the accessible environment. The Department shall demonstrate whether any of the potentially adverse human activities or natural conditions are present. The Department shall document all investigations. The presence of any of the potentially adverse human activities or natural conditions will give rise to a presumption that the geologic repository will not meet the performance objectives. The conditions and activities in this section apply, unless otherwise stated, to the volume of rock determined by the Department in § 60.122(a)(8) above.

(1) *Potentially adverse human activities.* (i) There is or has been conventional or in situ subsurface mining for resources.

(ii) Except holes drilled for investigations of the geologic repository, there is or has been drilling for whatever purpose to depths below the lower limit of the accessible environment.

(iii) There are resources which are economically exploitable using existing technology under present market conditions.

(iv) Based on a resource assessment, there are resources that have either higher gross or net value than the average for other areas of similar size in the region in which the geologic repository is located.

(v) There is reasonable potential that failure of human-made impoundments could cause flooding of the geologic repository operations are prior to decommissioning.

(vi) There is reasonable potential based on existing geologic and hydrologic conditions and methods of construction for construction of large-scale impoundments which may affect the regional ground-water flow system.

(vii) There is indication that present or reasonably anticipatable human activities can significantly affect the hydrogeologic framework. Human activities include ground-water withdrawals, extensive irrigation, subsurface injection of fluids, underground pumped storage facilities or underground military activities.

(2) *Potentially adverse natural conditions—geologic and tectonic.* (i) There is evidence of extreme bedrock incision since the start of the Quaternary Period.

(ii) There is evidence of dissolutioning, such as karst features, breccia ipes, or insoluble residues.

(iii) There is evidence of processes in the candidate area which could result in structural deformation in the volume of rock such as uplift, diapirism, subsidence, folding, faulting, or fracture zones.

(iv) The geologic repository operations area lies within the near field of a fault that has been active since the start of the Quaternary Period.

(v) There is an area characterized by higher seismicity than that of the surrounding region or there is an area in which there are indications, based on correlations of earthquakes with tectonic processes and features, that seismicity may increase in the future.

(vi) There is evidence of intrusive igneous activity since the start of the Quaternary Period.

(vii) There is a high and anomalous geothermal gradient relative to the regional geothermal gradient.

(3) *Potentially adverse natural conditions—hydrologic.* (i) There is potential for significant changes in hydrologic conditions including hydraulic gradient, average pore velocity, storativity, permeability, natural recharge, piezometric level, and discharge points. Evaluation techniques include paleohydrologic analysis.

(ii) The geologic repository operations area is located where there would be long term and short term adverse impacts associated with the occupancy and modification of floodplains. (Executive Order 11988).

(iii) There is reasonable potential for natural phenomena such as landslides, subsidence, or volcanic activity to create large-scale impoundments that may affect the regional ground-water flow system.

(iv) There is a fault or fracture zone, irrespective of age of last movement, which has a horizontal length of more than a few hundreds of meters.

(4) *Potentially Adverse Natural Conditions—Geochemical.* The rock units between the repository and the accessible environment exhibit low retardation for most of the radionuclides contained in the radioactive waste.

A presumption that the geologic repository will not meet the performance objectives can be rebutted upon showing that the presence of the potentially adverse condition does not adversely affect the performance of the geologic repository. In order to make this showing, the Department shall first demonstrate that:

(1) The potentially adverse human activity or natural condition has been adequately characterized, including the extent to which the particular feature may be present and still be undetected taking into account the degree of resolution achieved by the investigations;

(2) The effect of the potentially adverse human activity or natural condition on the geologic framework, ground-water flow, ground-water chemistry and geomechanical integrity has been adequately evaluated using conservative analyses and assumptions, and the evaluation used is sensitive to the adverse human activity or natural condition;

(3) The effect of the potentially adverse human activity or natural condition is compensated by the presence of favorable characteristics in Paragraph 60.122(c) of this Section; and

(4) The potentially adverse human activity or natural condition can be remedied during construction, operation, or decommissioning of the repository.

(c) *Favorable characteristics.* Each of the following characteristics represent conditions which enhance the ability of the geologic repository to meet the performance objectives. Candidate areas and sites which exhibit as many favorable characteristics as practicable are preferred. The Department shall demonstrate the degree to which each favorable characteristic is present. The Department shall fully document all investigations. The Department shall perform evaluations to demonstrate to what extent the favorable characteristic contributes to assuring the stability of the site and/or the isolation of the waste by restricting the access of groundwater to the waste, the rate of dissolution of the waste, or the migration of radionuclides from the geologic repository. The Department shall use conservative analyses to demonstrate the significance of the favorable characteristics. The Department shall include evaluation of the degree to which the favorable characteristic has been adequately characterized, given the degree of resolution achieved by the investigations. The specific favorable characteristics are the following:

(1) The Department shall select the site so that to the extent practicable the candidate area—

(i) Exhibits demonstrable surface and subsurface geologic, geochemical, tectonic, and hydrologic stability since the beginning of the Quaternary Period; and

(ii) Contains a host rock and surrounding confining units that provide:

(*a*) Long ground-water residence times and long flow paths between the repository and the accessible environment;

(*b*) Inactive ground-water circulation within the host rock and surrounding confining units, and little hydraulic communication with adjacent hydrogeologic units due to ground-water characteristics such as low intrinsic permeability and low fracture permeability of the rock mass; and

(*c*) Geochemical properties, such as reducing conditions which result in low solubility or radionuclides, and near-normal pH, or a lack of complexing agents.

(2) The Department shall select the site so that to the extent practicable the volume of rock—

(i) Possesses the favorable characteristics described above;

(ii) Possesses a geologic framework that permits effective sealing of shafts, drifts, and boreholes, and that permits excavation of a stable subsurface opening, and the emplacement of waste at a minimum depth of 300 meters from the ground surface;

(iii) Possesses ground-water flow characteristics that—

(*a*) Result in a host rock with very low water content;

(*b*) Prevent ground-water intrusion or circulation of ground water in the host rock;

(*c*) Prevent significant upward ground-water flow between hydrogeologic units or along shafts, drifts, and boreholes;

(*d*) Result in low hydraulic gradients in the host rock and surrounding confining units;

(*e*) Result in horizontal or downward hydraulic gradients in the host rock and surrounding confining units; and

(*f*) Result in ground-water residence times under ambient conditions, between the repository and the accessible environment, that exceed 1000 years.

(iv) Possesses geomechanical properties that provide stability during construction, operation, and under the influences of thermal load or other waste/rock/water interactions;

(v) Possesses a low population density;

(vi) Possesses a combination of meteorological characteristics (especially prevailing wind flow direction) and population distribution such as to assure that a radiological exposure of the population, which is within the limits of Part 20 of this chapter; and

(vii) Is in an area where climatic change is not expected to have an adverse impact on the geologic, tectonic, or hydrologic characteristics.

§ 60.132 Design requirements.

(a) *General design requirements.* The requirements in this section apply to surface and subsurface facilities.

(1) *Compliance with mining regulations.* The Department shall design, construct and operate the surface and subsurface facilities to comply with all applicable Federal and state mining regulations including Subchapters D, E, and N of 30 CFR Part 57 as applicable.

(2) *Identification of structures, systems, and components important to safety.* The Department shall identify by appropriate analyses those systems, structures and components that are important to safety.

(3) *Protection against natural phenomena and environmental conditions.* (i) The Department shall

design and locate structures, systems, and components important to safety to accommodate the effects of and to be compatible with site characteristics and environmental conditions associated with normal operation, maintenance and testing at any time prior to decommissioning.

(ii) The Department shall design and locate structures, systems and components important to safety to withstand the most severe of natural phenomena that are likely to occur at the site including seismic, meteorologic and hydrologic events without loss of capability to perform their safety function.

(4) *Protection against dynamic effects of equipment failure and similar events.* The Department shall design and locate structures, systems and components important to safety to resist dynamic effects that could result from equipment failure, missile impacts, the dropping of crane loads in transit, and similar events and conditions.

(5) *Protection against fires and explosions.* (i) The Department shall design and locate structures, systems, and components importrant to safety to minimize the potential for impairment of their ability to perform their safety functions during fires or explosions.

(ii) The the extent practicable, the Department shall design the geologic repository to incorporate noncombustible and heat resistant materials.

(iii) The Department shall design the geologic repository to include explosion and fire detection alarm systems and appropriate suppression systems with sufficient capacity and capability to minimize the adverse effects of fires and explosions on structures, systems, and components important to safety.

(iv) The Department shall design the geologic repository to include provisions to protect personnel from either the operation of, or the failure of the fire suppression systems.

(6) *Inspection, testing, and maintenance.* The Department shall design and locate structures, systems and components important to safety to permit periodic inspection, testing, and maintenance, as appropirate, to ensure their continued functioning and readiness.

(7) *Emergency capability.* (i) The Department shall design and locate structures, systems, and components important to safety to assure safe storage of radioactive waste, prompt termination of operations and evacuation of personnel during an emergency.

(ii) The Department shall design the geologic repository to include onsite facilities and services that assure a safe and timely response to emergency conditions and facilitate the use of available offsite services such as fire, police, medical and ambulance service that may aid in recovery from emergencies.

(8) *Utility services.* (i) The Department shall design each utility service system to provide for the meeting of safety demands under normal and abnormal conditions. The Department shall design utility services and distribution systems important to safety to include redundant systems to the extent necessary to maintain, with adequate capacity, the ability to perform safety functions assuming a single failure.

(ii) The Department shall design emergency utility services to permit testing of the functional operability and capacity, including the full operational sequence, of each system for transfer between normal and emergency supply sources, and the operation of associated safety systems.

(iii) The Department shall make provisions so that in the event of a loss of the primary electric power source or circuit, reliable and timely emergency power is provided to instruments, utility service systems, and operating systems including the security central alarm station, in amounts sufficient to allow safe conditions to be maintained with all safety devices essential to safety functioning.

(9) *Radiological protection.* (i) The Department shall design structures, systems, and components for which operation, maintenance, and required inspections could involve radiological exposure to personnel to include means to control external and internal radiation exposures within the limits specified in Part 20 of this Chapter. This includes the means to:

(*a*) Prevent the accumulation of radioactive material in those systems to which access by personnel is required;

(*b*) Minimize the time required to perform work in the vicinity of radioactive components, such as by providing sufficient space for ease of operation and designing equipment for ease of repair and replacement; and

(*c*) Provide shielding to assure that exposures to personnel in accessible areas are within the limits of Part 20.

(ii) The Department shall design the geologic repository to include means to—

(*a*) Provide appropriate radiation protection systems and programs for all areas and operations where personnel may be exposed to levels of radiation or airborne radioactive materials significantly above background levels to insure that exposures are within the limits of Part 20;

(*b*) Control and monitor the spread of contamination;

(*c*) Control access to areas of high radiation or potential contamination; and

(*d*) Warn workers by a radiation alarm system of significant increases in radiation levels in normally accessible areas and of excessive radioactivity released in effluents. The Department shall design such systems with redundancy and *in situ* testing capability.

(10) *Criticality control.* The Department shall design all systems for processing, transporting, handling, storage, retrieval, emplacement, and isolation of radioactive waste to insure that a nuclear criticality accident is possible only if at least two unlikely, independent and concurrent or sequential changes have occurred in the conditions essential to nuclear criticality safety. Demonstration of criticality safety under normal and accident conditions shall be by calculation of the effective multiplication factor (k_{eff}). This value must be sufficiently below unity to show at least a 5% margin after allowance for the bias in the method of calculation and the uncertainty in the experiments used to validate the method of calculation.

(11) *Instrumentation and control systems.* The Department shall provide instrumentation and control systems to monitor and control the behavior of engineered systems that are important to safety over anticipated ranges for normal operation, for abnormal operation and for accident conditions. The Department shall design the systems with sufficient redundancy to assure that adequate margins of safety are maintained.

(b) *Additional design requirements for surface facilities.* The requirements in this section apply only to the design of surface facilities.

(1) *Compliance with Part 72.* If the geologic repository includes surface facilities that would be required to comply with 10 CFR Part 72, were they to be geographically removed from the site, the Department shall design, construct and operate those surface facilities to conform with 10 CFR Part 72.

(2) *Facilities for retrieval of waste.* The Department shall design and construct surface facilities to facilitate safe and prompt retrieval of wastes including facilities to inspect, repair, decontaminate, and store retrieved wastes prior to their shipment off site. Surface storage capacity of all emplaced waste is not required, but must be

sufficient to handle waste backlogs prior to shipment offsite.

(3) *Ventilation.* The Department shall design surface facility ventilation system(s) supporting waste transfer, inspection, decontamination, processing and/or packaging to assure that occupational exposures and releases of gases and airborne radioactive particulate materials during normal operations do not exceed the limits identified in Part 20 of this chapter.

(4) *Radiation control and monitoring.* (i) *Effluent control.* The Department shall design the surface facilities to minimize the release of radioactive materials in effluents of any form, during normal operations. The Department shall monitor the systems provided to guard against the release of radioactive materials. The Department shall insure that the monitoring systems are provided with alarms which are periodically tested. The Department shall design and construct facilities to assure treatment of contaminated effluents as necessary to ensure that the concentrations and total quantities of radioactive materials in effluents are maintained within the limits of Part 20 of this chapter.

(ii) *Effluent monitoring.* The Department shall design effluent monitoring systems to adequately measure the amount and concentration of radionuclides in any effluent to assure that radioactive materials are maintained within the limits of Part 20 of this Chapter.

(5) *Waste treatment.* The Department shall design radioactive waste treatment facilities to process all site generated wastes.

(6) *Consideration of decommissioning.* The Department shall design and construct surface facility structures to facilitate decommissioning.

(c) *Additional design requirements for subsurface facilities.* The requirements in this section apply only to subsurface facilities.

(1) *Underground facility.* The Department shall design the underground facility as an underground civil engineered structure that satisfies requirements for structural performance, control of groundwater movement and control of radionuclide transport. The Department shall design the facility to provide for safe operation during construction, emplacement, and retrieval of waste and to assure compliance with § 60.111 (Performance Objectives).

(2) *Waste isolation engineering.* (i) The Department shall demonstrate that the underground facility includes those engineered features that are needed to limit radioactive releases after decommissioning to levels that are as low as reasonably achievable. The Department shall include an identification and a comparative evaluation of alternatives to the major design features that are provided to enhance radionuclide retardation and containment.

(ii) The Department shall design the underground facility such that the orientation, geometry, layout, and depth of the underground excavation in addition to any engineered barriers provided as part of the underground facility are optimized for that site. The Department shall use as optimization criteria the performance objectives in § 60.111, (c)(2), (c)(3).

(iii) The Department shall design the underground facility so that the effects of disruptive events will not propagate through the facility.

(iv) To assure that shafts and boreholes do not act as preferential pathways for ground-water or radionuclide migration, the Department shall design shaft and borehole seals such that—

(*a*) The shafts and boreholes are sealed along their entire length as soon after they have served their operational purpose as is practicable;

(*b*) The sealed shafts and boreholes provide a barrier to radionuclide migration which is at least equivalent to the barrier provided by the undisturbed rock;

(*c*) There is effective sealing to the rock contact and the adjacent zone of disturbed rock surrounding boreholes and shafts; and

(*d*) The shaft and borehole seals can accommodate potential variations of stress, temperature, and moisture, and to provide for radionuclide retardation.

(v) The Department shall place emphasis on multicomponent borehole and shaft and seals and use materials that are compatible with the rock properties and other *in situ* conditions.

(iv) The Department shall design the underground facility to include engineered barriers which protect the waste package from (1) natural events and processes, (2) *in situ* stresses, (3) chemical attack, and (4) groundwater contact. The Department shall determine the location of the barriers by proper engineering analysis and *in situ* testing. The Department shall include in the design—

(*a*) Engineered barriers where shafts could provide access for ground water to enter or leave the underground facility;

(*b*) Creation of a near-field waste package environment which favorably controls chemical reations affecting the performance of the waste package or other engineered barriers;

(*c*) Creation of an emplacement environment which reduces the potential for creep deformation in the rock and deformation of waste packages; and

(*d*) Backfill materials as a barrier to ground-water movement into the repository. The Department shall select backfill materials to provide for (1) adequate placement and compaction in underground openings, (2) seals to reduce and control ground-water movement, (3) absorption of radionuclides, and (4) preservation of favorable properties in the presence of anticipated rise of rock temperatures.

(vii) Thermal and thermomechanical response of the rock—

(*a*) The Department shall design the underground facility to assure that the predicted thermal and thermomechanical response of the rock could not adversely affect the performance of the natural or engineered barriers to radionuclide migration.

(*b*) The Department shall conduct *in situ* monitoring of the thermomechanical response of the geologic repository until decommissioning to assure that the thermomechanical response of the natural and engineered features are within design limits. Should these limits be exceeded, the NRC shall be notified and informed of any needed changes or actions.

(3) *Design to facilities retrieval of waste.* The Department shall design the underground facility to facilitate retrieval of waste in accordance with § 60.111(a)(3). To accomplish this the Department shall design the underground facility to assure structural stability of openings and minimize ground-water contact with the waste packages and design an emplacement environment that otherwise promotes waste recovery without compromising the ability of the geologic repository to meet the performance objectives.

(4) *Design of openings.* (i) The Department shall design subsurface openings to assure stability throughout the construction, operation, and retrieval periods. If support systems and structures are required for stability, the Department shall design them to be compatible with long-term deformation characteristics of the rock and to allow for subsequent placement of backfill.

(ii) The Department shall design openings to minimize the potential for deleterious rock movement or fracturing of overlying or surrounding rock. The Department shall optimize opening design, including shape, size, orientation, spacing and support

materials with respect to natural stress conditions, deformation characteristics of the host rock under thermal loading, and the nature of weaknesses or structural discontinuities present at the location of the opening.

(5) *Lining of subsurface excavations.* The Department shall line subsurface excavations in areas that require:

(i) A positive control of water or gas inflow from aquifers or other porous zones;

(ii) Support for zones of weak or fractured rock;

(iii) Anchorage for equipment or hardware.

(6) *Shaft conveyances used in waste handling.* (i) The Department shall consider shaft conveyances as a system important to safety.

(ii) The Department shall design hoists with mechanical geared lowering devices that preclude cage free fall.

(iii) The Department shall design hoists with a reliable cage location system that provides direct signals from all levels in the shaft. The Department shall design and construct final unload points which are controlled and verified by local position detectors.

(iv) The Department shall design shaft loading and unloading systems with a reliable system of interlocks that will fail safely upon malfunction. The Department shall include in the design two independent indicators to indicate whether waste packages are in place, grappled, and ready for transfer.

(7) *In situ testing and design verification.* (i) During the early or developmental stages of construction an area the Department shall excavate and reserve an area for *in situ* testing of borehole and shaft seals, backfill, and thermal effects and waste-rock interaction. The Department shall initiate the testing as early as is practicable and continue as long as necessary to demonstrate that performance is within design limits.

(ii) The Department shall insure that the contact between lining and the rock surrounding subsurface excavations does not jeopardize repository containment by providing a preferential pathway for ground-water or radionuclide migration.

(iii) During repository construction and operation the Department shall conduct a continued program of surveillance, testing, measurement, and geologic mapping to ensure that design parameters are verified and to provide additional data to confirm the isolation and containment characteristics of the seals and the underground facility. The Department shall measure and monitor changes in subsurface conditions on a regular basis.

(iv) The Department shall, as a minimum, make measurements of rock deformations and displacement, changes in rock stress and strain, water inflow into subsurface areas, changes in ground-water locations and conditions, host rock pore water pressures, and host rock thermal and thermomechanical response as a result of development and operations of the geologic repository. The Department shall compare such measurements and observations with original design bases and assumptions and if significant differences exist the Department must determine modifications to design or construction methods and report to the Commission the recommended changes.

(8) *Compacted Backfill Test Section.* To verify performance requirements intended in the design the Department shall establish, before any backfill placement is initiated, a program for placement, sampling, and testing of the backfill section. If the result of testing and observations made at the test section are different from the original design intent then the Department must analyze the need for changes and report the recommended changes to the Commission.

(9) *Water control during operations.* (i) The Department shall provide water control systems which are of sufficient capability and capacity to minimize the potentially adverse effects of ground water or service water (including that supporting excavation) intrusion on structures systems and components important to safety, waste emplacement operations, the performance of waste packages as engineered barrier to radionuclide migration, or effect retrieval capability.

(ii) The Department shall design the water control systems to monitor and control the quality and quantity of water flowing into or from the repository.

(iii) The Department shall provide water control storage capability, modular designs, or other provisions to assure unexpected inrush or flood can be controlled are contained.

(iv) The Department shall construct water control systems to control water from waste emplacement areas and shall keep those systems separate from the systems controlling water in the excavation areas.

(v) If aquifers or water bearing structures are encountered during construction then the Department must use pregrouting in advance of excavation.

(d) *General design requirements for construction.* The requirements in this section include general design criteria which are important for construction.

(1) Site development and excavation sequence. (i) The Department shall plan the exploratory program so that construction takes advantage of exploratory boreholes, shafts, and excavations in order to minimize the total number of penetrations within the geologic repository operations area.

(ii) The Department shall coordinate the design of the geologic repository with site characterization activities to assure that boreholes necessary for site characterization are located at future positions of shafts or large unexcavated pillars.

(iii) If critical host rock and other site specific design assumptions cannot be verified from boreholes, geophysical measurements, and/or an exploratory shaft and initial excavation, then the Department must establish a pilot program to further characterize the entire volume to be occupied by the underground facility and to verify critical host rock and site specific design assumptions prior to design finalization and waste emplacement.

(iv) The Department shall design the subsurface facilities with sufficient flexibility to ensure that designs are compatible with specific site features encountered during pilot development and excavation, and to facilitate the use of tests and monitoring system outputs.

(2) *Construction management program.* The Department shall establish a construction management program which is sufficient to assure that construction activities do not adversely affect the suitability of the site or jeopardize the containment capabilities of the underground facility. The Department shall include in the program means to assure that the underground facility is excavated and constructed as designed.

(3) *Excavation techniques.* The Department shall assure that methods used for excavation will neither create a preferential pathway for ground water or radioactive waste migration, nor increase the potential for migration through existing pathways. The Department shall use to the extent practicable mechanical excavators, boring machines and other nonblasting methods. If blasting is required for excavation, the Department must use methods specifically designed for each phase of the work that minimize fracturing of the surrounding rock. In this program the Department may include the use of pilot bores and tunnels and delay systems designed to minimize the amount of explosives detonated simultaneously. If blasting is utilized the Department must utilize controlled perimeter blasting such as the

smooth blasting or preshearing techniques and cushion.

(4) *Control of explosives.* If explosives are used, the Department must meet the provisions of 30 CFR Part 57.6 as minimum safety requirements for storage, use and transportation. The Department shall use electrical detonation. If the rock contains open joints or fractures the Department must use cartridge or packaged explosives only.

(5) *Support structures.* If temporary support structures are used the Department must assure that they do not impair the placement of permanent structures or the ability of the repository to contain wastes by adversely affecting the ability to seal excavated areas.

(e) *Records and reporting requirements.* (1) *Identification and reporting of adverse features or conditions.* (a) If any feature listed under § 60.122(b)((Adverse Conditions) is encountered during excavations then the Department must report it to the Commission within 5 days. The Department must analyze the effect of such features or conditions report as required in § 60.122(b).

(2) *Construction and mapping records.* The Department shall maintain and preserve records which provide a complete, documented history of the repository construction.

The Department shall include in the records the following—

(i) Surveys of underground excavations and shafts located with respect to readily identifiable surface features or monuments;

(ii) Materials encountered;

(iii) Geologic maps and profiles;

(iv) Locations and amount of seepage;

(v) Details of equipment, methods, progress and sequence of work;

(vi) Construction problems;

(vii) Anomalous conditions encountered;

(viii) Instrument locations, reading, and analysis;

(ix) Location and description of support systems;

(x) Location and description of dewatering systems; and

(xi) Details of seals used, methods of emplacement, and location.

The Department shall perform and plot surveys and geologic mapping as the work progresses.

(3) *Retention of cores and logs.* The Department shall retain on site, until decommissioning, all cores from all exploratory borings drilled during site selection, site characterization, construction, and operation. The Department shall store the cores in durable boxes housed in a weatherproof building. The Department shall arrange the cores to be readily available for inspection. The Department shall store in the same area logs of the borings, including geophysical logs.

(f) *General design requirements for subsurface operation.* The requirements of this section apply during repository operations.

(1) If concurrent excavation and emplacement of wastes are planned, then the Department must design the repository in modules which are sufficiently separated to assure that excavation activities could not impair emplacement operations or adversely affect retrieval.

(i) If interconnections are provided, the Department shall design each module to be sealed and isolated from all other modules in the event of an accident and so that waste can be safely retrieved if necessary.

(ii) The Department shall separate ventilation systems supporting excavation and waste emplacement.

(iii) The Department shall coordinate excavation rates and emplacement rates and schedules to assure physical separation of activities and further assure that handling and emplacement operations are not adversely affected by the excavation activities.

(2) *Ventilation.* (i) The Department shall design ventilation system(s) which are capable of controlling the transport of radioactive particulates and gases within and from the subsurface facility. The Department shall design and test the ventilation system to assure that radiological exposures during operations will not exceed the limits of 10 CFR Part 20.

(ii) The Department shall design ventilation systems to permit occupancy of all areas as required either for normal operations, cessation of operations, or for maintaining the facility in a safe condition.

(iii) The Department shall design the ventilation system(s) to be capable of accommodating changes in operating conditions such as variations in temperature and humidity.

(iv) The Department shall design the ventilation system(s) to protect against the intake and accumulation of radioactive materials and hazardous substances.

(v) The Department shall design ventilation system(s) for under normal and accident conditions.

(vi) The Department shall design the ventilation system to assure by means of redundant equipment, fail safe control systems or other provisions, the continuity of ventilation.

(3) *Waste handling and emplacement.* (i) The Department shall design the systems used to handle, transport, and emplace radioactive wastes to have positive, fail safe designs to preclude impairment of the performance of the waste packages as a barrier to radionuclide migration and to minimize radiological hazards.

(ii) The Department shall design the handling systems for emplacement and retrieval operations to minimize the potential for operator error.

(iii) The Department shall demonstrate that the handling equipment and systems for emplacement and retrieval operations are effective under *in situ* conditions prior to the start of waste emplacement operations.

(iv) The Department shall inspect any holes that are bored to receive waste prior to waste emplacement, to assure the absence of adverse conditions that could jeopardize the integrity of the waste package.

(4) The Department shall determine by analysis the specifications of waste loading and waste spacings. The Department shall make the analysis prior to receipt of waste. The Department shall include in the analysis—

(i) Effects of the design of the geologic repository on the thermal and thermomechanical response of the host rock;

(ii) The characteristics of the site and the host rock that affect the thermal response of the host rock;

(iii) Site and host rock features that affect the thermomechanical response of the seals and underground facility, including but not limited to: behavior and deformational characteristics of the host rock, the presence of insulating layers, aquifers, faults, orientation of bedding planes and the presence of discontinuties in the host rock.

(iv) The effect of temperatures and stresses on the performance of the waste packages and other engineered barriers; and

(v) The extent to which fracturing of the host rock occurs during temperature increase and decrease cycles.

§ 60.133 Waste package and emplacement environment.

(a) *General Requirements.* The Department shall insure that waste packages are designed and fabricated to so that the performance objectives of § 60.111 will be met. To demonstrate that the waste package meets these objectives, the Department at a minimum, shall do the following—

(1) Perform comparative evaluation of several candidate waste form and packaging combinations considering the proposed emplacement environment to

optimize the waste package performance;

(2) Provide reasonable assurance that the *in situ* chemical;, physical, and/or nuclear properties of the waste package and/or its interactions with the emplacement environment will not compromise the function of the waste packages. Supporting analyses shall include, but not be limited to evaluation of the following factors: Solubility, oxidation/reduction reactions, corrosion, gas generation, thermal effects, mechanical strength, mechanical stresses, radiolysis, radiation damage, nuclide retardation, leaching, fire and explosion hazards, thermal loads, and synergistic interactions;

(3) Provide reasonable assurance that the *in situ* chemical, physical, and/or nuclear properties of the waste package and/or its interactions with the emplacement environment will not compromise the function of the site or engineered elements of the geologic repository. The supporting analyses shall include, but not be limited to, evaluation of the following factors: solubility, oxidation/reduction reactions, corrosion, gas generation, thermal effects, mechanical strength, stress, radiolysis, radiation damage, nuclide retardation, leaching, fire and explosion hazards, thermal loads, and synergistic interactions.

(4) Design and fabricate the waste packages to promote safe handling during transportation, handling, emplacement, and retrieval; and

(5) Test the waste packages, as appropriate, to ensure that the requirements of §§ 60.133(a)(1) and 60.133(a)(2) of the Performance Objectives are met.

(b) *Waste Form Requirements.* The Department shall accept waste for disposal only if it meets the following criteria—

(1) *Solidification.* All liquid radioactive wastes must have been converted to a dry solid and placed in a sealed container before transfer to the repository;

(2) *Stabilization.* Finely divided waste forms must have been stabilized (for example, by incorporation into an encapsulating matrix) to limit the production and availability of respirable fines during any accident condition to a level as low as is reasonably achievable;

(3) *Free Liquids.* The Waste package must contain no free liquids;

(4) *Combustibles.* All combustible radioactive wastes must have been reduced to a noncombustible form unless the associated packaging is such that a fire involving a single package will not—

(i) Compromise the integrity of other packages;

(ii) Result in radiation exposures or releases of radio-active materials in excess of permissible levels; and

(iii) Adversely affect any safety related structures, systems, or components.

(5) *Explosive, pyrophoric, and toxic materials.* The Department shall insure that there are not explosive or pyrophoric materials in the radioactive waste, nor are there chemically toxic wastes that could compromise either the operation or performance of the repository or adversely affect operator safety.

(c) *Container and packaging design requirements.* Containers shall meet the following criteria—

(1) *Physical dimensions and weight.* Each container has been designed and fabricated to permit safe handling at the repository during operations and if necessary, during retrieval prior to repository decommissioning;

(2) *Codes and Standards.* The container and packaging shall be designed, fabricated, and tested, to the maximum extent practical, in accordance with generally recognized codes and standards [1] except as authorized by the Commission upon demonstration by the Department that this would result in hardship or unusual difficulties without a compensating increase in the level of quality and safety;

(3) *Surface contamination.* The amount of removable radioactive surface contamination on the exterior of the package is such that exposure to operational personnel will not exceed the values in Part 20 of this chapter; and

(4) *Unique identification.* A label or other means of permanent identification must be provided for each container. The identification shall not impair the integrity of the container and shall be permanently applied in such a way that the information will be legible at least to the end of the retrievable storage period. Each container identification shall match the container with its permanent written records.

§ 60.135 Retrieval of waste.

The Department shall design and construct the geologic repository operations area to permit retrieval of all waste packages, mechanically intact, if retrieval operations begin within 50 years after all of the waste has been emplaced and if the geologic repository has not been decommissioned. The design of the geologic repository operations area shall provide for retrievability of the waste within a period of time that is about the same as that in which it was emplaced.

§ 60.137 Monitoring programs.

The Department shall initiate a system of monitors during site characterization. The Department shall maintain and supplement these monitors, as appropriate, throughout the period of institutional control. The Department shall design the monitoring systems to verify that the performance objectives of § 60.111 are being achieved. The Department shall design, construct and operate the monitoring system so that—

(a) They do not adversely affect the natural and engineered elements of the geologic respository;

(b) They provide baseline information on those parameters and natural processes pertaining to the safety of a candidate site that may be caused by site characterization activities; and

(c) They monitor changes from baseline condition of parameters which could affect the performance of a geologic repository operations area's natural or engineered barriers to radionuclide migration during construction, operation, and after decommissioning.

Subpart F—Physical Protection [Reserved]

Subpart G—Quality Assurance

§ 60.171 Quality assurance program.

(a) As used in this part, "quality assurance" comprises all those planned and systematic actions necessary to provide adequate confidence that a structure, system, or component will perform satisfactorily in service. Quality assurance includes quality control, which comprises those quality assurance actions related to the physical characteristics of a material, structure, component, or system which provide a means to control the quality of the material, structure, component, or system to predetermined requirements.

(b) The Department shall implement a quality assurance program based on the criteria in Appendix B of Part 50 of this chapter. The quality assurance program shall apply to all activities affecting the safety-related functions of those structures, systems, and components that prevent or mitigate events that could cause unreasonable risk to the health and safety of the public. These activities include exploring, designing, fabricating purchasing, handling, shipping, storing, cleaning, erecting,

[1] Regulatory guides describing generally acceptable codes and standards for containers of similar type and function will be issued.

installing, inspecting, testing, operating, maintaining, monitoring, repairing and modifying.

Subpart H—Criteria for Personnel Training [Reserved]

Subpart I—Emergencies and Emergency Programs [Reserved]

Dated at Washington, D.C. this 5th day of May, 1980

For the U.S. Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 80-14396 Filed 5-12-80; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 461

[Docket No. ERA-R-79-12A]

Financial Assistance Programs for State Utility Regulatory Commissions and Eligible Nonregulated Electric Utilities

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed rulemaking; cancellations of public hearing.

SUMMARY: The Economic Regulatory Administration of the Department of Energy hereby cancels the public hearing on proposed amendments to its regulations on the Innovative Rates Program which was scheduled for Wednesday, May 14, 1980, in Washington, D.C. The public hearing is cancelled due to the lack of any written requests to speak at the hearing. As stated in the notice of proposed rulemaking, issued on April 2, 1980, (45 FR 24092, April 8, 1980) written comments on the proposed amendments must be received by 4:30 p.m. on June 9, 1980.

FOR FURTHER INFORMATION CONTACT:

M. Larry Kaseman, Office of Utility Systems, Economic Regulatory Administration, Department of Energy, 2000 M Street NW., Room 4306, Washington, D.C. 20461 (202) 653-3920;

Mary Ann Masterson, Office of the Assistant General Counsel for Conservation and Solar Applications, Department of Energy, James Forrestal Building, Room 1E-258, Washington, D.C. 20585, (202) 252-9516;

William L. Webb, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., Room B-110, Washington, D.C. 20461, (202) 653-4055.

Issued in Washington, D.C. on May 9, 1980.

Jerry L. Pfeffer,

Assistant Administrator for Utility Systems, Economic Regulatory Administration.

[FR Doc. 80-14882 Filed 5-12-80; 10:30 am]

BILLING CODE 6450-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[80-292]

Accounting for Loan Servicing Fees

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Board is proposing to restrict savings and loan associations' accounting treatment for loan servicing fees by providing that such fees may be credited to current income only to the extent earned. The proposed regulation is intended to prohibit the reflection in net worth of unearned servicing income, which the Board regards as an unsafe and unsound practice.

EFFECTIVE DATE: Comments must be received by July 9, 1980.

ADDRESS: Send comments to the Office of the Secretary, Federal Home Loan Bank Board, 1700 G Street, NW, Washington, DC 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT:

Nancy L. Feldman, Associate General Counsel (202-377-6440), or Joseph M. Arendes, Assistant Regional Director, Department of Supervision, Office of Examinations and Supervision (202-377-6512).

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board's regulations for institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation currently do not set forth rules specifying the accounting treatment to be accorded loan servicing fees, or premiums received in lieu of such fees. The Board currently cannot rely on the application of generally accepted accounting principles (GAAP) to be controlling in this regard because it has been the Board's experience that there is not a uniform position among accounting professionals as to the proper treatment of such fees.

It has come to the Board's attention that some associations are following a practice of taking into current income imputed net gains on loan servicing to be performed in the future in connection with the servicing of loans and loan participations sold by these

associations. As a result, their net worth includes amounts which have not been earned at the time of recording these gains. The Board believes this practice is inappropriate because net worth is regarded as an important indicator of an institution's present ability to carry out various functions, and inclusion of contingent earnings results in overstatement of net worth available to perform such functions. It also is detrimental to the concept of net worth as a measurement of an institution's present financial position.

The Board's concern is compounded by the fact that some permanent stock associations have paid dividends to stockholders out of retained earnings which have been inflated by inclusion of such imputed gains. This constitutes a present distribution of contingent future income. The Board considers both the overstatement of earnings and dividends paid based on such overstated earnings to be unsafe and unsound practices.

Therefore, the Board has determined to propose that loan servicing fees may be credited to current income only to the extent that they have been earned, and premiums received in lieu of loan servicing fees must be credited to a deferred-income account and thereafter be credited to current income over the anticipated average life of the loans or loan participations serviced. The proposed regulation is consistent with the supervisory policy adopted by the Federal Financial Institutions Examination Council regarding accounting treatment accorded to the purchase and sale of U.S. government guaranteed loans, which provides that servicing fees and premiums earned in connection with such loans should be recognized only as earned and amortized to appropriate income accounts over the life of the loan.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 563 of the rules and regulations for Insurance of Accounts (12 CFR Part 563) by adding a new § 563.23–4 thereto, to read as set forth below.

§ 563.23–4 Accounting for loan servicing fees.

(a) Loan servicing fees shall be credited to income only to the extent that such fees have been earned. Premiums received in lieu of servicing fees, in connection with the sale of loans or participating interests therein, shall be deferred by a credit to an account descriptive of deferred income and shall thereafter be credited to income over the anticipated average life of the loans or participations sold.

(b) *Effective date.* The rules set forth in paragraph (a) of this section apply to fees and premiums relating to loans sold after [effective date of the regulation], and to fees from existing loan servicing contracts received after such date. Fees and premiums received before such date need not be recalculated.

(Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended; 12 U.S.C. 1725, 1726, 1730. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 80–14640 Filed 5–12–80; 8:45 am]

BILLING CODE 6720–01–M

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12 CFR Parts 563

[No. 80–293]

Annual Report Requirements

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: Board regulations require insured institutions to transmit an annual report to voting members if the institution or one or more of its subsidiaries engage in certain transactions with affiliated persons during the audit period preceding the institution's annual meeting. This proposed amendment allows the Principal Supervisory Agent, with concurrence of the Office of General Counsel, to waive the annual report requirement if the insured institution believed in good faith that the transaction would not trigger an annual report, and acted to reverse, or to divest itself of any interest in, the transaction upon learning that an annual report would be required. Waiver is available only in cases where the insured institution has compiled a generally satisfactory compliance record, and only if the transaction that triggered disclosure was not a transaction contrary to the best interests of the association or its members.

COMMENTS MUST BE RECEIVED BY: July 9, 1980.

ADDRESS: Send comments to the Office of the Secretary, Federal Home Loan Bank Board, 1700 G Street, NW, Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: Kathleen E. Topelius, Attorney (202–377–6444), Federal Home Loan Bank Board, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION: Section 563.45(b)(3)(ii) of the rules and regulations for Insurance of Accounts (12 CFR 563.45(b)(3)(ii)) requires an insured institution to prepare and transmit an annual report to voting members if the institution or subsidiary has engaged in a transaction with an affiliated person, or if an affiliated person has a direct or indirect material interest in the transaction, as described in Item 6(e) of the Board's Annual Report Form (Form AR).

For purposes of item 6(e), many loans and real property transactions involving the insured institution or its subsidiary and an affiliated person will trigger disclosure. For example, a loan to an affiliated person not specifically authorized under § 563.43(b) is a prohibited loan and will subject the association to supervisory action; such a loan will also trigger disclosure if the amount of the loan exceeds $40,000. The purchase of office supplies or equipment by an insured institution or subsidiary from an affiliated person is not prohibited by Board regulation, but will trigger disclosure if the purchase exceeds $40,000.

Generally, an affiliated person is deemed to have a direct or indirect interest in an insured institution's loan transactions if the affiliated person acts as the institution's loan closing attorney, appraiser, escrow agent, builder, or real estate agent/broker, unless he or she is a full-time employee of the institution and does not receive additional compensation for the services. Loan transactions in which an affiliated person acts as insurance agent/broker or underwriter, supplier of title examination or abstract, or building materials supplier are covered if the affiliated person was selected or referred by the institution or subsidiary or, in the case of a building materials supplier, if the institution or subsidiary had knowledge that the affiliated person would act in that capacity at the time the loan commitment was made. In addition, an affiliated person is deemed to have an interest for purposes of item 6(e) if he or she is a direct or indirect owner of a business that deals with the institution or subsidiary; an interest would also arise from such transactions where the business is itself an affiliated person.

Generally, these interests are material for purposes of Item 6(e) if payments to the affiliated person exceed $40,000 in an audit period. All payments to the affiliated person, direct and indirect, attributable to transactions involving the institution or subsidiary are aggregated for purposes of calculating whether the interest of the affiliated person has exceeded $40,000.

The regulations governing transactions that trigger disclosure are complex and far reaching. They can operate to require disclosure even where the institution was unaware at the time of the transaction of the applicable

disclosure requirement, or believed in good faith that the disclosure requirements did not apply. For example, if an association, without prior supervisory approval, sold real estate owned by the association to a university whose president served as a director of the association, or if an association made loans to individual purchasers of homes that were constructed on property purchased from an affiliated person, the association would be required to file an annual report. If an association made mortgage loans to purchasers represented by real estate agents employed as independent contractors by a broker who was an affiliated person of the association, disclosure would be triggered when commissions paid to the agents totalled more than $40,000 in an audit period.

Under current regulations, disclosure would be required even where an association discovered that it had inadvertently engaged in a triggering transaction and immediately reversed the transaction or divested itself of any interest therein. While in the above situations a potential for conflict of interest exists, it is clear that occasionally institutions act in good faith on the basis of misunderstandings as to the content or effect of the conflict of interest regulations. Under such circumstances, institutions that have inadvertently triggered disclosure have requested from the Board a waiver of the reporting requirements.

Because § 563.45 includes no provision for waiver, the Board has been forced to deny all such requests regardless of the nature of the transaction or the merits of the request. There are, however, situations in which equity would seem to favor waiver of the disclosure requirements. The Board is, therefore, proposing to amend its regulations to provide some flexibility to application of the § 563.45 disclosure requirements in circumstances where the insured institution appears to have inadvertently triggered disclosure.

The proposed amendment provides that the Principal Supervisory Agent, with concurrence of the Office of General Counsel, may waive disclosure in cases where an insured institution entered into the transaction believing in good faith that the transaction would not trigger an annual report and where the association acted to reverse the transaction upon learning that an annual report would be required. Waiver, pursuant to the proposed amendment, would only be available in cases where an insured institution has compiled a generally satisfactory record of compliance and only if the transaction that triggered the annual report was not a transaction contrary to the best interests of the association or its members. The proposed amendment makes clear that waiver of disclosure neither constitutes Board approval of the transaction nor limits the Board's enforcement authority against any person who has committed a breach of fiduciary duty to the association or its members.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 563 of the Rules and Regulations for Insurance of Accounts by adding Instruction 9 to Item 6(e), Form AR, of § 563.45, to read as set forth below.

Rules and Regulations for Insurance of Accounts

PART 563—OPERATIONS

§ 563.45 Disclosure.

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FORM AR (Annual Report Form)

* * * * *

Item 6—*Remuneration and other transactions with Management and others.* * * *

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(e) *Transactions where certain persons have a material interest.* * * *

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Instructions. * * *

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9. An insured institution that has engaged in a transaction that must be disclosed pursuant to Item 6(e) of Form AR may be granted a waiver by the Principal Supervisory Agent, with the concurrence of the General Counsel or his designee, upon an affirmative showing that the insured institution—

1. Entered into the transaction believing in good faith that the transaction would not trigger disclosure;

2. Initiated appropriate action to reverse, or to divest itself of any interest in, the transaction upon learning that the transaction would trigger disclosure;

3. Has compiled, prior to the subject transaction, a record of satisfactory compliance with applicable law, Board rules, regulations, and supervisory directives; and

4. Has not, by involvement in the subject transaction, engaged in a transaction contrary to the best interests of the association or its members.

Waiver of the Form AR disclosure requirements under this paragraph does not constitute approval of the transaction nor does it limit the Board's enforcement authority to suspend, remove, prohibit, or bring cease-and-desist proceedings against any person who has committed a breach of fiduciary duty to the insured institution or its members.

* * * * *

(Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730). Sec. 5A, 47 Stat. 727, as amended by sec. 1, 64 Stat. 256, as amended, sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1425a, 1437). Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464). Reorg. Plan No. 3 of 1947, 172 FR 4891, 3 CFR, 1943–48 Comp., p. 1071.)

Dated: May 5, 1980.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 80-14641 Filed 5-12-80; 8:45 am]

BILLING CODE 6720-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

Loans to State and Local Development Companies; Interest Rates for State Development Companies

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The regulation, as revised, would remove the interest rate ceiling of 8 percent on section 501 loans to state development companies and establish a rate that is consistent with the rate set for section 7(a) business loans. Removing the interest rate ceiling on section 501 loans will enable the SBA to set an interest rate structure that is consistent with its other loan programs, and realistically reflects the cost of money as established by the U.S. Treasury.

DATE: Comments must be received on or before August 11, 1980.

FOR FURTHER INFORMATION CONTACT: Alan B. Abraham, Financial Analyst, Neighborhood Business Revitalization, Small Business Administration, Washington, DC, 202–653–6470.

SUPPLEMENTARY INFORMATION: The proposed change will enable section 501 interest rates to be determined on the same cost of money formula that determines the section 7(a) and section 502 loan programs.

On August 23, 1974, Pub. L. 93–386 (88 Stat. 742) was approved establishing the rate of interest of section 7(a) business loans on a cost of money formula. In keeping with that change, the section 502 regulations were also amended to establish interest rates on the same basis. This proposed revision reflects a desire on the part of the Agency to coordinate interest rate policies affecting all of its loan programs by setting an interest rate structure that is based on the cost of money as established by the U.S. Treasury. The formula for determining interest rates for section 7(a) business loans takes public sector financing into account and therefore is generally lower than the rates established by the private sector.

In addition, the revision reflects a number of conditions that have changed since the 8 percent ceiling for section 501 loans was originally established in 1969. For example, at the time the 8 percent rate was set, the state

development company borrowing rate was a fraction above the then prime rate of 7½ percent. The interest ceiling now, in essence, acts as a subsidy on 501 loans and may result in an artificial demand for available resources.

In the last five years, the prime interest rate has fluctuated from 12 percent to 6¼ percent to 15¾ percent. Given the volatile nature of the economy which these figures reflect, amending the section 501 regulations to establish a formula rate that realistically reflects the cost of money as established by the U.S. Treasury is appropriate.

Accordingly, pursuant to authority contained in section 308(c) of the Small Business Investment Act of 1958 (SBI Act), 15 U.S.C. 687, it is proposed to amend Part 108 of Title 13, CFR, (§ 108.501–1(f)) as follows:

§ 108.501–1 [Amended]

* * * * *

(f) *Interest Rate.* The rate of interest on section 501 loans to state development corporations shall be a rate determined annually by the Administrator consistent with the rate set for business loans, 15 U.S.C. 636(a).

(Catalog of Domestic Assistance Programs No. 59.013 State and Local Development Company Loans.)

Dated: March 27, 1980.

William H. Mauk, Jr.,

Acting Administrator.

[FR Doc. 80–14658 Filed 5–12–80; 8:45 am]

BILLING CODE 8025–01–M

CIVIL AERONAUTICS BOARD

14 CFR Parts 221 and 385

[EDR–402–ODR–21; Docket No. 38147; Dated: May 8, 1980]

Proposed New Pre-Filing Tariff Approval Procedures for all U.S. Certificated Air Carriers in Domestic Transportation

May 8, 1980.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The CAB is proposing new pre-filing tariff approval procedures for all U.S. certificated air carriers in domestic transportation so that fare reductions can be implemented within one day. This new procedure would apply to both original fares and to matching competitive fares. The proposal was initiated by an application for exemption from Western Air Lines.

DATES: Comments by: June 16, 1980.

Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

Requests to be put on the Service List by: May 27, 1980.

The Docket Section prepares the Service List and sends it to each person listed, who then serves comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 38147, Civil Aeronautics Board, 1825 Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Thomas Moore, Domestic Fares & Rates Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; (202) 673–5038.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking would set up a procedure to minimize delay in acting on passenger fare reduction proposals. The proposed procedures would further the Board's efforts to encourage a more responsive and dynamic pricing system, without fundamentally changing the principles of the tariff system, which is required by the Federal Aviation Act to continue until 1983. Under the proposal, if a carrier filed an application for a fare decrease in the morning, the Board would take action on it the same day. The carrier could then begin charging the fare the next day. The procedures would apply to both original and matching fare proposals, but not to proposals matching fares that were filed on statutory notice. The tariff amendment itself would have to be filed within 7 days. The procedures would not be available for fares that raise significant questions of lawfulness.

The Western Air Lines Application

Western Air Lines has filed an application (Docket 36804) asking for an exemption from the notice requirements of section 403 of the Federal Aviation Act (49 U.S.C. 1373) to allow it simply to notify the Board that it was matching a fare of another carrier already on file, and to file its amended tariff on short notice within 1 day. Western argued that the Act, as amended, places maximum reliance on competition to provide needed air transportation, and even though the Board has set up short notice filing procedures, the present structure, tied to the physical presence of a tariff amendment, does not allow true competitive response when other carriers adjust prices. Western's proposed exemption would apply only to fare reductions within the suspend-free zone established by the Board's fare flexibility guidelines (14 CFR Part 399, Subpart C).

The Board finds substantial merit in Western's policy arguments and is proposing here to issue procedures that will accomplish most of Western's aims, although formally we are denying its application for exemption. Under a system without tariff filing requirements, a carrier could and would begin promoting a new fare without notice to competitors, thus gaining a slight marketing edge. The Board's new Special Tariff Permission (STP) procedures (14 CFR Part 221, Subpart P) now provide for a minimum of 24 to 48 hours' notice for both innovative and matching fare changes. Western's proposal would allow competitors to take advantage of this advance notice of an innovative fare to match it simultaneously, thus eliminating any possible marketing edge gained by the fare change. Although Western's application does identify some practical restrictions of the Board's Special Tariff Permission rules, it deals only with matching fares and would not allow carriers to respond quickly to market conditions by using an original innovative fare on short notice.

There would be an additional problem with Western's proposal. If Western's suggestions were adopted, carriers could notify the Board by phone of their intention to use a matching fare, and then could begin to charge that fare without any documentary record on file at the Board. This type of system is incompatible with an air fare structure based on filed tariffs. Congress has directed in the Airline Deregulation Act of 1978 that the passenger tariff structure be kept in place until January 1, 1983. Although the Board has set up procedures for Special Tariff Permission filings on less than the statutory notice, these procedures are keyed to the existence of a tariff system, requiring filed, written notice before a fare may be charged. Western's proposal would severely undercut Congressional intent to maintain a tariff structure for the net 3 years. In Order 80–5–51, adopted simultaneously with this notice, the Board is therefore denying Western's application.

Other Special Tariff Permission Rulemaking

The Board has recently amended its rules and policies about statutory tariff filing requirements and short notice procedures (ER–1171, PS–91, 45 FR 20059, 20071, March 27, 1980). Those

changes, among other things, liberalized the Board's policy on Special Tariff Permission to file on less than statutory notice. The Board now grants STP for fares within and below the zone of fare flexibility, as long as the fares do not present a significant question of lawfulness. These procedures, however, do not place an obligation on the Board to act on an STP application within a certain period of time, thus creating possible delay in the use of innovative or matching fares. Further delay may also be caused by the time needed for printing and filing matching tariffs with the Board.

Proposal for Pre-Filing Tariff Approval

The Board proposes, by this notice, procedures for expedited approval of certain fare changes before tariffs are actually filed. These procedures are designed to accomplish some of the aims of Western's application, but would not depart from the basis of the tariff system itself. These pre-filing tariff approval procedures would apply to applications for reductions of existing fares, and applications for any fare within the downward portion of the Board's zone of flexibility for domestic passenger fares (14 CFR Part 399, Subpart C) that does not increase an existing fare. For these purpose, a change in an existing fare means a change in the fare amount without changing any of the conditions. The procedures could be used by a carrier either to initiate its own fare or to match a fare filed by another carrier on short notice. Carriers would not be allowed to use these procedures to match fares filed under the statutory notice set forth in section 403 of the Act.

The proposal would add a new section to Subpart P of Part 221. Carriers would be required to file the request for pre-filing tariff approval combined with an STP application. This document would describe the tariff to be amended, the current fare to be changed, if any, and the current pages and revision numbers of the tariff. In order to speed up review of the application, copies would be given directly to the Chief of the Tariffs Division, who would have delegated authority to act on the application. The application would also include the name of a contact person and an office phone number for notification of the Board's action. If an application were filed before noon on any business day, the Board would act on it the same day. In order for the Board to be able to take such quick action, the application would have to present all supporting information in an easily readable and understandable format. If extensive or complicated exhibits were included, there would have to be an accurate summary of the intent of the proposal and the supporting information. Upon notification of the Board's approval, the carrier would charge the proposed fare when it becomes effective, which could be as early at 12:01 a.m. on the following day. The tariff would then have to be formally amended within 7 days of approval of the STP application. In the interim, the fare approved under these procedures would be the legal fare to be charged by the carrier, having the same legal status as a fare set forth in a filed tariff. No further change would be permitted in any fare approved by these procedures until after the tariff amendment was filed.

A carrier using these procedures would, upon acceptance of its application, be granted an exemption from section 403(b) and (c) of the Act. Under section 403(b), carriers may charge only those fares that appear in currently effective tariffs. Under section 403(c)(1), carriers are required to file tariff changes 30 days before the effective date, or when authorized by the Board, 25 days if matching a filed tariff. These procedures would create no new grounds for granting Special Tariff Permission. They would merely enable speedier introduction of innovative fares for which it is already our policy to grant STP.

The Airline Deregulation Act of 1978 states that competition is gradually to become the primary economic governor of air transportation. The Board's role in this process is to assist in making the transition to a more competitive air travel market workable, without causing disruption to either the industry or the traveling public. Under the limited circumstances set out in this proposal, we believe that there is a need to give the carriers freedom both to innovate and to respond quickly to pricing changes. The pre-filing approval procedures proposed in this notice would allow conditions more closely resembling those of a freely competitive market.

The proposed procedures would eliminate unnecessary paperwork and regulatory delay for both a carrier that originates the new fare and a carrier that decides to match it. Since these fares have already been determined to be reasonable, there appears to be less of a need for a lengthy notice period in order for the Board to review the proposed change. The Board would, however, quickly review the proposal to be sure that is not unlawful on its face. Since there no longer appears to be a regulatory need for a longer notice period for such fare decreases, there is no reason to deny the benefits of greater competitive fare flexibility to airline passengers. For these reasons, we tentatively find that exemption from section 403 in order to use these procedures would be consistent with the public interest.

30-Day Comment Period

In recent months the Board staff has often been asked to make *ad hoc* decisions on requests for exemption from section 403 by competitors wanting to match innovative fares by another carrier. There may be some uncertainty about the Board's general policy in this area, specifically about what fares may be short-noticed, and what time periods for notice are acceptable. The large increase and rapid changes in tariff filings have caused delay at both the Board and the airline tariff publishers. For these reasons, as discussed earlier, consumers may be missing some of the benefits of increased competition, primarily because of the requirement for the physical presence of the tariff amendment at the Board. We therefore believe that there is a need to take action on this proposal as soon as practicable, and are asking for public comments to be submitted no later than 30 days after publication of the proposal.

Proposed Rule

The Board proposes to amend 14 CFR Part 221 and Part 385 as follows:

PART 221—TARIFFS

1. A new § 221.195 would be added to Subpart P of Part 221 to read:

Subpart P—Special Tariff Permission to File on Less Than Statutory Notice

§ 221.195 Pre-filing tariff approval for fare reductions.

(a) Carriers obtaining Special Tariff Permission under this section are exempt from section 403 (b) and (c) of the Act to the extent necessary to charge passenger fares approved by the Board under these procedures.

(1) Applications shall be filed with the Chief, Tariffs Division, Bureau of Domestic Aviation, and be entitled "Special Tariff Permission Application No. ——Pre-filing Approval Requested." The title page of the application shall include the name and telephone number of the contact person for the carrier.

(2) Applications filed with the Board before 12 noon on any business day will be acted on the same day. Applications filed with the Board after 12 noon will be acted on by the end of the next business day. The Chief, Tariffs

Division, will inform the carrier by telephone as soon as a decision is made on the application.

(3) The new fare may be put into effect by the carrier at 12:01 a.m. on the day following approval of the application.

(4) The carrier shall file a tariff amendment reflecting the changed fare within 7 days after approval of the application. The tariff filing shall show the date on which the fare became effective.

(b) Applications shall be in an easily readable and understandable format.

(1) The application shall describe: (i) the tariff to be amended, (ii) the current fare to be changed, if any, and (iii) the current page and revision number of the affected tariff.

(2) Extensive or complicated exhibits included with the application shall be summarized in a statement explaining the intent of the proposal.

(c) The procedures in this section shall be used only for proposing either (1) a decrease in an existing fare, or (2) a fare that is within the downward zone set for interstate and overseas passenger fares in Subpart C of 14 CFR Part 399 and does not increase an existing fare. For these purposes a change in an existing fare means a change in the fare amount without changing any of the conditions.

(d) The procedures in this section do not apply to proposals to match other fares already filed on statutory notice set forth in § 221.160. Applications proposing fares that raise significant questions of lawfulness, as set forth in § 399.35 of this chapter, will be denied.

(e) There shall be no further change in any fare approved under procedures in this section until the amended tariff is filed as required by paragraph (a)(4) of this section.

2. The Table of Contents of Subpart P of Part 221 would be amended accordingly.

PART 385—DELEGATIONS AND REVIEW OF ACTION UNDER DELEGATION; NONHEARING MATTERS

3. Section 385.15, *Delegation to the Chief, Tariffs Division, Bureau of Pricing and Domestic Aviation,* would be retitled, the opening sentence would be amended, and a new paragraph (k) would be added, so that the section would read:

§ 385.15 Delegation to the Chief, Tariffs Division, Bureau of Pricing and Domestic Aviation.

The Board delegates to the Chief, Tariffs Division, Bureau of Domestic Aviation, the authority to:

* * * * *

(k) Approve or deny applications for Special Tariff Permission filed under 14 CFR § 221.195 to allow carriers to provide reduced passenger fares effective the day following approval of the application.

4. The Table of Contents of Part 385 would be amended accordingly.

(Secs. 204, 403, 416, and 1002 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 758, 771, 788, as amended by P.L. 95-504; 49 U.S.C. 1324, 1373, 1386, 1482; Reorganization Plan No. 3 of 1961, 75 Stat. 837, 5 U.S.C. Appendix.)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-14718 Filed 5-12-80; 8:45 am]

BILLING CODE 6320-01-M

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14 CFR Part 250

[EDR-401; Docket No. 38108; Dated: May 1, 1980]

Oversales

May 1, 1980.

AGENCY: Civil Aeronautics Board.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Civil Aeronautics Board requests comments on whether, and in what form, its oversales and denied boarding rules should apply to commuter air carriers and to certificated carriers operating small (less than 60 seat) aircraft.

DATES: Comments by: June 30, 1980. Reply Comments by: July 10, 1980.

Comments and relevant information received after these dates will be considered by the Board only to the extent practicable.

Requests to be put on the Service List by: May 19, 1980

The Docket Section prepares the Service List and sends it to each person listed, who then serves comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket Section, Docket 38108, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Krevor, Legal Processing Division, Bureau of Domestic Aviation, Civil Aeronautics Board, Washington, D.C., 20428; (202) 673-5333.

SUPPLEMENTARY INFORMATION: We are conducting an investigation to determine whether Part 250 of our Economic Regulations (14 CFR 250) relating to oversales and denied boarding compensation should apply to commuter air carriers and to certificated carriers operating 60 seat of smaller aircraft. We are soliciting comments from passengers, carriers (foreign and domestic), civic parties, and other interested individuals and organizations on the issues involved. The comments received, in combination with other information already available, may provide the basis for a notice of proposed rulemaking.

When a carrier confirms a greater number of reservations than there are seats available on a particular flight, Part 250 regulates the treatment of those passengers holding confirmed reservations. The rule now applies to all certificated carriers, including those initially certificated through award of unused authority under Section 401(d)(5) of the Federal Aviation Act of 1958, as amended, regardless of the size of aircraft the carrier operates. Uncertificated carriers (commuters and other air taxis), however, are exempt from the rule. Carriers operating under dual commuter and certificate authority must conform to Part 250 in both their certificated and non-certificated operations.

When a flight is oversold the rule requires that the carrier first solicit volunteers who are willing to give up their seats in return for a payment of the carrier's choosing. If there are not enough volunteers, the carrier may "bump" the remaining unaccommodated passengers in accordance with its published denied boarding priority rules. An involuntarily "bumped" passenger is usually entitled to payment of denied boarding compensation at the rate of 200 percent of the sum of such passenger's remaining flight coupons to his or her next stopover or destination, with a $75 minimum and a $400 maximum. The compensation is one-half that described above if the carrier arranges alternate air transportation, or the passenger accepts other transportation, scheduled to arrive at the next stopover or destination no later than two hours after the original flight, or four hours in the case of foreign air transportation. This payment is intended to provide an on-the-spot compensation of liquidated damages for people whose travel plans

are disrupted and is the carrier's minimum obligation toward bumped passengers. A passenger whose damages exceed this Board prescribed minimum may seek greater compensation from the carrier or through legal action.

In ER-1123, 44 FR 30083, May 24, 1979, we increased the size of aircraft authorized to operate under Part 298 of the Board's Economic Regulations from 30 to 60 seats. (Part 298 exempts operators of small aircraft from most of the certification requirements of the Federal Aviation Act.) At that time, we promised to investigate and compare the costs and benefits of applying Part 250 to commuter carriers, with special emphasis on those in the 30 to 60 seat range, and to certificated operating aircraft no larger than those used by commuter carriers. Although we have consistently applied Part 250 to all certificated carriers without regard to the size of aircraft they operate, we have not focused on the impact of this rule on the small, former commuter air carriers now becoming certificated—principally through the dormant authority provisions of the new Act. We reaffirmed our intention to investigate this question in Order 79-12-161, December 21, 1979, where we granted an exemption from Part 250 to a certificated carrier operating smaller than 30 seat aircraft and indicated our willingness to provide the same temporary relief to other similarly situated carriers. We find, however, that we have insufficient data bearing on the need for the rule and its resultant costs to issue a notice of proposed rulemaking at this time. This is due in part to the limited data reporting required of Part 298 carriers, and in part to the lack of detailed analysis of the costs of complying with and implementing Part 250 by certificated carriers operating small (less than 60 seat) aircraft.

During the past year, a number of certificated small aircraft operators have asserted that the current denied boarding rule imposes on them a significantly greater financial and operational burden than on carriers operating large aircraft. They contend that the rule places them at a competitive disadvantage relative to commuter carriers operating similar equipment and routes because the costs of compliance with the rule—especially liability for denied boarding compensation—are excessive given the level of revenues at which these carriers operate. This argument has also been advanced on behalf of the Allegheny Commuters—who are subject to Part 250 through their agreements with USAir.

In order to better understand these issues and to identify what, if any, carrier activities need to be regulated, we would like more information (opinions and data) on oversales and denied boarding compensation in operations with 60 seat or smaller aircraft by both certificated and non-certificated carriers. The desirability of regulating oversales, and requiring denied boarding compensation, of certificated carriers operating solely large aircraft is outside the scope of this proceeding.

We could, of course, apply Part 250 to all the operations of all scheduled air carriers. Currently, however, the application of that rule turns on whether or not the carrier is certificated under section 401 of the Act. The rule applies to certificated air carriers but not to non-certificated ones (commuters). This could continue to be used as the sole criterion for determining which carriers are covered by Part 250 or could be only one of several factors.

We are also considering making the size of aircraft used by the carrier the determining factor. Under this criterion, carriers that operated any aircraft above a given size (e.g., 30 seats and larger or 60 seats and larger)would have to comply with Part 250 in all their operations. A variation on this criterion would have the DBC rule apply to all carriers that operated any aircraft larger than the specified size, but only to flights that used that larger aircraft. The aircraft size criterion could be further narrowed by applying Part 250 only to the operations of carriers whose entire fleet was larger than the qualifying size.

The certification and aircraft size criteria could be combined in various ways. For example, the rule could cover all operations by certificated carriers regardless of the size of aircraft that they operate while at the same time applying it only to commuter air carriers in their operation of 30-seat and larger aircraft. We specifically request comments on which critiera or combination of criteria the Board should use in applying the DBC rule.

We do not regard the criteria suggested above as all-inclusive; we invite commenters to suggest others. We will also consider refining the current rule (which affects certificated carriers only) to better address the operational needs of small aircraft operators. Provisions of the rule which may be modified include the method for computing denied boarding compensation, and creation of an exception to elibility for denied boarding compensation for bumpings necessitated by reduction of weight due to weather and other operational conditions. We will also consider the question of how carriers operating various types of aircraft that fall within more than one classification in the rule should be treated. There may also be special situations, such as a carrier providing essential air service, that require a different rule.

On the basis of these criteria, we suggest six possible options for application of the rule. It should be recognized that the questions of whether a carrier's operation must be exclusively of a certain size of aircraft for the rule to apply or not apply and whether a single carrier might operate under more than one rule in utilizing different size aircraft and additional variations to each option.

(1) Apply the rule to the system-wide operations of all scheduled air carriers.

(2) Apply the rule only to carriers operating larger than 60 seat aircraft (exempt all commuter carriers and certificated carriers operating smaller than 60 seat equipment).

(3) Apply the rule to all carriers operating larger than 30 seat aircraft (exempt only commuters and certificated carriers operating smaller than 30 seat equipment).

(4) Apply the rule to certificated carriers operating larger than 30 seat aircraft (exempt all commuter carriers, and certificated carriers operating the smaller equipment).

(5) Apply the rule to all certificated carriers, and to all commuter carriers operating larger than 30 seat aircraft (exempt only commuters using the smaller equipment).

(6) Apply the rule to all certificated carriers only (the present rule).

In the following discussion, we consider six major policy issues involved in the regulation of the oversales and denied boarding practices of carriers operating only small aircraft. We request comments on these six issues.

Commuter Carriers

The initial issue raised by our alternative proposals is whether commuter carriers should continue to be exempt from Part 250. Commuter carriers are assuming an increasingly significant role in the national air transportation system as they provide service to increasing numbers of passengers over larger route systems. In many cases, commuter carriers are providing essential air service as defined in section 419 of the Act. As a result, many passengers rely on commuters for travel to major business centers and to hub airports for connections to the large certificated carriers that serve regional,

transcontinental and overseas markets. Givern these trends, and the new authority of these carriers to operate up to 60-seat aircraft, we request comments on whether commuter carriers should be subject to the same oversales and denied boarding rules that apply to the large certificated carriers. In answering this question, we are interested in whether oversales and the involuntary bumping of passengers with confirmed reservations are significant problems in commuter operations. Do commuter carriers as a general practice offer confirmed reservations to more passengers than the maximum capacity of the aircraft on a particular flight? How many passengers are bumped by commuter carriers? Are no-shows a significant problem in small aircraft operations? What factors other than deliberate overlooking cause passengers with confirmed reservations to be denied confirmed space? (For example, small aircraft operators have contended that unforeseeable weather conditions result in blocking of space in small aircraft and that this causes confirmed passengers to be bumped even though the carrier did not deliberately overbook the flight.) We request that commenters address these questions and, in addition, the following:

(1) What methods other than overlooking can carriers use to insure high load factors? Have commuter carriers experimented with practices such as conditional reservations, stand-by tickets, cancellation penalties or solicitation of volunteers to give up their seats in return for some compensation? How effective have these approaches been?

(2) What percentage of passengers using small aircraft are interline connecting passengers?

Assuming that new rules are warranted for commuter carriers, more information is needed before specific solutions can be prepared. For example, should all commuter carriers be subject to the rule? We would like to receive comments on whether there is a logical basis for exempting some commuter carriers from the rule (for example, those operating smaller than 30 seat aircraft or those not providing essential air service).

In determining the need for the rule, we will also evaluate how commuter carriers have responded, and are likely to respond in the future, to oversales situations in the absence of any regulation. This includes how carriers propose to inform passengers of their denied boarding policies and what compensation or other provisions they will make for passengers with confirmed reservations who are denied boarding. In this regard, we welcome any commenting commuter carrier's summary of its policy on denied boarding, including:

—The statement regarding overbooking policy required by § 298.30 of the Board's Economic Regulations.

—The carrier's boarding priority rules (if any).

—Whether monetary compensation is offered to bumped passengers and how that amount is determined.

—Other services or allowances for bumped passengers.

We also need more data on the costs that would be incurred by commuter carriers in complying with the rule. We are uncertain how much it costs small carriers to comply with the rule and the relation of these costs to other operating costs and to revenues. We would like comments by commuter carriers, and by the small certificated carriers with experience under Part 250, regarding the specific cost elements (*i.e.*, personnel requirements, payment of denied boarding compensation, payment of voluntary compensation, training of employees) of compliance with this regulation and how these costs relate to other operating costs. This should also include comparison of per passenger revenue with a carrier's average payment of denied boarding compensation.

Certificated Carriers

Our possible options also present the question of whether certificated carriers operating 60-seat or smaller aircraft should be subject to the rule. Stated another way, we are considering proposing that application of the rule be determined by the operational nature of the carrier; *i.e.*, the size and type of aircraft it operates and the nature of its route system, rather than its legal status. If, under this test, certificated carriers operating small aircraft are more like commuters than like certificated carriers operating large aircraft, the rule for commuters should probably also apply to them. Another major consideration is the expectations of consumers. It is not clear whether consumers expect better and more extensive services and consumer protections from a certificated carrier simply because it enjoys certificated status. We also invite comments on whether some small certificated carriers should be exempted from the rule and whether carriers certificated through award of unused authority should be treated differently from carriers certificated through show-cause or other more formal proceedings.

Mixed Fleet

Assuming that we ultimately propose to exempt at least some certificated carriers from the rule, we are uncertain how to treat a carrier which operates aircraft falling on both sides of the determining line. For example, if we exempt certificated carriers operating no larger than 60-seat aircraft, how should we treat a carrier operating one (or a few) large aircraft? This problem is posed by Altair Airlines in its petition for reconsideration of Order 79–12–161 (Docket 36357). Altair seeks to retain its exemption from Part 250 for its under 30-seat fleet although it will soon operate 85-seat jet aircraft. This "mixed fleet" problem would also have to be resolved if the Board decides to distinguish between commuter carriers operating less than 30-seat aircraft and those operating 30- to 60-seat aircraft.

The mixed fleet issue presents a difficult balancing of consumer and industry needs. Our policy until recently has been to require a carrier to operate under one denied boarding rule in its entire operation. Under this policy, a carrier operating only small aircraft would lose its exemption upon commencing flights with a single large aircraft. On the other hand, we recently exempted Altair from Part 250 in those markets where it operates exclusively smaller than 60-seat aircraft. The carrier must comply with Part 250 on all its flights in every market in which, according to published flight schedules, it operates larger than 60-seat aircraft. We believe that there is the potential for consumer confusion and carrier abuse of the rule where a different rule applies to the large and small aircraft operations of a single carrier. Requiring compliance with Part 250 in any market in which a large aircraft is operated could obviate such consumer confusion. Commenters who urge this result should include suggestions for avoiding consumer confusion if different denied boarding rules apply to different services of the same carrier. We are also interested in whether becoming subject to denied boarding regulation is a major factor in the decisions of small certificated carriers on whether to operate larger aircraft.

Notice

Assuming that some carriers are exempted from the rule and as a result will engage in overbooking of passengers with confirmed reservations, we solicit comments on how carriers can provide actual notice of this information to passengers. Should the Board specify the type and form of notice, or should carriers be free to

utilize their own businesss judgment and normal contractual methods to communicate this information? We are inclined to believe that carriers exempted from the rule should develop methods to notify passengers of their denied boarding practices, policies and limits on liability rather than be entitled to rely on the constructive notice of tariff filings. We invite comments regarding how effective notice can be provided to passengers, and the extent to which carriers not subject to the liquidated damages scheme of Part 250 will be liable for their denied boarding policies and disclosure practices.

Refinement of Current Rule

We also invite proposals to refine the current rule to reduce its impact on small aircraft operators. The two aspects of the existing rule receiving the most criticism are: (1) The method for computing denied boarding compensation in section 250.4; and (2) That carriers are obligated to pay denied boarding compensation to passengers involuntarily bumped due to restrictions in takeoff or landing weight due to weather or other operational conditions often encountered in operations with small aircraft. We rejected this exception in our initial adoption of the rule, in 1967. However, we did not expressly consider the greater incidence of the problem in small aircraft since the rule was intended to apply only to certificated carriers, which generally used large aircraft. See ER–503, Preamble to Part 250, August 3, 1967, 32 FR 11939.[1] Therefore, we seek comments on whether adoption of such an exception in § 250.6 would satisfy the concerns of operators of small aircraft and at the same time provide protection for the public.

We will also consider modifications to the method for calculating denied boarding compensation. Under the present rule, if a carrier operating a small plane denies boarding to a passenger booked on a long connecting flight, the carrier may become liable for denied boarding compensation disproportionate to its revenues from providing the service. If the initial fare is very low, the maximum $400 compensation can be greater than the total revenue from all passengers on the flight. Possible changes to the rule include limiting compensation to the value of the ticket for the flight from which the passenger is bumped, and eliminating the double compensation rule for passengers that do not receive alternate transportation to their next destination within two hours of the original arrival time. We are interested in whether and how the rule should be revised.

We also recognize that carriers are required to pay denied boarding compensation to passengers bumped not as a result of intentional overbooking, but either because of erroneously confirmed reservations made by travel agents or other carriers or because of interline reservations made with insufficient time for confirmation. Such passengers appear for boarding with an "OK" ticket, but their confirmed reservations do not appear in the carrier's reservation system. We invite comments on how passengers with erroneously confirmed tickets should be treated under the rule.

Special Circumstances

As noted previously, there may be special situations or unusual circumstances in which operators of small aircraft should comply with a more stringent denied boarding rule than that of general applicability. Does the public find small aircraft more acceptable—especially in providing essential air service—when the carrier must comply with the Board's denied boarding rules? Similarly, is public acceptance of commuter carriers providing replacement service for a large certificated carrier significantly improved by the availability of the rule's remedies? Is alternative air transportation less likely to be available in markets where carriers operating small aircraft are the principal providers of air transportation? We do not know whether these situations require a different rule than the usual case and are interested in the views of civic parties, passengers, carriers, and other interested individuals and organizations on these questions.

Accordingly, the Civil Aeronautics Board requests comments on the issues discussed above.

(Secs. 204, 403, 404, 407 and 411 of the Federal Aviation Act of 1958, as amended; 72 Stat. 743, 758, 760, 766 and 769; 49 U.S.C. 1324, 1373, 1374, 1377 and 1381.)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-14717 Filed 5-12-80; 8:45 am]

BILLING CODE 6320-01-M

[1] Section 250.6 contains an exception to eligibility for denied boarding compensation when a certificated carrier must substitute an aircraft of lesser capacity when required by operational or safety reasons.

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 792 3214]

Beneficial Corp., et al.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commmission approval, among other things, would require a Wilmington, Del. accounting, auditing and legal services firm, to refrain from making any misleading representation regarding a consumer's right to assert claims and defenses against respondent arising out of the consumer's contract; using its past notice to defeat any otherwise valid consumer claim or defense; further, the respondent would be required to notify active account customers who received the notice that their claims and defenses have not been waived.

DATE: Comments must be received on or before July 14, 1980.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Thomas Armitage, Director, 10R, Seattle Regional Office, Federal Trade Commission, 28th Floor, Federal Bldg., 915 Second Ave., Seattle, Wash. 98174. (206) 442–4655.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

[File No. 792 3214]

Beneficial Corp. and Beneficial Management Corp.; Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission has initiated an investigation of certain acts and practices of Beneficial Corporation ("Beneficial") and Beneficial Management Corporation ("Beneficial Management"). It now appears that proposed respondents Beneficial and Beneficial Management are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed between Beneficial, by its duly authorized officer and its attorney, Beneficial Management, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Beneficial is a Delaware corporation. Its office and principal place of business is located at 1300 Market Street, Wilmington, Delaware 19899.

Beneficial Management is a Delaware corporation. Its office and principal place of business is located at 200 South Street, Morristown, New Jersey 07960.

Beneficial directs and controls the Beneficial Finance System comprised of wholly-owned subsidiaries including local loan offices and Beneficial Management. Beneficial Management provides centralized accounting, auditing and legal services to these consumer finance subsidiaries.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of facts and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to the agreement.

4. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of the complaint, will be placed on the public record for a period of 60 days and information in respect thereto publicly released. The Commission may withdraw its acceptance if comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provision of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive all rights to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order and understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order, and that proposed respondents may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

Order

This order applies to respondents Beneficial Corporation ("Beneficial") and Beneficial Management Corporation ("Beneficial Management"), their successors, assigns, officers, agents and employees, whether acting directly or though any corporation, subsidiary, division or other device, including any part of the Beneficial Finance System.

I. *It is ordered,* That Beneficial and Beneficial Management cease and desist from representing, directly or by implication, that a consumer's right to assert claims or defenses against a holder of the consumer's contract:

A. Is contingent upon the consumer giving notice of the claim or defense to the holder within a stated time after the holder purchases the contract;

B. Is in any other way limited by state law unless this is true.

II. *It is further ordered,* That Beneficial not assert any defect in a consumer's assertion of a claim or defense against the Beneficial Finance System (or any part of it) when that defect is based on the consumer's failure to give prior notice to the Beneficial Finance System (or any part of it).

III. *It is further ordered,* That Beneficial Management, within 30 days after service of this order, send the following notice to all active installment sales contract accounts:

Dear Customer: When we purchased your contract, we sent you a notice. This notice said you might not have the right to assert claims or defenses against us unless you notified us within a certain time period.

This statement was not correct.

You have always had the right to assert claims or defenses against us that you could assert against the seller. You have this right even if you have not previously told us of your claim or defense.

Beneficial Finance System Affiliated Companies.

IV. *It is further ordered,* That respondents maintain complete business records relative to the manner and form of their compliance with this order. Respondents shall retain each record for at least three years. Upon reasonable notice, respondents shall make any and all the records available for inspection and photocopying by authorized representatives of the Federal Trade Commission.

V. *It is further ordered,* That Beneficial forthwith distribute a copy of this order to each office of its respective domestic consumer finance subsidiaries.

VI. *It is further ordered,* That respondents notify the Commission at least 30 days prior to any proposed change in a corporate respondent in which the respondent is not a surviving entity, such as dissolution, assignment or sale resulting in the emergence of any successor corporation or corporations, or any other change in the corporation which may affect compliance obligations arising out of the order.

VII. *It is further ordered,* That respondents shall, within 60 days after service of this order, file with the Commission a report setting forth in detail the manner and form in which they have complied with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed

consent order from Beneficial Corporation and Beneficial Management Corporation.

The proposed consent order has been placed on the public record for 60 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Beneficial directs and controls the Beneficial Finance System comprised of wholly-owned subsidiaries including local loan offices and Beneficial Management. Beneficial Management provides centralized accounting, auditing and legal services to these consumer finance subsidiaries.

The Commission's complaint charges that the Beneficial Finance System sent notices to consumers whose contracts it had purchased. According to the complaint, the notices were misleading. They falsely implied that the consumer's right to assert claims and defenses against the Beneficial Finance System was limited to a set time period. In fact, the consumer's right was not so limited.

The complaint charges that the notice had the tendency and capacity to deter consumers from asserting valid claims and defenses against the Beneficial Finance System. For example, consumers with valid warranty claims against a seller might feel that they had no claim against the Beneficial Finance System and had to continue making payments. This would, according to the complaint, undermine the purpose of the FTC Trade Regulation Rule, Preservation of Consumer Claims and Defenses. This rule requires a notice in contracts which preserves the consumer's legally sufficient claims and defenses so that they may be asserted against a purchaser of the contract where a seller fails to keep its side of the bargain.

The proposed order requires Beneficial: To refrain from making any misleading representation regarding a consumer's right to assert claims and defenses against Beneficial arising out of the consumer's contract; not to use its past notice to defeat any otherwise valid consumer claim or defense; to notify active account consumers who received the notice that their claims and defenses have not been waived.

James A. Tobin,

Acting Secretary.

[FR Doc. 80-14639 Filed 5-12-80; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-16780]

Termination of Options Expansion Moratorium

AGENCY: Securities and Exchange Commission.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Commission announces the withdrawal of proposed Securities Exchange Act Rule 9b-1(T) which, if adopted, would have prohibited temporarily any further expansion of the standardized options markets.

FOR FURTHER INFORMATION CONTACT: Stuart Strauss, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549 (202) 272-2406.

SUPPLEMENTARY INFORMATION: Temporary Rule 9b-1(T), proposed by the Commission on October 17, 1977, would have formalized the options expansion moratorium by temporarily deferring the expansion of any existing program or the intiation of any new program for standardized options trading.[1] Because the self-regulatory organizations ("SROs") which traded or planned to trade standardized options voluntarily agreed to continue the moratorium pending the completion and evaluation of the Commission's Special Study of the Options Markets ("Options Study"), the Commission on August 3, 1978, postponed final action on the proposed rule.[2] The report of the Option Study was released in February 1979, and on February 22, 1979, the Commission requested the SROs participating in the moratorium to address certain of the recommendations of the Options Study before further expansion of the standardized options markets would be permitted.[3]

In view of the responses to the Options Study recommendations submitted by the SROs, the Commission, on March 26, 1980, announced its determination to terminate the options expansion moratorium and to begin to permit further expansion of the standardized options markets.[4] In view of this action, Rule 9b-1(T) is no longer necessary and, accordingly, is hereby withdrawn.

By the Commission.

George A. Fitzsimmons,

Secretary.

May 2, 1980.

[FR Doc. 80-14625 Filed 5-12-80; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* Securities Exchange Act Release No. 14056 October 17, 1977) (42 FR 56706).

[2] Securities Exchange Act Release No. 15026 (August 3, 1978).

[3] Securities Exchange Act Relase No. 15575 (February 22, 1979) (44 FR 11876).

[4] Securities Exchange Act Relase No. 16701 (March 26, 1980) (45 FR 21426).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 273

[Docket No. RM80-54]

Natural Gas; Interim, Retroactive and Refund Filing Requirements; Notice of Proposed Rulemaking

May 7, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission hereby gives notice that it proposes to amend interim, retroactive and refund filing requirements under Part 273 of the Commission's regulations. This proposal would eliminate interim and retroactive filing requirements, except where section 4(d) of the Natural Gas Act is applicable, and would change provisions regarding refunds.

DATE: Written comments by June 16, 1980.

ADDRESS: Written comments (14 copies) should be sent to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426; Reference Docket No. RM80-54.

FOR FURTHER INFORMATION CONTACT: Dan White, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426 (202) 357-8577; Teresa Ponder, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426 (202) 357-8151.

I. Background

Section 503(e) of the Natural Gas Policy Act of 1978 (NGPA), (15 U.S.C. 3414), requires that the Federal Energy Regulatory Commission (Commission) adopt rules or orders to permit with respect to the first sale of gas for which a determination is required the collection, subject to refund, of rates not to exceed the maximum lawful price for which the application has been filed and upon which final action has not been taken. The Commission has the

authority under section 503(e)(2)(A) to provide one or more methods of such interim collection and establish the qualifying requirements and authorized collection periods it deems appropriate. Section 503(e)(2)(B) provides that such collections shall be subject to refund, and requires the Commission to prescribe regulations to provide adequate assurance that funds are available for such refunds if, after the determination process has ended, the subject natural gas is determined to qualify for a lower maximum lawful price than that collected under the Commission's interim collection procedures.

The Commission has implemented section 503(e) in Part 273 of its regulations. Part 273 was first issued on an interim basis on December 1, 1978 (43 FR 56448, December 1, 1978). It was reissued with modifications as a final regulation on June 19, 1979, in Order No. 36, Docket No. RM79–53 (44 FR 37491, June 27, 1979).

Although section 503(e) of the NGPA does not require filings with the Commission, except in one case,[1] the Commission's regulations established interim, retroactive, and interim collection refund filing requirements. Sections 273.202 and 273.203 prescribe requirements for interim collections, subject to refund, of rates up to the maximum lawful price for which a sale is claimed to be eligible while the related final eligibility determination is pending. In such instances a seller must submit certain information, described below, to the Commission prior to making such collection.[2] If the maximum lawful price for a particular first sale is finally determined to exceed the price collected for such sale for any period between the date of filing for the determination and the date on which the eligibility determination became final, § 273.204 provides that seller can retroactively collect the difference to the extent contractually authorized.[3] A seller who makes retroactive collection is obligated to make a retroactive collection filing with the Commission. After an eligibility determination which disqualifies a sale for as high a rate as was collected pursuant to Part 273 becomes final, § 273.302 requires refund of the difference, and the filing of a refund report.

The Commission established these filing requirements in Part 273 partly to ensure that the requirements of section 4(d) of the Natural Gas Act (NGA) (15 U.S.C. 717c) were met. Section 4(d) of the NGA requires that a producer subject to the NGA provide adequate notice to the Commission, the producer's customers, and other interested parties of any proposed change in existing rates for sales of natural gas subject to the NGA. In Order No. 15 [4] the Commission, among other things, concluded that the filing and notice requirements of section 4(d) of the NGA are deemed satisfied if a producer has fulfilled the interim and retroactive collection filing requirements of Part 273. That policy is expressed in § 154.94(i) of the regulations, which was promulgated in its present form by Order Nos. 23 and 23–B.[5]

The Commission's regulations regarding interim collections for the period in which the jurisdictional agency determination is pending are set out in § 273.202, with the applicable filing requirements set forth in § 273.202(d). Section 273.203 contains the regulations governing interim collections where the well determinations are pending Commission review. Filing requirements for these collections are found in § 273.203(c). The filing requirements for both these sections are the same, and the § 273.203(c) filing requirement is deemed met if the § 273.202(d) filing was made.

An interim collection filing made pursuant to either § 273.202 or § 273.203 is required to contain the following:

(i) A statement under oath by the filer that he believes in good faith that the subject natural gas is eligible under the NGPA and Subchapter H for a maximum lawful price not less than that to be collected.

(ii) A duplicate of FERC Form No. 121 submitted to the jurisdictional agency.

(iii) A statement certifying that this filing has been served upon each purchaser.

(iv) A statement certifying that collections under this section will be placed in escrow or secured by a surety bond if the purchaser has so required pursuant to § 273.302(c).

(v) A statement of the extent to which such natural gas was committed and dedicated to interstate commerce on November 8, 1978, and if so committed or dedicated, the just and reasonable rate applicable to such natural gas under the NGA on November 8, 1978; any rate schedules for such natural gas on file with the Commission on November 8, 1978; and the certificate docket number if natural gas was being sold on November 8, 1978, pursuant to a small producer certificate.

The regulations governing retroactive collections are set forth in § 273.204. If a seller makes a retroactive collection, that seller is required to file with the Commission the information specified in § 273.204(c)(3), which includes:

1. A notice specifying the total amount to be collected and the amount of and basis for any carrying charges;

2. A statement that the seller has paid all refunds then due to such purchaser under Part 273;

3. A statement of concurrence in the filing signed by such purchaser from whom retroactive collections are made.

4. A copy of any written carrying charge agreement pursuant to which carrying charges are collected.

Section 273.302 sets forth regulations governing refunds of interim collections. The filing requirements are found in § 273.302(e)(3):

Within 30 days after making a refund under this subpart, the seller shall file with the Commission:

(i) The original and two copies of a refund report showing separately the amounts to be refunded and the appropriate interest paid thereon, and

(ii) The original and two copies of a release from the purchaser showing that refunds have been paid.

In 1979 approximately 71,000 filings were made pursuant to Part 273. At present, the Commission is receiving approximately 800 such filings a month.

II. Discussion

The Commission believes that the interim and retroactive collection filings presently required are not, in fact, necessary to assure that the collected rates do not exceed the applicable maximum lawful price, or to assure that funds are available for refunds of intermin collections when necessary. However, filings are necessary to satisfy the filing and notice requirements of section 4(d) of the NGA whenever rates for sales of gas subject to NGA producer rate schedules are changed. Section 4(d)

[1] Section 503(e)(1) allows a first seller of natural gas produced from a new well to collect rates permitted under Section 109 if an oath statement is filed. However, a further condition of such collection is that an application for determination concerning the subject natural gas be filed with the appropriate jurisdictional agency before March 1, 1979. Section 273.201 of the regulations implemented section 503(e)(1). Since the period provided in section 503(e)(1) has passed, no filings are now made pursuant to § 273.201. No modification of § 273.201 is proposed herein.

[2] The claimed maximum lawful price may be collected from December 1, 1978, if the application for determination was filed by April 1, 1979, and the filing requirements of § 273.202 are fulfilled.

[3] The maximum lawful price allowable as a result of the final determination of eligibility may be collected retroactively to December 1, 1978, if the application for determination was filed by April 1, 1979.

[4] Order No. 15, Docket No. RM79–4, issued November 17, 1978 (43 FR 55756, November 29, 1978).

[5] Order No. 23 Docket No. RM79–22, issued March 13, 1979, (44 FR 16895, March 20, 1979) and Order No. 23–B, issued June 21, 1979.

provides that a natural gas company [6] may not change any rate or charge except after thirty days notice to the Commission and the public.

The processing of the filings made pursuant to Part 273 consumes a significant portion of the Commission's resources. Given the considerations of economy of Commission resources and the need to comply with the provisions of the NGA, the Commission proposes to make the following amendments to Part 273:

1. Eliminate the interim and retroactive collection filings currently required by §§ 273.202(d), 273.203(c) and 273.204(c) except as required by the NGA;

2. Modify the refund report filing requirements found in § 273.302(e), so as to improve the compliance effort; and

3. Amend § 273.302 to provide that any collection under Part 273 constitute an implicit general undertaking.

The Commission estimates that under the regulatory changes herein recommended, the number of interim and retroactive collection filings would be approximately 75 a month and would decline over time to a minimal number.

A. Elimination of Interim and Retroactive Filings Except Where Necessary Under the NGA

In monitoring collections made pursuant to Part 273, the Commission follows procedures designed to ensure that appropriate refunds will be made if the subject natural gas is determined not to be eligible for the price for which application was filed. The information collected under the interim filing requirements of Part 273 does not aid in the implementations of this compliance program.

As mentioned above, the filing requirements of Part 273 do serve to satisfy filing and notice requirements of section 4(d) of the NGA. Under § 154.94 of the Commission's regulations, a producer must file with the Commission a notice of rate change for a sale under a producer rate schedule. In Order No. 15, the Commission recognized that natural gas subject to the NGA remains subject to the NGA until that gas receives a final determination that it qualifies under section 102(c), 103, or 107(c)(1) through (4) of the NGPA. In that same order the Commission promulgated § 154.94(i) which stipulates that for rate changes which would otherwise require a notice of rate change filing, the requirements of section 4(d) of the NGA and § 154.94 of the regulations would be deemed satisfied for gas eligible for interim or retroactive collection if the proposed filing requirements of Part 273 are fulfilled. In that same order, the 30 day notice requirement was waived.

In Order No. 25,[7] the Commission determined that one notice of rate change may be filed for each rate schedule to indicate that the producer intends to collect the maximum lawful prices applicable under sections 102(d) or 108 for the sale of any volume of gas which has been determined to qualify under section 102(d) or 108. The Commission believes it is appropriate to provide similar treatment for interim and retroactive collection.

Thus, under the proposed rule, a section 4(d) notice of intent to make an interim or retroactive collection under Part 273, need only be filed once for each NGPA category under a given schedule. Accordingly, to fulfill the requirements of section 4(d) of the NGA an interim or retroactive collection filing is required only if such a filing for the applicable rate schedule(s) has not been previously made. Additionally, the Commission does not intend to require such retroactive filing requirements if the provisions of the NGA do not continue to apply to the first sale of gas after the final determination has been made. (*See*, section 601(a)(1)(B) of the NGPA.) In this proposal: (1) A filing with the Commission is required for making interim or retroactive collections only if the sale is subject to a producer rate schedule; and (2) Such a filing is required only if a notice of intent to make interim or retroactive collection of the price applicable under the NGPA category for which application has been filed has not been previously filed under the applicable rate schedule. A prior filing of an intent to make interim or retroactive collection for sales of gas subject to the same rate schedule and the same NGPA category constitutes such a previous filing.

The Commission proposes to amend the filing requirements found in §§ 273.202, 273.203, and 273.204 to reflect the policy discussed above and requests comments on those proposals. The Commission will also consider and requests comment on whether producers should be permitted to make a blanket filing indicating an intent to make all applicable NGPA interim and retroactive collections under the NGA rate schedule, or whether, under the NGA, producers with rate schedules on file with the Commission may be relieved of the obligation to make any interim and retroactive collection filings.

B. Modification of the Refund Report Filing Requirements of § 273.302(e)

Under the present regulations, only first sellers who actually make refunds are required to file refund reports. The Commission proposes that § 273.302(e) of its regulations be modified to require that whenever an application for determination is withdrawn from the Commission or a jurisdictional agency, or such application receives a final determination that the subject natural gas is not eligible for the applied-for well category, the seller must file either a refund report or a statement that no refunds of interim collections are required. The proposal would enhance the value of these reports as they assist the Commission in monitoring compliance with the NGPA. This requirement would also reduce the amount of investigative work which the Commission staff currently undertakes to ensure that refunds are made where required. Filings made pursuant to § 273.302 would still be required to include a statement of concurrence executed by the purchaser. The Commission requests that comments address whether other methods of assuring refunds are feasible, as well as the proposal contained in this docket.

C. Amendment to § 273.302 Providing That Any Collection Under Part 273 Constitutes an Implicit General Undertaking

Under Part 273 as it currently reads, the interim and retroactive filings serve as a general undertaking agreement by operation of § 273.302(b). This section presently provides that any collection filing made pursuant to part 273 for a first sale of natural gas constitutes a general undertaking to comply with the refund provisions of Part 273. Inasmuch as the Commission herein proposes in most cases to allow collections pursuant to Part 273 without filings with the Commission, the general undertaking agreement would usually not be applicable. However, the fact that a filing need not be made should not affect the requirement that refunds are required where prices in excess of the applicable maximum lawful price have been collected pursuant to Part 273. Accordingly, the Commission proposes to amend § 273.302(b) of its regulations so that any collection of a price on an interim or retroactive basis under Part 273 would constitute and have the effect of a general undertaking agreement.

At such time as the Commission issues these rules we would make any necessary technical and conforming

[6] The NGA defines a natural-gas company in section 2(6) (15 U.S.C. 717a) as a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

[7] Order No. 25, Docket No. RM79-31, issued March 27, 1979.

amendments to the reseller rule, in § 270.202(b)(2). The Commission requests comments as to whether any special considerations need to be given to the effect of this proposal on the reseller rules.

III. Comments Procedures

Interested persons are invited to submit written comments on the proposed regulation to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol St. N.E., Washington, D.C. 20426. Comments should reference Docket No. RM80–54 on all documents submitted to the Commission. Fifteen (15) copies should be submitted. All comments and related information received by the Commission prior to June 16, 1980, will be considered prior to the issuance of the regulation. Comments are invited on all aspects of this proposal.

Dates and locations of hearings in this rulemaking may be announced in the near future.

(Natural Gas Act, as amended, 15 U.S.C. 717–717w; Natural Gas Policy Act 15 U.S.C. 3301–3432; Department of Energy Organization Act, 42 U.S.C. 7101–7352; EO 12009, 42 FR 46267).

In consideration of the foregoing the Commission proposes to amend Part 273 as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 273—COLLECTION AUTHORITY; REFUNDS

1. Section 273.202 is amended by revising paragraphs (d) and (e), to read as follows:

§ 273.202 Collection pending jurisdictional agency determination of eligibility.

* * * * *

(d) *Conditions.* A seller who makes an interim collection under this section with respect to a first sale of natural gas, must satisfy the following conditions:

(1) The seller shall serve each purchaser with a notice of intent to make interim collections pursuant to this section along with a copy of the FERC Form No. 121 submitted to the jurisdictional agency.

(2) The seller shall place all collections made under this section in escrow or shall secure such collections by a surety bond, if the purchaser so requires pursuant to § 273.302(c).

(3) If the subject natural gas was committed or dedicated to interstate commerce on November 8, 1978, and subject to a rate schedule on file with the Commission, the seller shall file with the Commission a notice of intent to make interim collections pursuant to this section which specifies the applicable category for which application has been filed under Part 271. Such notice shall also specify the just and reasonable rate applicable to such natural gas under the Natural Gas Act on November 8, 1978, and any rate schedules for such natural gas on file with the Commission on November 8, 1978. For each rate schedule only one notice must be filed for each category under Part 271 for which an application for determination has been filed.

(e) *Limitation.* Upon termination of the interim collection authority under this section for any sale, further collections under this section cannot be made for any sale from the same well.

2. Section 273.203 is amended by revising paragraph (c) to read as follows:

§ 273.203 Collection pending review of jurisdictional agency determination of eligibility.

* * * * *

(c) *Conditions.* Unless the seller has previously complied with the conditions set forth in § 273.202(d), in order to make interim collections under this section with respect to the first sale of natural gas, the seller shall fulfill the conditions described in § 273.202(d)(1) and (3).

3. Section 273.204 is amended by revising paragraph (c) to read as follows:

§ 273.204 Retroactive collection of the final determination.

* * * * *

(c) *Conditions.* In order to make a retroactive collection under this section with respect to a first sale of natural gas a seller must satisfy the following conditions:

(1) Retroactive collections may not begin until 45 days after the eligibility determination becomes final.

(2) A seller may not collect any amount under this section from any purchaser unless the seller has paid to such purchaser all amounts that are due to be refunded under this subchapter by the seller to such purchaser on or before the date on which retroactive collections are made.

(3) If the subject natural gas was committed or dedicated to interstate commerce on November 8, 1978, and was subject to a rate schedule on file with the Commission, and if the provisions of the Natural Gas Act continue to apply to the first sale of the gas after the final determination has been made, the seller shall file with the Commission a notice of intent to make retroactive collections under this Part 273 and shall specify the applicable category under Part 271. Such notice shall also specify the just and reasonable rate applicable to such natural gas under the Natural Gas Act on November 8, 1978, and any rate schedules for such natural gas on file with the Commission on November 8, 1978. One notice must be filed per rate schedule for each category under Part 271 for which a determination has been obtained and for which the rate schedule is applicable.

(4) Collection under this section may be made only to the extent permitted by the applicable sales contract.

(5) Carrying charges may be collected only to the extent provided by a written agreement of the parties to the applicable sales contract (or amendment thereto). The carrying charges shall be computed at an interest rate which does not exceed the rate specified in § 154.102(d).

4. Section 273.302 is revised to read as follows:

§ 273.302 Refunds of interim collections.

(a) *Applicability.* The provisions of this section apply to any interim collections made under the authority of Subpart B of this part.

(b) *General Undertaking.* (1) Any interim collections under this part shall constitute and have the effect of a general undertaking to comply with the refund provisions of this Part 273.

(2) Additional refund assurance may be required at any time by order of the Commission.

(c) *Escrow.* If the purchaser so requires, any amount (i) which is collected under § 273.202; and (ii) which (A) in the case of a new well, is in excess of the price specified in § 273.201(a)(1); or (B) in the case of any other well, is in excess of the otherwise applicable maximum lawful price, shall be secured by a surety bond or held in escrow, in a form satisfactory to the purchaser.

(d) *Records.* (1) If any collection is made under Subpart B, the seller shall keep accurate accounts of:

(i) All amounts so collected for each billing period and for each purchaser;

(ii) Resulting revenues as computed under the price being charged pursuant to this part;

(iii) The price charged immediately prior to any interim collections; and

(iv) The price prescribed by § 273.201 (or any other maximum lawful price used to compute the amount collected under Subpart B), together with the differences in revenues so computed for each sale.

(2) Such books and records shall be retained for a period of 3 years after the termination of the interim collection period. Any contract under which any

interim collections have occurred must be maintained and preserved for at least 3 years after expiration.

(e) *Refund payment.* (1) Within 45 days after an eligibility determination that a first sale is not at least eligible for the price collected under this part becomes final, or an application for determination is withdrawn by an applicant while the application is before the Commission or the jurisdictional agency, the seller shall refund to the purchaser by cash or check the refund amount computed under paragraph (h) of this section together with interest determined in accordance with § 154.102(d), on the excess collections that have been collected from the date of payment until the date of refund.

(2) No interest is required to be paid on any portion of a refund:

(i) Which represents payments of royalties or taxes to Federal or State governmental authorities, except to the extent that such authorities pay interest to the seller when refunding overpayments of royalties or taxes; or

(ii) Which is paid from escrow except that interest which accrued in the escrow account on the amount required to be refunded shall be paid at the time of refund.

(f) *Filing requirements.* (1) Within 75 days of either the date a final determination of eligibility is obtained that a sale is not at least eligible for the price collected under this part, or the date the application for determination is withdrawn by the applicant while the application is before the Commission or the jurisdictional agency, the seller shall file with the Commission either:

(i) A refund report stating separately the amounts required to be refunded pursuant to paragraph (h) of this section and the appropriate interest to be paid thereon, in accordance with paragraph (e) of this section; or

(ii) A statement certifying that no refund payment is required pursuant to paragraph (e) of this section.

(2) A filing made pursuant to this paragraph shall include a statement of concurrence in the filing signed by the purchaser.

(g) *Discharge of obligation.* If an eligibility determination that natural gas is eligible for the price for which the application for determination was filed becomes final, then at such time, the bond, escrow, or undertaking shall be discharged to the extent it applies to first sales from the well for which the determination was made. If any refunds required by this section are made in conformity with the terms and conditions of the bond, escrow, or undertaking, the bond, escrow, or undertaking shall be discharged insofar as it applies to such refund obligation.

(h) *Refund computation.* (1) Where the final eligibility determination that the sale is not at least eligible for the price collected under Subpart B also includes a final eligibility determination of the maximum lawful price for that sale, that finally determined price, to the extent permitted by the applicable sales contract, shall be used to compute the excessive interim collections and refund amount.

(2) In any other case, the applicable maximum lawful price specified under Subpart D, E, F, or I of Part 271, to the extent permitted by the applicable sales contract, shall be used to compute the excessive interim collections and refund amount.

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BILLING CODE 6450-85-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 330

[Docket No. 80N-0094]

Over-the-Counter (OTC) Category III Policy, Proposed Revised Rule

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise the procedural regulations for reviewing and classifying over-the-counter (OTC) drugs to delete the provision that authorizes the marketing of a Category III ingredient or other condition in an OTC drug product after a final monograph. This revision will affect the time period during which testing may be completed and new data submitted to FDA to support the inclusion in a final monograph of a condition not classified in Category I in a proposed monograph or tentative final monograph. The agency is taking this action to conform to the court order issued by the District Court for the District of Columbia.

DATE: Comments by July 14, 1980.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Bureau of Drugs (HFD-510), Food and Drug Administration, Department of Health and Human Services, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: FDA is proposing to revise the OTC procedural regulations (21 CFR 330.10) to delete the provision that authorizes the marketing of a Category III ingredient or other condition in an OTC drug product after a final monograph is established. This action is being taken to conform to the holding and order of the United States District Court for the District of Columbia in *Cutler* v. *Kennedy*, 475 F. Supp. 838 (D.D.C. 1979). This revision will affect the time period during which testing may be completed and new data submitted to FDA to support the inclusion in a final monograph of those ingredients or other conditions not classified in Category I in a proposed monograph or tentative final monograph.

Current Procedure

The OTC drug review was instituted to carry out FDA's statutory mandate to assure that OTC drug products are safe and affective for their intended use and not misbranded. The current approach involves the development of drug "monographs," in the form of regulations, which define the conditions for which OTC drug products are generally recognized as safe and effective and not misbranded. Monographs list both acceptable ingredients and proper labeling for each of the different categories of OTC drug products. The procedures by which the monographs are developed involve several administrative steps, as set forth in 21 CFR 330.10. The Food and Drug Administration appointed scientific experts from outside the agency as members of advisory review panels. These panels were asked to review published and unpublished data and information, which the agency had requested interested persons to submit, that are pertinent to a designated category of OTC drug products. Each panel also includes two nonvoting liaison members, a representative of consumer interests and a representative of industry. Each panel reviews the data submitted and reports to the Commissioner of Food and Drugs its conclusions and recommendations as to the safety and effectiveness of ingredients and labeling in a designated category of drug products. Each panel report may include a recommended monograph establishing conditions under which the drug products involved are generally recognized as safe and effective and not misbranded (Category I). In addition, each panel report includes a statement of all active ingredients, labeling claims or other statements, or other conditions reviewed and excluded from the

monograph on the basis of the panel's determination that they would result in a drug product not being generally recognized as safe and effective or would result in misbranding (Category II). (The wording "active ingredients, labeling claims or other statements, or other conditions" will herinafter be referred to as "conditions.") The report also includes a statement of all such conditions reviewed and excluded from the monograph on the basis of the panel's determination that the available data are insufficient to classify a condition as Category I or Category II and for which further testing is required (Category III). FDA publishes the panel reports and proposed monographs in the **Federal Register** and requests interested persons to comment within 90 days. Additionally, because new data may be submitted in those comments, the OTC drug regulations allow an additional 30 days after the comment period for the filing of reply comments. After considering these comments and reply comments, the agency publishes a tentative order proposing a monograph in the form of a regulation, which is subject to public objections and requests for a hearing for a period of 30 days. If the Commissioner finds reasonable grounds for so doing, an oral hearing before the Commissioner may be scheduled. At the conclusion of these procedures, the agency publishes an order issuing a final monograph. After publication of a final monograph, any product with a Category III condition may remain on the market or may be introduced into the market, provided each sponsor of a study notifies FDA that studies will be undertaken to obtain the data necessary to resolve the issues that resulted in such classification. When FDA issued the OTC drug regulations, it concluded that Category III testing should not be required until after completion of the established OTC drug administrative procedures. Because an opportunity for public review and comment is provided at each stage of the administrative procedure, the content of Category III and the testing period provided are not fixed until publication of the final monograph. Some manufacturers, however, have begun the testing of Category III conditions voluntarily before FDA has issued a final OTC drug monograph.

Court Opinion

On July 16, 1979, the United States District Court for the District of Columbia entered its opinion in the case of *Cutler* v. *Kennedy*, 475 F. Supp. 838 (D.D.C. 1979). Plaintiffs had alleged that 21 CFR 330.10 is unlawful to the extent that it authorizes the marketing of Category III drugs after publication of a final monograph. Plaintiffs claimed that, if a drug is determined to be in Category III, it necessarily lacks substantial evidence of safety or effectiveness, is a new drug, and cannot be marketed without an approved NDA. The Court concluded that "* * * the FDA may not lawfully maintain Category III in any form in which drugs with Category III conditions * * * are exempted from enforcement action," (*Cutler, supra* at 856). The Court issued an order that declared the OTC drug regulations, 21 CFR 330.10, unlawful to the extent that they authorize the marketing of Category III drugs after a final monograph, and enjoined the FDA from implementing any portion of the regulations that authorizes such marketing.

Proposed Revised Requirements

Testing of Category III Conditions

Section 330.10(a)(13) (21 CFR 330.10(a)(13)) sets forth the conditions under which an OTC drug product with a condition classified in Category III may continue to be marketed after publication of a final monograph pending development of data to support approval of the condition as safe, effective, and not misbranded. The Court has declared that this provision of the OTC drug regulations is unlawful. Therefore, the agency proposes to delete § 330.10(a)(13) in its entirety. Any testing necessary to resolve the safety or affectiveness issues that formerly resulted in a Category III classification and submission to FDA of the results of that testing or any other data must be done during the OTC drug rulemaking process, before the establishment of a final monograph. Data submitted prior to the publication of a final order but after the administrative record has closed must be in the form of a petition to amend the final monograph.

The agency advises that tentative final and final monographs will no longer contain recommended testing guidelines. However, the agency will meet with industry representatives, at their request, to provide information on data already submitted to FDA, to develop testing guidelines for those conditions which industry is interested in upgrading, and to advise industry on the adequacy of their proposed protocols. Any communications between FDA and industry on these matters may continue outside the formal comment periods, and such communications will be part of the public record. FDA continues to encourage firms to cooperate and work with each other in arranging for the necessary study or studies to avoid unnecessary and repetitive human testing.

Contents and Time of Closing of the Administrative Record

Currently, under § 330.10(a)(10)(i) the administrative record closes at the end of the comment period following publication of the panel report with respect to the submission of new data and information for consideration by the agency in developing a tentative final monograph. Thereafter, no new data and information can be submitted for inclusion in the administrative record except with a petition to the Commissioner requesting that the administrative record be reopened to include such material. Because manufacturers must, in the future, submit before the final monograph, the data necessary to resolve the issues that previously resulted in a Category III classification, the agency proposes to provide for a fixed time period after a tentative final monograph during which manufacturers may submit new data and information to support approval of a condition as safe, effective, and not misbranded. In addition, the agency proposes to redesignate the contents of and time of closing of the administrative record in § 330.10(a)(10).

This action is being taken for a number of reasons. Substantial numbers of tests aimed at upgrading Category III conditions to Category I have already been completed and the results have been submitted to the agency for evaluation and review prior to publication of the relevant tentative final monograph. Those data were developed under the testing guidelines developed by various Panels and published in the Panel's report. As agency scientists have begun to evaluate the data, they have found that, in some cases, certain additional information is necessary to enable them to complete their review. Were the administrative record to remain closed, each particle of new information would have to be submitted with a petition to reopen the administrative record. Each of these petitions would then have to be reviewed, and either granted or denied, entailing additional burdensome administrative effort by the agency. Further, as agency scientific personnel meet with industry representatives in informal meetings to discuss future testing requirements, an open administrative record makes it much less cumbersome and time-consuming to submit the additional data and information that FDA has determined are necessary to upgrade the conditions. In addition, manufacturers will in the future have to submit data necessary to

resolve issues of safety, effectiveness, and misbranding before publication of a final monograph. Leaving the record open will facilitate this process.

Finally, by permitting the record to remain open, the agency believes that it can facilitate the entire review and accord the various matters the type of attention required—scientific, policy, and legal—in the most efficient fashion possible. After a tentative final monograph has been published, the agency must expend a substantial amount of time reviewing and responding to objections, comments on new data, and requests for hearings. This administrative review is distinct from the scientific evaluation of the new data, but the both kinds of scrutiny must be completed before any final rule is issued. Based on the agency's experience with comments filed to Panel Reports and with the tentative final and final monographs published to date, the evaluation of the comments, objections, and requests for hearings will take at least as long as the fixed time period established for the submission of new data. Thus, leaving the record open for new data will not, in the agency's judgment, delay the overall process because this period is necessary in any event to complete the essential task of evaluating the comments.

Under the proposed revisions, the agency's decision in a tentative final monograph will be based solely on the administrative record developed through the 90-day comment and 30-day rebuttal comment period. New data and information may be submitted after the 90-day comment period but will not be included as part of the administrative record for consideration by the agency until after the administrative record is reopened following publication of a tentative final monograph, as discussed below.

After publishing a tentative final monograph in the **Federal Register**, FDA proposes to reopen the administrative record for 12 months to permit interested persons to submit new data and information in support of the safety and effectiveness of any condition reviewed by a panel and not classified in Category I, and for an additional 2 months to permit interested persons to submit written comments on any new data and information submitted through the 12-month period. Section 330.10(a)(7) and (10) has been revised accordingly. The agency's decision on the conditions to be included in a final monograph will be based solely on the administrative record developed throughout the entire OTC drug rulemaking period, i.e., through the 14-month period following publication of the tentative final monograph including the 12 months for the submission of new data and the 2-month comment period on that date. Data received by FDA after the closing of the administrative record will be treated after publication of the final monograph as a petition to amend the monograph. The Food and Drug Administration will not include such data in its consideration of the content of a final monograph.

Additionally, FDA proposes to extend the period for filing written objections following publication in the **Federal Register** of a tentative final monograph to 60 days to permit additional time for interested persons to fully evaluate the agency's position on a panel's recommendations. Section 330.10(a)(7) has been revised accordingly.

The agency further proposes to delete the petition procedure described in § 330.10(a)(10)(ii) because it duplicates the provisions of § 10.30 (21 CFR 10.30) of the agency's procedural regulations concerning petitions. The agency also proposes to delete § 330.10(a)(12)(i) because the provisions are no longer relevant. The agency advises that revision of § 330.10(a)(12)(ii) (concerning FDA's acceptance of a new drug application for a condition in the OTC drug review) is being contemplated and any revision, if proposed, will be published in a future **Federal Register** statement.

Category II Conditions

Under the current OTC drug review procedures, all conditions reviewed by a panel within a specific category of drugs experience the same total lapsed time between adoption of a panel report and publication of a final monograph regardless of their classification. The agency intends to reduce the time period for those Category II active ingredients on which no substantive comments have been received. Therefore, the agency proposes to revise § 330.10(a)(7) to provide that the Commissioner may publish a separate tentative order for any ingredient classified by a panel in Category II and for which no substantive comments in opposition to the panel report or new data and information were submitted within the 90-day comment period following publication in the **Federal Register** of a panel report. Further, following publication of a tentative order, any interested person may file with the Hearing Clerk written objections to provisions of the order and request an oral hearing. If no objections are received and there are no requests for an oral hearing, the agency would proceed directly to a final order. The agency believes this revised procedure would serve the public interest because it would expedite completion of the OTC drug review and removal from the market of those ingredients for which the Category II classification has evoked no comments.

OTC Drug Review Classification Terminology

Although the classification terminology used during the pendency of the OTC drug rulemaking proceeding was not involved in the court proceedings in *Cutler*, FDA is proposing to abandon the terms "Category I," "Category II," and "Category III" at the final monograph stage in favor of the terms "monograph conditions" and "nonmonograph conditions." That is, a "monograph condition" would be any condition included in a monograph which the agency publishes in the **Federal Register** as part of a final order. Any condition excluded from the monograph for a specific category of drug products would be termed a "nonmonograph condition" regardless of the reason for its exclusion from the monograph. The preamble to the final order would use this term in stating those conditions included in the OTC drug review but excluded from the monograph. The agency concludes that this proposed language reflects the court's decision that only OTC drug products meeting the conditions of a monograph or having an approved new drug application (NDA) may be legally marketed after a monograph is final. Any OTC drug product containing a "nonmonograph condition" would be subject to regulatory action as specified below.

Regulatory Policy

Any currently marketed OTC drug product that fails to conform to an applicable monograph after its effective date, and that is not covered by an approved new drug application, is subject to regulatory action. The agency has developed a general enforcement policy that will enable it to take regulatory action in an orderly fashion, commensurate with availabe resouces, against those OTC drug products failing to meet the requirements of an applicable monograph. This policy is consistent with enforcement policies for prescription new drug products, e.g., FDA Compliance Policy Guide 7132c.08 dated October 6, 1976, which is designed to deal on a priority basis with marketed new drugs without approved new drug applications. The policy is intended to give first attention to those products that most affect the public health and safety, to provide equitable treatment among

competing firms, and to utilize agency resources most efficiently.

The broad enforcement priorities established by FDA for initiating regulatory action against those marketed OTC drug products that fail to meet the monograph conditions are, in order of priority, as follows:

1. Products that present a potential health hazard.

2. Products that contain either (1) an ingredient excluded from the monograph because the ingredient is not generally recognized as safe or (2) a claim excluded from the monograph on the basis that the claim's use would result in the products not being generally recognized as safe.

3. Products that contain an ingredient excluded from the monograph because the ingredient is not generally recognized as effective.

4. Products that contain an ingredient or claim excluded from the monograph because of insufficient information and for which no petition to amend the monograph is pending before the agency.

5. Products that contain monograph ingredients but that fail to meet the conditions of the monograph in other respects, e.g., its label fails to contain required information, the product fails to pass required *in vitro* tests, or its labeling contain claims excluded from the monograph on the basis that the claims would result in the product not being generally recognized as effective.

6. Products similar to those described in number 4 above except that a full and complete petition to amend the monograph to include the ingredient or claim in the monograph is pending before the agency.

7. Products that contain a nonmonograph ingredient or claim for which there is a pending NDA before the agency.

Petitions and NDA's pending before the agency as described in paragraphs (6) and (7) above will be given a preliminary review by FDA upon receipt to be certain that they are full and complete.

As explained above, these priorities constitute the agency's current views about how best to use available resources consistent with its obligation to protect the public health. That FDA is attempting to allocate its resources as efficiently as possible does not mean that it will neglect any matter that significantly affects the consumer. For example, the agency reiterates that it will continue to take regulatory action at any time in the review against products that present a potential health hazard or a significant and substantial effectiveness question. Further, the agency is prepared to take enforcement action against products that are adulterated or misbranded in ways not directly related to the OTC review process, e.g., failure to bear label warnings presently required by other regulations.

Most important, FDA wishes to emphasize that this policy and the priorities described above are part of an overall approach to enforcement action. Like other policies it is subject to change, depending on various factors existing in the market place. Accordingly, this regulatory policy is not necessarily a final and comprehensive statement of FDA's enforcement posture with respect to all aspects of OTC drug compliance, and its issuance does not preclude the agency from modifying or amplifying it at a later date, with or without public notice.

The agency has determined pursuant to 21 CFR 25.24(b)(12) (proposed December 11, 1979 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 505, 701(a), 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055 (21 U.S.C. 321, 352, 355, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Part 330 be amended in § 330.10 by revising paragraph (a) (7), (9), (10), and (12) and by deleting paragraph (a)(13) as follows:

§ 330.10 Procedures for classifying OTC drugs as generally recognized as safe and effective and not misbranded, and for establishing monographs.

* * * * *

(a) * * *

(7) *Tentative final monograph.* (i) After reviewing all comments, reply comments, and any new data and information, the Commissioner shall publish in the **Federal Register** a tentative order containing a monograph establishing conditions under which a category of OTC drugs is generally recognized as safe and effective and not misbranded. Within 60 days, any interested person may file with the Hearing Clerk, Food and Drug Administration, written objections specifying with particularity the omissions or additions requested. These objections are to be supported by a brief statement of the grounds therefor. A request for an oral hearing may accompany such objections.

(ii) The Commissioner may publish in the **Federal Register** a separate tentative order containing a statement of those active ingredients reviewed and proposed to be excluded from the monograph on the basis of the Commissioner's determination that they would result in a drug product not being generally recognized as safe and effective or would result in misbranding, and for which no substantive comments in opposition to the panel report or new data and information were received by the Food and Drug Administration pursuant to paragraph (a)(6)(iv) of this section. Within 60 days, any interested person may file with the Hearing Clerk, Food and Drug Administration, written objections specifying with particularity the provision of the tentative order to which objection is made. These objections are to be supported by a brief statement of the grounds therefor. A request for an oral hearing may accompany such objections.

(iii) Within 12 months after publishing a tentative order pursuant to paragraph (a)(7)(i) of this section, any interested person may file with the Hearing Clerk, Food and Drug Administration, new data and information to support a condition excluded from the monograph in the tentative order.

(iv) Within 60 days after the final day for submission of new data and information, comments on the new data and information may be filed with the Hearing Clerk, Food and Drug Administration.

(v) New data and information submitted after the time specified in this paragraph but prior to the establishment of a final monograph will be considered as a petition to amend the monograph and will be considered by the Commissioner only after a final monograph has been published in the **Federal Register**.

* * * * *

(9) *Final monograph.* After reviewing the objections, the entire administrative record including all new data and information and comments, and considering the arguments made at any oral hearing, the Commissioner shall publish in the **Federal Register** a final order containing a monograph establishing conditions under which a category of OTC drugs is generally recognized as safe and effective and not misbranded. The monograph shall become effective as specified in the order.

(10) *Administrative record.* (i) All data and information to be considered in any proceeding pursuant to this section shall be submitted in response to the request for data and views pursuant to

paragraph (a)(2) of this section or accepted by the panel during its deliberations pursuant to paragraph (a)(3) of this section or submitted to the Hearing Clerk as part of the comments during the 90-day period and 30-day rebuttal comment period permitted pursuant to paragraph (a)(6) of this section or submitted to the Hearing Clerk during the 12-month period or as part of the comments during the 60-day period permitted pursuant to paragraph (a)(7) of this section.

(ii) The Commissioner shall make all decisions and issue all orders pursuant to this section solely on the basis of the administrative record, and shall not consider data or information not included as part of the administrative record.

(iii) The administrative record shall consist solely of the following material: All notices and orders published in the **Federal Register**, all data and views submitted in response to the request published pursuant to paragraph (a)(2) of this section or accepted by the panel during its deliberations pursuant to paragraph (a)(3) of this section, all minutes of panel meetings, the panel report(s), all comments and rebuttal comments submitted on the proposed monograph and all new data and information submitted pursuant to paragraph (a)(6) of this section, all objections submitted on the tentative final monograph and all new data and information and comments submitted pursuant to paragraph (a)(7) of this section, the complete record of any oral public hearing conducted pursuant to paragraph (a)(8) of this section, all other comments requested at any time by the Commissioner, all data and information for which the Commissioner has reopened the administrative record, and all other material that the Commissioner includes in the administrative record as part of the basis for the Commissioner's decision.

* * * * *

(12) *Amendment of monographs.* (i) The Commissioner may propose on the Commissioner's own initiative to amend or repeal any monograph established pursuant to this section. Any interested person may petition the Commissioner for such proposal pursuant to § 10.30 of this chapter. The Commissioner may deny the petition if the Commissioner finds a lack of safety or effectiveness employing the standards in paragraph (a)(4) of this section (in which case the appeal provisions of paragraph (a)(11) of this section shall apply), or the Commissioner may publish a proposed amendment or repeal in the **Federal Register** if the Commissioner finds general recognition of safety and effectiveness employing the standards in paragraph (a)(4) of this section. Any interested person may, within 60 days after publication of the proposed order in the **Federal Register**, file with the Hearing Clerk, Food and Drug Administration, written comments in quadruplicate. Comments may be accompanied by a memorandum or brief in support thereof. All comments may be reviewed in the office of the Hearing Clerk between the hours of 9 a.m. and 4 p.m., Monday through Friday. After reviewing the comments, the Commissioner shall publish a final order amending the monograph established under the provisions of paragraph (a)(9) of this section or withdraw the proposal if comments opposing the amendment are persuasive. A new drug application may be submitted in lieu of, or in addition to, a petition under this paragraph.

(ii) A new drug application may be submitted in lieu of a petition to amend the OTC drug monograph only if the drug product with the condition that is the subject of the new drug application has not been marketed on an interim basis (such as under the provisions of paragraph (a)(6)(iii) of this section), all clinical testing has been conducted pursuant to a new drug application plan, and no marketing of the product with the condition for which approval is sought is undertaken prior to approval of the new drug application. The Food and Drug Administration shall handle a new drug application as a petition for amendment of a monograph, and shall review it on that basis, if the provisions of this paragraph preclude approval of a new drug application but permit the granting of such a petition.

* * * * *

Interested persons may, on or before July 14, 1980, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted except that individuals may submit single copies of comments. The comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: May 6, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

[FR Doc. 80-14637 Filed 5-12-80; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 70, 71, 90

Respirable Dust; Additional Public Hearings on Miner Participation

AGENCY: Mine Safety and Health Administration, Department of Labor.

ACTION: Notice of additional public hearings.

SUMMARY: Public hearings will be held in four locations, in addition to those previously announced in the **Federal Register** on April 8, 1980, in order to receive testimony on the proposed provisions involving miner participation in respirable dust sampling procedures. The miner participation issue will be the only issue covered at the new hearings and will not be covered at the earlier hearings on June 3 and 5, 1980.

DATES: The additional public hearings will be conducted on the following dates:

July 8, 1980—Pittsburgh, Pennsylvania.

July 8, 1980—Lexington, Kentucky.

July 10, 1980—Charleston, West Virginia.

July 10, 1980—Denver, Colorado.

Requests to make oral statements for the record at these hearings should be submitted in writing by July 3, 1980. The rulemaking record for the miner participation proposals only will remain until July 24, 1980.

ADDRESSES: Send requests to make oral statements to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

The four public hearings will be held beginning at 9:00 a.m. at the following locations:

U.S. Bureau of Mines Building, Auditorium, First Floor, 4800 Forbes Avenue, Pittsburgh, Pennsylvania 15213.

Holiday Inn North, Burley Room, I–75 and Newtown Pike, Lexington, Kentucky 40505.

University of Charleston, Geary Student Union Building, Ballroom, Third Floor, 2300 MacCorkle Avenue, SE., Charleston, West Virginia 25304.

U.S. Post Office, Main Office Building, Room 269, Auditorium, 1823 Stout Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Frank A. White, Office of Standards, Regulations and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: On April 8, 1980, MSHA published three proposed rules concerning the sampling of respirable dust in coal mines. Public hearings were also scheduled in four locations on June 3 and 5, 1980. Since publication of the proposed rules, MSHA has received a number of requests to hold additional public hearings in order to allow witnesses the opportunity to more fully address all of the issues raised by the proposals. In response to these requests and in order to assure a complete and orderly record, these additional hearings have been scheduled. They are being held for the purpose of receiving oral statements and other data or information concerning the proposals to permit miner participation in the sampling of dust with respect to underground coal mines (30 CFR Part 70), surface work areas of underground coal mines and surface coal mines (30 CFR Part 71), and miners at underground coal mines who have evidence of pneumoconiosis (30 CFR Part 90). All other issues with respect to the proposed rules should be addressed at the earlier hearings on June 3 and 5, 1980.

The hearings will be conducted in an informal manner, with each oral presentation being limited to 20 minutes.

Dated: May 6, 1980.

Eckehard Muessig,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 80–14716 Filed 5–12–80 8:45 am]

BILLING CODE 4510–43–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–5817]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program (202) 426–1460 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii call Toll Free Line (800) 424–9080), Room 5150, 451 Seventh Street, S.W., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.4(a).

These elevations, together with the flood plain management measures required by section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alabama	Baldwin County	Mobile River	At the confluence of Mobile River and Tensaw River	*18
		Mobile Bay	At the Interstate Route 65 bridge over Little Lizard Creek	*11
			At the confluence of Crab Creek and Raft River	*11
			Approximately 100 feet downstream of the State Route 225 bridge over Bay Minette Creek.	*12
			Approximately 100 feet downstream of the State Route 42 bridge over Rock Creek (north of Fairhope).	*12
			At the confluence of the Raft River and Little Bay John	*13
			At the Interstate Route 10 bridge over the Tensaw River	*14
		Perdido Bay	Approximately 100 feet downstream of the County Road 99 bridge over Peterson Branch.	*7
			Approximately 500 feet shoreward from the intersection of County Road 99 and U.S. Route 98.	*8
			At Point Ono	*9
		Gulf of Mexico	Approximately 500 feet south of the intersection of County Road 6 and State Route 180 (west of Gulf Shores).	*12
			At Alligator and South Islands within the Shelby Lakes	*14
			Seaward from the coastline of the Gulf of Mexico	*18
	Maps available at Commissioner's Office, P.O. Box 148, Bay—Minette, Alabama 36507.			
	Send comments to Mr. David C. Wood, Baldwin County Administrator, Baldwin County, P.O. Box 148, Bay—Minette, Alabama 36507.			
Alabama	Bayou La Batre (City)	Mississippi Sound	Intersection of North Coden Avenue and Sutton Drive	*13
			Intersection of Alba Street and Lottie Avenue	*13
			Intersection of Little River Street and Powell Avenue	*14
			Along southern corporate limits at mouth of Bayou La Batre	*21
	Maps available at City Hall, City of Bayou La Batre, P.O. Box 517, Bayou La Batre, Alabama 36509.			
	Send comments to Mr. M. G. Temme, Mayor Pro Tem, City of Bayou La Batre, City Hall, P.O. Box 517, Bayou La Batre, Alabama 36509.			

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alabama	City of Brighton, Jefferson County	Valley Creek	Just upstream of Harmer Street	*484
			Just upstream of U.S. Highway 11	*486
Maps available at City Hall, 3700 Main Street, Brighton, Alabama 35020.				
Send comments to Mayor Richard Lewis or Mayor Pro-Tem Walter Jenkins, 3700 Main Street, Brighton, Alabama 35020.				
Alabama	City of Brownville, Jefferson County.	Unnamed Creek 45	Just upstream of Avenue K	*526
			Just upstream of Louisville & Nashville Railroad	*539
Maps available at City Hall, 2120 Avenue K, Brownville, Alabama 35020.				
Send comments to Mayor Henry Hicks, Jr. or Ms. Mattie Zander, City Clerk, City Hall, 2120 Avenue K, Brownville, Alabama 35020.				
Alabama	Town of Cardiff, Jefferson County	Fivemile Creek	Just upstream of intersection of Cardiff Road and Main Street	*370
Maps Available at, City Hall, Cardiff, Alabama 35041.				
Send comments to, Mayor Sam Tombiello or Rev. Eddie Nichols, Councilman P.O. Box 37, Cardiff, Albama 35041.				
Alabama	Fairhope (City)	Mobile Bay	Approximately 400 feet west of the intersection of Section Street and U.S. Highway 98.	*11
			Intersection of Mobile Avenue and Pier Street	*12
			Approximately 125 feet west of the intersection of Kiefer Street and North Bayview Avenue.	*12
			Approximately 250 feet west of the intersection of Blakeney Street and North Bayview Avenue.	*14
			Approximately 500 feet West of the intersection of Mobile Avenue and Tensaw Avenue.	*14
Maps available at City Hall, City of Fairhope, P.O. Box 429, Fairhope, Alabama 36532.				
Send comments to the Honorable James P. Nix, Mayor, City of Fairhope, P.O. Box 429, Fairhope, Alabama 36532.				
Alabama	Gulf Shores (Town)	Gulf of Mexico	Intersection of Sunset Drive and Magnolia Drive	*12
			Intersection of Alabama Highway 59 and West 12th Avenue	*12
			Intersection of Ark Road and Alabama Highway 59	*13
			Intersection of East 1st Avenue and East Third Street	*14
			Intersection of 1st Avenue and West 8th Street	*14
			Intersection of West Gulf Shores Boulevard and West 11th Street	*15
			Intersection of West 1st Street and East Gulf Shores Boulevard	*15
			Approximately 300 feet shoreward from the intersection of West Gulf Shores Boulevard and West 11th Street.	*16
			Approximately 500 feet shoreward from the intersection of East Gulf Shores Boulevard and East 1st Street.	*16
			Approximately 600 feet shoreward from the intersection of West 9th Street and West Gulf Shores Boulevard.	*18
			Approximately 600 feet shoreward from the intersection of East 2nd Street and East Gulf Shores Boulevard.	*18
		Mobile Bay	Intersection of East 6th Street and East 23rd Avenue	*11
			Intersection of Wedgewood Drive and West 3rd Street	*11
			Approximately 2000 feet west of the intersection of Rose Lane and Wedgewood Drive.	*12
			Approximately 6500 feet west of the intersection of West 24th Avenue and West Third Street.	*13
Maps available at Town Hall, Town of Gulf Shores, P.O. Box 299, Gulf Shores, Alabama 36542.				
Send comments to the Honorable Mixon Jones, Mayor, Town of Gulf Shores, Town Hall, P.O. Box 299 Gulf Shores, Alabama 36542.				
Alabama	City of Hoover, Jefferson County	Patton Creek	Just downstream of Kestwick Road	*491
			Just upstream of Southland Drive	*512
		Cahaba River	Intersection of Loch Ridge trail, and East Heather Line	*433
Maps available at City Hall, 1631 Montgomery Highway, Hoover, Alabama 35120.				
Send comments to Mayor John Hodnett or Anita Steirer, City Clerk, City Hall, 1631 Montgomery Highway, Hoover, Albama 35120.				
Alabama	City of Hueytown, Jefferson County.	Valley Creek	Just downstream of 19th Street	*463
		Unnamed Creek 40	Just downstream of Cambridge Road	*483
Maps available at City Hall, 1318 Hueytown Road, Hueytown, Alabama 35020.				
Send comments to Mayor Preston Darden, or Mayor Pro-Tem Robert Gober, City Hall, 1318 Hueytown Road, Hueytown, Alabama 35020.				
Alabama	City of Irondale, Jefferson County	Shades Creek	Just downstream of U.S. Highway 78	*709
			Just upstream of Hass McDavid Avenue	*715
			Just downstream of Commerce Blvd	*719
Maps available at City Hall, 101 South 20th Street, Irondale, Alabama 35210.				
Send comments to Mayor Leath or City Clerk, Harry Swafford, City Hall, 101 South 20th Street, Irondale, Alabama 35210.				
Alabama	Unincorporated Areas of Jefferson County.	Ward Mill Creek	Just downstream from a Private Road	*365
		Unnamed Creek 2	Just upstream of the Private Road located approximately 1.9 miles upstream of the confluence with Ward Mill Creek.	*365
		Locust Fork (Lower Branch)	At Ward Mill Creek	*326
		Locust Fork (Upper Branch)	At I-65	*352
		Turkey Creek (Lower Branch)	At Glenwood Road	*375
			Just upstream of Louisville & Nashville Railroad	*412
		Turkey Creek (Upper Branch)	At Old Bradford Road	*594
			100 feet downstream of Pinson-Clay Road	*641
			Just upstream of Old Springville Highway	*790

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Self Creek	100 feet downstream of Alabama Highway 75	*675
			Just downstream of Brookwod Road	*711
		Dry Creek (Warrior river Basin)	100 feet downstream of Faucett Road	*683
		Unnamed Creek 8	20 feet upstream of the confluence with Dry Creek (Warrior River Basin).	*692
		Unnamed Creek 9	Just upstream of Red Hollow Road	*608
		Unnamed Creek 10	100 feet downstream of Brumbeloe Drive	*635
		Unnamed Creek 11	100 feet upstream of Sweeney Hollow Road	*658
		Fivemile Creek (Fivemile Creek Basin).	Just downstream of Lindale Road	*333
			Just upstream of Coalburg Road 3.25 miles downstream of the confluence of Black Creek.	*406
			At Highway 78	*465
			At Point Road	*705
		Unnamed Creek 13	100 feet downstream of the Graysville Corporate limit and Limit of Detailed Study.	*376
		Newfound Creek	At the Louisville and Nashville Railroad	*374
		Black Creek (Fivemile Creek Basin).	At Walaker Chapel Road	*431
		Barton Branch	Just downstream of Fleming Road	*598
		Tarrant Srings Branch	At Marlin Spring Road	*693
		Dry Creek (Fivemile Creek Basin).	At Pine Mill road	*759
			100 feet upstream of Brewster Road	*867
		Unnamed Creek 23	Just downstream of Robinwood Road	*636
		Village Creek	At Porter Road	*403
			At Adamsville Ensley Road	*513
			150 feet upstream of Vanderbilt Road	*578
			150 feet downstream of 75th Street	*626
		Corbet Branch	At Adamsville-Dacena Road	*628
		Camp Branch	150 feet downstream of Denmark Avenue	*509
		Second Creek	Just upstream of Pratt Highway	*529
		Black Creek (VillageCreek Basin)	At Cherry Avenue	*545
		Valley Creek	Just upstream of John-Adger Road	*409
			At Powder Plant Road	*437
			Just downstream of 13th Street	*461
			150 feet downstream of 18th Avenue	*468
		Fivemile Creek (Valley Creek Basin).	Just downstream of Freeman Avenue	*453
			Just downstream of Eastern Valley Road	*525
		Unnamed Creek 38	Just downstream of Lakeridge Drive	*479
		Opossum Creek	100 feet downstream of Woodward Road	*485
			At 12th Street	*512
		Unnamed Creek 40	At Brookland Drive	*474
		Unnamed Creek 41	Just upstream of Louisville & Nashville Railroad	*467
		Unnamed Creek 45	Just upstream of Jefferson Avenue	*526
		Shades Creek	200 feet upstream of Bluff Ridge Road	*490
			At Parkwood Drive	*544
			At Oxmoor Road	*621
			At Groover Drive	*688
		Little Shades Creek (Shades Creek Basin).	At Highway 150	*527
			At Pleasant Valley Road	*585
		Cahaba River	At Cahaba Heights Road	*465
			Just upstream of Grants Mill Road	*509
			Just downstream of Highway 78	*537
			Just upstream of Goodner Mountain Road	*896
		Patton Creek	At the Green Valley Country Club	*495
		Little Shades Creek (Cahaba River Basin).	Just upstream of Gonnedo Road	*448
			100 feet upstream of Rocky Ridge Road	*508
		Little Cahaba River	Just upstream of Grants Mill Road	*558
			At Cahaba Valley Road	*593
		Dry Creek (Cahaba River Basin)	200 feet upstream of Shale Road	*642
		Stinking Creek	Just downstream of Old Lovick Road	*553
		Pinchgut Creek	Just upstream of Mary Taylor Road	*714

Maps available at 202A Jefferson County Courthouse, Birmingham, Alabama 35203.

Send comments to Mr. Chris Doss, Chairman, Jefferson County Commission or Mr. Ray Davidson, Asst. Highway Engineer, 202A Jefferson County Courthouse, Birmingham, Alabama 35203.

Alabama	City of Midfield, Jefferson County.	Valley Creek	Just upstream of Midfield Road	*509
		Unnamed Creek	Just upstream of Collier Drive	*506
			Just downstream of Short Street	*511

Maps available at City Hall, 390 Midfield Street, Midfield, Alabama 35228.

Send comments to Mayor Winfrid Jackson or Chairman Pro-Tem Thomas B. Ramey, City Hall, 390 Midfield Street, Midfield, Alabama 35228.

Alabama	Mobile (City)	Mobile Bay	Intersection of Dauphin Island Parkway and Alba Avenue	*11
			Intersection of Dog River Drive and Perch Drive	*11
			Intersection of Dauphin Island Parkway and Hannon Road	*11
			Intersection of Jackson Street and Dempsey Street	*11
			Intersection of South Old Water Street and Madison Street	*12
			Confluence of Spanish River and Mobile River	*13
			Northern end of Polecat Bay	*14
			Little Sand Island	*16

Maps available at City Hall, City of Mobile, P.O. Box 1827, Mobile, Alabama 36601.

Send comments to the Honorable Gary A. Greenough, Mayor, City of Mobile, City Hall, P.O. Box 1827, Mobile, Alabama 36601.

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alabama	Mobile County	Mobile Bay	Interstate Route 65 bridge over Mobile River	*11
			Interstate Route 65 bridge over Gunnison Creek	*11
			Confluence of Sara Bayou and Gunnison Creek	*11
			Approximately 100 feet upstream of the Dauphin Island Parkway bridge over Middle Fork Deer River.	*11
			Approximately 100 feet downstream of the Dauphin Island Parkway bridge over Middle Fork Deer River.	*12
			Approximately 100 feet upstream of the Cedar Point Road bridge over Dog River.	*14
			Approximately 200 feet downstream of the Dauphin Island Parkway bridge over South Fork Deer River.	*14
			Approximately 750 feet east along Bay Road from its intersection with Kerns Road.	*14
			Approximately 100 feet downstream of the Cedar Point Road bridge over the Dog River.	*16
			Approximately 1000 feet east of the intersection of Bay Road and Hammock Road.	*16
		Mississippi Sound	Approximately 1000 feet south of the intersection of Cuthbert Road and State Route 163.	*13
			Approximately 100 feet south of the intersection of Russel Avenue and State Route 188.	*14
			Approximately 200 feet downstream of the State Route 188 bridge over Bayou Como.	*15
			Approximately 1000 feet south of the intersection of Rabby Road and State Route 188.	*16
			At the mouth of Bayou La Fourche Bay	*21
			At Barton Island	*21
		Gulf of Mexico	At the intersection of Bienville Boulevard and Audabon Drive on Dauphin Island.	*13
			At the western end of Dauphin Island	*18

Maps available at Mobile County Courthouse, Mobile, Alabama 36601.

Send comments to Mr. Bay Hass, President, Mobile County Commission, P.O. Box 1443, Mobile, Alabama 36601.

Alabama	City of Prichard, Mobile County	Chickasaw Creek	Just upstream of Shelton Beach Road	*21
			Crystal Spring Road (extended)	*25
		Branch "A"	Just upstream of St. Stephens Road (US Highway 45)	*47
		Crystal Spring Branch	Just downstream of Crystal Springs Road	*36
		Gum Tree Branch	Just downstream of North Wasson Avenue	*19
			Just upstream of Interstate Highway 65	*22
		Branch "G"	Just upstream of Warren Street	*20
			Just downstream of Illinois Central Gulf Railroad	*28
		Eight Mile Creek	Just upstream of Whistler Street	*23
			Just upstream of St. Stephens Road (US Highway 45)	*33
		Branch "C"	Just upstream of Shelton Beach Road	*30
			Just upstream of Love Avenue	*41
		Branch "D"	Just downstream of Myers Road	*54
		Branch "L"	Just upstream of Craft Highway	*25
			Just upstream of Smith Street	*27
		Branch "M"	Just upstream of Haig Street	*25
			Just upstream of Diaz Street	*25
		Toulmins Spring Branch	Just upstream of Craft Highway	*15
			Just upstream of West Prichard Avenue	*25
			Just upstream of South Thomas Avenue	*37
		Toulmins Spring Branch Tributary	Just upstream of West Prichard Avenue	*22
			Just downstream of Max Street	*28

Maps available at City Hall, 216 E. Prichard Avenue, Prichard, Alabama 36610.

Send comments to Mayor A. J. Cooper or President of City Council John Sanderson, City Hall, P.O. Box 10515, Prichard, Alabama 36610.

Alabama	City of Roosevelt City, Jefferson County.	Valley Creek	Just upstream of New Wilkes Road	*498
		Unnamed Creek 45	Intersection of the Tennessee Coal and Iron Railroad and the Seaboard Coast Line Railroad.	*512

Maps available at City Hall, 4543 Bessemer Superhighway, Roosevelt City, Alabama 35020.

Send comments to Mayor Freddy C. Rogers of Mr. Wilbur Miller, Councilman, City Hall, 4543 Bessemer Superhighway, Roosevelt City, Alabama 35020.

Alabama	City of Tarrant City, Jefferson County.	Five Mile Creek	Just downstream of road on ABP's property	*531
			Just downstream of Springdale Drive	*538

Maps available at City Hall, 1004 Ford Avenue, Tarrant City, Alabama 35217.

Send comments to Mayor D. Veal or Mayor Pro-Tem Dennis Joiner, City Hall, 1004 Ford Avenue, Tarrant City, Alabama 35217.

Alabama	City of Trussville, Jefferson County.	Pinchgut Creek	Just downstream of Southern Railway	*692
			Just upstream of Chalkville Road	**695
		Cahaba River	Just upstream of U.S. Hwy 11	*692
			Just upstream of Cherokee Road	*696

Maps available at City Hall, 131 Main Street, Trussville, Alabama 37171.

Send comments to Mayor Ormond Bentley or Ms. Emile Southerland, City Clerk, City Hall, P.O. Box 137, Trussville, Alabama 37173.

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alabama	City of Vestavia Hills, Jefferson County.	Little Shades Creek (Tributary to the Cahaba River).	Approximately 300 feet upstream of Rocky Ridge Road	*509
		Patton Creek	Approximately 200 feet downstream of Columbiana Drive	*518
			Approximately 200 feet upstream of Old Montgomery Hwy	*530
	Maps available at City Clerk's Office, 513 Montgomery Highway, Vestavia Hills, Alabama 35216.			
	Send comments to Mayor Jack Grace or President of Council, Byron Shew, City Hall, 513 Montgomery Highway, Vestavia Hills, Alabama 35216.			
Arkansas	City of Jonesboro, Craighead County.	Christian Creek	Approximately 200 feet upstream of Matthews Avenue	*299
			Just upstrream of Nettleton Avenue	*306
		Lateral No. 3	Just upstream of State Highway 18	*247
			Approximately 250 feet downstream of Missouri-Pacific Railroad	*249
		Lost Creek	Just upstream of Culberhouse Street	*294
			Just downstream of Church Street	*297
		Moore's Ditch Lateral	Just upstream of Missouri-Pacific Railroad	*250
		Higginbottom Creek	Just upstream of State Highway 1	*258
			Approximately 150 feet upstream of State Highway 39	*298
		Whiteman's Creek	Just upstream of Missouri-Pacific Railroad	*250
			Approximately 100 feet downstream of Carroway Road	*270
		Turtle Creek	Just upstream of Missouri-Pacific Railroad	*250
			Just downstream of Aggie Road	*275
		Turtle Creek Lateral	Just upstream of Carroway Road	*277
			Just upstream of West College Drive	*283
		Lateral No. 5	Just upstream of the most downstream St. Louis and Southwestern Railroad Crossing.	*268
			Just upstream of the most upstream St. Louis and Southwestern Railroad Crossing.	*288
	Maps available at City Hall, 314 West Washington Street, Jonesboro, Arkansas 72401.			
	Send comments to Mayor Neil J. Stallings or Mr. Joe Tomlinson, Building Inspector, City Hall, 314 West Washington Street, P.O. Box 580, Jonesboro, Arkansas 72401.			
Arkansas	City of Searcy, White County	Little Red River	Just upstream of Arkansas Highway 367	*219
		Deener Creek	Just downstream of Maple Street	*221
			Just downstream of Ella Street	*232
		Gin Creek	Just upstream of Race Avenue (U.S. Highway 67)	*222
			Just upstream of Park Avenue	*225
			Just upstream of Main Street (U.S. Highway 67)	*238
			Just downstream of Ella Street	*260
		Iorio Creek	Just upstream of Arkansas Highway 267	*235
	Maps available at City Hall, 300 West Arch Avenue, Searcy, Arkansas 72143.			
	Send comments to Mayor Jack Wiseman or Mr. Gary Grimes, City engineer, City Hall, 300 West Arch Avenue, Searcy, Arkansas 72143.			
Arkansas	City of Tukerman, Jackson County.	Tuckerman Ditch	Just downstream of Missouri-Pacific Railroad	*239
			At Estelle Street	*242
		Watson Ditch	At County Highway 145	*242
	Maps available at City Hall, Courtroom, Main Street, Tuckerman, Arkansas 72473.			
	Send comments to Mayor Everett King or Mr. Calvin Whitlock, City Secretray, City Hall, P.O. Drawer K, Tuckerman, Arkansas 72473.			
California	Menlo Park (City), San Mateo County.	San Francisco Bay	Intersection of Hamilton Avenue and Chilco Street	*7
			Intersection of Jefferson Drive and Chrysler Drive	*7
			Intersection of Haven	*7
			Intersection of Constitution Drive and Independence Drive	*7
			Intersection of Willow Road and Southern Pacific Railroad	*7
			Intersection of Ivy Drive and Madera Avenue	*7
			Intersection of Willow Road and bay shoreline	*7
	Maps available at City Hall, Civic Center, Ravenswood and Laurel Streets, California.			
	Send comments to the Honorable Douglas Dupen, Mayor, City of Menlo Park, City Hall, Civic Center, Menlo Park, California 94025.			
California	Pacifica (City), San Mateo	Calera Creek	At upstream opening of the culvert under San Marlo Way	*18
			Intersection of Creek and quarry access road	*30
			At downstream opening of the culvert under State Highway 1	*66
		San Pedro Creek	Intersection of De Solo Drive and Arguello Boulevard	*11
	Maps available at Department of Development and Community Services, 1800 Francisco Avenue, Pacifica, California.			
	Send comments to the Honorable Stanley M. Farber, Mayor, City of Pacifica, City Hall, 170 Santa Maria Avenue, Pacifica, California. 94044.			
California	Ross (Town), Marin County	Corte Madera Creek	Approximately 190 feet west of the intersection of Sir Francis Drake Boulevard and Aikens Lane.	*14
			Northwestern side of Lagunitas Road between Shady Lane and Sylvan Drive.	*26
			Approximately 150 feet west of the intersection of Winship Avenue and Wellington Avenue.	*36
			Intersection of Shady Lane and Fernhill Avenue	#2
			Intersection of Redwood Drive and Brookwood Lane	#3
			Ross Common	#3
		Kittle Creek	Confluence with Corte Madera Creek	*16
			Upstream side of Marin Art and Garden Center Drive over the channel.	*31
			Approximately 90 feet south of the intersection of Monte Allegre Road and Laurel Grove Avenue.	*48

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Sheetflow	Appoximately 300 feet northwest along Sir Francis Drake Boulevard from its intersection with Aikens Lane.	#2

Maps available at Town Hall, Ross, California.

Send comments to the Honorable John H. Chase, Mayor, Town of Ross, Town Hall, P.O. Box 320, Ross, California 94957.

California	Whittier (City), Los Angeles County.	Turnbull Canyon	50 feet northeast of the interesection of Painter Avenue and Camilla Street.	*418
			Intersection of Sycamore Drive and Broadway	#1
		Savage Creek	150 feet north of intersection of Vista Street and York Avenue	*380
		San Gabriel River	Area bounded between Durfee Avenue and Siphon Road	*220

Maps available at City Hall, 13230 Penn Street, Whittier, California.

Send comments to the Honorable Delta Murphy, Mayor, City of Whittier, City Hall, 13230 Penn Street, Whittier, California 90602.

Florida	City of Moore Haven, Glade County.	Caloosahatchee River	Just downstream of U.S. 27	*13
		Rainfall	All flooded areas west of Riverside Drive and First Street	*14

Maps available at City Hall, City Clerk's Office, 99 Riverside Drive, Moore Haven, Florida 33471.

Send comments to Mayor John Akern or Sue Kimbrow, City Clerk, City Hall, P.O. Box 399, Moore Haven, Florida 33471.

Florida	Unincorporated Areas of Okeechobee County.	Popash Slough	Just downstream of Florida Highway 70	*28
		Tributaries Flowing to Pumping Station 133.	Northwest and Northeast of the intersection of Florida Highway 78 and U.S. Highway 441.	*17
		Tributaries Flowing to Pumping Station 135.	East of Nubbin Slough between U.S. Highway 441 and Lake Okeechobee.	*18

Maps available at County Clerk's Office, Okeechobee County Courthouse, 304 N.W. Second Street, Okeechobee, Florida 33472.

Send comments to Mr. James Lashley, Chairman, Okeechobee County Board of Commissioners, County Courthouse, 304 N.W. Second Street, or Mr. Clayton White, Building Official, County Courthouse Annex, 303 N.W. Second Street, Okeechobee, Florida 33472.

Illinois	(V) Broadview Cook County	Addison Creek	Southern corporate limit	*620
			Just downstream Indiana Harbor Belt Railroad	*623
			Just upstream Illinois Central Gulf Railroad	*625
			Just downstream of Eisenhower Expressway	*627
		Salt Creek	About 740 feet upstream confluence with Addison Creek	*620
			South West corporate limits	*622

Maps available at City Clerk's Office, Village Hall, 1600 Roosevelt Road, Broadview, Illinois.

Send comments to Mr. Merritt E. Braga, Village President, Village of Broadview, Village Hall, 1600 Roosevelt Road, Broadview, Illinois 60153.

Illinois	(V) Brussels; Calhoun County	Pohlman Creek	Just downstream of Main Street	*455
			Just downstream of southern corporate limit	*462

Maps available at Village Hall, Fire House, Brussels, Illinois.

Send comments to Mr. Robert L. Held, Village President, Village of Brussels, Village Hall, Fire House, Brussels, Illinois 62013 to the Attention of Mr. W. E. Schwallenstecker, Calhoun County Building Inspector.

Illinois	(C) Collinsville, Madison County	Canteen Creek	Just upstream U.S. Highway 40	*421
			About 450 Feet downstream State Highway 157	*435
			About 300 feet upstream Lake Side Drive	*454
			Just upstream Old Belleville Road	*470
			About 600 feet upstream Mulberry Street	*483
		Ponding Area	Northwest of intersection of U.S. Highway 40 and Simpson Place	*419

Maps available at Clerk's Office, City Hall, 125 South Center Street, Collinsville, Illinois.

Send comments to Honorable Gene J. Brombolich, Mayor, City of Collinsville, City Hall, 125 South Center Street, Collinsville, Illinois 62234 to the attention of Louis Jackstadt, City Clerk.

Illinois	(V) Dupo, St. Clair County	Shallow Flooding (Local ponding).	Approximately 1000 feet west of Missouri Pacific Railroad and east of the corporate limits.	*403
			About 1000 feet southeast along Stone Street from the intersection of Second Street and Stone Street.	*404
			At the intersection of Columbia Rock Road and Columbia Dupo Road.	*404
			Approximately 800 feet west of Sugarloaf Hill Drive and 500 feet east of Wheatly Road.	*404
			At south Dupo Station Building from Missouri Pacific Railroad to eastern corporate limit.	*404
			Area surrounded by corporate limits to the east of Fifth Street, approximately 400 feet northeast of the intersection of Fourth Street and E. Carondelet Road.	*404
			Area surrounded by Missouri Pacific Railroad, Waterloo Avenue and Wheatly Road.	*404
			At the intersection of Pattee Avenue and Hofstetter Street	*406

Maps available at the Village President's Office, Village Hall, 100 N. 2nd Street, Dupo, Illinois 62239.

Send comments to Mr. Curtis Wiechert, Village President, Village of Dupo, Village Hall, 100 N. 2nd Street, Dupo, Illinois 62239 to the attention of Mr. Don Radentz, Village Engineer.

Illinois	(C) Elmhurst, Du Page County	Salt Creek	Just upstream Frontage Road	*663
			About 500 feet downstream Chicago and North Western Railroad (downstream of Saint Charles Road).	*667
			Just downstream Saint Charles Road	*669
			About 400 feet downstream Central Gulf Railroad	*672

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Sugar Creek	Mouth at Salt Creek	*664
			Upstream corporate limits	*665

Maps available at the City Clerk's Office, Municipal Building, 119 Chiller Street, Elmhurst, Illinois.

Send comments to Honorable Abner S. Cannet, Mayor, City of Elmhurst, Municipal Building, 119 Chiller Street, Elmhurst, Illinois 60126 to the attention of Robert Palmer, City Manager and Thomas Borchart, City Engineer.

Illinois	(V) Hardin, Calhoun County	Illinois River	Within corporate limits	*442

Maps available at Village Hall, Main and Water Streets, Hardin, Illinois.

Send comments to Mr. William Horman, Village President, Village of Hardin, Village Hall, Main and Water Streets, Hardin, Illinois 62047 to the attention of Mr. W. E. Schwallenstecker, Calhoun County Building Inspector.

Illinois	(V) Hinsdale, Cook County	59th Street Ditch	Downstream corporate limit	*654
			Approximately 800 feet downstream County Line Road	*660
			Just upstream County Line Road	*671
			Just upstream Charleston Road South	*678
			Just upstream Elm Street	*682
		Bronswood Cemetary Tributary	Downstream corporate limit	*688
			Just upstream Adams Road	*689
			Approximately 100 feet downstream from State Route 83	*697
		Salt Creek	Downstream corporate limit	*642
			Just downstream York Road	*645

Maps available at Village Library, Hinsdale, Illinois.

Send comments to Mr. James Lincoln, Village Manager, Village of Hinsdale, Village Hall, Hinsdale, Illinois 60521.

Illinois	(V) Richton Park, Cook County	Butterfield Creek East Branch	Downstream corporate limit	*704
			950 feet downstream of Sauk Trail	*705
			Just downstream of the north shopping center entrance	*708
			Just upstream of the south shopping center entrance	*710
			630 feet upstream from the south shopping center entrance	*713
			1,425 feet upstream from the south shopping center entrance	*717
			Just downstream of tank farm driveway	*722
		Butterfield Creek East Branch Tributary.	Just upstream of the Elgin Joilet and Eastern Railroad	*705
			Just downstream of Sauk Trail	*711
			Just upstream of Sauk Trail	*719
			Just downstream of Cicero Avenue	*719
			Just upstream of Cicero Avenue	*722
			Just downstream of Imperial Drive	*724
			Just downstream of Lake Shore Drive crossing	*737
			About 160 feet downstream of corporate limit	*737
			Just downstream of Steger Road	*739
		Tributary A	At confluence with Butterfield Creek East Branch Tributary	*722
			Upstream corporate limits	*731

Maps available at the Village Hall, 4045 Sauk Trail, Richton Park, Illinois.

Send comments to Mr. Frank Farrell, Village President, Village Hall, 4045 Sauk Trail, Richton Park, Illinois 60471.

Indiana	(C) Carmel, Hamilton County	White River	Approximately 0.8 mile downstream from the confluence of Blue Woods Creek.	*740
			Just downstream from northern Township Line	*755
		Carmel Creek	Approximately 600 feet Just upstream of east 96th Street	*740
			Approximately 170 feet Just downstream of State Route 431	*767
			Just upstream of State Route 431	*774
			Approximately 100 feet Just downstream of 106th Street	*779
			Just upstream of 106th Street	*784
			Just upstream of 110th Street	*798
			Approximately 750 fet upstream of Wood Valley Drive	*810
			Just downstream of Westfield Boulevard	*815
			Just upstream of Westfield Boulevard	*819
			Just upstream of interurban line	*827
			Approximately 900 feet upstream of 116th Street	*827
		Cool Creek	Mouth at White River	*743
			Approximately 1,500 feet downstream of 116th Street	*743
			Approximately 300 feet upstream of 116th Street	*748
			Just upstream of Gray Road	*752
			Approximately 3,500 feet upstream of Gray Road	*763
			Just downstream of 126th Street	*774
			Approximately 100 feet upstream of 126th Street	*776
			Approximately 150 feet downstream of 131st Street	*787
			Just upstream of 131st Street	*790
			Approximately 200 feet upstream of U.S. Route 431	*798
			Just upstream of 136th Street	*805
			Just downstream of southbound U.S. Route 431	*811
			Just upstream of northbound U.S. Route 431	*813
			Just downstream of 146th Street	*816
		Hot Lick Creek	Mouth at Cool Creek	*768
			Just downstream of Carmel Drive	*773
			Just upstream of Carmel Drive	*776
			Approximately 475 feet upstream of Carmel Drive	*780
		Williams Creek	Just upstream of 96th Street	*794
			Approximately 2,100 feet upstream of Interstate Route 465	*800
			Approximately 2,480 feet upstream of Interstate Route 465	*805
			Approximately 300 feet upstream of 106th Street	*814
			Just downstream of 116th Street	*831
			Just upstream of 116th Street	*834

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just upstream of Spring Mill Road (upstream crossing)	*854
			Just downstream of 131st Street	*862
		Henley Creek	Mouth at Williams Creek	*860
			Just downstream of 131st Street	*861
	Maps available at the Building Commissioner's Office, City Hall, 40 East Main Street, Carmel, Indiana.			
	Send comments to Honorable Jane Reiman, Mayor, City of Carmel, City Hall, 40 East Main Street, Carmel, Indiana 46032 to the attention of Mr. Jim Anderson.			
Iowa	(C) Hawarden, Sioux County	Big Sioux River	At western corporate limit, about 800 feet downstream from Chicago and North Western Railroad..	*1,171
			Just upstream of Chicago and North Western Railroad	*1,172
			About 4,700 feet upstream of Chicago and North Western Railroad	*1,173
			At northern corporate limit, about 9,370 feet upstream of Chicago and North Western Railroad.	*1,174
		Dry Creek	Western corporate limit	*1,171
			About 100 feet upstream of E Avenue	*1,173
			About 1,250 feet upstream of E Avenue	*1,179
			Just upstream of the Chicago and North Western Railroad bridge	*1,185
			Just downstream of Tenth Street	*1,188
			About 600 feet upstream of Tenth Street	*1,190
		Shallow flooding from Stream No. 5.	At intersection of 23rd Street and E Avenue	*1,178
	Maps available at the City Hall, P.O. Box 231, Hawarden, Iowa.			
	Send comments to Honorable William F. Hill, Mayor, City of Hawarden, P.O. Box 231, Hawarden, Iowa, 51023.			
Kansas	(C) Auburn, Shawnee County	Wakarusa River	Approximately 1,400 feet downstream Auburn Road	*1,017
		North Branch Wakarusa River	Southern corporate limits (approximately 530 feet upstream Auburn Road).	*1,017
			Western corporate limits	*1,017
	Maps available at the City Hall, P.O. Box 160, Auburn, Kansas.			
	Send comments to Honorable Wilton Kellogg, Mayor, City of Auburn, City Hall, P.O. Box 160, Auburn, Kansas 66402.			
Kansas	(C) Holton, Jackson County	Elk Creek	At western extraterritorial limit	*1,052
			Just upstream of U.S. Highway 75	*1,021
			About 200 feet upstream of Iowa Avenue	*1,015
			About 265 feet upstream of the Chicago, Rock Island and Pacific Railroad.	*1,010
			About 265 feet downstream of the Chicago, Rock Island and Pacific Railroad.	*1,006
			At the eastern extraterritorial limit	*985
		Banner Creek	At the western extraterritorial limit	*1,091
			Just downstream of U.S. Highway 75	*1,033
			Just downstream of the Chicago, Rock Island and Pacific Railroad	*1,020
			At the confluence with Elk Creek	*1,003
	Maps available at the City Hall, 5th and Pennsylvania, Holton, Kansas.			
	Send comments to Honorable Wayne Marshall, Mayor, City of Holton, City Hall, 5th and Pennsylvania, Holton, Kansas 66436.			
Kentucky	City of Georgetown, Scott County	North Elkhorn Creek	Just upstream of US Highway 25 (North Broadway)	*799
			Just upstream of Paris Road (US Highway 460)	*808
			Just downstream of Interstate Highway 75	*811
	Maps available at City Hall, 141 South Broadway, Georgetown, Kentucky 40324.			
	Send comments to Mayor Warren Powers or Mayor Pro-Tem, Ms. Jane Offutt, 141 South Broadway, Georgetown, Kentucky 40324.			
Louisiana	Abbeville (City) Vermilion Parish	Vermilion River	100 feet upstream from intersection of Vermilion River and center of Southern Pacific Railroad.	*10
		Valcourt Coulee	Intersection of Valcourt Coulee and center of South Hollingsworth Drive.	*11
			Intersection of Valcourt Coulee and center of West Summers Drive	*13
		Dick Hunter Coulee	Intersection of Dick Hunter Coulee and the center of Memorial Drive	*10
		Hog Coulee	Intersection of Hog Coulee and center of Port Street	*10
		Youngs South Coulee	Intersection of Youngs South Coulee and center of Eaton Drive	*12
		Youngs North Coulee	Intersection of Youngs North Coulee and center of Hospital Road	*7
			Intersection of Youngs North Coulee and center of Leonard Avenue	*12
	Maps available at City Hall, 3040 Charity Street, Abbeville, Louisiana.			
	Send Comments to the Honorable Jimmy Vorhoff, Jr., Mayor, City of Abbeville, City Hall, 3040 Charity Street, Abbeville, Louisiana 70510.			
Louisiana	Village of Estherwood, Acadia Parish.	Estherwood Lateral	Entire area within The Village of Estherwood	*17
	Maps available at City Hall, 124 North Le Blanc Estherwood, Louisiana 70534.			
	Send comments to Mayor Ernie P. Broussard or Dalton G. Godeaux, Mayor Pro-Tem, 124 North Le Blanc Street, P.O. Box 167, Esterwood, Louisiana 70534.			
Maryland	Cambridge, City, Dorchester County.	Chesapeake Bay	Shoreline of Choptank River in City of Cambridge	
			Shoreline of Cambridge Creek	*6
				*6
			Tributary A at southern Corporate Limits	*6

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available at the Department of Public Works, 703 Lenards Lane, Cambridge, Maryland.				
Send comments to Honorable Albert B. Atkinson, Mayor of Cambridge, P.O. Box 225, Cambridge, Maryland 21613.				
Maryland	Dorchester County	Higgins Creek	Higgins Millpond Dam	*8
			Linkwood Road	*9
			U.S. Route 50	*12
		Chesapeake Bay	Hunting Creek Shoreline	*6
			Shoreline of Choptank River	*6
			Mouth of Choptank River South to middle of Taylors Island	*6
			Slaughter Creek and Blackwater River	*6
			Maples Dam Road east to Guinea Marsh and Craft Neck south to Fishing Bay.	*6
			Shoreline of Naticoke River	*6
			State Route 335 at Key Wallace Road	*6
			East side of Bloodsworth Island	*6
			Shoreline of Honga River	*6
			Shoreline of Cabin Creek from mouth to State Route 16	*6
			Little Choptank River	*6
			Riggins Corner	*6
			Cokeland	*6
			Toddville	*6
			Bishops Head	*6
			Chesapeake Bay from middle of Taylors Island south to west side of Bloodsworth Island.	*5
			Crapo Road from Wingate to Chorale Creek Golden Hill Road south to Hongo River.	*5
Maps available at the Dorchester County Courthouse, 501 Court Lane and at the City Library, Cambridge, Maryland.				
Send comments to Mr. William Wingate, President of the Dorchester County Commission, P.O. Box 26, Cambridge, Maryland 21613.				
Maryland	Hurlock, Town, Dorchester County.	Wright's Branch	Downstream Corporate Limits	*39
			Upstream Corporate Limits	*39
Maps available at the Town Hall, 111 Poplar Street, Hurlock, Maryland.				
Send comments to Honorable Oliver Harding, Mayor of Hurlock, Hurlock, Maryland 21643.				
Massachusetts	East Bridgewater, Town, Plymouth County.	Beaver Brook	Upstream side of Elm Street	*65
			Upstream side of Summer Street	*80
			Approximately 3,120' upstream of Summer Street	*94
		Black Brook	Approximately 500' downstream of Central Street	*54
			Upstream side of Central Street	*58
			Approximately 1,000' upstream of Central Street	*59
		Meadow Brook	Upstream side of North Central Street	*41
			Downstream side of dam	*43
			Upstream side of State Route 18 (Downstream crossing)	*48
			Upstream side of Water Street	*51
			Approximately 3,800' upstream of Water Street	*64
			Upstream side of Highland street	*75
			Downstream side of State Route 18 (Upstream crossing)	*75
		Tributary to Meadow Brook	Confluence with Meadow Brook	*75
			Upstream Corporate Limits	*75
		Satucket River (Plymouth vicinity).	Approximately 700' downstream of dam	*34
			Upstream of dam	*40
			Approximately 900' upstream of Dam	*41
		Satucket River (Washington Street-Pond Street Area).	Confluence with Black Brook	*40
			Downstream side of Pond Street	*43
Maps available at the Selectmen's Office, Town Hall, East Bridgewater, Massachusetts.				
Send comments to Mr. Dana Chase, Chairman of the Board of Selectmen of East Bridgewater, Town Hall, 175 Central Street, East Bridgewater, Massachusetts 02333.				
Massachusetts	Falmouth (Town), Barnstable County.	Vineyard Sound	The area just north of the intersection of Elm Road and Conrail, east of Oyster Pond.	*8
			The area at the south end of Bournes Pond Road	*10
			Intersection of Shorewood Drive and Portside Circle, east of Great Pond.	*11
		Buzzards Bay	Intersection of Bigelow Street and Gosnold Road	*13
			Intersection of Old Dock Road and Bowline Road, east of West Falmouth Harbor.	*13
			Intersection of Harbor Road and Grove Street, east of Nyes Neck	*14
Maps available at Town Hall, Town Hall Square, Falmouth, Massachusetts.				
Send comments to Ms. Heather McMurtrie, Chairperson, Board of Selectmen, Town of Falmouth, Town Hall, Town Hall Square, Falmouth, Massachusetts 02540.				
Massachusetts	Spencer, Town, Worcester County.	Sevenmile River	Downstream Corporate Limits	*624
			Downstream State Route 49	*626
			Downstream State Route 9	*631
			Downstream Smithville Road	*639
			Downstream State Route 31	*643
			Confluence of Turkey Hill Brook	*646
Maps available at the Selectmen's Office, Memorial Town Hall, Spencer, Massachusetts.				
Send comments to Mr. Harold Perreira, Chairman of the Board of Selectmen of Spencer, Town Hall, Main Street, Spencer, Massachusetts 01526.				

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Michigan	(C) Fenton, Genessee County	Shiawassee River	At north western corporate limits	*873
			Just upstream of North Road	*881
			Just upstream of Grand Trunk Western Railroad	*884
			At downstream side of Caroline Street	*888
			Just downstream of Fenton Dam	*891
			Just upstream of Fenton Dam	*899
		Fenton Mill Pond	Shoreline	*899
		Silver Lake	Shoreline	*872

Maps available at the City Manager's Office, City Hall, 301 Leroy St., Fenton, Michigan.

Send comments to Honorable Lucille Brabon, Mayor, City of Fenton, City Hall, 301 Leroy Street, Fenton, Michigan 48430.

Michigan	(Twp) Fenton, Genesee County	Shiawassee River	Downstream corporate limit	*851
			Just upstream Hogan Road	*853
			Downstream Village of Linden corporate limit	*854
			Upstream Village of Linden corporate limit	*869
			Approximately 2200 feet upstream Linden corporate limit	*872
			At city of Fenton corporate limit	*873
		Lake Ponemah	Shoreline	*872
		Squaw Lake	Shoreline	*872
		Tupper Lake	Shoreline	*872
		Silver Lake	Shoreline	*872

Maps available at the Township Office, 12060 Mantawauka, Fenton, Michigan 48430.

Send comments to Mr. James A. Smeets, Township Supervisor, Township of Fenton, Township Office, 12060 Mantawauka, Fenton, Michigan 48430.

Michigan	(Twp) Grand Haven, Ottawa County.	Lake Michigan	Shoreline	*584
		Pattawattomie	Shoreline	*588
		Millhouse Bayou	Shoreline	*588
		Grand River	Downstream corporate limits	*585
			Upstream corporate limits	*589

Maps available at the City Clerk's Office, 13300 168th Avenue, Grand Haven Township, Michigan.

Send comments to Mr. Emil W. Teska, Supervisor, Township of Grand Haven, 13300 168th Avenue, Grand Haven Township, Michigan 49417.

Michigan	(Twp) Lansing, Ingham County	Grand River	Just upstream of Waverly Road (north of Interstate 496)	*818
			About 1 mile upstream of Waverly Road (north of Interstate 496)	*821
			About 1.4 miles downstream of Waverly Road (south of Interstate 496).	*836
			Just downstream of Waverly Road (south of Interstate 496)	*838
		Red Cedar River	About 700 feet downstream of eastbound Interstate 496	*836
			About 900 feet upstream of northbound U.S. Highway 127	*837

Maps available at Lansing Township Hall, 3209 W. Michigan Avenue, Lansing, Michigan.

Send comments to Mr. James Stornant, Township Supervisor, Township of Lansing, Lansing Township Hall, 3209 W. Michigan Avenue, Lansing, Michigan 48917.

Michigan	(Twp) Macomb, Macomb County	Middle Branch Clinton River	Just upstream Hall Road	*594
			Just upstream Twenty Two Mile Road	*600
			Just upstream Twenty Four Mile Road	*611
			Just downstream Hayes Road	*627
		North Branch Clinton River	Just upstream Hall Road	*597
			About 2.2 miles upstream of Twenty One Mile Road	*601
		Miller Drain	Just upstream Hall Road	*594
			Just upstream Twenty One Mile Road	*599
			Just downstream of Twenty Two Mile Road	*602
		Crittenden Drain	Just upstream Hall Road	*593
			Just upstream Twenty One Mile Road	*596
			Just downstream Twenty Two Mile Road	*603
		Gloede Ditch	Just upstream Hall Road	*595
			Just upstream Twenty One Mile Road	*599
			Just downstream Twenty Two Mile Road	*606
		Lewis Drain	At confluence with Gloede Ditch	*598
			Just upstream Twenty One Mile Road	599
			Just downstream of Hayes Road	*603
		Dunn Drain	At confluence with Lewis Drain	*599
			Just downstream of Hayes Road	*601
		Banister Drain	At confluence with Dunn Drain	*599
			Just downstream of Hayes Road	*601

Maps available at Macomb City Hall, 19925 23 Mile Road, Mt. Clemens, Michigan.

Send comments to Mr. Ronald De Buck, Township Supervisor, Township of Macomb, Macomb City Hall, 19925 23 Mile Road, Mt. Clemens, Michigan 48004 to the attention of Mr. Elmer Sudau, Township Clerk.

Michigan	(Twp) Mt. Morris, Genesee County.	Hartshorn Drain	Just upstream of Pasadena Avenue	*711
			Just upstream from Pierson Road	*726
			Just upstream from Linden Road	*737
			Just upstream from Jennings Road	*754
			Approximately 3150 feet upstream from Jennings Road	*760

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Lake Drain	Downstream corporate limit	*719
			Just upstream from Mount Morris Road	*730
			Just upstream from Clio Road	*743
			Just upstream from Coldwater Road	*750
			Upstream corporate limit	*754
		Cattail Swamp Drain	Just upstream of Elms Road	*708
			Just upstream from Webster Road	*725
			Just downstream of Linden Road	*748
		Hughes Drain	At confluence with Lake Drain	*744
			Approximately 550 feet upstream from Detroit Street	*750
		Flint River	Northern corporate limit	*687
			Southern corporate limit	*690
		Mason Drain	From Frances Road to eastern corporate limit	#1
	Maps available at Mt. Morris Township Office, G 3026 W. Coldwater Road, Mt. Morris, Michigan.			
	Send comments to Mr. Donald J. Krapohl, Township Supervisor, Township of Mt. Morris, Mt. Morris Township Office, G 3026 W. Coldwater Road, Mt. Morris, Michigan 48450.			
Minnesota	(C) Alvarado, Marshall County	Snake River	Just upstream of State Highway 1	*810
			At the upstream corporate limit	*812
	Maps available at the City Hall, P.O. Box 94, Alvarado, Minnesota.			
	Send comments to Honorable Lee Selnes, Mayor, City of Alvarado, City Hall, P.O. Box 94, Alvarado, Minnesota 56710.			
Minnesota	(C) Corcoran, Hennepin County	North Fork Rush Creek	Downstream corporate limit (county road 117)	*914
			Upstream side of Cain Road	*915
			Just upstream of Trail Haven Road	*925
			Just upstream of County Road 117 (located 0.66 mile downstream of Bechtold Road).	*930
			Just upstream of Bechtold Road	*938
			Just upstream of County Road 30	*947
			Just upstream of Sundance Road	*964
			Just upstream of 97th Avenue North	*977
			Just upstream of County Road 10	*992
			Just downstream of County Road 19	*995
			Just upstream of County Road 19	*1001
			Just upstream of Strehler Road	*1004
			Approximately 1.06 miles upstream of Strehler Road	*1004
		Rush Creek	Eastern corporate limits	*934
			Just upstream of County Highway 116	*937
			Just upstream of County Highway 10	*946
			Just downstream of County Highway 50	*959
			Just upstream of Kalk Road	*965
			Just upstream of Rolling Hills Road	*967
			0.66 mile upstream of Rolling Hills Road	*971
	Maps available at the City Hall, 9525 Cain Road, Corcoran, Minnesota 55340.			
	Send comments to Honorable Frank Larkin, Mayor, City of Corcoran, City Hall, 9525 Cain Road, Corcoran, Minnesota 55340.			
Minnesota	(C) Golden Valley, Hennepin County.	Bassett Creek, Sweeney Lake Branch.	Just upstream of Chicago and Northwestern Railroad	*838
			Just upstream of Minneapolis, Northfield and Southern Railway	*842
			Just upstream of Lilac Drive	*857
			Just upstream of Minneapolis, Northfield and Southern Railway, (Upstream from Glenwood Avenue).	*869
		Bassett Creek	Just upstream of Golden Valley Road	*831
			About 500 feet upstream of Bassett Creek Drive	*835
			About 300 feet downstream Noble Avenue	*840
			About 1,800 feet downstream West Brook Road	*850
			Just downstream West Brook Road	*859
			Just upstream West Brook Road	*863
			Just downstream of Minneapolis, Northfield and Southern Railway	*868
			Just upstream of Hampshire Avenue North	*873
			About 1,200 feet downstream of Pennsylvania Avenue North	*876
			About 200 feet downstream Pennsylvania Avenue North	*880
			Just upstream of Pennsylvania Avenue North	*884
			Just upstream of Winnetka Avenue	*887
			Downstream of Mendelsson Drive	*887
	Maps available at City Hall, 7800 Golden Valley Road, Golden Valley, Minnesota.			
	Send comments to Honorable Robert Hoover, Mayor, City Hall, 7800 Golden Valley Road, Golden Valley, Minnesota 55427.			
Minnesota	(Uninc.) Kittson County	Red River of the North	At Canada-United States International boundary	*792
			At downstream St. Vincent corporate limits	*793
			At upstream St. Vincent corporate limits	*794
			About 6.5 miles upstream Canada-United States International boundary.	*795
			About 10.5 miles downstream of State Highway 11	*797
			About 5.9 miles upstream of State Highway 11	*800
		Two Rivers	Just upstream of Township Road about 5 miles downstream from U.S. State Highway 75.	*802
			Just downstream of Burlington Northern Railroad	*807
			Just upstream of U.S. Highway 75	*809
			At the City of Hallock northern corporate limits	*811
		South Branch Two Rivers	At the City of Hallock southern corporate limits	*815

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just downstream of Township Road about 2.25 miles downstream from County Highway 22.	*818
			Just downstream of County Highway 22	*821
		Middle Branch Two Rivers	At confluence with Two Rivers	*813
			Just downstream of Township Road about 4.9 miles upstream from confluence with Two Rivers.	*817
			Just upstream of Township Road about 4.9 miles upstream from confluence with Two Rivers.	*823
			About 1.3 miles downstream of State Highway 175 (downstream crossing).	*824
			Just upstream of State Highway 175 (downstream crossing)	*832
			Just upstream of State Highway 175 (upstream crossing)	*840
			Just downstream of Township Road about 4.0 miles downstream from County Highway 5.	*861
			Just upstream of Township road about 4.0 miles downstream from County Highway 5.	*864
			Just downstream of Township Road about 1.9 miles downstream from County Highway 5.	*869
			Just upstream of Township Road about 1.9 miles downstream from County Highway 5.	*872
			Just downstream of County Highway 5	*886

Maps available at Kittson County Courthouse, P.O. Box 558, Hallock, Minnesota.

Send comments to Mr. Garfield E. Erlandson, Chairman of the Kittson County Board of Commissioners, Kittson County, Kittson County Courthouse, P.O. Box 558, Hollock, Minnesota 56728.

National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: April 17, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80–14453 Filed 5–12–80; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

[Docket No. FEMA–58–8]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappel, National Flood Insurance Program, (202) 426–1460 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii call Toll Free Line (800) 424–9080, Room 5150, 451 Seventh Street, S.W., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.4(a) (presently appearing at its former title 24, chapter 10, part 1917.4(a)).

These elevations, together with the flood plain management measures required by section 60.3 (formerly Section 1910.3) of the program regulations are the minimum that are required. The should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alabama	City of Anderson, Lauderdale County.	Anderson Creek	Just upstream of State Highway 207	*655
			Just upstream of Betty Highway (County Highway 52)	*669

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		East Fork Anderson Creek	Just downstream of State Highway 49	*671
			Just upstream of State Highway 93	*679
	Maps available at Anderson Courthouse, Anderson, Alabama 35610.			
	Send comments to Mayor William Turpen or Mr. Henry Hammonds, City Clerk, Anderson Courthouse, Anderson, Alabama 35610.			
Alabama	Daphne (City), Baldwin County	Mobile Bay	At the Spring Branch crossing of Deer Avenue	*12
			Approximately 1600 feet shoreward from the intersection of Belrose Avenue and Old Country Road.	*12
			Approximately 1800 feet shoreward from the intersection of College Avenue and Old Country Road.	*14
			Approximately 1300 feet shoreward along Van Avenue from its intersection with Second Street.	*14
	Maps available at City Hall, Daphne, Alabama 36526.			
	Send comments to the Honorable A. Victor Guarisco, Mayor, City of Daphne, P.O. Drawer 400, Daphne, Alabama.			
Alabama	Unincorporated Areas of Lauderdale County.	Wilson Creek	Just upstream of Old Jackson Highway (County Highway 47)	*570
		Huddon Creek	Just upstream of County Road 16	*557
		Anderson Creek	Just downstream of the Southern Corporate Limits of the Town of Anderson.	*652
			Just upstream of the Town of Anderson Northern Corporate Limits	*675
		East Fork Anderson Creek	Just upstream of Private Drive	*686
		Cypress Creek	Just upstream of Jackson Road	*486
			Just upstream of Rasch Road	*496
		Little Cypress Creek	Just upstream of Rasch Road	*497
		Shoal Creek	Confluence of Shoal Creek and Indiancamp Creek	*518
		Indiancamp Creek	Just downstream of County Road	*525
			Just upstream of County Road	*527
	Maps available at Lauderdale County Courthouse, 200 Court Street, Florence, Alabama 35630.			
	Send comments to Honorable Will Duncan, County Judge or Ms Corrine Campbell, County Administrator, Lauderdale County Courthouse, 200 Court Street, Florence, Alabama 35630.			
Alabama	Town of Owens Cross Roads, Madison County.	Flint River	Just downstream of the left abutment of Carpenter Bridge (Breached) on Wilson Manns Road.	*585
	Maps available at City Hall, 2965 Old 431 Highway, Ownens Cross Roads, Alabama 35763.			
	Send comments to the Mayor, Steve Baker or Ms. Beverly Drake, President of the Council, City Hall, 2965 Old 431 highway, Owens Cross Roads, Alabama 35763.			
Illinois	(V) Bridgeview, Cook County	Lucas Ditch Cutoff	Just upstream of 103rd Street	*594
			About 2,800 feet upstream of 103rd Street	*595
	Maps available at Village Clerk's Office, Village hall, 7500 South Oketo Avenue, Bridgeview, Illinois.			
	Send comments to Mr. John A. Oremus, Village President, Village of Bridgeview, Village Hall, 7500 South Oketo Avenue, Bridgeview, Illinois 60455 to the attention of Ms. Lillian Tupy, Village Clerk.			
Illinois	(V) Elsah, Jersey County	Elsah Creek	Mouth	*440
			About 100 feet downstream of Alma Street	*440
			Just upstream of intersection of Mill Street and Cemetery Road	*472
			Upstream corporate limit	*478
		Mississippi River	Downstream corporate limit	*440
			Upstream corporate limit	*440
	Maps available at Community Center, Elsah, Illinois.			
	Send comments to Mr. Delby O. Darr, Village President, Village of Elsah, Village Hall, 3 Elm Street, Elsah, Illinois 62028 to the attention of Ms. Blanche Darnell, Village Clerk.			
Illinois	(V) Florence, Pike County	Illinois River	Within corporate limits	*447
	Maps available at Florence Village Hall, R.R. #1, Pittsfield, Illinois.			
	Send comments to the Mr. Raymond Wade, Village President, Village of Florence, Florence Village Hall, R.R. #1, Pittsfield, Illinois 62363.			
Illinois	(V) Kampsville, Calhoun County	Illinois River	At northern corporate limits	*443
			About 1.1 miles downstream of State Route 108 ferry crossing	*443
	Maps available at Village Hall, Kampsville, Illinois.			
	Send comments to Mr. Paul W. Campbell, Village President, Village of Kampsville, Village Hall, kampsville, Illinois 62053 to the attention of Mildred Wirth, Village Clerk and W.E. Schwallenstecker, Building Inspector.			
Illinois	(V) Oak Brook, Du Page County	Bronswood Cemetery Tributary	At the confluence with Salt Creek	*652
			At the corporate limit upstream of the cemetery (Glendale Road extended).	*688
			About 400 feet upstream of the dam west of Adams Road	*691
		Ginger Creek	At the confluence with Salt Creek	*655
			About 300 feet upstream of Jorie Boulevard	*664
			Just downstream of Robert Kingery Highway	*667
			Upstream of the dam located west of Briarwood Central Street	*670
			Approximately 220 feet upstream of Regent Drive	*671
			Just downstream of Midwest Road	*680
			At the corporate limits downstream of Baybrook Lane	*699
			About 700 feet upstream of Baybrook Lane, east of Ochinvar Lane	*700
			Just north of Oak Brook Road	*700
		Salt Creek	At the eastern corporate limit, just upstream of Interstate 294	*642
			About 100 feet upstream of York Road	*646
			Approximately 130 feet upstream of Oak Brook Road	*656
			Just upstream of Roosevelt Road	*663
		Spring Road Tributary	Mouth at Salt Creek	*661
			At the corporate limits located just downstream of Robert Kingery Highway.	*668

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just upstream of Midwest Road	*699

Maps available at the Village Clerk's Office, Oak Brook Village Hall, 1200 Oak Brook Road, Hinsdale, Illinois.

Send comments to Mr. Wence F. Cerne, Village President, Village of Oak Brook, Oak Brook Village Hall, 1200 Oak Brook Road, Hinsdale, Illinois 60521 to the attention of Mr. Dale Durfey, Jr., Village Engineer.

Illinois	(C) Oakbrook Terrace, Du Page County.	Spring Road Tributary	Just upstream of Robert Kingery Highway	*670
			Just upstream of Hodges Road	*672
			About 1250 feet upstream of Karban Road	*677
			Just upstream of Karban Road	*684
			Just upstream of Eisenhower Road	*686
			About 650 feet upstream of Eisenhower Road	*692
		Salt Creek	About 1225 feet downstream of Roosevelt Road	*661
			Just upstream of Roosevelt Road	*663

Maps available at the Clerk's Office, Oakbrook Terrace Village Hall, 17 W. 275 Butterfield Road, Villa Park, Illinois.

Send comments to Honorable Richard E. Sarallo, Mayor, City of Oakbrook Terrace, Oakbrook Terrace Village Hall, 17 W. 275 Butterfield Road, Villa Park, Illinois 60181.

Illinois	(V) Orland Park, Cook County	Mill Creek	Just upstream of downstream corporate limits	*668
			Just downstream of Norfolk and Western Railway	*672
			Just upstream of 88th Avenue	*682
		Marley Creek	Just downstream of 108th Avenue	*688
			Just downstream of Norfolk and Western Railway	*690
			Just upstream of Norfolk and Western Railway	*692
			About 200 feet upstream 159th Avenue	*692
		South Fork, Marley Creek	Mouth at Marley Creek	*688
			About 670 feet upstream of Norfolk and Western Railway	*691
			About 1,800 feet upstream of Norfolk and Western Railway	*692
		Tinley Creek	Just upstream of downstream corporate limits (at 82nd Avenue)	*665
			About 400 feet upstream of Silver Lake Country Club Road	*667
			About 800 feet upstream of Dam	*673
			About 150 feet downstream of 159th Street	*687
			About 300 feet upstream of 88th Avenue	*700

Maps available at Village Hall, Administrator's Office, 14415 Beacon Avenue, Orland Park, Illinois.

Send comments to Mr. Melvin Doogan, Village President, Village of Orland Park, Village Hall, 14415 Beacon Avenue, Orland Park, Illinois 60462 to the attention of Mr. Joseph Cistaro, Administrative Coordinator.

Illinois	(V) Valley City, Pike County	Illinois River	Within the corporate limits	*448

Maps available at the Valley City Village Hall, Route 2, Griggsville, Illinois.

Send comments to Mr. Delford R. Tooley, Village President, Village of Valley City, Valley City Village Hall, Route 2, Griggsville, Illinois 62340.

Illinois	(V) Villa Park, Du Page County	Salt Creek	Downstream corporate limits about 800 feet upstream of confluence of Sugar Creek.	*665
			About 400 feet downstream of State Route 83	*668
			Just upstream Illinois Central Gulf Railroad	*673
			Upstream corporate limits (Lorraine Avenue extended)	*675
		Sugar Creek	Just downstream of State Highway 83	*665
			Just downstream of Cross Street	*666
			Just upstream of Summit Avenue	*668
			Just upstream of Riordan Road	*687
			Upstream corporate limits	*691
		Sugar Creek Tributary A	At confluence with Sugar Creek	*688
			About 300 feet upstream Roosevelt Road	*705

Maps available at the Village Engineer's Office, Village Hall, 20 South Ardmore, Villa Park, Illinois.

Send comments to Mr. Willard J. Phillimore, Jr., Village President, Village of Villa Park, Village Hall, 20 South Ardmore, Villa Park, Illinois 60181 to the attention of Mr. Steven Weinstock, Village Engineer.

Illinois	(V) Wadsworth, Lake County	Des PLaines River	Downstream corporate limits	*666
			Upstream corporate limits	*668
		Mill Creek	About 260 feet downstream U.S. Highway 41	*667
			Upstream corporate limits	*670

Maps available at Village Hall, 38310 Chicago Avenue, Wadsworth, Illinois.

Send comments to Mr. Gilbert Schlosser, Village President, Village of Wadsworth, Village Hall, 38310 Chicago Avenue, Wadsworth, Illinois 60083.

Iowa	(C) Des Moines, Polk County	Des Moines River	Just upstream of Second Avenue	*803
			Just upstream of Euclid Avenue	*805
			Upstream corporate limits	*806
		Raccoon River	Just upstream of Fleur Drive	*801
			Just downstream of Chicago and North Western Railroad	*809
			Just downstream of Southwest 63rd Street	*813
		Fourmile Creek	Downstream corporate limits	*791
			Just upstream of Chicago, Rock Island and Pacific Railroad	*800
			Just downstream of Easton Boulevard	*814
			Just downstream of Hubbell Avenue	*821
			Upstream corporate limits	*828
		Frink Creek	Mouth at Raccoon River	*807
			Just upstream of Park Avenue	*813
			About 1,200 feet upstream of Park Avenue	*816
		Walnut Creek	Just upstream of Chicago, Rock Island and Pacific Railroad	*812
			About 900 feet downstream of Southwest 63rd Street	*820
			Upstream corporate limits (about 2,600 feet upstream of Southwest 63rd Street).	*824

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Shallow flooding	About 300 feet east of intersection of Dixon Street and East Sheridan Avenue.	*#1
			About 800 feet east of intersection of East Euclid Avenue and East 14th Street.	*#2
			About 300 feet southeast of intersection of Aurora Street and East 14th Street.	*#2
			Intersection of Douglas Avenue and East 9th Street	*#2
			Intersection of Shawnee Avenue and East 10th Street	*#3
			Intersection of Dixon Street and East Hull Avenue	*#3
			About 300 feet southeast of intersection of Aurora Street and East 16th Street.	*#3
	Maps available at City Hall, East 1st and Locust Street, Des Moines, Iowa.			
	Send comments to Honorable Richard E. Olson, Mayor, City of Des Moines, City Hall, East 1st and Locust Street, Des Moines, Iowa 50307.			
Kansas	(C) Wamego, Pottawatomie County.	Kansas River	At the east corporate limit	*977
			At the west corporate limit	*979
		East Unnamed Creek	At the downstream corporate limit, downstream of the Union Pacific Railroad.	*976
			Just upstream of Eighth Street	*985
			Just upstream of Pine Street	*991
			Just upstream of U.S. Highway 24	*998
			At the upstream corporate limits, about 1,000 feet upstream of Lilac Lane.	*1,015
	Maps available at the City Hall, Wamego, Kansas.			
	Send comments to Honorable Earl Daylor, Mayor, City of Wamego, 106 Wilson Circle, Wamego, Kansas 66547.			
Kentucky	Unincorporated Areas of Bell County.	Cumberland River	Just downstream of Lone Jack School Bridge	*1,015
			Just downstream of U.S. 119	*1,023
			Just upstream of Bridge at Calvin Kentucky	*1,042
			Just downstream of State Highway 2012	*1,079
			Just downstream of State Highway 72	*1,095
		Greasy Creek	Just upstream of White Church Road	*1,014
		Fourmile Creek	Immediately west of the junction of Unnammed Road and Lewis Coal Mine Road.	*1,020
		Straight Creek	Just upstream of State Highway 2013	*1,031
			Just upstream of State Highway 221	*1,058
		Left Fork Straight Creek	Just upstream of State Highway 2133	*1,035
		Yellow Creek	Just upstream of State Highways 188 and 516	*1,090
			Just upstream of U.S. 25E (Wilderness Road)	*1,123
		Williams Branch	Just downstream of Confluence of Left Fork Williams Branch	*1,042
		Cranes Creek	Just downstream of State Highway 188	*1,073
		Brownies Creek	Just upstream of State Highway 987 at Oaks	*1,101
		Puckett Creek	McFarland Branch Road Extended	*1,134
		Clear Creek	Just upstream State Highway 190	*1,190
		Little Clear Creek	Just downstream State Highway 190	*1,183
		Stony Fork	Just downstream State Highway 74	*1,152
	Maps available at County Courthouse, Courthouse Square, Pineville, Kentucky 40977.			
	Send comments to Judge Willie Hendrickson, or Ms. Donna Sowders, Secretary, County Courthouse, Courthouse Square, Pineville, Kentucky 40977.			
Louisiana	Town of Cheneyville, Rapides Parish.	Shallow Flooding	Southwest of Intersection of U.S. Highway 71 and State Highway 181.	*62
	Maps available at City Hall, Highway 71 and Klock Street, Cheneyville, Louisiana 71325.			
	Send comments to Mayor C. A. Land, Jr. or W. L. Tannor, Jr. Mayor Pro-Tem P.O. Box 322, Cheneyville, Louisiana 71325.			
Louisiana	City of Houma, Terrebonne Parish	Bayou Grand Caillou	Just upstream of Oaklawn Drive	*9
			Just downstream of Merrill Street	*10
		Bayou Chauvin (Sale)	Just upstream of Boundary Road	*7
			Just downstream of Allen Street	*8
		Intracoastal Waterway (Backwater effects from Gulf of Mexico).	At intersection of Gum Avenue and Garnet Street	*4
			At intersection of Beauregard Street and Buenavista Boulevard	*5
			At intersection of Mary Hughes Drive and Summers Drive	*5
		Ponding Area	At intersection of White Street and Morrison Avenue	*5
			At intersection of Naquin Street and Honduras Street	*7
	Maps available at City Planning Office, Main and Russell Streets, Houma, Louisiana 70363.			
	Send comments to Mr. Martin Bruno, Director of Planning, P.O. Box 6097, Houma, Louisiana 70363.			
Louisiana	City of LeCompte, Rapides Parish	Weems Canal	Just upstream of U.S. Highway 71 Northbound	*70
			Just upstream of St. Charles Street	*71
			Just upstream of Chicago Rock Island & Pacific Railroad	*73
	Maps available at City Hall, 1302 Weems Street, LeCompte, Louisiana 71346.			
	Send comments to Mayor Sherman Roberts or Charles Davis, Mayor Pro-Tem, 1302 Weems Street, LeCompte, Louisiana 71346.			
Massachusetts	Princeton, Town, Worcester County.	Keyes Brook	Approximately 0.417 mile downstream of Hobbs Road	*769
			Approximately 0.335 mile downstream of Hobbs Road	*776
			Approximately 0.198 mile downstream of Hobbs Road	*783
			Approximately 0.015 mile downstream of Hobbs Road	*786
			Approximately 0.003 mile upstream of Hobbs Road	*787
			Approximately 0.302 mile upstream of Hobbs Road	*790

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Approximately 0.532 mile upstream of Hobbs Road	*795
			Approximately 0.749 mile upstream of Hobbs Road	*800
			Approximately 0.755 mile upstream of Hobbs Road	*801
		Governor Brook	Downstream Corporate Limits	*694
			Approximately 0.637 mile upstream of Downstream, Corporate Limits	*696
		Babcock Brook	Confluence with East Wachusett Brook	*638
			Downstream side of Dam	*647
			Upstream side of Dam	*655
			Approximately 0.077 mile upstream of Dam	*655
		East Wachusett Brook	Town Farm Road	*611
			Approximately 0.392 mile upstream of Town Farm Road	*627
			Approximately 0.816 mile upstream of Town Farm Road	*635
			Upstream side Bullard Road	*642
			Approximately 0.16 mile upstream of Bullard Road	*649

Maps available at the Office of the Town Clerk, Princeton, Massachusetts.

Send comments to Mr. Joseph H. O'Brien, Chairman of the Board of Selectmen of Princeton, P.O. Box 101, Princeton, Massachusetts 01541.

Michigan	(C) Hasting, Barry County	Thornapple River	Downstream corporate limits	*771
			Just upstream of Broadway Street	*779
			Upstream corporate limits	*785
		Fall Creek	Mouth at Thornapple River	*783
			Just upstream of Walnut Street	*790
			Just upstream of Clinton Street	*799
			Just upstream of Shriner Street	*810
			Upstream corporate limits	*813

Maps available at Hastings City Hall, 102 S. Broadway, Hastings, Michigan.

Send comments to Honorable Ivan Snyder, Mayor, City of Hastings, Hastings City Hall, 102 S. Broadway, Hastings, Michigan 49058 to the attention of Mr. Mike Klovanich.

Michigan	(C) Muskegon Heights, Muskegon County.	Little Black Creek	Mouth at Mona Lake	*582
			Just downstream Summit Street	*589
			About 200 feet upstream Summit Street	*592
			Just downstream Broadway Avenue	*593
			Just upstream Broadway Avenue	*604
			Upstream corporate limits	*605

Maps available at City Hall, 2724 Peck Street, Muskegon Heights, Michigan.

Send comments to Mr. Pompie Durril, City Administrator, City of Muskegon Heights, Muskegon Heights City Hall, 2724 Peck Street, Muskegon Heights, Michigan 49444.

Michigan	(C) Utica, Macomb County	Clinton River	Just downstream of Van Dyke Road	*624
			Just upstream of Hall Road	*628
			Northern corporate limits	*633

Maps available at City Hall, 7550 Auburn Road, Utica, Michigan.

Send comments to Honorable Fred Beck, Mayor, City of Utica, City Hall, 7550 Auburn Road, Utica, Michigan 48087 to the attention of Ms. Pat Delie.

Minnesota	(C) Lake City, Wabasha County	Lake Pepin (Mississippi River)	Shoreline	*681
		Gilbert Creek	Just downstream of U.S. Highway 61	*681
			Just upstream Chicago, Milwaukee, Saint Paul and Pacific Railroad	*688
			About 1700 feet upstream of Chicago, Milwaukee, Saint Paul and Pacific Railroad.	*690
			About 1.0 mile upstream of Chicago, Milwaukee, Saint Paul and Pacific Railroad.	*697
			About 1100 feet upstream of most upstream corporate limit crossing	*714
		Miller Creek	Just upstream U.S. Highway 61	*681
			Just upstream County Highway 9	*699
			Just upstream Marion Street	*707

Maps available at City Administrator's Office, City Hall, 205 West Center Street, Lake City, Minnesota.

Send comments to Mr. Richard Abraham, City Administrator, City of Lake City, City Hall, 205 West Center Street, Lake City, Minnesota 55041.

Minnesota	(Uninc.) McLeod County	Campbell Lake	Shoreline	*1,045
		Otter Lake	Shoreline	*1,045
		Lake Addie	Shoreline	*1,018
		South Fork Crow River	Downstream county boundary	*966
			Just downstream County Road 9	*967
		Buffalo Creek	About 0.3 mile downstream County Road 1	*985
			At eastern Glencoe corporate limits	*989
			About 4,200 feet downstream Chicago, Milwaukee, St. Paul, and Pacific Railroad.	*1,016
			At County Road 25	*1,018
			About 9,050 feet upstream County Road 25	*1,018

Maps available at McLeod County Courthouse, Glencoe, Minnesota.

Send comments to Mr. Howard Christenson, Chairman, County Board of Commissioners, McLeod County, McLeod County-Courthouse, Glencoe, Minnesota 53336 to the attention of Mr. Edwin Homan, County Planning and Zoning Administrator.

Minnesota	(C) Minneapolis, Hennepin County.	Mississippi River	Downstream corporate limits	*716
			Just downstream Lock and Dam No. 1	*717
			Just upstream Lock and Dam No. 1	*735
			Just downstream Lower Saint Anthony Falls Dam	*740
			Just upstream Lower Saint Anthony Falls Dam	*752
			Just downstream Upper Saint Anthony Falls Dam	*763
			Just upstream Upper Saint Anthony Falls Dam	*804
			Upstream corporate limits	*816
		Minnehaha Creek	Approximately 2700 feet upstream of mouth	*717
			Just downstream Minnehaha Falls	*745

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Just upstream Minnehaha Falls	*801
			At Hiawatha Avenue	*809
			Upstream of Weir located just upstream Hiawatha Avenue	*813
			Just downstream Nokomis Avenue	*816
			Just downstream Bloomington Avenue	*822
			Downstream abandoned bridge (approximately 2000 feet upstream Nicollet Avenue).	*838
			Just downstream Lyndale Avenue South	*843
			Upstream corporate limits at West 54th Street	*854
		Bassett Creek	Conduit entrance at 2nd Avenue North	*811
			About 260 feet upstream Irving Avenue North	*811
			Approximately 200 feet upstream Cedar Lake Road	*816
			Downstream Minneapolis, Northfield and Southern Railway	*818
			Upstream corporate limits	*822
		East Channel Bassett Creek	Confluence with Bassett Creek	*822
			Upstream corporate limits	*824
		Lake Hiawatha	Shoreline areas	*818
		Lake Nokomis	Shoreline areas	*819
		Shingle Creek	Approximately 300 feet downstream Lyndale Avenue	*813
			Approximately 50 feet downstream Lyndale Avenue	*821
			Approximately 850 feet upstream Lyndale Avenue	*832
			Upstream corporate limits	*842
		East Channel Mississippi River	Downstream confluence with Mississippi River	*804
			Upstream divergence with Mississippi River	*807

Maps available at Minneapolis City Hall, Minneapolis, Minnesota.

Send comments to Honorable Donald Fraser, Mayor, City of Minneapolis, Minneapolis City Hall, Minneapolis, Minnesota 55415 to the attention of Mr. Perry D. Smith, Director of Public Works.

Minnesota	(Uninc.) Rice County	Cannon River	From County Road 13 to northern Faribult corporate limit	*982
			Shoreline, south of County Road 13	*982
		Wells Lake	Shoreline	*982
		Roberds Lake	Shoreline	*1,021
		French Lake	Shoreline	*1,053
		Mazaska Lake	Shoreline	*1,068

Maps available at County Planning and Zoning Administrator's Office, Rice County Highway Building, 610 N.W. 20th Street, Faribult, Minnesota.

Send comments to Mr. William R. Gill, Planning and Zoning Administrator, Rice County, Rice County Highway Building, 610 N.W. 20th Street, Faribult, Minnesota 55021.

Minnesota	(C) Rochester, Olmsted County	South Fork Zumbro River	At the downstream corporate limits	*968
Minnesota	(C) Rochester; Olmsted County	South Fork Zumbro River	At the downstream corporate limits	*968
			Just upstream Elton Hills Drive	*979
			Just upstream Silver Lake Dam	*986
			Just upstream of East Center Street	*992
			About 100 feet upstream of the Chicago and North Western Railroad	*996
			About 100 feet downstream of Souith Broadway	*1,001
			Just downstream of 16th Street SW	*1,010
			At the upstream corporate limits near Bamber Valley Road	*1,016
		Cascade Creek	At the confluence with South Fork Zumbro River	*983
			About 300 feet upstream of 14th Street NW	*988
			About 100 feet downstream of 11th Avenue NW	*998
			Just upstream of U.S. Highway 52	*1,006
			About 400 feet upstream of confluence of North Run North Fork Cascade Creek.	*1,007
			About 3000 feet downstream of County Highway 34	*1,012
			Just downstream of County Highway 34	*1,018
			About 200 feet upstream of County Highway 34	*1,023
			About 800 feet upstream of County Highway 34	*1,024
		North Run, North Fork Cascade Creek.	About 50 feet downstream of Chicago and North Western Railroad	*1,007
			Just downstream of 7th Street NW	*1,013
			Just downstream of 19th Street NW	*1,024
			Just upstream of 19th Street NW	*1,027
			About 1100 feet upstream of 19th Street NW	*1,029
		South Run, North Fork Cascade Creek.	Just upstream of 7th Street NW	*1,015
			About 100 feet upstream of U.S. Highway 14	*1,019
			About 100 feet upstream of the Chicago and North Western Railroad	*1,023
			Just downstream of Field Road	*1,029
			Just upstream of Field Run	*1,034
		Silver Creek	At the confluence with South Fork Zumbro River	*988
			Just upstream of 11th Avenue NE	*990
			About 2650 feet upstream of 11th Avenue NE	*995
			About 4900 feet upstream of 11th Avenue NE	*1,011
			At the upstream (eastern) corporate limit	*1,016
		Bear Creek	At the confluence with South Fork Zumbro River	*993
			Just upstream of 6th Street SE	*999
			About 200 feet downstream of 12th Street SE	*1,008
			At the confluence of Willow Creek	*1,013
			About 1600 feet upstrea m of the confluence of Willow Creek	*1,015
		Willow Creek	Just upstream of 11th Avenue SE	*1,015
			About 250 feet upstream of 11th Avenue SE	*1,019

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			About 1.0 mile upsteam of the confluence of the West Tributary to Willow Creek.	*1,022
			About 2100 feet downstream U.S. Highway 52	*1,032
			About 3560 feet upstream U.S. Highway 52	*1,040
		West Tributary Willow Creek	At confluence with Willow Creek	*1,019
			About 600 feet downstream of Chicago and North Western Railroad	*1,022
			About 2200 feet upstream of the Chicago and North Western Railroad	*1,042
		Shallow Flooding (Overflow From South Run North Fork Cascade Creek).	Area east of creek, north of U.S. Highway 14, south of Chicago and North Western Railroad and northwest of 7th Street NW.	*#1
		Shallow Flooding (Overflow from North Run North Fork Cascade Creek.	Area west of creek at 7th Street NW bounded by northern corporate limit and Chicago and North Western Railroad.	*#2
		Shallow Flooding (Overflow from North Run North Fork Cascade Creek).	An area east of creek, south of 7th Street NW and north of corporate limits.	*#2
			An area west of creek, south of Chicago and North Western Railroad and north of U.S. Highway 14.	*#3
		Shallow Flooding (Overflow from Cascade Creek).	Area north of 5th Street NW at 11th Avenue NW	*#2
		Shallow Flooding (Overflow from Willow Creek).	Area at southern corporate limits between Willow Creek and West Tributary to Willow Creek.	*#3
	Maps available at City Hall, Rochester, Minnesota			
	Send comments to Honorable Chuck Hazama, Mayor, City of Rochester, City Hall, Rochester, Minnesota 55901 to the attention of Mr. Tom O. Moore, Planning Director.			
Mississippi	City of Corinth, Alcorn County	Phillips Creek	Just upstream of Shiloh Road	*449
		Bridge Creek	Just upstream of Kendrick Road	*447
		Elam Creek	Just upstream of Mitchell Street	*431
		Turner Creek	Just upstream of HWY 45	*434
	Maps available at Municipal Building, City Clerk's Office, 300 Childs Street, Corinth, Mississippi 77507.			
	Send comments to Mayor John D. Mercier, Municipal Building, 300 Childs Street, Corinth, Mississipi 38834.			
Missouri	(V) Bel-Ridge, St. Louis County	Maline Creek	Northern corporate limits	*528
			Just upstream of Natural Bridge Road	*532
			Just downstream of Northbound State Route 725 entrance ramp	*533
			Between entrance and exist ramps for northbound State Route 725	*539
			Just upstream of Northbound State Route 725 exit ramp	*546
			Approximately 1,060 feet upstream of footbridge at Ramona Drive	*547
	Maps available at the City Clerk's Office, City Hall, 8765 Natural Bridge, Bel-Ridge, Missouri.			
	Send comments to Mr. Robert Mahoney, Chairman, Village of Bel-Ridge, City Hall, 8765 Natural Bridge, Bel-Ridge, Missouri 63112.			
Missouri	(C) Moline Acres, St. Louis County.	Maline Creek	About 280 feet upstream of eastern cororate limit	*446
			About 90 feet upstream of the Lewis and Clark Boulevard	*448
			About 400 feet upstream of the Lewis and Clark Boulevard	*449
			About 500 feet upstream of the western corporate limit	*450
		Black Jack Creek	About 50 feet downstream of the southern corporate limit	*451
			Just downstream of Chambers Road	*461
	Maps available at the Moline Acres City Hall, 2454 Chambers Road, St. Louis, Missouri.			
	Send comments to Honorable Thomas Dowd, Mayor, City of Moline Acres, Moline Acres City Hall, 2454 Chambers Road, St. Louis, Missouri 63136.			
Missouri	(C) Monett, Barry County	Clear Creek	Mouth at Kelly Creek	*1,284
			About 60 feet downstream of U.S. Highway 60	*1,285
			At upstream corporate limits	*1,300
		Unnamed Tributary	About 100 feet upstream western corporate limits	*1,278
			About 250 feet upstream Melody Lane	*1,316
		Kelly Creek	At downstream corporate limits	*1,259
			About 200 feet downstream of Eisenhower Street	*1,266
			Just upstream Eisenhower Street	*1,278
			Just downstream of Saint Louis-San Francisco Railroad	*1,287
			About 150 feet downstream 4th Street	*1,293
			At upstream corporate limits	*1,314
	Maps available at City Hall, Monett, Missouri.			
	Send comments to Honorable Harold Harrel, Mayor, City of Monett, City Hall, Monett, Missouri 65708 to the attention of Mr. Lee Schalton.			
Missouri	(C) Mt. Vernon, Lawrence County.	Williams Creek	Downstream corporate limits	*1,156
			Just downstream Saint Louis-San Francisco railway	*1,162
			Just upstream Saint Louis-San Francisco Railway	*1,165
			Approximately 1,150 feet upstream County Highway Y	*1,170
		Unnamed Tributary	Downstream corporate limits	*1,211
			Just downstream State Highway 39	*1,219
			Approximately 75 feet upstream Landrum Street	*1,228
			Approximately 50 feet downstream State Highway 39	*1,232
			Approximately 50 feet upstream State Highway 39	*1,237
	Maps available at City Hall, Mount Vernon, Missouri.			
	Send comments to Honorable Neal Underwood, Mayor, City of Mount Vernon, City Hall, Mount Vernon, Missouri 65712.			

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Missouri	(C) Poplar Bluff, Butler County	Black River	Downstream corporate limits	*336
			About 0.6 mile upstream of corporate limits	*342
		Hill Creek	Just upstream of Missouri Pacific railroad	*340
			Just upstream of West Center Street	*340
		Hogg Creek	Confluence with Pike Creek	*339
			Just downstream Davis Street	*359
			Just upstream of Gray Street	*393
			Just upstream North 14th Street	*424
		Hogg Creek Tributary	Confluence with Hogg Creek	*349
			Just downstream of Highland road	*360
		Park Creek	Just downstream 5th Street	*338
			Just upstream 8th Street	*340
			Just upstream Oakwood Drive	*346
		Pike Creek	Downstream corporate limits (near intersection of Cardinal Lane and Orchid Lane).	*330
			Just downstream Fair Street	*332
			Just upstream Missouri Pacific railroad	*335
			Just downstream Roxie Road	*340
			About 350 feet upstream confluence of North Branch Pike Creek	*348
			Just downstream of Maud Street	*342
			About 2,000 feet upstream County Highway PP	*361
			About 350 feet downstream U.S. Highways 60 and 67	*385
		North Branch Pike Creek	Confluence with Pike Creek	*348
			Just upstream Crestwood Drive	*395
			Just upstream Oakgrove Road	*427

Maps available at the Building Inspector's Office, City Hall, 309 S. Broadway, Poplar Bluff, Missouri.

Send comments to Honorable William t. Foster, Mayor, City of Poplar Bluff, City Hall, 309 S. Broadway, Poplar Bluff, Missouri 63901.

Missouri	(C) West Plains, Howell County	Howell Creek	At corporate limits	*947
			Just downstream of Howell Street	*954
			Just upstream of Howell Street	*957
			About 70 feet upstream of Saint Louis Street	*963
		South Fork, Howell Creek	Confluence with Howell Creek	*964
			Just upstream of Missouri Avenue	*968
			Just upstream of 4th Street	*971
			Just upstream of 6th Street	*975
			Just upstream U.S. Business Highway 63	*988
			Just downstream of County Highway CC	*997
			Just upstream of County Highway CC	*999
			Just downstream of a private drive	*1,000
			Just downstream of U.S. Bypass Highway 63	*1,003
			Just upstream of U.S. Bypass Highway 63	*1,011
			At corporate limits	*1,018
		Burton Branch	At mouth	*982
			Just downstream of Business Highway 63	*985
			Just upstream of Business Highway 63	*989
			Just upstream of 5th Street	*993
			At upstream corporate limits	*1,004
		North Fork, Howell Creek	Confluence with Howell Creek	*964
			Just downstream of Thornburg Street	*968
			Just downstream of private drive	*974
			Just downstream of Saint Louis-San Francisco Railway	*978
			Just upstream of Saint Louis-San Francisco Railway	*981
			Approximately 2,300 feet downstream of U.S. Business Highway 63	*987
			Business Highway 63	*995
			Approximately 1,350 feet downstream of corporate limits	*1,002
			Corporate limits	*1,009
		Mustion Creek	Approximately 230 feet downstream from corporate limits	*996
			Approximately 550 feet above upstream corporate limits	*1,007

Maps available at City Engineer's Office, City Hall, 401 Jefferson, West Plains, Missouri.

Send comments to Honorable W. G. Roe, Mayor, City of West Plains, City Hall, 401 Jefferson, West Plains, Missouri 65775.

Nebraska	(C) Hastings, Adams County	Pawnee Creek	Downstream extraterritorial limits (about 900 feet downstream of County Road 24).	*1,886
			About 750 feet upstream of County Road 137	*1,895
			Just upstream of U.S. Highway 281	*1,902
			Just downstream of County Road 33	*1,909
			Just upstream of Burlington Northern Railroad	*1,912
			Just downstream of U.S. Highway 6	*1,922
			Just downstream of Burlington Northern Railroad (near County Road 8-74).	*1,932
			Just upstream of County Road 8-74	*1,939
			About 1.1 miles upstream of County Road 10-4W	*1,950
		West Fork, Big Blue River	About 2200 feet downstream of County Road 9-3W	*1,873
			Just upstream of County Road 241	*1,882
			About 300 feet downstream of County Road 214	*1,886
			Just upstream of County Road 214	*1,891
			About 400 feet downstream of U.S. Highway 281	*1,902
			About 500 feet upstream of U.S. Highway 281	*1,910
			Just downstream of County Road 135	*1,910
			Just upstream of County Road 135	*1,915
			Upstream extraterritorial limits (about 1.6 miles upstream of County Road 135).	*1,922

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		North Branch, West Fork, Big Blue River.	Mouth at West Fork Big Blue River	*1,882
			About 3600 feet upstream of County Road 241	*1,886
		Lake Heartwell Tributary	Mouth at West Fork Big Blue River	*1,883
			Just downstream of Elm Street	*1,900
			Just upstream of Elm Street	*1,905
			Just downstream of East Side Boulevard	*1,908
		South Branch, West Fork, Big Blue River.	Mouth at West Fork Big Blue River	*1,891
			Just downstream of Lake Hastings Dam	*1,903
			Just upstream of Lake Hastings Dam	*1,909
			Just downstream of North Shore Drive	*1,912
			Just downstream of Union Pacific Railroad (railroad is about 100 feet upstream of North Shore Drive).	*1,916
			Just downstream of County Road 33	*1,929

Maps available at the City Hall, P.O. Box 1085, Hasting, Nebraska.

Send comments to Honorable Robert M. Allen, Mayor, City of Hastings, City Hall, P.O. Box 1085, Hastings, Nebraska 68901.

Nebraska	(Uninc.) Washington County	Missouri River	Southeast county boundary	*995
			About 2000 feet upstream of the divergence with Boyer Chute	*998
			About 3.6 miles downstream of the City of Blair Extraterritorial Limits	*1,001
			About 2.0 miles downstream of the City of Blair Extraterritorial Limits	*1,003
			At the downstream City of Blair Extraterritorial Limits	*1,006
			Just upstream of the upstream City of Blair Extraterritorial Limits	*1,011
			About 2.1 miles upstream City of Blair Extraterritorial Limits	*1,013
			About 4.15 miles upstream City of Blair Extraterritorial Limits	*1,015
			Northeast county boundary	*1,018
		Elkhorn River	Downstream county boundary	*1,146
			About 3.20 miles downstream U.S. Highway 30	*1,155
			About 7900 feet upstream U.S. Highway 30	*1,167
			About 2.20 miles upstream U.S. Highway 30	*1,168
			About 4.9 miles downstream State Highway 91	*1,180
			About 3.9 miles downstream State Highway 91	*1,181
			About 3.4 miles downstream State Highway 91	*1,185
			Just downstream State Highway 91	*1,193

Maps available at the County Clerk's Office, Washington County Courthouse, Blair, Nebraska.

Send comments to Mr. Jack Jensen, Chairman of the County Board of Supervisors, Washington County, Washington County Courthouse, Blair, Nebraska 68008.

National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963.)

Issued: April 28, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-14454 Filed 5-12-80; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of the Status of Nine Antioch, California, Insect Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Status Review.

SUMMARY: The Service will review the status of the Middlekauff's katydid (*Idiostatus middlekauffi*), the Antioch weevil (*Dysticheus rotundicollis*), the Antioch robber fly (*Cophura hurdi*), the Valley mydas fly (*Raphiomydas trochilus*), the Antioch vespid wasp (*Leptochilus arenicolus*), the Antioch tiphiid wasp (*Myrmosa pacifica*), the Antioch sphecid wasp (*Philanthus nasalis*), the Antioch andrenid bee (*Perdita scitula antiochensis*), and the yellow-banded andrenid bee (*Perdita hirticeps luteocincta*). Information in the Office of Endangered Species files provides sufficient data to warrant this review. Information concerning the status of this species is solicited.

DATES: Information regarding the status of this species should be submitted by September 1, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2771).

ADDRESS: Information should be sent to the Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION:

Background

One insect species and two plant species from the Antioch Dunes, Contra Costa County, California, were previously added to the U.S. Fish and Wildlife Service's Lists of Endangered and Threatened Wildlife and Plants. On June 1, 1976 (41 FR 22041–22044) the Service determined that Lange's metalmark butterfly (*Apodemia mormo langei*) was an Endangered species, and on April 26, 1978 (43 FR 17910–17916) the Antioch dunes evening-primrose (*Oenothera deltoides* sep. *howelli*) and the Contra Costa wallflower (*Erysimum capitatum* var. *augustatum*) were determined to be Endangered species. On August 31, 1978 (43 FR 39042–39044) the Service determined Critical Habitat for the Antioch Dunes evening-primrose and the Contra Costa wallflower.

Information in the files of the Office of Endangered Species indicates that a review of the status of nine additional Antioch Dunes insect species is warranted. Section 4(a) of the Endangered Species Act of 1973, as amended states that the Secretary may determine a species to be Endangered or Threatened because of any of the following factors:

1. The present or threatened destruction, modification, or curtailment of its habitat or range;
2. Overutilization for commercial, sporting, scientific, or educational purposes;
3. Disease or predation;
4. The inadequacy of existing regulatory mechanisms; or
5. Other natural or man-made factors affecting its continued existence.

This authority has been delegated to the Director, Fish and Wildlife Service.

The service has determined that, with respect to Middlekauff's katydid, the Antioch weevil, the Antioch robber fly, the Valley mydas fly, the Antioch vespid wasp, the Antioch tiphiid wasp, the Antioch sphecid wasp, the Antioch andrenid bee, and yellow-banded andrenid bee, that substantial evidence exists indicating that these species may be Endangered or Threatened because of factors 1 and 4.

The Antioch Dunes ecosystem has been almost completely destroyed by industrialization. This area supports, or formerly supported, the nine insect species which are the subject of this status review. The Antioch robber fly and vespid wasp are last known to have been collected in 1939; the Antioch weevil, tiphiid wasp, and sphecid wasp in the 1950's; the Middlekauff's katydid in 1965; the Valley mydas fly in 1974; and the Antioch and yellow-banded andrenid bees in 1977. Two species of insects found only at the Antioch Dunes are believed to be already extinct. The Antioch katydid (*Neduba extincta*) is known from a single specimen collected in 1937. Subsequent searches have not yielded other specimens. Despite search, no specimens of the Antioch anthicid beetle (*Anthicus antiochensis*) have been obtained from Antioch since 1953.

Critical Habitat already determined for the Antioch Dunes evening-primrose and the Contra Costa wallflower includes the remnant areas of the Antioch Dunes, the only known remaining habitat for the endemic Antioch insects. The Valley mydas fly formerly occurred elsewhere in the California Central Valley, but was last collected at the Antioch Dunes. The other eight species of this status review are known only from the Antioch Dunes.

Adding these species to the U.S. List of Endangered and Threatened Wildlife would afford them the protection of the Endangered Species Act of 1973, as amended. This would include consideration of their needs in formulating and carrying our recovery plans for Antioch Dunes wildlife and plants.

The Service is seeking the views of the Governor of California, and is soliciting from him information on the status of Middlekauff's katydid, the Antioch weevil, the Antioch robber fly, the Valley mydas fly, the Antioch vespid wasp, the Antioch tiphiid wasp, the Antioch sphecid wasp, the Antioch andrenid bee, and the yellow-banded andrenid bee. Other interested parties are invited to submit any factual information, especially publications and written reports, which is germane to this status review. The information received in response to this notice of review will be used to determine if these species should be proposed for addition to the List of U.S. Endangered and Threatened Wildlife.

This notice of review was prepared by Dr. Michael M. Bentzien, Office of Endangered Species (703/235–1975).

Dated: April 28, 1980.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 80–14678 Filed 5–12–80; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of the Status of the Orangefin Madtom (Noturaus gilberti) and the Roanoke Logperch (Percina rex)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of status review.

SUMMARY: The Service is reviewing the status of the orangefin madtom (*Noturus gilberti*) and the Roanoke logperch (*Percina rex*) to determine if these species should be proposed as endangered or threatened species and if and where critical habitat should be designated. This review is being taken because of indications that populations of the orangefin madtom and Roanoke logperch are decreasing and adverse modification of their habitat is ocurring. These species are known to occur in North Carolina and Virginia. The Service welcomes additional data on the status of these fishes and their habitat.

DATES: Information regarding the status of these species should be submitted on or before August 11, 1980.

ADDRESSES: Comments and data submitted in review should be sent to the Regional Director, U.S. Fish and Wildlife Service, Department of Interior, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158. Comments and materials relative to this notice are available for public inspection during normal business hours at the Service's Regional office at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Biggins or Mr. Roger Hogan at U.S. Fish and Wildlife Service, Department of Interior, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158, (telephone number 617/965–5100).

SUPPLEMENTARY INFORMATION:

Background

The Service published a notice of review on the orangefin madtom (*Noturus gilberti*) and the Roanoke logperch (*Percina rex*) in the **Federal Register** of March 18, 1975, (40 FR 12297–8). The republication of a notice of review at this time is felt necessary to solicit any information on these species that has been gathered since the original notice of review. The Service is also seeking to gather from Federal agencies, State and local governments, the scientific community, and the public, economic or other relevant information concerning areas that may be affected by designating critical habitat for these species.

Section 4(a) of the Endangered Species Act of 1973, as amended, states that the Secretary may determine a species to be endangered or threatened because of any of the following factors:

1. The present or threatened destruction, modification, or curtailment of its habitat or range;
2. Overutilization for commerical, sporting, scientific, or educational purposes;
3. Disease or predation;
4. The inadequacy of existing regulatory mechanisms; or
5. Other natural or man-made factors affecting its continued existence.

This authority has been delegated to the Director, Fish and Wildlife Service.

Orangefin Madtom

The orangefin madtom (*Noturus gilberti*) is presently believed to be restricted to the upper portion of the Roanoke River system in Virginia and North Carolina and the Craig Creek system in the James River watershed in Virginia. The range of the orangefin has been reduced by impoundments, turbidity, sedimentation, sewage, and chemical pollutants. These factors continue to threaten this species especially in the rapidly developing Roanoke-Salem Metropolitan Area.

In response to the March 18, 1975, notice of review, Virginia recommended threatened status for the orangefin in their state. North Carolina indicated that the fish was peripheral in their state and was known only from the Dan River near the Virginia-North Carolina border. The American Fisheries Societies' Endangered Species Committee listed the orangefin as threatened in a publication by J. E. Deacon et al., entitled "Fishes of North America Endangered, Threatened, or of Special Concern: 1979."

If the orangefin madtom is proposed for listing, critical habitat for this species likely will be proposed. The exact river miles which will be proposed have not as yet been ascertained. However, areas within the following river systems will be evaluated for critical habitat status.

North Carolina

Stokes County: The main channel of the Dan River from the North Carolina-Carolina-Virginia State line downstream to the town of Danbury.

Virginia

Patrick County: The main channel of the Dan River from the Virginia-North Carolina State line upstream to the town of Kibler.

Craig and Botetourt Counties: The main channel of Craig Creek from the town of Abbot (Craig Co.) downstream to the junction of Craig Creek and the James River (Botetourt Co.).

Montgomery and Roanoke Counties: The main channel of the Roanoke River from the junction of Mason Creek (Roanoke Co.) upstream to the junction of the North and South Forks of the Roanoke (Montgomery Co.). The main channel of the North Fork Roanoke River from its junction with the South Fork Roanoke upstream to the town of Ironto, Montgomery County. The main channel of the South Fork Roanoke from its junction with the North Fork upstream to the junction of Bottom Creek. The main channel of Bottom Creek, Montgomery County, from its junction with the South Fork Roanoke River upstream to the Mongomery-Roanoke County line. The main channel of Elliott Creek, Montgomery County, from its junction with the South Fork Roanoke River upstream to the town of Sugar Grove.

Roanoke logperch

The Roanoke logperch (*Percina rex*) is known to occur in four small and widely separate populations in the Virginia section of the Roanoke River system. The largest population of the logperch inhabits the upper Roanoke River mainstream from the Roanoke-Salem area and upstream beyond the forks of the Roanoke River in Roanoke and Mongomery Counties, Virginia. Three other restricted logperch populations exist in Stony Creek, a tributary of the Notaway River is Sussex County, Virginia; near Rocky Mount, Franklin County, Virginia in the Pigg River system; and in Town Creek, a tributary of the Dan River system in Henry County, Virginia.

The Roanoke logperch is threatened by pollution and stream alteration. The populations in the upper Roanoke River are subject to industrial pollution, accidental chemical spills, and increases in toxic urban run-off resulting from suburban expansions.

Virginia indicated in response to the March 18, 1975, notice of review that the logperch was threatened. They also pointed out that the species was vulnerable to a single catastrophic environmental event due to its restricted distribution. The American Fisheries Societies' Endangered Species Committee listed the Roanoke logperch as threatened in a publication by J. E. Deacon et al., entitled "Fishes of North America Endandered, Threatened, or of Special Concern: 1979."

If the logperch is proposed for listing, critical habitat for the species likely will be proposed. The exact river miles which will be proposed have not as yet been ascertained. However, areas within the following river system will be evaluated for critical habitat status.

Virginia

Montgomery and Roanoke Counties: The main channel Roanoke River from the junction of Tinker Creek (Roanoke Co.) upstream to the junction of the North and South Forks of Roanoke River (Montgomery Co.). The Main channel of Mason Creek from its junction with Roanoke River upstream to Interstate Highway 81 (Roanoke Co.). The main channel of the North Fork Roanoke River from its junction with South Fork Roanoke upstream to a secondary highway 603 crossing west of Ellet (Montgomery Co.).

Public Comments Solicited

The Service is seeking comments from the Governors of North Carolina and Virginia on these species and their possible critical habitat. With this notice of status review the Service is also inviting and requesting anyone who may have information on these species to contact the Regional Director, at the above address. The Service has particular interest in receiving comments on the following:

1. Biological, commercial, or other relevant data concerning any threat (or the lack therof) to the species included in this review;

2. The location of and the reasons why any habitat of these species should or should not be determined to be critical habitat as provided for by sections 4 and 7 of the Act;

3. Additional information concerning the range and distribution of these species.

4. Current or planned activities in the subject areas;

5. The probable impacts on such activities if the area is designated as critical habitat; and

6. The foreseeable economic and other impacts of listing this species, including any critical habitat designation on Federally funded or authorized projects.

The Service will analyze all data that it now has, as well as any data that is obtained as a result of this review, and will take appropriate action concerning listing for the species.

This Notice of Status Review was prepared by Richard Biggins, U.S. Fish and Wildlife Service, Regional Office, Suite 700, Newton Corner, Massachusetts 02158, telephone (617/965-5100, ext. 316).

Dated: April 28, 1980.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 80-14677 Filed 5-12-80; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 45, No. 94
Tuesday, May 13, 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.

DEPARTMENT OF AGRICULTURE

Forest Service

Commercial Recreation Special Uses; Policy on Pricing

AGENCY: Forest Service, USDA.

ACTION: Notice of policy on pricing by recreation enterprises.

SUMMARY: Forest Service policy has been modified in the area of review of prices charged the public by private businesses offering recreational services on the National Forests. Prices must be reasonable; reasonableness will be judged by comparison with other similar operations. Dates: The policy has been issued, but will expire within one year. Questions and comments for consideration in future modifications or revisions may be submitted at any time.

ADDRESSES: Send comments to: Chief R. Max Peterson, Forest Service, Department of Agriculture, P.O. Box 2417, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: John Shilling, Forest Service, Recreation Management; Department of Agriculture, P.O. Box 2417, Washington, D.C. 20013, (202) 447–2311.

SUPPLEMENTARY INFORMATION: In modifying the policy for controlling prices charged by permittees, the Forest Service considered the enabling legislation, (Act of March 4, 1915), Code of Federal Regulation (36 CFR 251.1 (b)(5)) and the agreement with the permittees (Special Use Permit).

Comments on a draft of the modification were received from: Skiflation, Inc., of Sun Valley, Idaho; National Ski Areas Association; American Ski Federation; National Forest Recreation Association; and the Far West Association. Comments received were considered in developing the modification.

The policy as issued in FSM 2721 is set forth below:

2721 Recreation Special Uses

2721.01 Authority

Title 36 CFR 251.1 (b)(5) directs that permitted commercial public service enterprises charge reasonable rates. Stipulations included in commercial public service special use permits provide (1) permittee may be required to furnish the Forest Service a schedule of prices, (2) prices may be regulated by the Forest Service, (3) permittee shall not be required to charge prices lower than those charged by comparable or competing enterprises.

2721.02 Objective

1. Allow permittees to establish prices for key services which are comparable with similar enterprises.

2. Prevent pricing practices which either restrict or favor, by economic criteria, certain members of the public in benefiting from the services and opportunities provided.

2721.03 Policy

1. Permittees may charge fair market value for services provided on National Forest System lands.

2. Prices charged to the public will be reasonable.

3. Prices will be considered to be reasonable if the prices charged and values received are similar in quantity and quality to those provided by comparable enterprises. Emphasis should be on quality of experience and services. A comparable enterprise is a firm in the same distinct line of business; not located on National Forest System land; and providing same or similar service and opportunities. In rare instances, comparisons can be made with enterprises on the National Forest System.

In support of their pricing, permittees must document the comparability of their prices, facilities, and services with other resorts in the United States. Canadian ski areas may be used where appropriate. Similarity of operation is more important than proximity. Permittees may use as examples resorts that are outside the region or influence of the Forest Service administrative jurisdiction involved.

Large and small resorts can be compared if the experiences provided are judged to be similar since many large areas are, in fact, an aggregation of smaller units.

Documentation by the permittee must demonstrate relationships between quantity and quality and prices of the permittee's operation and those businesses being used for comparison.

The character, appearance, atmosphere, types of experience and standards of construction and maintenance of the resort enterprise are indicators of quality.

Vertical transport feet, skiable acres, food service seats, rest room facilities, docks and parking space denote quantity.

Variety and number of runs, time spent in lift lines, snow grooming, and skier density, are factors which combine quantity and quality of experience.

4. Earnings, investment, return on investment, profits, losses or costs, will not be used as a test of reasonableness.

Profit equals sales minus costs; therefore, cost cannot be considered because to do so would be addressing profit. As we cannot limit losses, we do not limit profits.

5. The Forest Supervisor may approve prices which are equal to or less than the National Consumer Price Index for All Urban Consumers (CPI–U) for the 12 months preceding the submission of the requested increases. Prices will not be allowed to automatically rise with the CPI–U. Requests for higher increases are to be sent to the Regional Office for further analysis and coordination prior to approval by the Forest Supervisor.

6. Permittees will be asked to use restraint and participate in the Administration's voluntary anti-inflation programs. The Forest Service will not mandate price controls nor use percentage increases as indicators of reasonableness. This could adversely and automatically link future prices to a measurement of past inflation.

2721.04 Responsibility

1. Permittees shall annually submit key prices with documentation described above to the Forest Supervisor. While all prices are subject to monitoring, emphasis will be directed toward those key items which contribute the majority of revenue to individual permittees. Key items are: All-day all-lifts adult ski ticket at ski resorts; boat mooring, launching and rental at marina resorts; and room and cabin rental at lodging type resorts. In addition, prices for other services and goods may be monitored if the Forest

Supervisor determines there is a public need to do so.

2. Forest Supervisors are to judge if proposed prices are reasonable. To meet this responsibility, they must become knowledgeable of comparable enterprises. Forest Supervisors are to review documentation of comparability made by permittees and to accept or reject the conclusions. The Forest Supervisor must decide to what extent and with respect to what properties are the operations alike and to what extent and in what respect they differ. Regional Foresters and the Office of the Chief may assist with comparisons as needed.

If the Forest Supervisor rejects the permittee's request for rate changes he must inform the permittee and state the reason. The permittee will be given opportunity to correct deficiencies or select and document new information.

For referred cases, RO Staff may analyze the long-term trend of the permittee's prices. A permittee may have used restraint in increasing prices in prior years but now requests substantial increases. The cumulative increase may be justified in light of prices charged in prior years, provided the new prices are comparable to similar enterprises.

4. Forest Supervisors are to be alert to and prohibit restrictive pricing proposals such as membership fees, initiation fees or other schemes which lead to exclusive or semi-exclusive club type businesses, and thus restrict the general public from procuring and benefiting from the services and opportunities provided. Discounting is a commonly accepted practice and, as a normal marketing technique, will not be regulated if the discounts are equally available to all. Approved exceptions are discounts to older citizens, handicapped and local children participating in a school supervised program.

R. Max Peterson,

Chief.

[FR Doc. 80-14621 Filed 5-12-80; 8:45 am]

BILLING CODE 3410-11-M

Helena National Forest Plan (Montana); Intent To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, will prepare an Environmental Impact Statement for the Forest land and resource management plan for the Helena National Forest. The management plan will encompass the entire Forest of 972,408 acres.

Preparation of the plan will follow direction outlined in the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, and the Secretary's Regulations of September 17, 1979.

The resulting Forest Plan will provide for multiple use and sustained yield of products and service from the Helena National Forest. The Plan will guide all natural resource management activities and establish management standards and guidelines. It will determine resource management practices, harvesting levels and procedures under the principles of multiple use and sustained yield, and the availability and suitability of lands for resource management.

The Forest Plan will be selected from a range of alternatives which will include at least:

a. A no action alternative which represents the most likely conditions expected to exist in the future if current management direction would continue unchanged.

b. Alternatives that display possible outputs of resources available at each of several expenditure levels; and

c. Alternatives designed to resolve the identified major public issues and management concerns.

Public participation will be an integral part of the planning process. "Scoping" meetings to identify issues were held early in the process. Times and places for these meetings were announced by notices in area newspapers, news releases to news media, and notices mailed to other agencies, organizations, and individuals known to have interest in management of the Helena National Forest.

Public meetings were held in Lincoln, Helena, and Townsend, Montana during March 1980, to identify issues and concerns to be addressed by the Forest Plan.

The Forest planning steps include identifying issues and management concerns; development of planning and decisionmaking criteria; collecting and storing needed information; analyzing the existing Forest management situation; formulating alternatives; estimating the effects of each alternative; evaluating and selecting the preferred alternative; and implementing the Plan.

Tom Coston, Regional Forester, is the responsible official for the Forest Plan. A Draft Environmental Impact Statement is schedule to be issued in mid-1981, and the Final Envionmental Impact Statement in the winter of 1981–1982. All documents related to the Forest Plan will be kept at the Helena Forest Supervisor's office, 301 South Park, Room 328, Federal Office Building, Helena, Montana 59601.

Questions or comments on the Notice of Intent or the Forest Plan should be sent to John C. Sherrod, Land Management Planner, Helena National Forest, 301 South Park, Room 328, Federal Office Building, Helena, Montana 59601 (Phone 406–449–5099).

James E. Reid,

Acting Regional Forester.

May 1, 1980.

[FR Doc. 80-14597 Filed 5-12-80; 8:45 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

[Docket No. 35361; Order 80-5-39]

Air Carrier Rules Governing Failure To Operate on Schedule or Failure To Carry

May 6, 1980.

Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 6th day of May 1980.

By Order 79–9–129, September 20, 1979, the Board ordered cancellation of Rule 380(H) in the domestic passenger rules tariffs, CAB No. 142 (now Rule 240(H) of CAB No. 352). In subsequent orders the Board postponed the effective date of the order, except insofar as it applied to airlines' withdrawal of all service in a market or at a point. Orders 79–11–23, November 1, 1979, and 80–3–10, March 3, 1980. The order is now scheduled to become effective May 7, 1980. (See 44 FR 55615, 44 FR 64477, 45 FR 14911)

United Air Lines has petitioned for reconsideration of Order 79–9–129, alleging that the Board's action contravenes the policy expressed by Congress in the Airline Deregulation Act of 1978 and that the procedures used were inadequate to meet the requirements of the Federal Aviation Act. In addition, the Air Transport Association has requested that the Board postpone the effective date of Order 79–9–129 for a third time. ATA seeks an indefinite stay of effectiveness of the order pending completion of the Board's rulemaking proceeding on revision of Board-prescribed airline counter signs and ticket notices (Docket 38021, EDR–396, 45 FR 25817, April 16, 1980). For the reasons in this order, we have decided to deny both of these petitions. As explained below, however, we will grant a very brief additional stay of Order 79–9–129 to permit airlines to take action in response to this order.

Background

The Board opened this proceeding by issuing an order to show cause why Rule 240(H) should not be cancelled on the grounds that it is unjust and unlawful. Order 79–4–115, April 19, 1979. Rule 240 describes the actions carriers will take on behalf of passengers in situations involving schedule changes, flight cancellations, or flight delays. Rule 240(H) exculpates the airlines from any liability to passengers greater than that stated in the rest of Rule 240, whether or not the passenger is notified of the schedule change.

In Order 79–9–129, we tentatively concluded that it is unreasonable for carriers to use the tariff system to relieve themselves of responsibility to provide any notice to passengers of flight cancellations, including even those planned in advance. We also questioned the reasonableness of a tariff rule that apparently provides no rebooking protection for passengers when carriers withdraw all service from a market, regardles of whether and when the passenger is notified of the withdrawal. The Board invited interested parties to file written objections, including any supporting facts or data, and instructed parties requesting an oral evidentiary hearing to explain the need for such a hearing and the reasons why the evidence to be developed in such a hearing could not otherwise be presented.

After reviewing the written responses to the show cause order, the Board made it tentative conclusions final in Order 79–9–129. We reiterated our belief that the broad exculpatory clause presented a greater potential hazard to passengers in the increasingly flexible and competitive environment in which the airline industry is operating today. The Board rejected carrier arguments that the fact that the overbroad discretion afforded by the rule was seldom abused by the carriers made the rule itself reasonable. In the Board's view, airlines should not be able to use a tariff rule to immunize themselves from liability even for the consequences of negligent or intentional torts, regardless of how infrequently such incidents occur.

The Board also rejected the contention of several carriers that it must hold an adjudicatory, on-the-record hearing before ordering cancellation of Rule 240(H). We noted that many statutorily-required "hearings" need not be trial-type hearings. Instead, we observed, the courts have frequently upheld the sufficiency of notice and comment procedures like those used here in instances when administrative agencies are engaged in essentially legislative functions such as prospective ratemaking.

The Board offered carriers two options in replacing Rule 240(H). We expressed our preference for an approach under which carriers would limit their liability for schedule changes and irregularities by direct contract with their passengers, subject to court review under common law principles, without availing themselves of the extra protection of the tariff system. We stated, however, that carriers could file new, independently determined tariff provisions in place of Rule 240(H), subject to the Board's review of their substantive reasonableness.

At the request of individual carriers and of the ATA, the Board subsequently granted two stays of the effectiveness of Order 79–9–129. The carriers professed interest in following the Board's invitation to deal with schedule delay liability through direct contractual provisions. They asserted, however, that time would be needed to resolve problems with the interline ticketing system, and to discuss intercarrier methods for notifying passengers that individual carriers' liability for schedule changes and delays may vary.

United's Petition

In its petition for reconsideration, United has raised two major objections to the Board's action. First, United alleges that Order 79–9–129 contravenes the statutory policy embodied in the Airline Deregulation Act because it would effectively require deregulation of certain aspects of the airline industry earlier than the timetable set by Congress in the Deregulations Act. United states that the Act calls for the phasing out of the Board-regulated tariff system in 1983, and that Congress has given airlines until that date to develop alternative methods of establishing airline-passenger relationships and to renegotiate affected interline agreements and practices. For the Board to order cancellation of an individual tariff rule before that date, according to United, is a "circumvention of the legislative process." United contends that the Board cannot justify such "an abrupt and fundamental departure" from the transition schedule mandated by Congress on the basis of the record in this proceeding.

United has misinterpreted the nature and impact of the Board's action. The basic question at issue in this proceeding was the reasonableness of a single tariff rule, not the future of the tariff system. The Board found that Rule 240(H) was unjust and unlawful because that particular rule, on its face, would permit carriers to deny liability even for negligent or intentional torts related to schedule changes or irregularities and because it absolves carriers from responsibility to provide any notice to passengers of schedule changes or flight cancellations, regardless of the circumstances. Such a finding is clearly within the Board's authority under section 1002(d) of the Federal Aviation Act, and this authority continues unchanged by the Deregulation Act until 1983.

In its order, the Board did encourage carriers to consider developing a direct contract method of dealing with this issue rather than filing substitute tariff rules. We believe such an approach would provide valuable experience to both carriers and passengers in preparing for the elimination of the Board's tariff authority. We are aware, however, that the legal and practical ramifications of contracting directly with passengers may be complex for an industry accustomed to extensive regulation. Accordingly, we explicitly authorized airlines to file substitute tariff provisions if they chose to. Rather than departing from the timetable of the Deregualtion Act, we believe our order, by providing these options is a particularly apt exercise of our responsibility ot facilitate the transition to deregulation.

United's second objection concerns the Board's procedures. According to United, the Board has ordered cancellation of Rule 240(H) without the "notice and hearing" required by section 1002(d)of the Federal Aviation Act because it has not held a trial-type oral evidentiary hearing. United argues that such a hearing is required by law, regardless of whether objecting parties have raised any relevant disputed factual issues that might be explored. It further contends that his proceeding is essentially an adjudicatory one because if "affects the substantive interests of a carrier." Finally, United asserts that the Board must hold a trial-type evidentiary hearing in order to develop a lawful substitute tariff rule for Rule 240(H) and in order to make findings of fact sufficient to support its decision.

The Board considered and rejected these arguments in Order 79–9–129. Nothing in United's petition leads us to conclude that our original decision was incorrect. As we noted in that order, and more recently in Order 79–12–98, December 17, 1979, Section 1002(d) of the Act requires "notice and hearing," but it does not specify an "on-the-record" or trial-type oral evidentiary hearing. We believe that the notice and hearing provided by issuance of a show

cause order and consideration of written objections are fully adequate to meet the requirements of the statute. The cases cited by United, *Delta Air Lines, Inc. v. CAB*, 543 F.2d 247 (D.C. Cir. 1976), and *Moss v. CAB*, 430 F.2d 891 (D.C. Cir. 1970), did not reach this issue. *Delta* concerned the limits of the Board's authority to reject tariff rules summarily under Section 403(a) of the Act, a power the Board has not attempted to exercise here. In *Moss*, the Board issued an order suspending certain tariffs. Though the Board's suspension power can be used only temporarily, pending an investigation into the lawfulness of the affected tariffs, the Board used its suspension order to describe precisely the terms of alternate tariffs the Board would permit to become effective if filed, without ever finding the existing tariffs unlawful or affording any form of public hearing on their lawfulness. Neither of these cases concerned the adequacy of notice and comment procedures actually provided to satisfy the "hearing" requirement of Section 1002(d).

As we noted in Order 79–9–129, in this proceeding the Board is examining a general industry practice to determine its lawfulness as a prospective policy matter, rather than examining the legality of past behavior of a particular carrier. We believe the law is clear that in this situation a legislative-type notice and comment proceeding provides a legally adequate hearing, even though the practice in question is contained in carrier tariffs. See *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council*, 435 U.S. 519 (1978); *United States v. Florida East Coast Railway Co.*, 410 U.S. 224 (1973); *Rocky Mountain Motor Tariff Bureau, Inc. v. ICC*, 590 F.2d 865, 868–69 (10th Cir. 1979); *Central & Southern Motor Freight Tariff Ass'n. v. ICC*, 582 F.2d 113, 118–21 (1st Cir. 1978); *RCA Global Communications, Inc. v. FCC*, 559 F.2d 881 (2d (Cir. 1977); *Phillips Petroleum Co. v. FPC*, 475 F.2d 842, 848–50 (10th Cir. 1973), *cert. denied*, 414 U.S. 1146 (1974). The choice of procedures lies primarily in the discretion of the agency. See *National Labor Relations Board v. Bell Aerospace Co.*, 416 U.S. 267 (1974); *Securities and Exchange Commission v. Chenery Corp.*, 332 U.S. 194 (1947).

United's contention that this proceeding is adjudicatory because it affects carriers' substantive interests is not persuasive. Virtually any substantive rulemaking prospectively applicable to a regulated industry will affect "substantive interests" of the industry in some way, yet these regulatory actions are not considered adjudicatory. Indeed, *American Airlines v. C.A.B.*, 359 F.2d 624 (D.C. Cir. 1966), cited by plaintiffs in support of their position, actually leads to the opposite conclusion. There, the court upheld a Board policy statement, developed on the basis of notice and comment procedures, that decreed that only all cargo carriers could provide "blocked space service." The court dismissed the petitioners' argument that the proceeding was adjudicatory, observing that the Board's action was general in scope and prospective in operation, and concluding that the mere fact that existing licenses would be affected did not make general rulemaking impermissible. *Continental Air Lines, Inc. v. CAB*, 522 F.2d 107 (D.C. Cir. 1975), also cited by United, concerned the question of when an agency action involving future policy is sufficiently final, and sufficiently affects carrier interests, to be ripe for review. The adjudicatory or legislative nature of the proceeding at the Board level, and the adequacy of Board procedures, were not at issue.

We believe United's additional points concerning the need for an adjudicatory hearing so that the Board can determine a lawful substitute tariff rule and make findings of fact adequate to support its decision here have been adequately answered in our original order. It is not speculation or conjecture to state that Rule 240(H) on its face permits airlines to deny liability to passengers in situations where it would be patently unreasonably for them to do so, including even those involving intentional torts. Accordingly, we have decided to deny United's petition for reconsideration.

In addition, United's petition sought a stay of the Board's order for at least a year. We believe our actions with respect to the other petitions for stay filed in this docket are dispositive of United's request.

ATA's Petition

ATA has asked us to postpone the effective date of Order 79–9–129 until completion of the Board's rulemaking proceeding on Board-prescribed counter signs and ticket notices, EDR–396. ATA asserts that, in response to the Board's request that carriers develop non-tariff means of limiting their liability for flight cancellations, and schedule irregularities, several carriers have been looking for solutions to the problem of preserving the benefits of the standard industry interline ticket while asserting individually developed, differing liability limitations. These carriers have now agreed on the outlines of a solution in which they will develop a mechanism for publishing and distributing individual carrier "rules of carriage," to be incorporated into the ticket contract by reference, and will agree on a standard ticket notice to alert passengers to the existence of the "rules of carriage". This solution, according to ATA, will be adaptable to the problems carriers will face when Board-approved tariffs are eliminated in 1983.

ATA contends, however, that the carriers face substantial practical problems in implementing this plan, since it would require including a new notice on the standard industry ticket stock. The ATC interline ticket, ATA asserts, is already filled with required notices and contractual provisions. In addition, since the Board proposes in EDR–396 to change the text of the notices it requires carriers to include on their tickets, it would be wasteful for the carriers to have to revise their ticket stock once for purposes of Rule 240(H) and again to comply with the final rules adopted in EDR–396. Postponement of the effective date of Order 79–9–129, according to ATA, would avoid the need for inflationary and inefficient stop-gap industry measures to deal with the Rule 240(H) problem. ATA believes that the Board's primary goal in canceling Rule 240(H) has already been achieved by the Board's decision not to postpone the effectiveness of the rule insofar as it applies to withdrawals of service from a market or at a point.

We do not agree that the only purpose of Order 79–9–129 was to deal with the problem of market withdrawals, and we do not believe indefinite delay in implementing the order is desirable. Nor are we persuaded that permitting Order 79–9–129 to become effective will lead to the adverse consequences predicted by ATA.

In the first place, carriers would not be totally unprotected without Rule 240(H) even if no interline system for incorporating individual liability limits into the ticket contract existed. The standard ticket already contains language to the effect that carriers do not guarantee their schedules, and Order 79–9–129 would not affect this language. In addition, carriers who believe it necessary could use additional techniques, such as notices on ticket envelopes, oral notice, counter signs, or notices in advertisements to provide more specific information on their liability limits. While interline ticketing may present some danger that one carrier would be harmed by the inadequacy of another's notification measures, we have seen no evidence that this problem is likely to be major in scope, particularly in view of the

existing standard ticket language. For example, we have not been made aware of any problems in this respect concerning market withdrawals, though Order 79–9–129 has been effective with respect to withdrawals since November 1979. And carrier efforts to find a long-term solution to the problem of airline-passenger contracts could, of course, continue.

Moreover, a carrier decision to change the standard ticket stock in response to the cancellation of Rule 240(H) before additional changes are mandated by EDR–396 would not necessarily result in gross or wasteful expense to the carriers. The notices involved in EDR–396 are those the Board requires all carriers to give to passengers, concerning matters such as overbooking and baggage liability. They are generally on separate pages of the ticket from the carrier-written conditions of contract that the carriers might amend or expand to discuss "rules of carriage." The type of change envisioned by ATA, moreover, would affect, at most, one part of one page of the standard ticket. The printing plates for the rest of the ticket could remain unchanged. In addition, if the Board orders changes to standard ticket stock in its rulemaking proceeding, it will certainly make ample provision for the use of existing ticket stock supplies.

In any event, however, carriers who believe these approaches would be too costly or impractical retain the option of filing substitute tariff rules that limit their liability more narrowly than Rule 240(H). We would prefer that carriers file acceptable tariff limitations to govern their conduct pending development of a non-tariff system than that the Rule 240(H) problem remain unresolved for several months pending the outcome of a rulemaking to which it is only tangentially related. While the Board stated that carriers refiling tariffs would be expected to make some provision for direct notice to passengers of their liability limits, we did not specify the amount of notice required nor the method for providing it, and we see no reason why individual carriers cannot comply with this directive without undue effort or expense.

We have decided, therefore, not to grant the requested stay of effectiveness of Order 79–9–129. Since the carriers have now had over 7 months to prepare since the order was originally issued, we anticipate that they have ready some form of interim or permanent plans for dealing with their liability for schedule changes or irregularities. To give the carriers some time to implement these plans, we will postpone the effective date of Order 79–9–129 for an additional 15 days.

Accordingly: 1. The effective date of ordering paragraph 1 of Order 79–9–129, insofar as extended by ordering paragraph 1 of Order 79–11–23 and ordering paragraph 1 of Order 80–3–10, is extended for an additional 15 days (to May 22, 1980);

2. The petition for reconsideration of United Airlines and the petition for stay of the Air Transport Association are denied.

This order shall be served on all U.S. certificated carriers and shall be published in the **Federal Register.**

By the Civil Aeronautics Board.

Phyllis T. Kaylor,[1]

Secretary.

[FR Doc. 80–14671 Filed 5–12–80; 8:45 am]

BILLING CODE 6320–01–M

[Docket No. 36592; Agreement C.A.B. No. 1041, as amended; Order 80–5–49]

All American Aviation Inc. et al.; Order

May 7, 1980.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 7th day of May, 1980

All American Aviation Inc. *et al.*, [Agreement C.A.B. No. 1041, as amended); Petition of Air Freight Haulage Co., Inc.

Air Freight Haulage Co., Inc. (AFH), a marine and air freight forwarder based in New York with agents nationwide, has requested that the Board review its outstanding approval of Agreement C.A.B. No. 1041, as amended, under section 412 of the Federal Aviation Act, as amended. Agreement 1041, approved by the Board in Order E–1086, December 31, 1947, is an agreement among various air carriers providing for the establishment of Air Cargo, Inc. (ACI) to provide for its member carriers, directly [1] or by contract, pick-up and delivery services and ground terminal operations [2] in connection with the transportation of air cargo in the United States.[3] ACI is wholly owned by the domestic airlines which own varying amounts of its stock. ACI's role was limited by the terms of Order E–1086 to acting as agent for the airlines and any responsibility for or control over rates applicable to air transportation was specifically prohibited.[4] The Board reaffirmed its approval of Agreement 1041 on several occasions when amendments were filed for approval, most recently in 1975.[5]

The historic relationship between Air Freight Haulage and ACI is as follows. In 1958 a New York City service contract between Salvadore Cirami, d/b/a Air Freight Haulage Co., and ACI was signed and approved by the Board.[6] ACI had similar service contracts with two other local motor carriers, Mercury Air Freight and Breen Air Freight, for cartage service in New York City. In 1970, ACI entered into an agreement with Ryder Systems, Inc., in which a new subsidiary corporation, Ryd-Air, Inc.,[7] was formed to conduct pick-up and delivery services of air freight in New York City. In 1970, ACI terminated its contracts with Air Freight Haulage, Mercury, and Breen. In 1973, ACI terminated its contract with Ryd-Air, eliminated the 5% management fee, and commenced its own direct trucking operation in New York City which continues to operate today.

In 1972, separate suits were filed by Breen and Air Freight Haulage in the U.S. District Court for the Southern District of New York, charging ACI with violations of the antitrust laws.[8] Air

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[1] All members concurred.

[1] Apparently at only one point in the U.S., New York City, is service performed directly by ACI through the use of its own vehicles and employees.

[2] ACI, under Agreement 1041, operates consolidated freight terminals at Dulles International Airport in Washington, D.C. and at Ontario International Airport in Los Angeles, California.

[3] In 1975, the Board approved an amendment which permitted the geographic expansion of ACI's activities outside the continental United States. Today ACI's service includes Hawaii, Alaska and Puerto Rico.

[4] The Board conditioned its approval by specifying that any certificated air carrier was authorized to participate in ACI as a matter of right and that it would require ACI to file future ACI pick-up and delivery contracts and agreements with local agents as the Economic Bureau should prescribe. In 1962, however, the Bureau exempted cartage contracts from filing requirements. *See* C.A.B. Economic Regulations § 289.3 (14 CFR Part 289).

[5] Order No. E–6913 October 24, 1952; No. E–9532 August 30, 1955; No. 22004 April 6, 1965 and Order 75–6–37 June 6, 1975. The activities of the airlines and ACI under Agreement C.A.B. No. 1041 were subject to further review by the Board in its decision in the *Local Cartage Agreement Case*, 15 C.A.B. 850 (1952).

[6] Agreement C.A.B. No. 12708. The Board approved subsequent amendments to the service contract in C.A.B. Orders Nos. E–13601, E–14052, E–14265, and E–15267.

[7] Ryder Systems owned 80% of the stock and ACI owned the remaining 20%, with ACI designating two of the five directors. Ryd-Air, Inc. was to be paid on a cost plus 5% basis.

[8] In *Breen*, ACI moved to dismiss on the ground that the Board had primary jurisdiction and ACI's activities were immunized from the antitrust laws under section 414 of the Federal Aviation Act, 49 U.S.C. 1384. The Second Circuit held that Agreement 1041, as amended, did not empower ACI to organize and operate new firms, and hence ACI was not acting as the agent of the airlines when it did so. Therefore, neither ACI nor Ryd-Air was an "air carrier" under section 412 and immunity did not attach. The motion was denied and the denial affirmed on appeal. *See Breen Air Freight, Ltd., v. Air Cargo, Inc., et al.*, 470 F.2d 767 (2d Cir. 1972), *cert. denied*, 411 U.S. 932, 93 S.Ct. 1901 (1973).

Freight Haulage's suit charged the 21 airlines servicing New York City and participating in ACI services, Ryd-Air, Inc., and ACI with conspiring to monopolize and unreasonably restrain trade in the trucking of air freight to and from New York City's airports in violation of sections 1 and 2 of the Sherman Act, (15 U.S.C. 1 and 2) and § 7 of the Clayton Act, (15 U.S.C. 18). The case came to trial in 1978 and, based on the factual finding that the operations of Ryd-Air and ACI in New York City were not in restraint of trade, were not monopolistic, and were not anticompetitive, the complaint was dismissed. The U.S. Court of Appeals for the Second Circuit affirmed the decision of the District Court on April 6, 1979,[9] and on October 1, 1979, the U.S. Supreme Court denied Air Freight Haulage's petition for certiorari.[10]

In support of its current petition for Board review, Air Freight Haulage alleges that the Airline Deregulation Act requires that we periodically review agreements which may substantially reduce or eliminate competition and that we may not continue our approval unless we find that such an agreement is "necessary to meet a serious transportation need or to secure important public benefits" and that such need cannot be secured by "reasonably available alternative means having materially less anticompetitive effects." Air Freight Haulage contends that Agreement 1041, as amended, has substantially reduce or eliminated competition in the trucking field in the New York area as well as other areas of the United States in which ACI does business.[11] The answer of ACI and its twenty-seven certificated airline stockholders alleges that Air Freight Haulage's petition was filed vindictively to avenge the antitrust case it lost in New York. They assert that Agreement C.A.B. 1041,[11a] as amended, is not anticompetitive and argue that we are not mandated by section 412 of the Act, as amended, to review all previously approved agreements but rather only those that we wish to review.[12]

We do not agree with petitioner that we are required by the Airline Deregulation Act to conduct a "periodic review" of every agreement previously approved. Section 412 by its terms requires only that we disapprove any previously approved agreement if we find it to be adverse to the public interest or in violation of the Act, and, specifically, that we not, after periodic review, continue our approval of any such agreement if we find that it substantially reduces or eliminates competition unless we further find that it is necessary to meet a serious transportation need or secure important public benefits, and are unable to find that there are reasonably available, materially less anticompetitive means of meeting such need or securing such benefits. The statute is silent as to circumstances under which an investigation of a previously approved agreement must, or should, be instituted. Therefore, we conclude that the decision to institute an investigation and the time of institution, is a matter that Congress has placed in our discretion. Moreover, Congress has in § 412(b), specifically given the Board the discretion to determine the form of proceeding utilized. We believe, as a matter of sound administrative policy, that such a decision must depend upon both whether there is substantial reason to believe that an agreement has become adverse to the public interest or in violation of the Act and thus no longer warrants approval, *and* whether an investigation of the agreement at a given point is justified from the standpoint of efficient allocation of Board resources.

Our policy since the passage of the Deregulation Act has been to select for review those agreements which we believe run counter to our statutory mandate and general policy of placing maximum reliance on competitive market forces to determine levels of price, market entry, and service.[13] We do not believe, however, that we have enough information in Docket 36592 to determine whether Agreement C.A.B. No. 1041, as amended, merits review at this time. We do, however, believe that the question warrants further exploration. Agreement 1041 is broad in scope and may have substantial adverse effects on competition at various airports that are not justified by the benefits it may produce.

Accordingly, to assist us in determining whether an investigation should be instituted, and if so what form it should take, we request interested persons to submit comments which respond to the specific questions listed in Appendix A.

Interested persons will be given 30 days following service of this order to file comments. We expect such persons to support their comments with specificity and detail. These comments should be accompanied by arguments of fact or law and supported by legal precedent and/or detailed economic analysis. If an evidentiary hearing is requested, comments should state what relevant and material facts are considered necessary and could be expected to be established through such hearing.

Accordingly, under the Federal Aviation Act of 1958, and particularly sections 102 and 412, we order that:

1. Air Freight Haulage and other interested parties file comments with us within 30 days following service of this order. These comments shall be served on all parties named in paragraph 2; and

2. We will serve this order on all parties in Docket 6592 and all certificated route and charter carriers, Part 298 carriers, the Department of Transportation, Department of Justice, and the Interstate Commerce Commission.

This order shall be published in the **Federal Register.**

By the Civil Aeronautics Board.

Phyllis T. Kaylor,[14]

Secretary.

[FR Doc. 80-14672 Filed 5-12-80; 8:45 am]

BILLING CODE 6320-01-M

[9] *Air Freight Haulage Co., Inc. v. Ryd-Air, Inc.*, No. 78-7557 (2d Cir., April 6, 1979).

[10] *Air Freight Haulage Co., Inc. v. Ryd-Air, Inc.*, 444 U.S. 864 (1979).

[11] On October 15, 1979, Independent Cartage Association of America (ICAA), an organization consisting of independent cartage agents operating in Los Angeles, submitted a statement in support of Air Freight Haulage's petition for review. At the present time, litigation continues in California arising out of a 1976 suit filed by ICAA against ACI for alleged antitrust violations. The case, *Cain et al. v. Air Cargo, Inc., et al.*, 599 F.2d 316 (1979), is pending before the U.S. District Court, Central District of California, on remand from the Ninth Circuit which reinstated claims under the Sherman and Clayton Acts that had originally been dismissed by the district court.

[11a] Appendix A through A3 filed as part of the original document.

[12] Air Freight Haulage's reply alleges that the monopolistic effect of the ACI combination is not unique to New York, citing the antitrust suit in California and alleging that statements in support of AFH's petition have been received by the Board from many trucking companies. However, as ACI indicates in its answer, this is not entirely accurate. The only statement in support of AFH's petition which is part of the docket and has been served on all parties is that filed by the Independent Cartage Association of America, whose members are the plaintiffs involved in the California lawsuit against ACI. The Board has, however, received letters from a number of truckers expressing interest in this proceeding and general support for Air Freight Haulage's petition. These letters have been placed in the correspondence section of Docket 36592.

In a supplemental reply, AFH alleges that since ACI sets a single charge which must be paid to the trucker selected by the airlines, "price-fixing is the heart of Agreement 1041."

[13] *See* Section 102 FAA, as amended; EDR-353, April 13, 1978; *Improved Authority to Wichita Case*, Order 78-3-78, March 16, 1978; and the *International Air Transport Association Show-Cause Proceeding*, Orders 78-6-78, June 9, 1978 and 80-4-113, April 15, 1980.

[14] All Members concurred.

[Docket Nos. 36317, 36797; 80-5-33]

Reeve Aleutian Airways, Inc.; Order Fixing Final Service Mail Rates

May 5, 1980.

In the matter of the petition of Reeve Aleutian Airways, Inc. for a fuel surcharge applicable to the carriage of mail.

By Order 80-4-117, served April 18, 1980, we directed all interested persons, particularly Reeve Aleutian Airways, Inc., and the Postmaster General, to show cause why the Board should not adopt the proposed findings and conclusions therein and amend Order 78-9-113, September 27, 1978, so as to provide for a surcharge to cover increased costs of fuel.

The time designated for filing notice of objection has elapsed and no person has filed a notice of objection or answer to the order. All persons have therefore waived the right to a hearing and all other procedural steps short of fixing a final rate.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, particularly sections 204(a) and 406, the Board's Procedural Regulations promulgated in 14 CFR Part 302, and the authority delegated by the Board in its Organizational Regulations, 14 CFR 385.16(g),

1. We make final the tentative findings and conclusions set forth in Order 80-4-117.

2. The fair and reasonable rates of compensation to be paid in their entirety by the Postmaster General to Reeve Aleutian Airways, Inc. for the transportation of mail by aircraft over its intra-Alaska routes, the facilities used and useful therefor, and the services connected therewith, are as follows:

(1) For the period from August 11 through October 5, 1979, a linehaul charge of $1.048 per great-circle mail ton-mile and a terminal charge of $0.226 per pound originated;

(2) On and after October 6, 1979, a linehaul charge of $1.065 per great-circle mail ton-mile and a terminal charge of $0.227 per pound originated.

3. We shall serve a copy of this order upon the Postmaster General and Reeve Aleutian Airways, Inc.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the service date of this order.

We shall make this order effective and an action of the Civil Aeronautics Board upon expiration of the above period unless within such period a petition for review is filed or the Board gives notice that it will review this order on its own motion.

We shall publish this order in the Federal Register.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-14670 Filed 5-12-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Administrative Review of Countervailing Duty Orders

AGENCY: U.S. Department of Commerce.

ACTION: Notice of Administrative Review of Countervailing Duty Orders.

SUMMARY: This notice is to advise the public that the Department of Commerce will review and determine the amount of any countervailing duties at least once during the 12-month period beginning on the anniversary of the date of publication of all countervailing duty orders under section 303 of the Tariff Act of 1930, as amended, or under the Trade Agreements Act of 1979. Current orders and their dates of publication are listed in the Appendix to this notice. This notice is published pursuant to section 751 of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: May 13, 1980.

FOR FURTHER INFORMATION CONTACT: Stephen Nyschot or Edward Haley, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Room 1126, Washington, D.C. 20230 (202-377-2209).

SUPPLEMENTARY INFORMATION: Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (93 Stat. 175, 19 U.S.C. 1675(a)(1)), this notice is to advise the public that the Department of Commerce is conducting an administrative review of countervailing duty orders published under section 303 and Title VII of the Tariff Act of 1930, as amended. This review is to ascertain if benefits have been provided exporters or producers of the merchandise subject to the order and included within that determination (i.e., for each order, all entries, or withdrawals from warehouse, for consumption dated subsequent to the period covered by the last published annual review results, or, as a minimum, the last 12 month period) which are deemed subsidies pursuant to sections 771(5) and 771(6) of the Act (93 Stat. 177, 178; 19 U.S.C. 1677) and to determine the amounts, if any, of such net subsidies.

Section 751(a)(1) provides that administrative review take place at least once during the 12-month period beginning on the anniversary of the date of publication of all orders under section 303 or Title VII of the Tariff Act of 1930, as amended (93 Stat. 150). Current countervailing duty orders and their dates of publication are listed in the Appendix to this notice. The administrative review of the orders listed in the Appendix will be completed by the anniversary in 1981 of the date of publicaiton of the order.

Questionaires are being, or will be, delivered to affected foreign embassies or manufacturers, producers or exporters, as appropriate. The responses will be analyzed, and then, in accordance with section 355.41(d) of the Commerce Regulations (19 CFR 355.41(d), 45 FR 4948), the parties to the proceeding can request disclosure of the nonconfidential information (or, pursuant to an administrative protective order, of confidential information) on the basis of which the determination will be made. Where disclosure is requested, it will be made generally about 30 days prior to the date a notice of review is published. Written views may be presented, and an opportunity to present oral views may be requested, by any party to whom disclosure was made. After providing an opportunity for comment by interested parties, the Department of Commerce will publish in the Federal Register the results of such review, together with notice of any countervailing duties to be assessed and estimated countervailing duties to be deposited.

This notice is published pursuant to section 751(a)(1) of the Act (93 Stat. 175, 19 U.S.C. 1675(a)(1)).

John D. Greenwald,

Deputy Assistant Secretary Import Administration.

May 7, 1980.

Appendix.—Countervailing Duty Orders

Dates and Commodity	Country
1/2/80—Ferroalloys	Spain
1/5/78—Butter cookies	Denmark
1/5/79—Fish	Canada
1/7/76—Float glass manufactured by Fabbrica Pisani S.p.A.	Italy
1/8/73—X-radial steel belted tires manufactured by Michelin Tire Manufacturing Co. of Canada, Ltd.	Canada
1/8/76—Emmenthaler and Gruyere cheese.	Switzerland
1/8/79—Optic liquid level sensing systems manufactured by Honeywell Ltd.	Canada
1/9/76—Footwear	Republic of Korea
1/12/79—Bicyle tires and tubes produced by Korea Inoue Kasei Co., Ltd.	Republid of Korea
1/17/79—Non-rubber footwear	Argentina
1/24/78—Chains and parts thereof, of iron or steel.	Spain
2/11/77—Certain scissors and shears.	Brazil
2/22/38—Sugar	United Kingdom
2/28/79—Oleoresins	Spain
3/15/77—Cotton yarn	Brazil

Appendix.—Countervailing Duty Orders— Continued

Dates and Commodity	Country
3/16/76—Certain castor oil products.	Brazil
3/22/79—Ampicillin trihydrate and its salts.	Spain
4/8/77—Unwrought zinc	Spain
4/9/79—Oleoresins	India
4/13/77—Certain fish	Canada
4/16/68—Canned tomato paste	France
5/6/77—Certain fasteners	Japan
5/11/73—Refrigerators, freezers, other refrigeration equipment, and parts thereof.	Italy
5/12/72—Tomato products	Greece
5/15/79—Viscose rayon staple fiber.	Sweden
5/16/68—Canned tomatoes and canned tomato concentrates.	Italy
5/19/75—Dairy products	European Community
5/21/67—Galvanized fabricated structural steel units for the erection of electrical transmission towers.	Italy
6/3/77—Certain handbags	Republic of Korea
6/13/78—Fish	Canada
6/15/69—Certain steel products	Italy
6/17/72—Compressors and parts thereof.	Italy
6/18/76—Cheese	Finland
6/19/71—Barley	France
6/19/71—Molasses	France
6/20/35—Spirits	Ireland
6/29/68—Steel welded wire mesh	Italy
7/1/76—Cheese	Sweden
7/13/79—Certain textiles and textile products.	Pakistan
7/26/74—Die presses	Italy
7/27/79—Amoxicillin trihydrate and its salts.	Spain
7/31/78—Sugar	European Community
8/13/76—Cap screws, ¼" in diameter and over, of iron or steel.	Italy
8/19/54—Cordage	Cuba
8/22/79—Tomato products	European Community
8/24/78—Chain and parts thereof, of iron or steel.	Japan
9/2/76—Glass beads not over six millimeters in diameter produced by Canasphere Industries, Ltd.	Canada
9/12/74—Non-rubber footwear	Brazil
9/28/35—Butter	Denmark
10/5/28—Butter	Australia
10/11/77—Certain chains and parts thereof.	Italy
10/25/74—Bottled green olives	Spain
10/25/74—Non-rubber footwear	Spain
10/26/79—Leather shoes and uppers.	India
11/16/76—Vitamin K	Spain
11/16/78—Woolen garments	Argentina
12/1/75—Canned hams and canned shoulders.	European Community
12/15/68—Ski-lifts and ski-lift parts.	Italy
12/16/22—Sugar content of certain articles.	Australia

[FR Doc. 80-14656 Filed 5-12-80; 8:45 am]

BILLING CODE 3510-25-M

Children's Hospital Medical Center; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. at 666 11th Street, N.W. (Room 735) Washington, D.C.

Docket No. 79-00438. Applicant: Children's Hospital Medical Center, 300 Longwood Avenue, Boston MA 02115. Article: LKB 2128-010/Ultrotome IV Ultramicrotome and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to section tissue specimens from immature and adult animals, particularly mice with inherited disease of the nervous system. Ultrastructural studies will be conducted to gain basic knowledge of the detailed interrelationships of cells of the nervous system, and to establish the principles underlying human developmental diseases, such as those leading to mental retardation.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (July 24, 1979).

Reasons: The foreign article provides knife stage rotation from −45 to +45 degrees (°) and specimen adjustment up to 45° on either side of the specimen arm. The Department notes that the MT-5000 ultramicrotome, manufactured domestically by the DuPont/Sorvall Division of the Dupont Company (Sorvall), became available on April 24, 1979. Its universal arc specimen holder, however, did not become available until August 1, 1979. Therefore, at the time the foreign article was ordered (July 26, 1979), the Model MT-5000 provided knife stage rotation from −6 to +30° and specimen adjustment up to 20° on either side of the specimen arm. The Department of Health, Education and Welfare (HEW) advises in its memorandum dated January 3, 1980, that the domestic instrument was not scientifically equivalent to the foreign article for the applicant's intended purposes. The Department concurs and finds that at the time of order the Sorvall Model MT-5000 was not of equivalent scientific value to the foreign article, for such purposes as the article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the foreign article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director Statutory Import Programs Staff.

[FR Doc. 80-14655 Filed 5-12-80; 8:45 am]

BILLING CODE 3510-25-M

University of California et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

The following is a consolidated decision on applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulation issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 a.m. and 5:00 p.m. at 666-11th Street N.W., Washington, D.C.

Decision: Applications denied. Applicants have failed to establish that instruments or apparatus of equivalent scientific value to the foreign articles for such purposes as the foreign articles are intended to be used, are not being manufactured in the United States.

Reason: Subsection 301.8 of the Regulations provides in pertinent part:

> The applicant shall *on or before the 20th* day following the date of such notice, inform the Deputy Assistant Secretary whether it intends to resubmit another application for the same article for the same intended purposes to which the denied application relates. The applicant shall then resubmit the new application on or before the 90th day following the date of the notice of denial without prejudice to resubmission, unless an extension of time is granted by the Deputy Assistant Secretary in writing prior to the expiration of the 90-day period.
>
> * * * If the applicant fails, within the applicable time periods specified above, to either (a) inform the Deputy Assistant Secretary whether it intends to resubmit another application for the same article to which the denial without prejudice to resubmission relates, or (b) resubmit the new application, the prior denial without prejudice to resubmission shall have the effect of a final decision by the Deputy Assistant Secretary on the application within the context of Subsection 301.11. (Emphasis added.)

The meaning of the subsection is that should an applicant either fail to notify the Deputy Assistant Secretary of its intent to resubmit another application for the same article to which the denial without prejudice relates *within the 20-day* period, or fails to resubmit a new

application within the 90-day period, the prior denial without prejudice to resubmission will have the effect of a final denial of the application.

None of the applicants to which this consolidated decision relates has satisfied the requirements set forth above; therefore, the prior denials without prejudice have the effect of a final decision denying their respective applications.

Subsection 301.8 further provides:

* * * the Deputy Assistant Secretary shall transmit a summary of the prior denial without prejudice to resubmission to the **Federal Register** for publication, to the Commissioner of Customs, and to the applicant.

Each of the prior denials without prejudice to resubmission to which this consolidated decision relates was based on the failure of the respective applicants to submit the required documentation, including a completely executed application form, in sufficient detail to allow the issue of "scientific equivalency" to be determined by the Deputy Assistant Secretary.

Docket Number 78–00418. Applicant: University of California, San Francisco, 1438 Harbour Way South, P.O. Box 4028, Richmond, CA 94804. Article: Radiochromatogram Spark Chamber System, Model 450/3. Date of denial without prejudice to resubmission: October 18, 1979.

Docket Number 79–00250. Applicant: Texas Tech University School of Medicine, Anatomy Department, Lubbock, Texas 79403. Article: Diamond Knives for Ultramicrotome, Type B and Accessories. Date of denial without prejudice to resubmission: October 18, 1979.

Docket Number 79–00298. Applicant: University of California, Los Angeles, 405 Hilgard Avenue, Los Angeles, CA 90025. Article: Reflex Klystron, Model VRT 2121A with Accessories. Date of denial without prejudice to resubmission: October 18, 1979.

Docket Number 79–00306. Applicant: University of Alaska, Forest Soils Lab, O'Neill Building, Fairbanks, Alaska 99701. Article: Miniature Temperature Recorder, Model D, Temperature Ranges and Accessories. Date of denial without prejudice to resubmission: October 18, 1979.

Docket Number 79–00311. Applicant: Purdue University, Purchasing Department, FREH Building, West Lafayette, IN 47907. Article: Dynamic Viscoelastometer, DDV–11–C with Accessories. Date of denial without prejudice to resubmission: January 11, 1980.

Docket Number 79–00340. Applicant: Veterans Administration Medical Center, 1601 Perdido Street, New Orleans, LA 70146. Article: Diamond Knife. Date of denial without prejudice to resubmission: December 17, 1979.

Docket Number 79–00373. Applicant: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Bethesda, Maryland 20205. Article: LKB 2128–010/Ultrotome IV Ultramicrotome and Accessories. Date of denial without prejudice to resubmission: December 21, 1979.

Docket Number 79–00421. Applicant: Radiation Therapy Medical Group, 6939 Palm Court, P.O. Box 632, Riverside, California 92502. Article: G2900B Therac 20/Saturne Linear Accelerator and Accessories. Date of denial without prejudice to resubmission: October 18, 1979.

Docket Number 79–00425. Applicant: Evangelical Hospital Association, 1415 W. 22nd Street, Oak Brook, IL 60521. Article: Therac 6/Neptune Linear Accelerator. Date of denial without prejudice to resubmission: October 18, 1979.

Docket Number 79–00445. Applicant: Northridge Hospital Foundation, 18300 Roscoe Blvd., Northridge, California 91328. Article: Electron Microscope, Model EM 109 and Accessories. Date of denial without prejudice to resubmission: December 17, 1979.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80–14618 Filed 5–12–80; 8:45 am]

BILLING CODE 3510–25–M

Maritime Administration

Retrofitting of one MA Design C3–S–76a Cargo Vessel With one Bucyrus-Erie MK–60 Marine Crane; Intent To Compute Foreign Cost

Notice is hereby given of the intent of the Maritime Subsidy Board pursuant ot the provisions of Section 502(b) of the Merchant Marine Act, 1936, as amended, to compute the estimated foreign cost to retrofit one MA Design C3–S–76a cargo vessel with one Bucyrus-Erie model MK–60 marine crane.

Any person, firm or corporation having any interest (within the meaning of Section 502(b)) in such computation may file written statements by the close of business on May 19, 1980, with the Secretary, Maritime Subsidy Board, Maritime Administration, Room 3099B, Department of Commmerce Building, 14th and E Streets, N.W., Washington, D.C. 20230.

Dated; May 7, 1980.

By Order of the Maritime Subsidy Board, Maritime Administration

Robert J. Patton, Jr.,

Secretary.

[FR Doc. 80–14615 Filed 5–12–80; 8:45 am]

BILLING CODE 6510–15–M

National Oceanic and Atmospheric Administration

Acceptance of Competitive Applications for Assistance With Marine Pollution Research, Development and Monitoring

AGENCY: Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), Office of Research and Development, Office of Marine Pollution Assessment.

ACTION: Notice.

SUMMARY: The Office of Marine Pollution Assessment of NOAA invites applications for participation in two programs related to marine pollution research and development and monitoring. It is anticipated that awards will be made in the form of grants by NOAA: however, should contracts result, they will be awarded by the Office of Procurement and ADP Management, Department of Commerce, in accordance with Federal Procurement Regulations. NOAA anticipates making awards by September 30, 1980.

DATE: May 16, 1980 is the closing date for receipt of applications for this program, as previously announced in the Commerce Business Daily and several scientific journals.

ADDRESS: Office of Marine Pollution Assessment, NOAA, Old Biology Building, State University of New York, Stony Brook, NY 11794.

FOR FURTHER INFORMATION CONTACT: Harold Stanford, (516) 751–7002.

SUPPLEMENTARY INFORMATION: The following announcement addresses two programs: (1) the Long-Range Effects Research Program, responsive to Section 202 of the Marine Protection, Research, and Sanctuaries Act (Public Law 92–532); and (2) the Financial Support Program, responsive to Section 6 of the Ocean Pollution Research and Development and Monitoring Planning Act (Public Law 95–273).

The funds for the grants for the Long-Range Effects Research Program are appropriated under Pub. L. 92–532 (Section 202), Marine Protection, Research, and Sanctuaries Act, and for the Financial Support Program are appropriated under Pub. L. 95–273 (Section 6), Ocean Pollution Research and Development and Monitoring Planning Act.

This announcement identifies the general objectives, indicates general areas of interest for the two programs, and suggests more specific areas for research and development and monitoring projects and activities for funding for the remainder of Fiscal Year 1980. To the extent possible, data and

findings resulting from this announcement will be published rapidly to assist Federal, State, municipal and private parties interested in marine pollution.

The purpose of the programs is: (1) Long-Range Effects Research Program: To conduct a comprehensive and continuing program of marine research with respect to possible long-range effects of pollution, and man-induced changes of ocean ecosystems, (2) Financial Support Program: To conduct a program of marine research and development and monitoring projects or activities which are needed to meet priorities set forth in the Five-Year Federal Plan for the Study of Ocean Pollution. Individuals, corporations, companies, educational institutions, and others, including State and local governments and Federal agencies, are eligible to submit applications.

The Office of Marine Pollution Assessment expects to award approximately $2,200,000 (about $1,200,000 for the Long-Range Effects Research Program, and about $1,000,000 for the Financial Support Program) in about 30 new grants pursuant to this announcement in Fiscal Year 1980. The average of the funds per grant is expected to be about $75,000. Generally, projects or activities will be supported for periods of 1 to 3 years. Support beyond one year will depend upon: (1) Availability of funds, (2) Office of Marine Pollution Assessment's evaluation of the grantee's satisfactory performance on the project or activity for which the original grant was awarded and (3) The likelihood of the grantee's continued contribution to the objectives and priorities of either of the two Office of Marine Pollution Assessment programs.

Publication of this announcement does not obligate the Office of Marine Pollution Assessment to award any specific number of grants, or to obligate the entire amount of funds available or any part thereof.

The objectives of the programs are:

1. Long-Range Effects Research Program objective areas are to study:

a. Human health aspects.

b. Ecosystem structure and function.

c. Pollutant levels.

2. Financial Support Program objective areas are to determine:

a. Effects on marine ecosystems of coastal land use practices.

b. Effects of pollution on the marine ecosystem.

c. Marine aspects of disposal of municipal sewage and its treatment products.

d. Problems related to oil and gas development and utilization of chemicals.

e. Risk analysis methods for assessment of marine pollution problems. Applications which are late, incomplete, or otherwise do not conform to the Guidance for Applications for Assistance may not be accepted for review, and applicants will be notified accordingly. All other applications will be subject to a competitive review and evaluation in accordance with the established process. If a decision is made to disapprove a competing grant application, or if funds are not available to support all approved competing grant applications, the applicant will be so notified.

All applications for assistance received as a result of this announcement will be evaluated in accordance with the evaluation factors outlined below. These factors will be applied in an identical manner to all applications and will be given paramount consideration in the awarding of a grant. Scoring values are given to indicate to applicants the relative importance of each of the evaluation factors. The evaluation factors are:

1. Overall scientific/technical or socioeconomic merits of the project or activity (25%);

2. The scientific/technical competence of applicant and supporting institution and the adequacy of necessary facilities (25%);

3. The relevance of the research project to short-, mid-, and/or long-term mission objectives of the Program (30%);

4. The appropriateness of costs (20%).

Each application must have a score greater than zero for each factor to remain in consideration.

All responsive applications submitted by the deadline date will be reviewed and ranked by NOAA staff members with experience in ocean sciences, aided by peer reviews, as appropriate.

The closing date for receipt of applications is May 16, 1980. An application will be considered to have arrived if the application is postmarked no later than the announced closing date.

Dated: May 6, 1980.

Francis J. Balint,

Acting Director, Office of Management and Computer Systems.

[FR Doc. 80-14598 Filed 5-12-80; 8:45 am]

BILLING CODE 3510-12-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The New England Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet to discuss groundfish, scallops, programmatic budget survey, Scientific and Statistical Committee report, Breaux Fisheries Development Bill, and other business.

DATES: The meeting will convene on Wednesday, May 28, 1980, at approximately 10 a.m., and will adjourn on Thursday, May 29, 1980, at approximately 5 p.m. The meeting is open to the public.

ADDRESS: The meeting will take place at the Ramada Inn, I-95 and Route 27, Mystic, Connecticut.

FOR FURTHER INFORMATION CONTACT: New England Fishery Managment Council, Suntaug Office Park, Five Broadway, Route One, Saugus, Massachusetts 01906, Telephone: (617) 231-0422.

Dated: May 8, 1980.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 80-14706 Filed 5-12-80; 8:45 am]

BILLING CODE 3510-22-M

Modification of Permit Issued to Brian W. and Patricia A. Johnson

Notice is hereby given the pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and § 222.25 of the regulations governing endangered species, Permit No. 258 issued to Brian W. and Patrica A. Johnson, P.O. Box 3830, Honolulu Hawaii 96812 on March 26, 1979 (44 FR 19221), is modified in the following manner:

1. Section A.1 is modified to read:

"One hundred fifty-seven (157) Hawaiian monk seals (*Monachus schauinslandi*) may be taken by marking with a commercial dye. Eighty-five (85) of those animals authorized may be taken during the 1980 field season. Of those eighty-five, thirty-five (35) may be pups. Each of the one hundred fifty-seven animals authorized may be re-marked up the three (3) times."

2. Section B.5 is modified to read:

"The Holder shall submit an annual report to the Assistant Administrator for Fisheries describing the activities that have been conducted under this Permit. The report shall be a summary of all activities including numbers of animals marked; the numbers,

letters or symbols used; the location of marks on the animals; and the age, sex, and date of the markings. The report shall also include the numbers, method of preservation and disposition of any specimen materials taken during the year. This report is due by January 1 of each year the Permit is valid."

These modifications are effective on May 13, 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, NW., Washington, D.C.;

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731; and

Regional Director, Northwest Region, National Marine Fisheries Service, 1700 Westlake Avenue North, Seattle, Washington 98109.

Dated: May 2, 1980.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 80-14707 Filed 5-12-80; 8:45 am]

BILLING CODE 3510-22-M

Receipt of Application for Permit From Dr. Charles A. Mayo III

Notice is hereby given that an Applicant has applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant:

a. Name Dr. Charles A. Mayo, III (p248), Director, Cetacean Research Program.

b. Address Provincetown Center for Coastal Studies, Provincetown, Massachusetts 02657.

2. Type of Permit: Scientific Research/ Scientific Purposes.

3. Name and Number of Animals: Humpback whales (megaptera novaenagliae), 100.

4. Type of Take: Individual whales of the population estimated to be approximately 100, may be inadvertently harassed while conducting observational activities including underwater photography.

5. Location of Activity: Cape Cod Bay including Stellwagen Bank.

6. Period of Activity: 1 year.

Concurrent with the publication of this notice in the **Federal Register** the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before June 12, 1980. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application 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, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: May 6, 1980.

William Aron,

Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 80-14708 Filed 5-12-80; 8:45 am]

BILLING CODE 3510-22-M

Receipt of Application for Permit From Quinlan Marine Attraction

Notice is hereby given that an Applicant has applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Quinlan Marine Attraction (P55E).

b. Address: Route 3, Box 540, Lincolnton, North Carolina 28092.

2. Type of permit: Public Display.

3. Name and number of animals: Atlantic bottlenose dolphin (*Tursiops truncatus*), 4.

4. Type of take: To take four (4) Atlantic bottlenose dolphins to maintain in public display facilities.

5. Location of activity: Gulf of Mexico, just off the mouth of the Mississippi River.

6. Period of activity: 2 years.

The arrangement and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register** the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before June 12, 1980. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: May 7, 1980.

William Aron,

Director, Office of Marine Mammal and Endangered Species, National Marine Fisheries Service.

[FR Doc. 80-14709 Filed 5-12-80; 8:45 am]

BILLING CODE 3510-22-M

CONSUMER PRODUCT SAFETY COMMISSION

Thomas Turner, Clarence F. Smith and Charles K. Gribble, Former Officers of Chatsworth Carpet & Rug Co., Inc.; Provisional Acceptance of Consent Agreement

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of Consent Agreement.

SUMMARY: The Commission has provisionally accepted a consent agreement containing a cease and desist order offered by Thomas Turner, Clarence F. Smith and Charles K. Gribble, former officers of Chatsworth Carpet & Rug Co., Inc. In the agreement,

they agree to cease and desist from manufacturing, selling and distributing in commerce certain carpets that fail to conform to the carpet flammability standard and from issuing false guaranties on samples without having conducted the reasonable and representative tests required by 16 CFR 1630.31, and without having received and relied on guaranties in good faith in violation of section 8(b) of the Flammable Fabrics Act, 15 U.S.C. 1197(b). If finally accepted, this agreement will settle allegations that Turner, Smith and Gribble have violated the provisions of the Flammable Fabrics Act.

DATES: The Commission will accept written comments on the provisionally-accepted agreement until close of business May 28, 1980.

ADDRESSES: Submit written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Copies of the agreement may be seen or obtained from the Office of the Secretary, Consumer Product Safety Commission, 3rd Floor, 1111–18th St., NW, Washington, DC.

FOR FURTHER INFORMATION, CONTACT: Earl Gershenow, Directorate for Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207 (Phone (301) 492–6629).

Dated: May 8, 1980.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 80–14710 Filed 5–12–80; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

Commission on the Review of the Federal Impact Aid Program; Hearings

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 its final hearings in Washington, D.C., on May 28 and May 29, 1980 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 additional evidence from representatives of the Administration, the Division of School Assistance in Federally Affected Areas, national associations, and other interested parties. 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 as soon as possible. Those unable to attend the hearings who wish to submit written testimony may do so by forwarding the text to the Commission by the end of May, 1980. Notice of the hearings are given in accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix 1).

DATES: May 28 and May 29, 1980. The Commission will meet at 9:30 a.m. and continue until 4:30 p.m.

ADDRESS: Hubert H. Humphrey Building, Humphrey Auditorium, 200 Independence Avenue, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Richard Dallas Smith, Executive Director, Commission on the Review of the Federal Impact Aid Program, 1832 M Street, NW., Suite 837, Washington, D.C. 20036, tel. no. (202) 653–5817.

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 reasons 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, NW., Suite 837, Washington, D.C. 20036.

Signed at Washington, D.C., on the 9th day of May, 1980.

Richard Dallas Smith,

Executive Director, Commission on the Review of the Federal Impact Aid Program.

[FR Doc. 80–14773 Filed 5–12–80; 8:45 am]

BILLING CODE 4110–02–M

Commission on the Review of the Federal Impact Aid Program; Meeting

AGENCY: Commission on the Review of the Federal Impact Aid Program.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Commission on the Review of the Federal Impact Aid Program, the members of which were appointed by the President on August 15, 1979, will hold a business meeting on May 30, 1980, in Washington, D.C. The meeting will be open to the general public, and all interested persons are invited to attend. Notice of the meeting is given in accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix 1).

DATE: May 30, 1980. The Commission will meet at 9:30 a.m. and continue until business is completed.

ADDRESS: Hubert H. Humphrey Building, Humphrey Auditorium, 200 Independence Avenue, S.W., Washington, D.C. 20201.

TENTATIVE AGENDA: The Commission members will conduct Commission business involving the development of recommendations to accompany the Commission's final report.

FOR FURTHER INFORMATION CONTACT: Richard Dallas Smith, Executive Director, Commission on the Review of the Federal Impact Aid Program, 1832 M Street, N.W., Suite 837, Washington, D.C. 20036, tel. no. (202) 653–5817.

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 reasons 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 9th day of May, 1980.

Richard Dallas Smith,

Executive Director, Commission on the Review of the Federal Impact Aid Program.

[FR Doc. 80-14774 Filed 5-12-80; 8:45 am]

BILLING CODE 4110-02-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-FC-80-012; OFC Case Number 50180-6464-01-77]

Auxiliary Boiler; New or Existing Major Fuel Burning Installations

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Request for Classification.

SUMMARY: On January 23, 1980, Basin Electric Power Cooperative filed a request with the Economic Regulatory Administration (ERA) to classify an Auxiliary Boiler being installed at its Antelope Valley Station in rural Mercer County approximately seven miles northwest of Beulah, North Dakota, as an existing installation pursuant to § 515.13 of ERA's Final Rule to Permit Classification of Certain Powerplants and Installations as Existing Facilities (44 FR 60690 and pursuant to the provisions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA). FUA, which was effective May 8, 1979, imposes certain statutory prohibitions against the use of natural gas and petroleum as a primary energy source by new major fuel burning installations (MFBIs) consisting of a boiler.

ERA's decision in this matter will determine whether the Auxiliary Boiler is a new or existing MFBI. The prohibitions which apply to existing MFBIs are different from those which apply to new MFBIs.

As provided for in § 515.26 of the Final Rule, interested persons are invited to submit written comments in regard to this matter, however, no public hearing will be held.

SUPPLEMENTARY INFORMATION: The MFBI for which the request for classification was filed is a packaged boiler designated Auxiliary Boiler by the Basin Electric Power Cooperative having a design capability to consume fuel at a fuel heat input rate of 137.7 million BTU's per hour and will be used at the Antelope Valley Station for startup of the lignite-fired main steam generators. The boiler will use No. 2 fuel oil as the primary energy source and is scheduled to be placed in operation in August of 1980.

Section 515.10 of the Final Rule requires that to be eligible to request that a transitional facility be classified as existing, a contract for the construction or acquisition of the installaton must have been signed prior to November 9, 1978. Basin Electric Power Cooperative states in its request that a contract for the acquisition of its Auxiliary Boiler was signed on December 16, 1977.

In accordance with the provisions of § 515.13 of the Final Rule, ERA will calssify an eligible installation as existing if it is demonstrated to the satisfaction of ERA that the cancellation, rescheduling, or modification of the construction or the acquisition of the installation would result in substantial financial penalty or a significant operational detriment. Basin Electric Power Cooperative's request for classification of its Auxiliary Boiler as existing is based on a demonstration of substantial financial penalty and significant operational detriment pursuant to § 515.13(a). ERA will classify a facility as existing upon demonstration that at least 25 percent of the total projected project costs were non-recoverable costs expended as of November 9, 1978. In accordance with § 515.15(b) and the instructions contained on ERA Form 300B Schedule 1 (Substantial Financial Penalty), Basin Electric Power Cooperative indicated that 8 percent of its non-recoverable costs were expended as of November 9, 1978 and that these non-recoverable costs covered only the auxiliary boiler for the powerplant. Basin Electric Power Cooperative asserts that it would have incurred a substantial financial penalty in addition to the eight percent of the non-recoverable project costs as of that date because by that date a major portion of the Antelope Valley Station was complete and some of the contracts were already awarded. It would have been too late by that date to incorporate a coal-fired auxiliary boiler contiguous with the Antelope Valley Station main plant facilities and therefore, a remotely located coal-fired auxiliary boiler, with all its auxiliary equipment, would have had to be constructed at substantial additional cost. Basin Electric Power Cooperative estimates its additional financial penalty would have been $450,000 compared to a total installed cost for the oil-fired auxiliary boiler of only $623,000.

Pursuant to § 515.13(b), ERA will classify a facility as existing upon a demonstration that significant operational detriment would have been incurred if on November 9, 1978, the installation had been cancelled, rescheduled, or modified to burn an alternate fuel or fuel mixture.

In accordance with § 515.15(c) Basin Electric Power Cooperative has provided the following information to demonstrate that it would incur significant operational detriment if the construction or acquisition of the Auxiliary Boiler were to be cancelled, rescheduled or modified on November 9, 1978:

a. Cancellation of the oil-fired auxiliary boiler contract would cause delays in the commercial operation of Main Unit No. 1, thereby requiring that power generation be obtained from other sources, most likely from oil-fired generation.

b. Delays in the start-up and commercial operation of Unit No. 1 would, accordingly, delay the hiring of up to 160 operating personnel at the Antelope Valley Station.

c. Since oil-fired auxiliary boilers can be started more quickly than coal-fired auxiliary boilers, they provide faster powerplant recovery by at least an hour in the event of an outage. Therefore, if the new lignite-fired units experienced failure, reliance would have to be placed on the existing oil fired units to provide the necessary power thereby subverting the intent of the Fuel Use Act to preserve oil and natural gas.

d. Coal-fired auxiliary boilers are much more difficult to operate and more costly to maintain than oil-fired auxiliary boilers because of the more elaborate associated subsystems consisting of coal/ash handling, soot blowing and pollution control equipment. Chances of equipment failure associated with these subsystems are substantially greater than for oil-fired auxiliary boiler equipment.

e. Incorporation of a coal-fired auxiliary boiler into the design of the Antelope Valley Station at this late date

would necessitate siting such a facility at a remote location. In order to man the remote site, additional personnel would be needed, personnel who would not be needed otherwise under the presently designed system where the auxiliary boiler and its appurtenances are contiguous with the main facility and its assigned operating personnel.

ERA hereby invites all interested persons to submit written comments on this matter. The public file containing documents on these proceedings and supporting material is available for inspection upon request at: ERA, Room B-110, 2000 M Street, NW., Washington, DC., Monday-Friday, 8:00 a.m. to 4:30 p.m.

COMMENTS BY: June 3, 1980.

ADDRESSES: Ten copies of written comments shall be submitted to: Economic Regulatory Administration, Case Control Unit, Box 4629, Room 2313, 2000 M Street, NW., Washington, DC, 20461.

Docket Number ERA-FC-80-012, should be printed clearly on the outside of the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT:

William L. Webb, Office of Public Information, Economic Regulatory Administration, 2000 M Street, NW., Room B-110, Washington, DC 20461, Phone (202) 653-4055.

Constance L. Buckley, Chief, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW., Room 3128, Washington, DC 20461, Phone (202) 653-3679.

Edward Jiran, Office of the General Counsel, Department of Energy, 1000 Independence Avenue SW., Room 6G-087, Washington, DC 20585, Phone (202) 252-2967.

Anthony M. Vaitekunas, Case Manager, New MFBI Branch, Office of Fuels Conversion, Economic Regulatory Administration, 2000 M Street, NW., Room 3126-B, Washington, DC 20461, Phone (202) 653-3645.

Issued in Washington, D.C., on May 5, 1980.

Robert L. Davies,

Assistant Administrator, Office of Fuels Conversion, Economic Regulatory Administrator.

[FR Doc. 80-14701 Filed 5-12-80; 8:45 am]

BILLING CODE 6450-01-M

Sun Company, Inc.; Application on Behalf of Suntech, Inc., for Permission To Use Multiple Allocation Fractions

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Petition and Request for Comments.

SUMMARY: The Economic Regulatory Administration of the Department of Energy hereby gives notice that on April 23, 1980, Sun Company, Inc. (Sun), in accordance with the provisions of 10 CFR 205.90 *et seq.* and 211.10(b), filed an application on behalf of Suntech, Inc. (Suntech), a wholly-owned Sun subsidiary, for permission to use multiple allocation fractions. The relief, if granted, would enable Suntech to use a separate allocation fraction for its marketing of CAM 2 racing gasoline, the distribution of which is asserted to be separate from and independent of that which is used for Sun's commercial gasoline distribution.

A copy of Sun's application, with proprietary material deleted, may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, at the Economic Regulatory Administration, Office of Petroleum Operations, Room 6222-C, 2000 M Street, NW., Washington, DC 20461.

DATE: Interested firms may submit comments on Sun's application to the address listed below until the close of business on May 28, 1980.

ADDRESS: Send comments to: Economic Regulatory Administration, Office of Petroleum Operations, Room 6222, 2000 M Street NW., Washington, DC 20461, Attn: Alan T. Lockhard.

FOR FURTHER INFORMATION CONTACT:

John A. Carlyle, Economic Regulatory Administration, Office of Petroleum Operations, Room 6222-C, 2000 M Street NW., Washington, DC 20461, Telephone: (202) 653-3431.

Joel M. Yudson, Office of the General Counsel, Room 6A-127, 1000 Independence Avenue SW., Washington, DC 20461, Telephone: (202) 252-6744.

Issued in Washington, D.C., on the 7th day of May 1980.

Doris J. Dewton,

Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

[FR Doc. 80-14700 Filed 5-12-80; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 3103]

City of Westfield, Mass.; Application for Preliminary Permit

May 6, 1980

Take notice that the City of Westfield, Massachusetts (Applicant) filed on March 25, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for proposed Project No. 3103 to be known as the Stevens Project located on the Little River in the City of Westfield, Hampden County, Massachusetts. Correspondence with the Applicant should be directed to: O'Brien and Gere Engineers, Inc., 1304 Buckley Road, Syracuse, New York 13221.

Project Description.—The proposed project would consist of: (1) An existing 15-foot high, 150-foot long, upper dam of concrete construction; (2) An upper reservoir with a storage capacity of 150-acre feet to be modified by installation of a crest gate at the dam, raising the reservoir 3 to 5 feet, which would add an additional, 60 to 100 acre-feet of storage; (3) An existing 15-foot high, 100 foot-long lower dam of concrete construction; (4) A lower reservoir with a storage capacity of 500-acre feet to be modified by the installation of flashboards at the dam, raising the reservoir 3 feet, which would add an additinal 120 acre-feet of storage; (5) A powerhouse containing a single 500 kW turbine/generator unit; (6) A 2,000-foot long 23-kV transmission line; and (7) Appurtenant facilities.

Purpose of Project.—Energy generated at the project would be used by the Applicant's municipal electric department to offset fossil fuel fired peaking power now purchased from outside sources.

Proposed Scope and Cost of Studies Under Permit.—Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would perform the studies, investigations, tests, and surveys, and prepare maps, plans, and/or specifications necessary for the preparation of an application for FERC license. Applicant estimates the cost of work under the permit would not exceed $44,500.

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 July 10, 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 September 8, 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 be also be submitting 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 July 10, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-14681 Filed 5-12-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP76-454]

Columbia Gas Transmission Corp., Columbia Gulf Transmission Co.; Petition To Amend

May 6, 1980.

Take notice that on April 30, 1980, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, S.W., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 W. Alabama Avenue, Houston, Texas 77027, filed in Docket No. CP76-454 a joint petition to amend the order issued November 29, 1976,[1] in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize a change in the transportation service authorized for the City of Somerset, Kentucky (Somerset), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Applicants state that by order issued November 29, 1976, Columbia Gas was authorized to transport up to 2,500 Mcf of natural gas per day for Somerset and to construct and operate a measuring and regulating facility, as well as approximately 0.1 mile of 6-inch pipeline to connect the aforesaid measuring and regulating facility to Columbia Gas' existing Line KA-1 which serves the City of Manchester, Kentucky. It is further stated that Columbia Gulf was also authorized to establish an additional point of delivery at Casey County, Kentucky, and to construction and operate the appurtenant facilities.

It is stated that at the time of filing of the original application, Somerset was in the process of constructing an 8-inch pipeline from Hyden, Leslie County, Kentucky, to Manchester, Clay County, Kentucky, in order to move production volumes from the Hyden field to Columbia Gas' Line KA-1. It is asserted that gas delivered by Somerset to Line KA-1 was then to be redelivered by Columbia Gulf for Columbia Gas' account to Somerset at the intersection of existing Columbia Gulf and Somerset pipelines in Casey County, Kentucky.

The order of November 29, 1976, it is stated, limited the transportation service to Somerset on an emergency basis after Somerset had completed the line from Manchester to Somerset.

Applicants propose herein to remove the limitation on Somerset's transportation rights in Line KA-1, as well as the status of Columbia Gulf's point of delivery at Casey County, Kentucky, which was to be maintained as an emergency interconnection only. Applicants assert this alteration is being requested to comply with the transportation contract among Columbia Gas, Columbia Gulf and Somerset which contract contained no such limitation.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before May 29, 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. 80-14682 Filed 5-12-80; 8:45 am]

BILLING CODE 6450-85-M

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

[Docket No. RE80-42]

Connecticut Light and Power Co.; Application for Exemption

May 6, 1980.

Take notice that the Connecticut Light and Power Company (CLPC), on November 19, 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 those portions of § 290.403, Load Data for Certain Customer Groups, which require data for "each month" of the reporting period and hourly group loads for a variety of periods. Exemption is also sought from reporting for certain end-use classes under §§ 290.406(a) and 290.404(d) of Part 290 of the Commission's regulations issued pursuant to Section 133 of PURPA.

In its application for exemption, CLPC identifies a number of cost and resource limitations as justification, and states also that the Connecticut Division of Public Utility Control has never required the data for which an exemption is being sought in exercising its ratemaking authority over the applicant.

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 June 27, 1980. The Commission's regulations require that such information also be served upon the applicant, CLPC.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-14683 Filed 5-12-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-363]

Delmarva Power & Light Co.; Proposed Tariff Change

May 6, 1980.

The filing Company submits the following:

Take notice that Delmarva Power & Light Company on April 30, 1980, tendered for filing a FERC Electric Tariff, designated FERC Electric Tariff, Volume No. 10 of Delmarva Power & Light Company. The total revenue increase proposed is $14,853,000 which, after reflecting the estimated fuel savings from the operation of Indian River Unit No. 4 and Salem Unit No. 2 of $7,902,000, results in a net increase in total resale revenues of $6,951,000 on the basis of the proposed test period information.

The company states the foregoing tariff changes are being filed so that it can achieve a fair and reasonable return on its investment in facilities used to provide jurisdictional services.

Copies of the filing were served upon Delmarva's jurisdictional customers, the Delaware Public Service Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 27, 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-14684 Filed 5-12-80; 8:45 am]

BILLING CODE 6450-85-M

[No. 197]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: May 7, 1980.

The Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

Texas Railroad Commission, Oil and Gas Division

1. Control Number (FERC/State)
2. API Well Number
3. Section of NGPA
4. Operator
5. Well Name
6. Field or OCS Area Name
7. County, State, or Block No.
8. Estimated Annual Volume
9. Date Received at FERC
10. Purchaser(s)

1. 80-28751/10539
2. 42-179-00000-0000
3. 108 000 000
4. G C Herrmann Co
5. Lee Harrah Well #4
6. Panhandle
7. Gray TX
8. .8 million cubic feet
9. April 24, 1980
10. Kerr-McGee Corporation

1. 80-28752/10540
2. 42-179-00000-0000
3. 108 000 000
4. G C Herrmann Co
5. Archer A Well #1
6. Panhandle
7. Gray TX
8. 4.3 million cubic feet
9. April 24, 1980
10. Kerr-McGee Corporation

1. 80-28753/10541
2. 42-179-00000-0000
3. 108 000 000
4. G C Herrmann Co
5. Archer A Well #2
6. Panhandle
7. Gray TX
8. 4.3 million cubic feet
9. April 24, 1980
10. Kerr-McGee Corporation

1. 80-28754/10542
2. 42-179-00000-0000
3. 108 000 000
4. G C Herrmann Co
5. Doss A Well #1
6. Panhandle
7. Gray TX
8. 1.1 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80-28755/10543
2. 42-179-00000-0000
3. 108 000 000
4. G C Herrmann Co
5. Doss A Well #2
6. Panhandle
7. Gray TX
8. 1.1 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80-28756/10544
2. 42-179-00000-0000
3. 108 000 000
4. G C Herrmann Co
5. Doss A Well #3
6. Panhandle
7. Gray TX
8. 1.1 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80-28757/10545
2. 42-179-00000-0000
3. 108 000 000
4. G C Herrmann Co
5. Doss A Well #4
6. Panhandle
7. Gray TX
8. 1.1 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80-28758/10546
2. 42-179-00000-0000
3. 108 000 000
4. G C Herrmann Co
5. Jackson Well #1
6. Panhandle
7. Gray TX
8. 1.7 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80-28759/10547
2. 42-179-00000-0000
3. 108 000 000
4. G C Herrmann Co
5. Jackson Well #2
6. Panhandle
7. Gray TX
8. 1.7 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80-28760/10548
2. 42-179-00000-0000
3. 108 000 000
4. G C Herrmann Co
5. Jackson Well #3
6. Panhandle
7. Gray TX
8. 1.7 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80-28761/10549
2. 42-179-00000-0000
3. 108 000 000
4. G C Herrmann Co
5. Jackson Well #4
6. Panhandle
7. Gray TX
8. 1.7 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80-28762/10550
2. 42-179-00000-0000
3. 108 000 000

4. G C Herrmann Co
5. Jackson Well #5
6. Panhandle
7. Gray TX
8. 1.7 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co
1. 80–28763/10551
2. 42–179–00000–0000
3. 108 000 000
4. G C Herrmann Co
5. Jackson Well #6
6. Panhandle
7. Gray TX
8. 1.7 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co
1. 80–28764/10552
2. 42–179–00000–0000
3. 108 000 000
4. G C Herrmann Co
5. Jackson Well #7
6. Panhandle
7. Gray TX
8. 1.7 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co
1. 80–28765/10553
2. 42–179–00000–0000
3. 108 000 000
4. G C Herrmann Co
5. Jackson Well #8
6. Panhandle
7. Gray TX
8. 1.7 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co
1. 80–28766/10554
2. 42–179–00000–0000
3. 108 000 000
4. G C Herrmann Co
5. Jackson Well #9
6. Panhandle
7. Gray, TX
8. 1.7 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co
1. 80–28767/10555
2. 42–179–00000–0000
3. 108 000 000
4. G C Herrmann Co
5. Jackson Well #10
6. Panhandle
7. Gray, TX
8. 1.7 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co
1. 80–28768/10557
2. 42–179–00000–0000
3. 108 000 000
4. G C Herrmann Co
5. Jackson Well #11
6. Panhandle
7. Gray, TX
8. 1.7 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co
1. 80–28769/10557
2. 42–065–00000–0000
3. 108 000 000
4. G C Herrmann Co
5. Burnett Well #5
6. Panhandle
7. Carson, TX
8. 2.8 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co
1. 80–28770/10558
2. 42–179–00000–0000
3. 108 000 000
4. G C Herrmann Co
5. Jackson Well #12
6. Panhandle
7. Gray, TX
8. 1.7 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co
1. 80–28771/10559
2. 42–065–00000–0000
3. 108 000 000
4. G C Herrmann Co
5. McConnell Well #1
6. Panhandle
7. Carson, TX
8. 4.5 million cubic feet
9. April 24, 1980
10. Getty Oil Co
1. 80–28772/10560
2. 42–065–00000–0000
3. 108 000 000
4. G C Herrmann Co
5. McConnell Well #2
6. Panhandle
7. Carson, TX
8. 4.5 million cubic feet
9. April 24, 1980
10. Getty Oil Co
1. 80–28773/10561
2. 42–065–00000–0000
3. 108 000 000
4. G C Herrmann Co
5. McConnell Well #3
6. Panhandle
7. Carson, TX
8. 4.5 million cubic feet
9. April 24, 1980
10. Getty Oil Co
1. 80–28774/10562
2. 42–065–00000–0000
3. 108 000 000
4. G C Herrmann Co
5. McConnell Well #4
6. Panhandle
7. Carson, TX
8. 4.5 million cubic feet
9. April 24, 1980
10. Getty Oil Co
1. 80–28775/10563
2. 42–065–00000–0000
3. 108 000 000
4. G C Herrmann Co
5. McConnell Well #5
6. Panhandle
7. Carson, TX
8. 4.5 million cubic feet
9. April 24, 1980
10. Getty Oil Co
1. 80–28776/10564
2. 42–065–00000–0000
3. 108 000 000
4. G C Herrmann Co
5. Burnett Well #2
6. Panhandle
7. Carson, TX
8. 2.8 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co
1. 80–28777/10565
2. 42–065–00000–0000
3. 108 000 000
4. G C Herrmann Company
5. Burnett Well #3
6. Panhandle
7. Carson, TX
8. 2.8 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co
1. 80–28778/10566
2. 42–065–00000–0000
3. 108 000 000
4. G C Herrmann Co
5. Burnett Well #4
6. Panhandle
7. Carson, TX
8. 2.8 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co
1. 80–28779/10567
2. 42–065–00000–0000
3. 108 000 000
4. G C Herrmann Co
5. Burnett Well #6
6. Panhandle
7. Carson, TX
8. 2.8 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co
1. 80–28780/10568
2. 42–065–00000–0000
3. 108 000 000
4. G C Herrmann Co
5. Burnett Well #7
6. Panhandle
7. Carson, TX
8. 2.8 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co
1. 80–28781/10569
2. 42–065–00000–0000
3. 108 000 000
4. G C Herrmann Co
5. Burnett Well #8
6. Panhandle
7. Carson, TX
8. 2.8 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co
1. 80–28782/10570
2. 42–065–00000–0000
3. 108 000 000
4. G C Herrmann Co
5. Burnett Well #9
6. Panhandle
7. Carson, TX
8. 2.8 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co
1. 80–28783/10572
2. 42–505–00000–0000
3. 103 000 000
4. Great Western Drilling Co
5. G W D Texcan Martinez #1
6. J C Martin (Lobo)
7. Zapata, TX
8. 43.5 million cubic feet
9. April 24, 1980
10. Lo-Vaca Gathering Co
1. 80–28784/10585
2. 42–495–31030–0000
3. 103 000 000
4. Hilliard Oil & Gas Inc
5. Sealy-Smith H No 3
6. Arenoso (Strawn Detritus)
7. Winkler, TX

8. 60.0 million cubic feet
9. April 24, 1980
10. El Paso Natural Gas Co

1. 80-28785/10611
2. 42-233-00000-0000
3. 108 000 000
4. Marion H Stekoll Exec
5. Perkins-Martin (01254) No 1
6. Panhandle Hutchinson County
7. Hutchinson, TX
8. .4 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80-28786/10612
2. 42-233-00000-0000
3. 108 000 000
4. Marion H Stekoll Exec
5. Perkins-Martin (01254) No 2
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 0.4 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80-28787/10613
2. 42-233-00000-0000
3. 108 000 000
4. Marion H Stekoll Exec
5. Perkins-Martin (01254) No 3
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 0.4 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80-28788/10614
2. 42-233-00000-0000
3. 108 000 000
4. Marion H Stekoll Exec
5. Perkins-Martin (01254) No 4
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 0.4 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80-28789/10616
2. 42-233-00000-0000
3. 108 000 000
4. Marion H Stekoll Exec
5. Perkins-Martin (01254) No 6
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 0.4 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80-28790/10617
2. 42-233-00000-0000
3. 108 000 000
4. Marion H Stekoll Exec
5. Perkins-Martin (01254) No 7
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 0.4 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80-28791/10618
2. 42-233-00000-0000
3. 108 000 000
4. Marion H Stekoll Exec
5. Perkins-Martin (01254) No 8
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 0.4 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80-28792/10619
2. 42-233-00000-0000
3. 108 000 000
4. Marion H Stekoll Exec
5. Perkins-Martin (01254) No 9
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 0.4 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80-28793/10620
2. 42-233-00000-0000
3. 108 000 000
4. Marion H Stekoll Exec
5. Perkins-Martin (01254) No 10
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 0.4 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80-28794/10621
2. 42-233-00000-0000
3. 108 000 000
4. Marion H Stekoll Exec
5. Perkins-Martin (01254) No 11
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 0.4 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80-28795/10622
2. 42-233-00000-0000
3. 108 000 000
4. Marion H Stekoll Exec
5. Perkins-Martin (01254) No 17
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 0.4 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80-28796/10623
2. 42-233-00000-0000
3. 108 000 000
4. Marion H Stekoll Exec
5. Perkins-Martin (01254) No 13
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 0.4 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80-28797/10626
2. 42-295-30608-0000
3. 103 000 000
4. Mewbourne Oil Co
5. Price #1 ID #81021
6. Lipscomb (Atoka)
7. Lipscomb TX
8. 144.0 million cubic feet
9. April 24, 1980
10.

1. 80-28798/10627
2. 42-195-30665-0000
3. 103 000 000
4. Mewbourne Oil Co
5. Higgs #1 ID #81025
6. Shapely (Morrow)
7. Hansford TX
8. 420.0 million cubic feet
9. April 24, 1980
10.

1. 80-28799/10656
2. 42-461-31376-0000
3. 103 000 000
4. MWJ Corp
5. Wilde #3
6. Spraberry (Trend area)
7. Upton Cty TX
8. 32.8 million cubic feet
9. April 24, 1980
10. El Paso Natural Gas Co

1. 80-28800/10663
2. 42-483-00000-0000
3. 108 000 000
4. Rodney Barker
5. C E Gierhart #1 47230
6. East Panhandle
7. Wheeler TX
8. 3.0 million cubic feet
9. April 24, 1980
10. Warren Petroleum Co

1. 80-28801/10669
2. 42-483-00000-0000
3. 108 000 000
4. Rodney Barker
5. O A Laycock #1 02434
6. Panhandle Wheeler County
7. Wheeler TX
8. 1.3 million cubic feet
9. April 24, 1980
10. Warren Petroleum Co

1. 80-28802/10738
2. 42-483-00000-0000
3. 108 000 000
4. Bronco Oil Co
5. Pomona-Walker #4 01406
6. Panhandle Wheeler County
7. Wheeler TX
8. 1.9 million cubic feet
9. April 24, 1980
10. Warren Petroleum Co

1. 80-28803/10739
2. 42-483-00000-0000
3. 108 000 000
4. Bronco Oil Co
5. Pomona-Walker #5 01406
6. Panhandle Wheeler County
7. Wheeler TX
8. 1.9 million cubic feet
9. April 24, 1980
10. Warren Petroleum Co

1. 80-28804/10742
2. 42-483-00000-0000
3. 108 000 000
4. Bronco Oil Co
5. W S Walker #3 01407
6. Panhandle Wheeler County
7. Wheeler TX
8. 4.2 million cubic feet
9. April 24, 1980
10. Warren Petroleum Co

1. 80-28805/10789
2. 42-363-31966-0000
3. 103 000 000
4. Polk & Patton Inc
5. Charles Manley No 1
6. Mineral Wells North (Big Saline)
7. Palo Pinto TX
8. 90.0 million cubic feet
9. April 24, 1980
10. Lone Star Gas Co

1. 80-28806/10790
2. 42-363-32011-0000
3. 103 000 000
4. Polk & Patton Inc
5. Harry Sikes Unit No 1
6. Wildcat
7. Palo Pinto TX
8. 150.0 million cubic feet
9. April 24, 1980
10. Lone Star Gas Co

1. 80-28807/10807

2. 42–081–30729–0000
3. 103 000 000
4. Petrolero Explorations Inc
5. Durham Well #1
6. Bloodworth N E (canyon sand)
7. Coke TX
8. 51.1 million cubic feet
9. April 24, 1980
10. Sun Gas Co

1. 80–28808/10826
2. 42–105–31886–0000
3. 103 000 000
4. Texaco Inc
5. A R Kincaid Trust D #7–U
6. Ozona (canyon sand)
7. Crockett TX
8. 153.3 million cubic feet
9. April 24, 1980
10. Northern Natural Gas Co

1. 80–28809/10828"
2. 42–483–00000–0000
3. 102 000 000
4. Apache Corp
5. Stiles #2–17
6. Stiles Ranch (morrow)
7. Wheeler TX
8. 3650.0 million cubic feet
9. April 24, 1980
10. Arkansas-Louisiana Gas Co

1. 80–28810/10836
2. 42–105–31992–0000
3. 102 000 000
4. Harrison Interest Ltd
5. Joe F Bean No 1 ID No 79205
6. Pikes Peak Draw (canyon)
7. Crockett TX
8. 50.0 million cubic feet
9. April 24, 1980
10.

1. 80–28811/10837
2. 42–401–30766–0000
3. 103 000 000
4. Hinton Production Co
5. Hayter Estate No 1
6. Trawick (Pettet) Field
7. Rusk TX
8. 700.0 million cubic feet
9. April 24, 1980
10.

1. 80–28812/10849
2. 42–105–00000–0000
3. 108 000 000
4. Beacon Energy Corp
5. Clay Adams 64178
6. Adams Baggett Branch
7. Crockett TX
8. 7.0 million cubic feet
9. April 24, 1980
10. Detroit Texas Gas Gathering Co Inc

1. 80–28813/10906
2. 42–349–30687–0000
3. 102 000 000
4. McCormick Oil Gas Corp
5. Baum Estate No 1
6. Cheneyboro (Cotton Valley)
7. Navarro TX
8. 146.0 million cubic feet
9. April 24, 1980
10. Lone Star Gas Co

1. 80–28814/10937
2. 42–065–00000–0000
3. 108 000 000
4. J B Watkins
5. Douglas #4
6. Panhandle
7. Carson TX
8. 21.7 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80–28815/10969
2. 42–003–00000–0000
3. 108 000 000
4. Coquina Oil Corp
5. E Lineberry 16 #2316
6. Union
7. Andrews TX
8. 9.0 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80–28816/10970
2. 42–003–00000–0000
3. 108 000 000
4. Coquina Oil Corp
5. E Lineberry 15 #215
6. Union
7. Andrews TX
8. 5.0 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80–28817/10972
2. 42–003–00000–0000
3. 108 000 000
4. Coquina Oil Corp
5. E Lineberry 15 #315
6. Union
7. Andrews TX
8. 5.0 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80–28818/10973
2. 42–003–00000–0000
3. 108 000 000
4. Coquina Oil Corp
5. E Lineberry 15 #415
6. Union
7. Andrews TX
8. 5.0 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80–28819/11166
2. 42–501–31653–0000
3. 103 000 000
4. Shell Oil Co
5. Denver Unit 5814
6. Wasson
7. Yoakum TX
8. 23.0 million cubic feet
9. April 24, 1980
10. Shell Oil Co, Coltexo Corp

1. 80–28820/11191
2. 42–285–31167–0000
3. 102 000 000
4. Kirby Exploration Co
5. B J Hobbs No 1–U
6. Speaks N (Frio)
7. Lavaca TX
8. 150.0 million cubic feet
9. April 24, 1980
10. Seagull Pipeline Corp

1. 80–28821/11278
2. 42–495–30997–0000
3. 103 000 000
4. Bass Enterprises Production Co
5. J B Walton #90
6. Keystone
7. Winkler TX
8. 27.0 million cubic feet
9. April 24, 1980
10. Transwestern Pipeline Co, El Paso Natural Gas Co

1. 80–28822/11279
2. 42–495–31001–0000
3. 103 000 000
4. Bass Enterprises Production Co
5. J B Walton F #93
6. Keystone
7. Winkler TX
8. 41.0 million cubic feet
9. April 24, 1980
10. Transwestern Pipeline Co, EL Paso Natural Gas Co

1. 80–28823/11316
2. 42–123–30950–0000
3. 103 000 000
4. Energy Reserves Group Inc
5. Edwin C Schaefer #5 UT
6. Cottonwood Creek South (Yegua 4800)
7. Dewitt TX
8. 108.0 million cubic feet
9. April 24, 1980
10. Texas Eastern Transmission Corp

1. 80–28824/11317
2. 42–123–30950–0000–
3. 103 000 000
4. Energy Reserves Group Inc
5. Edwin C Schaefer #5 Lt
6. Cottonwood Creek South (Yegua 5300)
7. Dewitt TX
8. 72.0 million cubic feet
9. April 24, 1980
10. Texas Eastern Transmission Corp

1. 80–28825/11328
2. 42–249–00000–0000–
3. 108 000 000
4. Sun Oil Co
5. Seeligson unit well #1–64 Lt
6. Seeligson (zone 20A–05)
7. Jim Wells TX
8. 1.0 million cubic feet
9. April 24, 1980
10. Tennessee Gas Pipeline Co

1. 80–28826/11343
2. 42–429–31635–0000–
3. 103 000 000
4. Wes-Mor Drilling Inc
5. Kennedy lease well #1 RRC #76508
6. Stephens County regular gas
7. Stephens TX
8. 73.0 million cubic feet
9. April 24, 1980
10.

1. 80–28827/11359
2. 42–249–00000–0000–
3. 108 000 000
4. Sun Oil Co
5. Seeligson unit well #40–30
6. Seeligson (zone 16D)
7. Jim Wells TX
8. 15.0 million cubic feet
9. April 24, 1980
10. Tennessee Gas Pipeline Co

1. 80–28828/11398
2. 42–365–30879–0000–
3. 103 000 000
4. Crystal Oil and Land Co
5. Cline #2–A
6. Panola
7. Panola TX
8. 21.0 million cubic feet
9. April 24, 1980
10. United Gas Pipeline Co

1. 80–28829/11408
2. 42–349–30757–0000–
3. 102 000 000
4. McCormick Oil & Gas Corp

5. I Baum Estate No 2
6. Cheneyboro (Cotton Valley)
7. Navarro TX
8. 118.0 million cubic feet
9. April 24, 1980
10. Lone Star Gas Co

1. 80–28830/11409
2. 42–413–00000–0000–
3. 103 000 000
4. Bill J Graham
5. J H Treadwell #1
6. Fort McKavett (Canyon)
7. Schliecher TX
8. 270.0 million cubic feet
9. April 24, 1980
10. Arco Oil & Gas Co

1. 80–28831/11424
2. 42–383–31266–0000–
3. 103 000 000
4. Houston Oil & Minerals Corp
5. Shell McMasters No 2
6. Spraberry (trend area)
7. Reagan TX
8. 30.0 million cubic feet
9. April 24, 1980
10. Union Texas Petroleum

1. 80–28832/11432
2. 42–071–00000–0000–
3. 108 000 000
4. Sun Oil Co
5. State tract 262 well #3–L
6. Red Fish Reef SW (F–11 B)
7. Chambers TX
8. 9.0 million cubic feet
9. April 24, 1980
10. United Texas Transmission Corp

1. 80–28833/11433
2. 42–071–00000–0000–
3. 108 000 000
4. Sun Oil Co
5. Umbrella Point ST TR–88 well #12
6. Umbrella Point (F–14)
7. Chambers TX
8. 3.0 million cubic feet
9. April 24, 1980
10. United Texas Transmission Corp

1. 80–28834/11435
2. 42–245–00000–0000–
3. 108 000 000
4. Sun Oil Co
5. Long-Mauboules well #1
6. Nome (x sand)
7. Jefferson TX
8. 11.0 million cubic feet
9. April 24, 1980
10. Texas Gas Pipe Line Corp

1. 80–28835/11439
2. 42–203–30567–0000–
3. 102 000 000
4. Tomlinson Interests Inc
5. John W Harris No 1
6. Wildcat-G H & H RR Survey A–292
7. Harrison TX
8. 500.0 million cubic feet
9. April 24, 1980
10.

1. 80–28836/11467
2. 42–173–30958–0000–
3. 103 000 000
4. MWJ Producing Co
5. TXL 39–#1
6. Spraberry Trend Area
7. Glasscock TX
8. 60.0 million cubic feet
9. April 24, 1980
10.

1. 80–28837/11471
2. 42–103–32026–0000–
3. 103 000 000
4. Exxon Corp
5. J B Tubb A/C 1 183U
6. Sand Hills (Judkins)
7. Crane TX
8. 35.0 million cubic feet
9. April 24, 1980
10. El Paso Natural Gas Co

1. 80–28838/11475
2. 42–383–00000–0000–
3. 108 000 000
4. Frank Cass
5. Boyd 16 No 3 RRC No 06001
6. Calvin (Dean)
7. Reagan TX
8. 5.6 million cubic feet
9. April 24, 1980
10. El Paso Natural Gas Co Union Texas Petroleum

1. 80–28839/11498
2. 42–479–32268–0000–
3. 103 000 000
4. Conoco Inc
5. H B Zachry D No 1 82019
6. Laredo (Lobo)
7. Webb TX
8. 1460.0 million cubic feet
9. April 24, 1980
10. Delhi Gas Pipeline Corp

1. 80–28840/11499
2. 42–467–30388–0000–
3. 102 000 000
4. Conoco Inc
5. Fruitvale Gas Unit No 2 81922
6. Fruitvale East (Smackover)
7. Van Zandt TX
8. 1095.0 million cubic feet
9. April 24, 1980
10. Delhi Gas Pipeline Corp

1. 80–28841/11500
2. 42–261–30446–0000–
3. 103 000 000
4. Exxon Corp
5. Sarita O & G Unit 146–F 81827
6. Sarita (4–H W)
7. Kenedy TX
8. 256.0 million cubic feet
9. April 24, 1980
10. El Paso Natural Gas Co of America

1. 80–28842/11501
2. 42–383–00000–0000–
3. 108 000 000
4. Frank Cass
5. Nunn 3–30 RRC No 06025
6. Calvin (Dean)
7. Reagan TX
8. 2.4 million cubic feet
9. April 24, 1980
10. El Paso Natural Gas Co

1. 80–28843/11503
2. 42–383–00000–0000–
3. 108 000 000
4. Frank Cass
5. Boyd 31 RRC No 06043
6. Calvin (Dean)
7. Reagan TX
8. 1.9 million cubic feet
9. April 24, 1980
10. El Paso Natural Gas Co

1. 80–28844/11507
2. 42–047–00000–0000
3. 108 000 000
4. Maguire Oil Co
5. Sullivan D J #1
6. Ann Mag
7. Brooks TX
8. 10.0 million cubic feet
9. April 24, 1980
10. Natural Gas Pipeline Co of America

1. 80–28845/11508
2. 42–047–00000–0000
3. 108 000 000
4. Maguire Oil Co
5. Flores-Chamberlain unit #1
6. Ann Mag
7. Brooks TX
8. 5.0 million cubic feet
9. April 24, 1980
10. Natural Gas Pipeline Co of America

1. 80–28846/11509
2. 42–497–31409–0000
3. 103 000 000
4. Mitchell Energy Corp
5. Mary Reddell #2 19304
6. Morris (consolidated congl)
7. Wise TX
8. 4.0 million cubic feet
9. April 24, 1980
10. Natural Gas Pipeline Co of America

1. 80–28847/11525
2. 42–365–00000–0000
3. 108 000 000
4. Clemco Inc
5. Langston #2
6. Bethany (Paluxy)
7. Panola TX
8. 12.1 million cubic feet
9. April 24, 1980
10. United Gas Pipeline Co of America

1. 80–28848/11529
2. 42–393–30637–0000
3. 103 000 000
4. El Paso Natural Gas Co
5. McMordie#1
6. St Clair (9200)
7. Roberts TX
8. 438.0 million cubic feet
9. April 24, 1980
10. El Paso Natural Gas Co

1. 80–28849/11531
2. 42–103–31909–0000
3. 103 000 000
4. Exxon Corp
5. J B Tubb B #20–U
6. Sand Hills (Judkins)
7. Crane TX
8. 141.0 million cubic feet
9. April 24, 1980
10. El Paso Natural Gas Co Warren Petroleum Corp

1. 80–28850/11547
2. 42–195–00000–0000
3. 108 000 000
4. Mesa Petroleum Co
5. Hart #1–4
6. Hansford Morrow Lower
7. Hansford TX
8. 15.5 million cubic feet
9. April 24, 1980
10. Panhandle Eastern Pipeline Co

1. 80–28851/11561
2. 42–233–00000–0000
3. 108 000 000
4. North Star Petroleum Corp
5. Herring A–3 (00986)
6. Panhandle Hutchinson County
7. Hutchinson TX

8. 11.0 million cubic feet
9. April 24, 1980
10. Panhandle Producing Co

1. 80–28852/11562
2. 42–233–00000–0000
3. 108 000 000
4. North Star Petroleum Co
5. Herring A–11 (00986)
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 11.1 million cubic feet
9. April 24, 1980
10. Panhandle Producing Co

1. 80–28853/11563
2. 42–233–00000–0000
3. 108 000 000
4. North Star Petroleum Corp
5. Herring A–16 (00986)
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 11.0 million cubic feet
9. April 24, 1980
10. Panhandle Producing Co

1. 80–28854/11564
2. 42–233–00000–0000
3. 108 000 000
4. North Star Petroleum Co
5. Herring B–1 (00986)
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 11.0 million cubic feet
9. April 24, 1980
10. Panhandle Producing Co

1. 80–28855/11565
2. 42–233–00000–0000
3. 108 000 000
4. North Star Petroleum Corp
5. Herring B–2 (00986)
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 11.0 million cubic feet
9. April 24, 1980
10. Panhandle Producing Co et al

1. 80–28856/11657
2. 42–173–30959–0000
3. 103 000 000
4. MWJ Producing Co
5. TXL 11–#1
6. Spraberry Trend Area
7. Glasscock County TX
8. 58.0 million cubic feet
9. April 24, 1980
10.

1. 80–28857/11670
2. 42–311–31061–0000
3. 103 000 000
4. Mobil Oil Corp
5. P Kynette Well No 28 (00177)
6. Campana South (1600)
7. McMullen TX
8. 285.0 million cubic feet
9. April 24, 1980
10. Houston Pipe Line Co

1. 80–28858/11678
2. 42–179–00000–0000
3. 108 000 000
4. Wefco Inc
5. W C Archer #2 (00568)
6. Panhandle Gray County
7. Gray TX
8. 2.0 million cubic feet
9. April 24, 1980
10. Kerr–McGee Corp

1. 80–28859/11684
2. 42–179–00000–0000
3. 108 000 000
4. Wefco Inc
5. R S McConnell #10 (00570)
6. Panhandle Gray County
7. Gray TX
8. 3.0 million cubic feet
9. April 24, 1980
10. Kerr–McGee Corp

1. 80–28860/11685
2. 42–179–00000–0000
3. 108 000 000
4. Wefco Inc
5. R S McConnell #9 (00570)
6. Panhandle Gray County
7. Gray TX
8. 3.0 million cubic feet
9. April 24, 1980
10. Kerr–McGee Corp

1. 80–28861/11686
2. 42–179–00000–0000
3. 108 000 000
4. Wefco Inc
5. R S McConnell #7 (00570)
6. Panhandle Gray County
7. Gray TX
8. 3.0 million cubic feet
9. April 24, 1980
10. Kerr–McGee Corp

1. 80–28862/11688
2. 42–179–00000–0000
3. 108 000 000
4. Wefco Inc
5. R S McConnell #8 (00570)
6. Panhandle Gray County
7. Gray TX
8. 3.0 million cubic feet
9. April 24, 1980
10. Kerr–McGee Corp

1. 80–28863/11826
2. 42–179–00000–0000
3. 108 000 000
4. Tripplehorn Oil Co
5. Hunt #1 ID 26596
6. Panhandle East
7. Gray TX
8. 11.0 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co

1. 80–28864/11827
2. 42–179–00000–0000
3. 108 000 000
4. Tripplehorn Oil Co.
5. Hunt #2 ID 26597
6. Panhandle East
7. Gray, TX
8. 14.4 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co.

1. 80–28865/11828
2. 42–179–00000–0000
3. 108 000 000
4. Tripplehorn Oil Co.
5. Hunt 3 ID 26598
6. Panhandle East
7. Gray, TX
8. 7.0 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co.

1. 80–28866/11829
2. 42–179–00000–0000
3. 108 000 000
4. Tripplehorn Oil Co.
5. Hunt #4 ID 26599
6. Panhandle East
7. Gray, TX
8. .0 million cubic feet
9. April 24, 1980
10. Phillips Petroleum Co.

1. 80–28867/11973
2. 42–233–00000–0000
3. 108 000 000
4. Petro-Search Inc.
5. Richards #2 (1–117–00972–6)
6. Panhandle
7. Hutchinson, TX
8. 6.2 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80–28868/11978
2. 42–233–00000–0000
3. 108 000 000
4. Petro-Search Inc.
5. Watkins #1 (1–117–00968–6)
6. Panhandle
7. Hutchinson, TX
8. .0 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80–28869/11988
2. 42–233–00000–0000
3. 108 000 000
4. Petro-Search Inc.
5. Watkins #12 (1–117–00968–6)
6. Panhandle
7. Hutchinson, TX
8. 3.9 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80–28870/11989
2. 42–233–00000–0000
3. 108 000 000
4. Petro-Search Inc.
5. Watkins #13 (1–117–00968–6)
6. Panhandle
7. Hutchinson, TX
8. 3.9 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80–28871/11990
2. 42–233–00000–0000
3. 108 000 000
4. Petro-Search Inc.
5. Watkins #15 (1–117–00968–6)
6. Panhandle
7. Hutchinson, TX
8. .0 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80–28872/11991
2. 42–233–00000–0000
3. 108 000 000
4. Petro-Search Inc.
5. Watkins #19 (1–117–00968–6)
6. Panhandle
7. Hutchinson, TX
8. 3.9 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80–28873/11992
2. 42–233–00000–0000
3. 108 000 000
4. Petro-Search Inc.
5. Watkins #20 (1–117–00968–6)
6. Panhandle
7. Hutchinson, TX
8. 3.9 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80–28874/11993

2. 42–233–00000–0000
3. 108 000 000
4. Petro-Search Inc.
5. Coleman #4 (1–117–00969–4)
6. Panhandle
7. Hutchinson, TX
8. 10.6 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80–28875/11999
2. 42–233–00000–0000
3. 108 000 000
4. Petro-Search Inc.
5. Coleman #16 (1–117–00969–4)
6. Panhandle
7. Hutchinson, TX
8. 10.6 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80–28876/12001
2. 42–233–00000–0000
3. 108 000 000
4. Petro-Search Inc.
5. Coleman #21 (1–117–00969–4)
6. Panhandle
7. Hutchinson, TX
8. 10.6 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80–28877/12004
2. 42–233–00000–0000
3. 108 000 000
4. Petro-Search Inc.
5. Coleman #39 (1–117–00969–4)
6. Panhandle
7. Hutchinson, TX
8. 10.6 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80–28878/12005
2. 42–233–00000–0000
3. 108 000 000
4. Petro-Search Inc.
5. Coleman #40 (1–117–00969–4)
6. Panhandle
7. Hutchinson, TX
8. 10.6 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80–28879/12006
2. 42–233–00000–0000
3. 108 000 000
4. Petro-Search Inc.
5. Coleman #41 (1–117–00969–4)
6. Panhandle
7. Hutchinson, TX
8. 10.6 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80–28880/12007
2. 42–233–00000–0000
3. 108 000 000
4. Petro-Search Inc.
5. Coleman #43 (1–117–00969–4)
6. Panhandle
7. Hutchinson, TX
8. 10.6 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80–28881/12008
2. 42–233–00000–0000
3. 108 000 000
4. Petro-Search Inc.
5. Coleman #44 (1–117–00969–4)
6. Panhandle
7. Hutchinson, TX
8. 10.6 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80–28882/12009
2. 42–233–00000–0000
3. 108 000 000
4. Petro-Search Inc.
5. Coleman #45 (1–117–00969–4)
6. Panhandle
7. Hutchinson, TX
8. 10.6 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80–28883/12010
2. 42–233–00000–0000
3. 108 000 000
4. Petro-Search Inc.
5. Coleman #46 (1–117–00969–4)
6. Panhandle
7. Hutchinson, TX
8. 10.6 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80–28884/12011
2. 42–233–00000–0000
3. 108 000 000
4. Petro-Search Inc
5. Coleman #47 (1–117–00969–4)
6. Panhandle
7. Hutchinson, TX
8. 10.6 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28885/12012
2. 42–233–00000–0000
3. 108 000 000
4. Petro-Search Inc
5. Richards #1 (1–117–00972–8)
6. Panhandle
7. Hutchinson, TX
8. 6.2 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28886/12230
2. 42–427–00000–0000
3. 108 000 000
4. Exxon Corp
5. N R Montalvo No 33 64376
6. Sun (D–2–B)
7. Starr, TX
8. 16.6 million cubic feet
9. April 24, 1980
10. Tennessee Gas Pipeline Co

1. 80–28887/12236
2. 42–131–00000–0000
3. 108 000 000
4. Exxon Corp
5. Duval Co Ranch Co St S 2–F 65069
6. Lundell (1330)
7. Duval County, TX
8. 6.2 million cubic feet
9. April 24, 1980
10. Natural Gas Pipeline Co

1. 80–28888/12252
2. 42–435–00000–0000
3. 108 000 000
4. Suburban Propane Gas Corp
5. Mayer Estate No 1
6. Mayer Ranch Canyon
7. Sutton, TX
8. 12.0 million cubic feet
9. April 24, 1980
10. Northern Natural Gas Co

1. 80–28889/12298
2. 42–459–00000–0000
3. 108 000 000
4. Mobil Oil Corp
5. J W Free #29
6. East Texas
7. Upshur, TX
8. .2 million cubic feet
9. April 24, 1980
10. Warren Petroleum Co et al

1. 80–28890/12299
2. 42–401–00000–0000
3. 108 000 000
4. Mobil Oil Corp
5. T O Mason #13
6. East Texas
7. Rusk, TX
8. .3 million cubic feet
9. April 24, 1980
10. Cities Service Company Arco Oil and Gas Co

1. 80–28891/12300
2. 42–459–00000–0000
3. 108 000 000
4. Mobil Oil Corp
5. J F Bland #1
6. East Texas
7. Upshur, TX
8. .9 million cubic feet
9. April 24, 1980
10. Warren Petroleum Co et al

1. 80–28892/12303
2. 42–401–00000–0000
3. 108 000 000
4. Mobil Oil Corp
5. A K Perkins #2
6. East Texas
7. Rusk, TX
8. .1 million cubic feet
9. April 24, 1980
10. Cities Service Co Arco Oil and Gas Co

1. 80–28893/12318
2. 42–371–30883–0000
3. 108 000 000
4. Mobil Oil Corp
5. State Houston Co Timber Co D #4
6. Brooklaw South (Tubb)
7. Pecos, TX
8. .7 million cubic feet
9. April 24, 1980
10. Lone Star Gas Co

1. 80–28894/12319
2. 42–459–00000–0000
3. 108 000 000
4. Mobil Oil Corp
5. O F Smith #13
6. East Texas
7. Upshur, TX
8. .6 million cubic feet
9. April 24, 1980
10. Warren Petroleum Co et al

1. 80–28895/12320
2. 42–459–00000–0000
3. 108 000 000
4. Mobil Oil Corp
5. O F Smith #8
6. East Texas
7. Upshur, TX
8. .6 million cubic feet
9. April 24, 1980
10. Warren Petroleum Co et al

1. 80–28896/12326
2. 42–459–00000–0000
3. 108 000 000
4. Mobil Oil Corp
5. Scurry Christian #1

6. East Texas
7. Upshur, TX
8. .9 million cubic feet
9. April 24, 1980
10. Warren Petroleum Co et al

1. 80–28897/12331
2. 42–459–00000–0000
3. 108 000 000
4. Mobil Oil Corp
5. J W Free #27
6. East Texas
7. Upshur, TX
8. .2 million cubic feet
9. April 24, 1980
10. Warren Petroleum Co et al

1. 80–28898/12334
2. 42–183–00000–0000
3. 108 000 000
4. Mobil Oil Corp
5. Ed Mitchell #1
6. East Texas
7. Gregg, TX
8. .4 million cubic feet
9. April 24, 1980
10. Warren Petroleum Co

1. 80–28899/12336
2. 42–459–00000–0000
3. 108 000 000
4. Mobil Oil Corp
5. Scurry Christian #4
6. East Texas
7. Upshur, TX
8. .9 million cubic feet
9. April 24, 1980
10. Warren Petroleum Co et al

1. 80–28900/12337
2. 42–183–00000–0000
3. 108 000 000
4. Mobil Oil Corp
5. J H Beavers #6
6. East Texas
7. Gregg, TX
8. .9 million cubic feet
9. April 24, 1980
10. Arco Oil & Gas Co

1. 80–28901/12340
2. 42–065–00000–0000
3. 108 000 000
4. North Star Petroleum Corp
5. R J Sailor No 2 (03355)
6. Panhandle Carson County
7. Carson, TX
8. 3.2 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28902/12339
2. 42–065–00000–0000
3. 108 000 000
4. North Star Petroleum Corp
5. R J Sailor No 1 (03355)
6. Panhandle Carson County
7. Carson, TX
8. 3.2 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28903/12341
2. 42–065–00000–0000
3. 108 000 000
4. North Star Petroleum Corp
5. R J Sailor No 3 (03355)
6. Panhandle Carson County
7. Carson, TX
8. 3.2 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28904/12342
2. 42–065–00000–0000
3. 108 000 000
4. North Star Petroleum Corp
5. R J Sailor No 4 (03355)
6. Panhandle Carson County
7. Carson TX
8. 3.2 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28905/12343
2. 42–065–00000–0000
3. 108 000 000
4. North Star Petroleum Corp
5. R J Sailor No 7 (03355)
6. Panhandle Carson County
7. Carson TX
8. 3.2 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28906/12344
2. 42–065–00000–0000
3. 108 000 000
4. North Star Petroleum Corp
5. R J Sailor No 8 (03355)
6. Panhandle Carson County
7. Carson TX
8. 3.2 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28907/12345
2. 42–065–00000–0000
3. 108 000 000
4. North Star Petroleum Corp
5. R J Sailor No 6 (03355)
6. Panhandle Carson County
7. Carson TX
8. 3.2 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28908/12389
2. 42–047–00000–0000
3. 108 000 000
4. Mills Bennett Estate
5. Bennett Mills Estate Fee #26
6. (L–2 Sand Seg 3) Field
7. Brooks TX
8. 2.4 million cubic feet
9. April 24, 1980
10. Texas Eastern Transmission Co

1. 80–28909/12393
2. 42–233–00000–0000
3. 108 000 000
4. Panhandle Producing Co
5. Haile No 5 (00820)
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 10.0 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28910/12395
2. 42–233–00000–0000
3. 108 000 000
4. Panhandle Producing Co
5. Haile No 2 (00820)
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 10.0 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28911/12396
2. 42–233–00000–0000
3. 108 000 000
4. Panhandle Producing Co
5. Haile No 1 (00820)
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 10.0 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28912/12397
2. 42–233–00000–0000
3. 108 000 000
4. Panhandle Producing Co
5. Haile No 6 (00820)
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 10.0 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28913/12398
2. 42–233–00000–0000
3. 108 000 000
4. Panhandle Producing Co
5. Haile No 7 (00820)
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 10.0 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28914/12399
2. 42–233–00000–0000
3. 108 000 000
4. Panhandle Producing Co
5. Haile No 8 (00820)
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 10.0 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28915/12400
2. 42–233–00000–0000
3. 108 000 000
4. Panhandle Producing Co
5. Haile No 10 (00820)
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 10.0 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28916/12401
2. 42–233–00000–0000
3. 108 000 000
4. Panhandle Producing Co
5. Haile No 11 (00820)
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 10.0 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28917/12402
2. 42–233–00000–0000
3. 108 000 000
4. Panhandle Producing Co
5. Haile No 14 (00820)
6. Panhandle Hutchinson County
7. Hutchinson TX
8. 10.0 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28918/12482
2. 42–179–00000–0000
3. 108 000 000
4. Cities Services Co
5. Bender A #1
6. Panhandle-Gray
7. Gray TX
8. 16.2 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28919/12483
2. 42–179–00000–0000
3. 108 000 000
4. Cities Service Co
5. Bender A #3
6. Panhandle-Gray
7. Gray TX
8. 9.8 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28920/12485
2. 42–179–00000–0000
3. 108 000 000
4. Cities Service Co
5. Bender A #5
6. Panhandle-Gray
7. Gray TX
8. 5.2 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28921/12487
2. 42–179–00000–0000
3. 108 000 000
4. Cities Service Co
5. Bender A #10
6. Panhandle-Gray
7. Gray TX
8. 6.2 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28922/12489
2. 42–233–00000–0000
3. 108 000 000
4. Cities Service Company
5. Cockrell J #1
6. Panhandle-Hutchinson
7. Hutchinson TX
8. 1.5 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28923/12490
2. 42–233–00000–0000
3. 108 000 000
4. Cities Service Company
5. Cockrell J #2
6. Panhandle-Hutchinson
7. Hutchinson TX
8. 2.1 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28924/12491
2. 42–233–00000–0000
3. 108 000 000
4. Cities Service Co
5. Cockrell J #3
6. Panhandle-Hutchinson
7. Hutchinson TX
8. 1.3 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28925/12492
2. 42–233–00000–0000
3. 108 000 000
4. Cities Service Co
5. Cockrell J #4
6. Panhandle-Hutchinson
7. Hutchinson TX
8. 1.0 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28926/12493
2. 42–233–00000–0000
3. 108 000 000
4. Cities Service Co
5. Cockrell J #5
6. Panhandle-Hutchinson
7. Hutchinson TX
8. 2.4 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28927/12494
2. 42–233–00000–0000
3. 108 000 000
4. Cities Service Co
5. Cockrell J #6
6. Panhandle-Hutchinson
7. Hutchinson TX
8. .6 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28928/12497
2. 42–233–00000–0000
3. 108 000 000
4. Cities Service Co
5. Cockrell J #10
6. Panhandle-Hutchinson
7. Hutchinson TX
8. 2.6 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28929/12498
2. 42–233–00000–0000
3. 108 000 000
4. Cities Service Co
5. Cockrell J #11
6. Panhandle-Hutchinson
7. Hutchinson TX
8. .8 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28930/12499
2. 42–233–00000–0000
3. 108 000 000
4. Cities Service Co
5. Cockrell J #12
6. Panhandle-Hutchinson
7. Hutchinson TX
8. .8 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28931/12500
2. 42–233–00000–0000
3. 108 000 000
4. Cities Service Co
5. Cockrell J #14
6. Panhandle-Hutchinson
7. Hutchinson TX
8. .8 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28932/12501
2. 42–233–00000–0000
3. 108 000 000
4. Cities Service Co
5. Cockrell J #15
6. Panhandle-Hutchinson
7. Hutchinson TX
8. .4 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28933/12502
2. 42–233–00000–0000
3. 108 000 000
4. Cities Service Co
5. Cockrell J #16
6. Panhandle-Hutchinson
7. Hutchinson TX
8. .9 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28934/12503
2. 42–233–00000–0000
3. 108 000 000
4. Cities Service Co
5. Cockrell L #1
6. Panhandle-Hutchinson
7. Hutchinson TX
8. .9 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28935/12504
2. 42–233–00000–0000
3. 108 000 000
4. Cities Service Co
5. Cockrell L #2
6. Panhandle-Hutchinson
7. Hutchinson TX
8. .6 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28936/12507
2. 42–233–00000–0000
3. 108 000 000
4. Cities Service Co
5. Culler A #2
6. Panhandle-Gray
7. Gray TX
8. 4.8 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28937/12508
2. 42–179–00000–0000
3. 108 000 000
4. Cities Service Co
5. Culler A #3
6. Panhandle-Gray
7. Gray TX
8. 8.1 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28938/12509
2. 42–179–00000–0000
3. 108 000 000
4. Cities Service Co
5. Culler A #4
6. Panhandle-Gray
7. Gray TX
8. 10.6 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28939/12510
2. 42–179–00000–0000
3. 108 000 000
4. Cities Service Co
5. Culler A #6
6. Panhandle-Gray
7. Gray TX
8. 12.2 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28940/12511
2. 42–179–00000–0000
3. 108 000 000
4. Cities Service Co
5. Culler A #7
6. Panhandle-Gray
7. Gray TX
8. 9.0 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28941/12512
2. 42–179–00000–0000
3. 108 000 000
4. Cities Service Co
5. Culler A #8

6. Panhandle-Gray
7. Gray TX
8. 5.7 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28942/12513
2. 42–179–00000–0000
3. 108 000 000
4. Cities Service Co
5. Culler A #9
6. Panhandle-Gray
7. Gray TX
8. 4.2 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28943/12514
2. 42–179–00000–0000
3. 108 000 000
4. Cities Service Co
5. Culler A #12
6. Panhandle-Gray
7. Gray TX
8. 4.0 million cubic feet
9. April 24, 1980
10. Getty Oil Co

1. 80–28944/12515
2. 42–065–00000–0000
3. 108 000 000
4. Cities Service Company
5. Deahl B #3
6. Panhandle-Carson
7. Carson TX
8. 3.0 million cubic feet
9. April 24, 1980
10. Cities Service Gas Co

1. 80–28945/12516
2. 42–065–00000–0000
3. 108 000 000
4. Cities Service Company
5. Deahl B #4
6. Panhandle-Carson
7. Carson TX
8. 0.6 million cubic feet
9. April 24, 1980
10. Cities Service Gas Company

1. 80–28946/12517
2. 42–065–00000–0000
3. 108 000 000
4. Cities Service Company
5. Deahl B #8
6. Panhandle-Carson
7. Carson TX
8. 1.0 million cubic feet
9. April 24, 1980
10. Cities Service Gas Company

1. 80–28947/12518
2. 42–065–00000–0000
3. 108 000 000
4. Cities Service Company
5. Deahl B #12
6. Panhandle-Carson
7. Carson TX
8. 1.0 million cubic feet
9. April 24, 1980
10. Cities Service Gas Company

1. 80–28948/12519
2. 42–065–00000–0000
3. 108 000 000
4. Cities Service Company
5. Deahl C #1
6. Panhandle-Carson
7. Carson TX
8. 1.1 million cubic feet
9. April 24, 1980
10. Cities Service Gas Company

1. 80–28949/12520
2. 42–065–00000–0000
3. 108 000 000
4. Cities Service Company
5. Deahl C #2
6. Panhandle-Carson
7. Carson TX
8. 1.2 million cubic feet
9. April 24, 1980
10. Cities Service Gas Company

1. 80–28950/12521
2. 42–065–00000–0000
3. 108 000 000
4. Cities Service Company
5. Deahl C #4
6. Panhandle-Carson
7. Carson TX
8. 2.9 million cubic feet
9. April 24, 1980
10. Cities Service Gas Company

1. 80–28951/12522
2. 42–065–00000–0000
3. 108 000 000
4. Cities Service Company
5. Deahl C #5
6. Panhandle-Carson
7. Carson TX
8. 0.8 million cubic feet
9. April 24, 1980
10. Cities Service Gas Company

1. 80–28952/12523
2. 42–065–00000–0000
3. 108 000 000
4. Cities Service Company
5. Deahl C #6
6. Panhandle-Carson
7. Carson TX
8. 1.3 million cubic feet
9. April 24, 1980
10. Cities Service Gas Company

1. 80–28953/12524
2. 42–065–00000–0000
3. 108 000 000
4. Cities Service Company
5. Deahl C #8
6. Panhandle-Carson
7. Carson TX
8. 0.8 million cubic feet
9. April 24, 1980
10. Cities Service Gas Company

1. 80–28954/12525
2. 42–065–00000–0000
3. 108 000 000
4. Cities Service Company
5. Deahl C #10
6. Panhandle-Carson
7. Carson TX
8. 1.3 million cubic feet
9. April 24, 1980
10. Cities Service Gas Company

1. 80–28955/12526
2. 42–065–00000–0000
3. 108 000 000
4. Cities Service Company
5. Deahl C #11
6. Panhandle-Carson
7. Carson TX
8. 1.4 million cubic feet
9. April 24, 1980
10. Cities Service Gas Company

1. 80–28956/12527
2. 42–065–00000–0000
3. 108 000 000
4. Cities Service Company
5. Deahl C#12
6. Panhandle—Carson
7. Carson
8. 1.2 million cubic feet
9. April 24, 1980
10. Cities Service Gas Company

1. 80–28957/12528
2. 42–065–00000–0000
3. 108 000 000
4. Cities Service Company
5. Drillex A #1
6. Panhandle-Carson
7. Hutchinson TX
8. 0.5 million cubic feet
9. April 24, 1980
10. Getty Oil Company

1. 80–28958/12609
2. 42–323–30519–0000
3. 108 000 000
4. Conoco Inc
5. N J Chittim No C 9 02082
6. Sacatosa (San Miguel #1 Sand)
7. Maverick TX
8. 0.4 million cubic feet
9. April 24, 1980
10. Lovaca Gathering Company

1. 80–28959/12616
2. 42–323–00000–0000
3. 108 000 000
4. Conoco Inc
5. N J Chittim No 7013 02082
6. Sacatosa (San Miguel #1 Sand)
7. Maverick TX
8. 0.4 million cubic feet
9. April 24, 1980
10. Lovaca Gathering Company

1. 80–28960/12617
2. 42–323–31169–0000
3. 108 000 000
4. Conoco Inc
5. N J Chittim No 7017 02082
6. Sacatosa (San Miguel #1 Sand)
7. Maverick TX
8. 0.4 million cubic feet
9. April 24, 1980
10. Lovaca Gathering Company

1. 80–28961/12619
2. 42–323–00000–0000
3. 108 000 000
4. Conoco Inc
5. N J Chittim No 7102 02082
6. Sacatosa (San Miguel #1 Sand)
7. Maverick TX
8. 0.4 million cubic feet
9. April 24, 1980
10. Lovaca Gathering Company

1. 80–28962/12618
2. 42–323–31168–0000
3. 108 000 000
4. Conoco Inc
5. N J Chittim No 7018 02082
6. Sacatosa (San Miguel #1 Sand)
7. Maverick TX
8. 0.4 million cubic feet
9. April 24, 1980
10. Lovaca Gathering Company

1. 80–28963/12620
2. 42–323–00000–0000
3. 108 000 000
4. Conoco Inc
5. N J Chittim No 7103 02082
6. Sacatosa (San Miguel #1 Sand)
7. Maverick TX
8. 0.4 million cubic feet
9. April 24, 1980
10. Lovaca Gathering Company

1. 80–28964/12621
2. 42–323–00000–0000
3. 108 000 000
4. Conoco Inc
5. N J Chittim No 7104 02082
6. Sacatosa (San Miguel #1 Sand)
7. Maverick, TX
8. .4 million cubic feet
9. April 24, 1980
10. Lovaca Gathering Co

1. 80–28965/12624
2. 42–323–00000–0000
3. 108 000 000
4. Conoco Inc
5. N J Chittim No 7104 02082
6. Sacatosa (San Miguel #1 Sand)
7. Maverick, TX
8. .4 million cubic feet
9. April 24, 1980
10. Lovaca Gathering Co

1. 80–28966/12625
2. 42–323–00000–0000
3. 108 000 000
4. Conoco Inc
5. N J Chittim No 7108 02082
6. Sacatosa (San Miguel #1 Sand)
7. Maverick, TX
8. .4 million cubic feet
9. April 24, 1980
10. Lovaca Gathering Co

1. 80–28967/12627
2. 42–323–00000–0000
3. 108 000 000
4. Conoco Inc
5. N J Chittim No 7110 02082
6. Sacatosa (San Miguel #1 Sand)
7. Maverick, TX
8. .4 million cubic feet
9. April 24, 1980
10. Lovaca Gathering Co

1. 80–28968/12631
2. 42–323–00000–0000
3. 108 000 000
4. Conoco Inc
5. N J Chittim No 4054 02082
6. Sacatosa (San Miguel #1 Sand)
7. Maverick, TX
8. .4 million cubic feet
9. April 24, 1980
10. Lovaca Gathering Co

1. 80–28969/12651
2. 42–135–07252–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Millard-C No 1 (04868)
6. Penwell (Ellenburger)
7. Ector, TX
8. 1.0 million cubic feet
9. April 24, 1980
10. El Paso Natural Gas Co

1. 80–28970/12653
2. 42–135–07568–0000
3. 108 000 000
4. Phillips Petroleum Co
5. Kloh-B No 10 (08461)
6. Cowden North (Deep)
7. Ector, TX
8. .9 million cubic feet
9. April 24, 1980
10. Amoco Production Co

1. 80–28971/12670
2. 42–323–30326–0000
3. 108 000 000
4. Conoco Inc
5. N J Chittim #4333 (02082)
6. Sacatosa (San Miguel #1 Sand)
7. Maverick, TX
8. .4 million cubic feet
9. April 24, 1980
10. Lovaca Gathering Co

1. 80–28972/12671
2. 42–323–30336–0000
3. 108 000 000
4. Conoco Inc
5. N J Chittim #4335 (02082)
6. Sacatosa (San Miguel #1 Sand)
7. Maverick, TX
8. .4 million cubic feet
9. April 24, 1980
10. Lovaca Gathering Co

1. 80–28973/12672
2. 42–323–30337–0000
3. 108 000 000
4. Conoco Inc
5. N J Chittim #4336 (02082)
6. Sacatosa (San Miguel #1 Sand)
7. Maverick, TX
8. .4 million cubic feet
9. April 24, 1980
10. Lovaca Gathering Co

1. 80–28974/12675
2. 42–323–30352–0000
3. 108 000 000
4. Conoco Inc
5. N J Chittim #4343 (02082)
6. Sacatosa (San Miguel #1 Sand)
7. Maverick, TX
8. .4 million cubic feet
9. April 24, 1980
10. Lovaca Gathering Co

1. 80–28975/12676
2. 42–323–30341–0000
3. 108 000 000
4. Conoco Inc
5. N J Chittim #4345 (02082)
6. Sacatosa (San Miguel #1 Sand)
7. Maverick, TX
8. .4 million cubic feet
9. April 24, 1980
10. Lovaca Gathering Co

1. 80–28976/12677
2. 42–323–30343–0000
3. 108 000 000
4. Conoco Inc
5. N J Chittim #4346 (02082)
6. Sacatosa (San Miguel #1 Sand)
7. Maverick, TX
8. .4 million cubic feet
9. April 24, 1980
10. Lovaca Gathering Co

1. 80–28977/12678
2. 42–323–30350–0000
3. 108 000 000
4. Conoco Inc
5. N J Chittim #4349 (02082)
6. Sacatosa (San Miguel #1 Sand)
7. Maverick, TX
8. .4 million cubic feet
9. April 24, 1980
10. Lovaca Gathering Co

1. 80–28978/12687
2. 42–323–30087–0000
3. 108 000 000
4. Conoco Inc
5. N J Chittim #6408 (02082)
6. Sacatosa (San Miguel #1 Sand)
7. Maverick, TX
8. .4 million cubic feet
9. April 24, 1980
10. Lovaca Gathering Co

1. 80–28979/12688
2. 42–323–00000–0000
3. 108 000 000
4. Conoco Inc
5. N J Chittim #6503 (02082)
6. Sacatosa (San Miguel #1 Sand)
7. Maverick, TX
8. .4 million cubic feet
9. April 24, 1980
10. Lovaca Gathering Co

1. 80–28980/12689
2. 42–323–00000–0000
3. 108 000 000
4. Conoco Inc
5. N J Chittim #6504 (02082)
6. Sacatosa (San Miguel #1 Sand)
7. Maverick, TX
8. .4 million cubic feet
9. April 24, 1980
10. Lovaca Gathering Co

1. 80–28981/12690
2. 42–323–00000–0000
3. 108 000 000
4. Conoco Inc
5. N J Chittim #6507 (02082)
6. Sacatosa (San Miguel #1 Sand)
7. Maverick, TX
8. .4 million cubic feet
9. April 24, 1980
10. Lovaca Gathering Co

1. 80–28982/12707
2. 42–323–30409–0000
3. 108 000 000
4. Conoco Inc
5. N J Chittim #6652 (02082)
6. Sacatosa (San Miguel #1 Sand)
7. Maverick, TX
8. .4 million cubic feet
9. April 24, 1980
10. Lovaca Gathering Co

1. 80–28983/12725
2. 42–127–30701–0000
3. 108 000 000
4. Conoco Inc
5. J S Myers et al #19 (04400)
6. Pena Creek (San Miguel 3rd)
7. Dimmit, TX
8. 1.4 million cubic feet
9. April 24, 1980
10. Lovaca Gathering Co

1. 80–28984/13209
2. 42–047–00000–0000
3. 108 000 000
4. Exxon Corp.
5. McGill Bros. #451–F (74672)
6. Kelsey Deep (Zone 21–A)
7. Brooks, TX
8. 15.8 million cubic feet
9. April 24, 1980
10. Trunkline Gas Co.

1. 80–28985/13215
2. 42–233–00000–0000
3. 108 000 000
4. L. Jack Gross Production
5. Weatherly #2
6. Panhandle Hutchinson Co.
7. Hutchinson, TX
8. 18.0 million cubic feet
9. April 24, 1980
10. Phillips Pet Co.

1. 80–28986/13216
2. 42–233–00000–0000
3. 108 000 000
4. L. Jack Gross Production
5. Weatherly #3

6. Panhandle Hutchinson Co.
7. Hutchinson, TX
8. 18.0 million cubic feet
9. April 24, 1980
10. Phillips Pet Co.

1. 80-28987/13390
2. 42-233-00000-0000
3. 108 000 000
4. Panhandle Producing Co.
5. Cockrell C-18 (00816)
6. Panhandle Hutchinson Co.
7. Hutchinson, TX
8. 2.3 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80-28988/13392
2. 42-233-00000-0000
3. 108 000 000
4. Panhandle Producing Co.
5. Cockrell C-16 (00816)
6. Panhandle Hutchinson Co.
7. Hutchinson, TX
8. 2.3 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80-28989/13393
2. 42-233-00000-0000
3. 108 000 000
4. Panhandle Producing Co.
5. Cockrell C-15 (00816)
6. Panhandle Hutchinson Co.
7. Hutchinson, TX
8. 2.3 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80-28990/13394
2. 42-233-00000-0000
3. 108 000 000
4. Panhandle Producing Co.
5. Cockrell C-13 (00816)
6. Panhandle Hutchinson Co.
7. Hutchinson, TX
8. 2.3 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80-28991/13395
2. 42-233-00000-0000
3. 108 000 000
4. Panhandle Producing Co.
5. Cockrell C-11 (00816)
6. Panhandle Hutchinson Co.
7. Hutchinson, TX
8. 2.3 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80-28992/13396
2. 42-233-00000-0000
3. 108 000 000
4. Panhandle Producing Co.
5. Cockrell C-10 (00816)
6. Panhandle Hutchinson Co.
7. Hutchinson, TX
8. 2.3 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80-28993/13437
2. 42-089-00000-0000
3. 108 000 000
4. Prairie Producing Co.
5. Goeckler Gas Unit No. 1-U
6. Ramsey (8500 Wilcox)
7. Colorado, TX
8. 12.0 million cubic feet
9. April 24, 1980
10. Trunkline Gas Co.

1. 80-28994/13397
2. 42-233-00000-0000
3. 108 000 000
4. Panhandle Producing Co.
5. Cockrell C-9 (00816)
6. Panhandle Hutchinson Co.
7. Hutchinson, TX
8. 2.3 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80-28995/13398
2. 42-233-00000-0000
3. 108 000 000
4. Panhandle Producing Co.
5. Cockrell C-8 (00816)
6. Panhandle Hutchinson Co.
7. Hutchinson, TX
8. 2.3 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80-28996/13399
2. 42-233-00000-0000
3. 108 000 000
4. Panhandle Producing Co.
5. Cockrell C-7 (00816)
6. Panhandle Hutchinson Co.
7. Hutchinson, TX
8. 2.3 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80-28997/13400
2. 42-233-00000-0000
3. 108 000 000
4. Panhandle Producing Co.
5. Cockrell C-6 (00816)
6. Panhandle Hutchinson Co.
7. Hutchinson, TX
8. 2.3 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80-28998/13401
2. 42-233-00000-0000
3. 108 000 000
4. Panhandle Producing Co.
5. Cockrell C-5 (00816)
6. Panhandle Hutchinson Co.
7. Hutchinson, TX
8. 2.3 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80-28999/13402
2. 42-233-00000-0000
3. 108 000 000
4. Panhandle Producing Co.
5. Cockrell C-4 (00816)
6. Panhandle Hutchinson Co.
7. Hutchinson, TX
8. 2.3 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80-29000/13403
2. 42-233-00000-0000
3. 108 000 000
4. Panhandle Producing Co.
5. Cockrell C-2 (00816)
6. Panhandle Hutchinson Co.
7. Hutchinson, TX
8. 2.3 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

1. 80-29001/13404
2. 42-233-00000-0000
3. 108 000 000
4. Panhandle Producing Co.
5. Cockrell C-1 (00816)
6. Panhandle Hutchinson Co.
7. Hutchinson, TX
8. 2.3 million cubic feet
9. April 24, 1980
10. Getty Oil Co.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before May 28, 1980.

Please reference the FERC control number in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-14690 Filed 5-12-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ID-1890]

Durwood Chalker; Application

May 6, 1980.

Take notice that on March 24, 1980, Durwood Chalker (Applicant), filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Director, Central Power and Light Company, Public Utility.
Director, Public Service Company of Oklahoma, Public Utility.
Director, Southwestern Electric Power Company, Public Utility.
Director, West Texas Utilities Company, Public Utility.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 30, 1980. Protests will be considered by the Commssion 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. 80-14685 Filed 5-12-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP79-12 (Reserved Issues)]

El Paso Natural Gas Co.; Denial of Appeal

May 7, 1980.

Take notice that the Commission agreed at its meeting of April 30, 1980, to take no action on the appeal filed jointly by Arizona Electric Power Cooperative, Inc. and the City of Willcox on April 10, 1980, from a ruling issued by the presiding judge in this proceeding.

Accordingly, the appeal is deemed denied pursuant to § 1.28(c) of the Commission's rules of practice and procedure.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-14686 Filed 5-12-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. G-19284, etc.]

General American Oil Company of Texas, et al; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

May 6, 1980.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authroization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 30, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commision will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to partiicpate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where 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 Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This motice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.[3]	Pressure base
G-19284, D, Apr. 25, 1980	General American Oil Company of Texas, Meadows Building, Dallas, Texas 75206.	United Gas Pipe Line Company, Valentine Field, LaFourche Parish, Louisiana.	Final determination under Section 103 of the NGPA of 1978.	
CI74-386, C, Apr. 25, 1980	Getty Oil Company, P.O. Box 1404, Houston, Texas 77001.	El Paso Natural Gas Company, SW/4 Sec. 18-25N-3W, Rio Arriba County, New Mexico and limited to the Mesa Verde formation.	(1)	14.65
CI80-276, A, Apr. 11, 1980	Southland Royalty Company, 1000 Fort Worth Club Tower, Fort Worth, Texas 76102.	Tennessee Gas Pipeline Company, East Cameron SA Blocks 351, 352, 353 and 354, Offshore Louisiana.	(2)	15.025
CI80-277, A, Apr. 14, 1980	The Superior Oil Company, P.O. Box 1521, Houston, Texas 77001.	Natural Gas Pipeline Company of America, West Cameron Block 264 Field, Offshore Louisiana.	(3)	14.73
CI80-278, A, Apr. 14, 1980	The Superior Oil Company	Natural Gas Pipeline Company of America, Block 9, Sabine Pass Area, Offshore Louisiana.	(3)	14.73
CI80-279, A, Apr. 14, 1980	Texasgulf Inc., 1100 Milam Building, Houston, Texas 77002.	Northern Natural Gas Company, Ship Shoal Area, Block 84, Offshore Louisiana.	(4)	15.025
CI80-280, B, Apr. 10, 1980	Wallace Oil & Gas, Inc., Suite 600—50 Penn Place, Oklahoma City, Okla. 73118.	Northern Natural Gas Company, Sec. 19-28S-31W, Hugoton Field, Haskell County, Kansas.	(5)	
CI80-281, A, Apr. 17, 1980	Marathon Oil Company (Operator), 539 South Main Street, Findlay, Ohio 45840.	Texas Eastern Transmission Corporation, Vermilion Area, Vermilion Blocks 369 and 386, Offshore Louisiana.	(6)	15.025
CI80-282 (CI65-276), B, Apr. 17, 1980.	Getty Oil Company	Baca Gas Gathering System, Inc., C. V. Cogburn Gas Unit, Baca County, Colorado.	(7)	
CI80-283 (G-9350), B, Apr. 18, 1980.	Monsanto Company, 1300 Post Oak Tower, 5051 Westheimer, Houston, Texas 77056.	Tennessee Gas Pipeline Company, Delk Unit, East Bay City Field, Matagorda County, Texas.	(8)	
CI80-284, B, Apr. 15, 1980	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Phillips Petroleum Company, Carper Federal "B" Lease and Hudson Federal "B" Lease, Eddy County, New Mexico.	Gas supply depleted. No production from leases and none planned.	
CI80-285, A, Apr. 18, 1980	The Northwestern Mutual Life Insurance Company, 720 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202.	Michigan Wisconsin Pipe Line Company, Block A-341, High Island Area, Offshore Texas.	(9)	14.73
CI80-286, A, Apr. 23, 1980	Conoco Inc., P.O. Box 2197, Houston, Texas 77001.	United Gas Pipe Line Company, Block 146, South Timbalier ARea, Offshore Louisiana.	(10)	15.025
CI80-287 (CI65-406), B, Apr. 24, 1980.	Gulf Oil Corporation, P.O. Box 2100, Houston, Texas 77001.	Cities Service Gas Company, Northwest Lovedale Field, Harper County, Oklahoma.	The last well on the remaining acreage covered by the contract has ceased to produce and the lease is being released..	
CI80-288 (CI61-1265), F, Apr. 28, 1980.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company (Partial Successor to Supron Energy Corporation), P.O. Box 2819, Dallas, Texas 75221.	El Paso Natural Gas Company, San Juan Basin, Rio Arriba County, New Mexico.	(11)	14.65

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.[3]	Pressure base
CI80-289 (G-14346), B, Apr. 24, 1980.	Marathon Oil Company, 539 South Main Street, Findlay, Ohio 45840.	Transcontinental Gas Pipe Line Corporation, Block 68 (Block 76 Field), Vermilion Area, Offshore Louisiana.	Depleted and wells were plugged and abandoned. Leases terminated by the Bureau of Land Management and were released to the lessor.	.....

[1] Applicant is filing under Contract dated 12-17-73, amended by Supplemental Gas Purchase Agreement dated 3-1-80.
[2] Applicant is willing to accept a certificate conditioned to the maximum lawful price established under Section 104 of the NGPA of 1978.
[3] Applicant is willing to accept an initial rate consistent with that prescribed by the NGPA of 1978.
[4] Applicant is filing under Gas Purchase Contract dated 3-15-78, amended by letter Amendment dated 3-31-80.
[5] Farmer wishes to take his ⅛ royalty gas in kind for irrigation purposes only. His property represents ¼ of unit, so a net of 1/32 needs to be abandoned.
[6] Applicant is filing under Gas Purchase Contract dated 3-25-80.
[7] The only well covered under the rate schedule is not producing natural gas, has no recompletion possibilities, and is considerd depleted. Getty is preparing to plug and abandon the well bore.
[8] Unit was plugged and abandoned on 9-9-69 and the lease reverted back to the landowners, J. B. Delk and Mary Ada Delk, at that time. The contract expired by its own terms on 12-7-69.
[9] Applicant is willing to accept certification conditioned to an initial rate equal to the applicable maximum lawful price prescribed in the NGPA and the Commission's regulations implementing the NGPA, including any increases in such prices, provided that Applicant shall be entitled to file increases to any higher contractually authorized prices in accordance with the Natural Gas Act and the NGPA.
[10] Applicant is filing under Gas Purchase Contract dated 3-13-80.
[11] By Farmout Agreement dated 9-3-52, Applicant, successor to Western Natural GAs Company, farmed out certain interest in various leases located in Rio Arriba County, New Mexico, to Southern Union Gas Company, predecessor of Supron Energy Corporation. Pursuant to the terms of said Farmout Agreement, Applicant elected to convert its overriding royalty interest in certain acreage covered by the aforementioned Farmout Agreement to a working interest. By three separte documents entitled "Assignment of Operating Rights," and one document entitled "Assignment Affecting Record Title to Oil and Gas Lease," all dated 5-15-79, Supron Energy Corporation conveyed to Applicant an undivided twenty-five percent (25%) working interest in such acreage, as more fully set out in the Assignments of 5-15-79. The assigned acreage is subject to the Gas Purchase Agreement of 1-10-53, as amended.

Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 80-14687 Filed 5-12-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RE80-37]

Jacksonville Electric Authority; Application for Exemption

May 6, 1980.

Take notice that the Jacksonville Electric Authority, on March 14, 1980, filed an application for exemption from certain requirements of Part 290 of the Commission's regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act, Order 48, (44 FR 58687, October 11, 1979). 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 those portions of the regulation, relating to operation and maintenance costs, costing periods, details of marginal costs and calculated costs based on such details, and customer group load data.

In its application for exemption, the Jacksonville Electric Authority states that it should not be required to file the specified data for the following reason(s):

1. Economic

In response to the dramatic increases in fuel oil prices, JEA electric rates have increased 56% within the last 15 months and stand among the highest in the nation. The JEA is committed to diversifying its fuel mix through several ongoing projects and must, to the greatest extent possible, allocate its limited resources to end dependence upon oil. The cost of the information gathering required by Order 48 can be reduced without compromising the requirements of PURPA Section 133, if the JEA is allowed exemption.

2. Other

Under its present Charter, major expenditures cannot be undertaken without prior approval from the Jacksonville City Council, granted usually through the annual budget making process. Furthermore, purchases must be made in accordance with City ordinances and State Laws governing the JEA. Due to uncertainty with regard to both PURPA 133 requirements and the status of its initial application for exemption, the JEA did not receive funding for purchase of hardware or services for the purpose of meeting PURPA Section 133 requirements. Consequently, much of the hardware and professional services necessary for gathering technical information required by Order 48 cannot be obtained by November 1, 1980, making data collection by that date impossible.

3. Technical

(a) The JEA has no installed fuel flow metering and cannot provide sufficiently accurate energy cost information required by §§ 290.202, 290.205, 290.302, 290.303, and 290.304. The JEA currently has such metering equipment on order and intends to install same at the earliest opportunity.

(b) The JEA has no utility specific load data, but has begun a residential load survey program that includes end use determinations. While wholesale and industrial customer class load research may be performed prior to November 1, 1982, General Service class requirements in § 290.404 will not be fulfilled.

(c) At the direction of the JEA, an embedded cost of service study was conducted for fiscal year 1978–1979. This study is not sufficient in scope or level of detail to meet the requirements of § 290.502. The JEA seeks to minimize the cost of compliance with § 290.502 by performing marginal cost of service studies at such time that JEA-specific load data is available for use as the basis for each study.

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 the utility publish a summary of the application 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 must file such information with the Federal Energy Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before June 27, 1980. Within that 45-day period such person must also serve a copy of such comments on the Jacksonville Electric Authority, 233 W. Duval St., Jacksonville, Florida 32203.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-14688 Filed 5-12-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP76-285; Docket No. CP80-222, etc.]

Mountain Fuel Resources, Inc., and El Paso Natural Gas Co.; Application

May 6, 1980.

Take notice that on April 16, 1980,[1] Mountain Fuel Resources, Inc. (Applicant), 180 East First South Street, Salt Lake City, Utah 84139, filed in Docket No. CP76-285 an amendment to its application in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to reflect a continuation of its storage operations for the benefit of El Paso Natural Gas Company (El Paso) and Clay Basin Storage Company (Clay Basin), all as more fully set forth in the amendment to the application which is on file with the Commission and open to public inspection.

Applicant states that its application, as originally submitted, was one of a series of applications to provide an interim storage service for El Paso to assist El Paso in the husbanding of volumes of natural gas during the summer 1977 to be utilized ultimately to protect Priority 1 and 2 requirements of El Paso's East of California (EOC) customers. Applicant further states that this storage service was intended to be for a limited term pending El Paso's developing underground storage at which time the volumes of natural gas remaining in the interim storage would be transferred to El Paso's permanent storage.

It is stated that El Paso has requested and Northwest Pipeline Corporation (Northwest) and Applicant have agreed to extend further the interim storage arrangement for one additional extended withdrawal season through September 30, 1981. It is stated that such extension would permit El Paso to continue to inject volumes of natural gas into Clay Basin storage during the 1980 injection season for withdrawal as required for the protection of El Paso's EOC customers' Priority 1 and 2 requirements during the 1980-81 withdrawal season. Applicant states that El Paso would require a working gas inventory of 18,000,000 to 20,000,000 Mcf for the 1980-81 withdrawal season. Applicant further states that, during the withdrawal periods and subject to Northwest's having pipeline capacity to transport such volumes, El Paso would be entitled to withdraw volumes up to the maximum daily capacity of the reservoir less Northwest's daily nomination or 150,000 Mcf, whichever is less.

It is stated that El Paso would cease all injections into and withdrawals from the storage on or before April 30, 1981, and that any remaining volumes in El Paso's account after that time would be transferred to Northwest prior to October 1, 1981, pursuant to the transportation and exchange agreement among Northwest, El Paso, and Clay Basin.

Applicant states that no new facilities would be required to accommodate the extended participation of El Paso in the Clay Basin storage project, although it may be necessary to continue utilization of the presently installed 11,000 horsepower temporary compression for injection/withdrawal operated by Applicant and the 4,990 horsepower temporary compression operated by El Paso.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before May 28, 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. 80-14689 Filed 5-12-80; 8:45 am]

BILLING CODE 6450-85-M

[1] The amendment was initially tendered for filing on April 16, 1980; however, the fee required by § 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until April 18, 1980; thus, the filing was not completed until the latter date.

[Docket No. CP80-341]

Northern Natural Gas Co.; Notice of Application

May 6, 1980.

Take notice that on April 25, 1980, Northern Natural Gas Company (Applicant) 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket no. CP80-341 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 pipeline and related facilities offshore Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has contracted to purchase all of the natural gas reserves in Galveston Area Block 144L, offshore Texas, and that to transport this gas it proposes to construct and operate approximately 13.8 miles of 10-inch pipeline, 3.0 miles of 6-inch pipeline, metering and appurtenant facilities extending from the producer platform located in Block 144L to an existing sub-sea tap on Black Marlin Pipeline Company's 16-inch pipeline in Galveston Area Block 99.

It is said that the proposed facilities would provide a capacity for 25,000 Mcf of natural gas per day to accommodate the maximum daily production of approximately 23,000 Mcf of natural gas from 23,200,000 Mcf of proved reserves and potential gas supply attributable to Block 144L.

Applicant proposes to finance the $5,811,000 estimated cost of construction from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 19, 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 determinating 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. 80-14691 Filed 5-12-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-361]

Ohio Edison Co.; Notice of Filing

May 6, 1980.

The filing Company submits the following:

Take notice that on April 29, 1980 Ohio Edison Company (Ohio Edison) filed an unexecuted Partial Requirements Contract, with attached schedules of rates for service at primary and transmission voltages, under which any of Ohio Edison's present full requirements municipal wholesale customers (Ohio Cities) may take partial requirements service. Ohio Edison states that at the present time none of Ohio Cities has made a specific request to change from receiving service under Ohio Edison's currently effective full requirements rate schedules. Nevertheless, to enable any or all of Ohio Cities to individually receive service under the tendered Partial Requirements Contract as soon as possible should circumstances warrant, Ohio Edison requests a waiver of the Commission's notice requirements to permit an effective date for the filing on the date of tender, without suspension.

Ohio Edison further states that the Partial Requirements Contract is a product of lengthy and successful negotiations between Ohio Edison and Ohio Cities and it is believed that the Contract will satisfy the foreseeable plans of Ohio Cities to obtain alternative power supplies.

Pursuant to applicable scheduling and rate provisions, and when Ohio Edison has the ability to satisfy the request, any customer under the Contract may receive:

(1) In monthly increments, power supply service from Ohio Edison for any portion, up to and including 100%, of its firm power requirements.

(2) In monthly increments, firm transmission service for any portion, up to and including 100%, of its firm power requirements acquired from non-Company sources, and

(3) In weekly increments, firm transmission service for portions of its power requirements acquired on short notice from non-Company sources. Thus, viewed functionally, the Contract provides for both transmission (or wheeling) service and firm power partial requirements service, but also may be used as a firm power full requirements contract.

Ohio Edison states that copies of this filing have been mailed to the Public Utilities Commission of Ohio, to each of Ohio Edison's full requirements municipal wholesale customers and to their Washington, D.C. counsel.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 27, 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. 80-14692 Filed 5-12-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-362]

Southern California Edison Co.; Filing of Initial Rate Schedule and Request for Waiver of Prior Notice Requirements

May 6, 1980.

The filing Company submits the following:

Take notice that on April 29, 1980, Southern California Edison Company ("Edison") tendered for filing, as an initial rate schedule, a letter Agreement, dated January 30, 1980, with Portland General Electric Company ("Portland").

Under the terms of the Agreement, Edison will sell to Portland nonfirm energy purchased by Edison which is surplus to Edison's then-current needs.

Edison has requested that the prior notice requirement be waived and that the Letter Agreement be made effective as an initial rate schedule as of October 15, 1979.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Portland General Electric Company.

Any person desiring to be heard or to protest this application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 27, 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-14693 Filed 5-12-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-331]

Southern Union Co.; Application

May 6, 1980.

Take notice that on April 18, 1980, Southern Union Company (Applicant), 1800 First International Building, Dallas, Texas, 75270, filed in Docket No. CP80-331 an application pursuant to Section 7(c) of the Natural Gas Act and § 284.222 of the Commission's Regulations for a certificate of public convenience and necessity for blanket authorization to transport, sell and assign natural gas in interstate commerce as if Applicant was an intrastate pipeline as defined in the Natural Gas Policy Act of 1978 (NGPA) and for a waiver of the Commission's Regulations which require inclusion of all categories of gas acquisitions in calculating a weighted average acquisition cost, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport, sell and assign natural gas in interstate commerce as if it were an intrastate pipeline as defined in the NGPA and able to make transportation, sales and assignments under Section 311 and Section 312 of the NGPA pursuant to the Commission's Order No. 63 issued January 3, 1980 in Docket No. RM79-24.

Applicant states that by order issued July 28, 1958, in Docket No. G-15186, with respect to certain specific facilities and services found to be relevant, it was exempted from the Commission's jurisdiction under Section 1(c) of the Natural Gas Act.

It is further stated that on December 11, 1967, in Docket No. CP68-44 Western Gas Service Company (WGSC), with respect to certain facilities and services found to be relevant, was exempted from the Commission's jurisdiction under Section 1(c) of the Natural Gas Act. Applicant states that its Southern

Union Gas Company Division has succeeded WGSC as the owner and operator of the facilities found to be exempt.

Applicant asserts that for the 12-month period ending December 31, 1979, it has purchased within or at the state boundaries of New Mexico from El Paso Natural Gas Company 5,501,000 Mcf of natural gas and within or at the state boundaries of Oklahoma and Texas from interstate pipelines 3,885,000 Mcf of natural gas, and for this same period, Applicant purchased 170,625,000 Mcf of gas from all sources of supply.

Applicant proposes that the Commission waive its regulations, under § 284.144(a)(1), if necessary, to the extent that they require inclusion of all categories of gas acquisition cost. The stated purpose of this waiver would be to allow Applicant to exclude from calculation of the weighted average acquisition cost volumes of gas which are subject to the ceiling prices established by the New Mexico Natural Gas Pricing Act.

Applicant asserts that no natural gas obtained from interstate supplies would be resold by it under the requested authorization.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 28, 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. 80-14694 Filed 5-12-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-327]

Tennessee Gas Pipeline Co., a division of Tenneco Inc.; Application

May 6, 1980.

Take notice that on April 17, 1980, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP80-327 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant (1) to render a limited-term best efforts natural gas transportation service for transportation of storage injection and withdrawal volumes for New York State Electric and Gas Corporation (NYSEG) to enable NYSEG to utilize an underground storage service it proposes to purchase from Consolidated Gas Supply Corporation (Consolidated), (2) to render a limited-term best-efforts natural gas transportation service NYSEG for transportation of volumes which may be purchased by NYSEG from Consolidated, (3) to render service to NYSEG on a permanent basis under Applicant's Rate Schedule CD-5 and under a new gas sales contract providing for a contracted demand of 30,523 Mcf of natural gas per day, (4) to reduce NYSEG's annual volumetric limitation from 31,901 Mcf to 30,523 Mcf of natural gas per day, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In order to enable NYSEG to utilize the storage service proposed to be rendered by Consolidated, Applicant, when requested by NYSEG, proposes to receive from NYSEG volumes of natural gas for transportation and delivery to Consolidated for storage injection not to exceed 3,649 Mcf per day.

Applicant states that it would receive such injection volumes from NYSEG at the existing interconnection of Applicant's and NYSEG's facilities at Applicant's existing Lockport Sales Meter Station located in Niagara County, New York, and would transport and deliver equivalent volumes to Consolidated for the account of NYSEG at the existing point of interconnection to Applicant's and Consolidated's facilities at Applicant's existing Ellisburg Sales Meter Station in Potter County, Pennsylvania, or at other existing points of interconnection from time to time as may be agreed upon by Applicant and Consolidated.

When requested by NYSEG, Applicant further proposes to receive volumes of natural gas from Consolidated for transportation and delivery to NYSEG and for Applicant's fuel and use requirements, which volumes would be equivalent to quantities of gas withdrawn from storage by Consolidated for the account of NYSEG. Consolidated would make such volumes available to Applicant at the Ellisburg Point and Applicant would transport and deliver equivalent volumes, minus fuel and use volumes as set out in the proposed transportation contract, to NYSEG at the Lockport Point, it is stated.

The rate for the proposed storage transportation service is stated to be 12.90 cents per Mcf of natural gas.

In order to enable NYSEG to receive volumes of natural gas which may be purchased from Consolidated pursuant to the aforementioned sales agreement, Applicant proposes to receive from Consolidated for the account of NYSEG such volumes as may be requested by NYSEG, not to exceed a maximum daily volume of 2,298 Mcf plus an associated fuel and use volume.

Applicant states that Consolidated would make such volumes available to Applicant at the Ellisburg Point or at other existing interconnections from time to time as may be agreed upon. Equivalent volumes, minus fuel and use volumes, would be delivered by Applicant to NYSEG at the Lackport Point, it is stated.

Applicant states that the compensation to be paid each month by NYSEG for the proposed transportation service is as follows:

a. *Demand Charge.*—A monthly demand charge equal to the product of $0.44 multiplied by the specified maximum daily transportation quantity.

b. *Volume Charge.*—A monthly volume charge equal to the product of 5.65 cents per Mcf multiplied by the total volume of gas delivered during such month.

(c) *Excess Transportation Quantity Charge.*—In the event the total volume of gas transported hereunder on any day exceeds the transportation quantity, NYSEG shall pay 1.45 cents per Mcf of such excess volume of gas.

d. *Minimum Bill.*—The minimum monthly bill shall consist of the demand

charge plus a minimum volume charge consisting of the product of 5.65 cents per Mcf multiplied by the number of days in said month, multiplied by 66⅔ percent of the specified maximum daily transportation quantity less any volumes not taken by Applicant and less the volume retained by Applicant for fuel.

Applicant asserts that in order to enable NYSEG, which is presently served under Applicant's Rate Schedule G–5, to be eligible to utilize the aforementioned storage service, it is necessary that NYSEG be served under Applicant's Rate Schedule CD–5. Accordingly, Applicant requests additional authorization herein to render natural gas service on a permanent basis to NYSEG under Applicant's Rate Schedule CD–5.

It is stated that NYSEG has requested and Applicant has agreed to a reduction of 1,378 Mcf per day in NYSEG's maximum daily contract quantity presently authorized, from a maximum daily quantity of 31,901 Mcf of natural gas to a contracted demand of 30,523 Mcf per day.

Recognizing that the proposed reduction in daily contract entitlement from 31,931 to 30,523 Mcf per day would, it is stated, require a corresponding reduction in the present monthly annual volumetric limitation for the months of December, January, February and March to volumes which NYSEG would be entitled to purchase from Applicant in such months under the proposed new gas sales contract between Applicant and NYSEG, Applicant further requests authorization to reduce such volumes and to render service for NYSEG based on such reduced volumes.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 28, 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 any 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. 80–14695 Filed 5–12–80; 8:45 am]

BILLING CODE 6450–85–M

[Docket No. ST80–186]

Transok Pipe Line Co.; Application for Approval of Rates

May 6, 1980.

Take notice that on April 22, 1980, Transok Pipe Line Company (Applicant), P.O. Box 3008, Tulsa, Oklahoma 74101, filed in Docket No. ST80–186 an application pursuant to § 284.123(b)(2) of the Commission's regulation for approval of rates charged for transporting natural gas for Lone Star Gas Company (Lone Star), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it and Lone Star entered into an agreement dated April 1, 1980, whereby Applicant is to provide transportation service to Lone Star for a two-year period. Applicant proposes to transport on a best-efforts basis up to 40 billion Btu of natural gas per day from wells in Grady, Woods, and Pittsburg Counties, Oklahoma, to a mutually agreeable point of interconnection in Grady County, Oklahoma.

Applicant proposes a transportation rate of 19.5 cents per million Btu which rate is the same as a rate charged by Applicant for a similar transportation service Applicant is providing for United Gas Pipe Line Company.

Applicant states that its rates are not directly regulated by the Oklahoma Corporation Commission and, accordingly, requests the Commission's approval of the rate for the proposed service for Lone Star.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 29, 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. 80–14696 Filed 5–12–80; 8:45 am]

BILLING CODE 6450–85–M

[Docket No. RE80–41]

Western Massachusetts Electric Co.; Application for Exemption

May 6, 1980.

Take notice that Western Massachusetts Electric Company (WMEC), on November 19, 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 those protions of § 290.403, Load Data for Certain Customer Groups, which require data for "each month" of the reporting period and hourly group loads for a variety of periods. Exemption is also sought from reporting for certain end-use classes under §§ 290.406(a) and 290.404(d) of Part 290 of the Commission's regulations issued pursuant to Section 133 of PURPA.

In its application for exemption, WMEC identifies a number of cost and resource limitations as justification, and states also that the Massachusetts Department of Public Utilities has never required the data for which an exemption is being sought in exercising its ratemaking authority over the applicant.

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, NE., Washington, D.C. 20426 on or before June 27, 1980.

The Commission's regulations require that such information also be served upon the applicant, WMEC.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-14697 Filed 5-12-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3131]

Williams River Electric Corp.; Application for Preliminary Permit

May 6, 1980.

Take notice that the Williams River Electric Corporation filed on April 4, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3131 to be known as the Brockways Mills Hydroelectric Project, located on the Williams River in Windham County, Vermont. Correspondence with the Applicant should be directed to: Mr. David F. Buckley, Williams River Electric Corporation, 18 Bridge Street, Bellows Falls, Vermont 05101.

Project Description—The proposed project would consist of: (1) A new 250-foot wide concrete overflow dam located at the site of a breached dam; (2) A 50-acre reservoir having a maximum surface elevation of approximately 455 feet m.s.l. and a storage capacity of approximately 125 acre-feet; (3) A 2,000-foot long buried steel penstock extending from an intake structure located about 1,500 feet above the dam; (4) A new powerhouse; (5) A new 1,000-foot long 12-kV transmission line and (6) Appurtenant works. The installed capacity would be between 900 and 1,000 kW. Applicant estimates that the average annual generation would be 4,400 megawatt-hours.

Purpose of Project—Project energy would be sold to local public utilities.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would prepare maps of the site, investigate dam foundation materials and project feasibility, and identify areas of environmental impact. According to the work study plan submitted with the application, the Permittee will retain the services of a consulting geologist to investigate foundation materials. Drilling will be carried out in the area of the proposed penstock, with additional subsurface exploration as needed. Geological investigation will be begun within six months of the date of issuance of the permit. Work areas will be restored to original condition. Studies under the permit are estimated to cost $42,000.

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 engineeering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary 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 July 22, 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 September 22, 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 ion any hearing, a person musts 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 July 22, 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. 80-14698 Filed 5-12-80; 8:45 am]

BILLING CODE 6450-85-M

Office of Energy Research

Energy Research Advisory Board, Geothermal Panel; Meeting

Notice is hereby given of the following meeting:

Name: Geothermal Panel of the Energy Research Advisory Board (ERAB). ERAB is a Committee constituted under the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770).

Date and time: May 23, 1980—9:00 a.m. to 3:30 p.m.

Place: Western Geophysical Company, 10001 Richmond Avenue, Houston Texas.

Contact: Eudora M. Taylor, Staff Assistant, Energy Research Advisory Board, Department of Energy, Forrestal Building—Room GE–216, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone: 202/252–8933.

Purpose of the Parent Board: To advise the Department of Energy on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department. The Geothermal Panel will make recommendations to the parent Board.

Tentative Agenda:

—Discussion of Draft Direct Heat Subpanel Report.

—Discussion of ERAB Hot Dry Rock Study Group Report.

—DOE Geothermal Program Update.

—Discussion of Additional Issues for Investigation by Geothermal Panel.

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Energy Research Advisory Board at the address or telephone number listed above.

Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, Room 5B–180, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 8:00 a.m. and 4:00 p.m. Monday through Friday, except Federal holidays.

Issued at Washington, DC on April 23, 1980.

Edward A. Frieman,

Director of Energy Research.

[FR Doc. 80–14702 Filed 5–12–80; 8:45 am]

BILLING CODE 6450–01–M

Office of the Secretary

Geothermal Demonstration Program; Record of Decision

Pursuant to Regulations of Council on Environmental Quality (40 CFR Part 1505) Implementing Procedures of U.S. Department of Energy (45 FR 20694).

Decision

The U.S. Department of Energy (DOE) has elected to jointly fund a project to build and operate a 50 megawatt (MWe), goethermal demonstration power plant at Baca Location No. 1 in Sandoval County, New Mexico, under a cooperative agreement with the Union Geothermal Company of New Mexico and the Public Service Company of New Mexico.

Project Description

The geothermal demonstration power plant project will convert the heat energy from a geothermal resource into electric power. The project's goal is to show that electricity can be produced from this nation's geothermal resources in an economical and environmentally acceptable manner. The project involves the design, construction, and operation of a commercial-scale, electric power plant using a liquid-dominated hydrothermal reservoir as an energy source. Liquid-dominated hydrothermal reservoirs are the most common type of geothermal resource. Information derived from the project will be made available to the geothermal industry and other interested groups as a means to accelerate geothermal resource development.

The demonstration plant will be located on about 746 acres of land within Baca Location No. 1 (Baca), a private landholding in north-central New Mexico. The site is approximately 60 miles north of Albuquerque and 19 miles west of Los Alamos. The plant will be a single-flash steam unit generating 50 MWe gross from 103 psi steam. The steam supply system will consist of 15–17 geothermal wells, piping, 4 steam separators, and a liquid waste injection system. Other plant systems will include: turbine-generator, shell-and-tube condenser, mechanical draft cooling tower, hydrogen sulfide abatement system, and an electrical switchyard. Electricity will be transported from the site by a 115-kV transmission line which will connect the plant to a substation near Los Alamos. Pending a right-of-way permit from the U.S. Forest Service, the transmission route will be the northerly of the two alternatives described in DOE's Final Environmental Impact Statement (FEIS) for the project. Of the two alternatives this route will have the lesser environmental impact.

The project will be cost-shared about equally between DOE and its industrial partners, the Union Geothermal Company of New Mexico (Union) and the Public Service Company of New Mexico (PNM), under a cooperative agreement. The industrial partners will be responsible for building and operating the plant. Title to all facilities and equipment acquired during the course of the project will vest in the industrial partners. DOE will end its participation in the project after 5 years of plant operation.

Description of Alternatives

The following alternatives were considered by DOE in reaching its decision:

1. Do not participate in the funding of the project (no Federal action);
2. Delay funding of the project;
3. Fund a nonelectric use of the geothermal resource;
4. Develop a different site within the Baca;
5. Develop a different site at another location within the United States;
6. Use an alternate plant design;
7. Use and alternate transmission route.

Alternatives 1, 4, and 5 would result in no action being taken at the site of the proposed project. The remaining alternatives would involve some form of activity at the site.

Alternatives 4–7 contain options within each alternative. Under alternative 4, two other sites near the proposed site within Redondo Canyon were considered, as well as the Sulfur Canyon area. Redondo Canyon and Sulfur Canyon are the two areas of known geothermal resources within Baca. Other locations within the United States (alternative 5) that were considered included: (1) Imperial Valley, California; (2) Roosevelt Hot Springs, Utah; and (3) Beowawe, Nevada. At present, these are the only other locations with confirmed liquid-dominated hydrothermal resources to support a 50 MWe demonstration power plant. Under alternative 6, different system designs were considered for: condenser cooling, hydrogen sulfide abatement, and power cycle. These are the plant systems most likely to affect the environment. Besides the two transmission routes to the Los Alamos substation, two other routes (alternative 7) were considered. These routes would tie the plant to the load center at Albuquerque via a substation at San Ysidro.

Basis for Decision

Recent international events underscore the need to decrease this nation's dependence on imported energy. The inflationary pressure wrought by the high cost of energy imports has affected the national economy. Energy has become an international economic and political weapon which, at present, can be used against the United States.

As one means of coping with the problem of dependence on foreign oil, the Congress passed the "Federal Non-nuclear Energy Research and Development Act of 1974" (Pub. L. 93–577). This law calls for the implementation of a program to develop the broadest range of non-nuclear energy options on an urgent basis. Geothermal energy is one such option. It can figure prominently in helping to alleviate the Nation's criticial shortage of environmentally acceptable energy sources.

If developed vigorously, DOE believes geothermal energy can contribute 5 percent of the Nation's energy supply by the year 2000. The most plentiful geothermal resource, the liquid-dominated hydrothermal (hot-water) resource, could produce as much as 20,000 MWe of electric power within 20 years.

Congress has recognized the great potential of geothermal energy by enacting the "Geothermal Energy Research, Development, and Demonstration Act of 1974" (Pub. L. 93–410). The law directs that a national Geothermal energy research, development, and demonstration program be pursued. That program is to include: (1) An inventory and assessment of geothermal resources; (2)

development of exploration, extraction, and utilization of technologies; (3) design, construction and operation of demonstration plants; and (4) establishment of a loan guaranty program. The intent of the Congress is clear: Geothermal resources must be developed to their maximum practicable capability, and a demonstration program is an esential component of that development. Accordingly, under Pub. L. 95–238 the authorization and an initial appropriation of $12 million were given for the first geothermal demonstration power plant. These actions were critical steps in implementing the national energy policy of accelerating the development of new domestic energy sources.

A survey of geothermal industry representatives, including 25 developers, 23 utilities, 13 engineering firms, and 6 financial institutions, found over a 2 to 1 ratio in favor of a Government-supported demonstration power plant. At present, much of the industry is reluctant to act totally on its own. The reasons for this reluctance depend on which industry sector is involved, but they all relate to a lack of confidence. The industry needs to acquire the confidence that geothermal energy can be produced profitably and at low risk. Such confidence can be gained from a federally-supported, commercial-scale demonstration power plant.

The geothermal demonstration power plant project at Baca is DOE's major programmatic effort to stimulate commercial development of hot-water geothermal resources in fracture-dominated reservoirs. The project is not intended to demonstrate a new technology; the technology is well known. Rather, the project is intended to show that hot-water geothermal energy is economically competitive, reliable, and environmentally and socially acceptable.

Whereas several hot-water geothermal power plants have been built and operated successfully in other countries, they do not reflect the market conditions that prevail in this country. There is still much hesitancy on the part of developers, utilities, and lenders to proceed with geothermal development. Recently, some cautious, tentative steps have been taken, aided in part by the geothermal loan guaranty program. Albeit the private development of several prime geothermal resources in the Imperial Valley of California is encouraging, it does not obviate the need for the demonstration project.

DOE has authorized contract negotiations with San Diego Gas & Electic Company to build a 50 MWe, binary-cycle geothermal power plant at Heber in Imperial Valley. The primary objective of this plant is to demonstrate the binary conversion technology at a commercial scale in a moderate temperature resource. The other resources in Imperial Valley are being developed at less than commercial scale. Magma Power Company is building a 10 MWe pilot plant at East Mesa. At Brawley, Union Oil Company and Southern California Edison are also building a 10 MWe pilot plant, and at Salton Sea, Magma Power Company may build a 10 to 20 MWe flashsteam pilot plant. Apparently, commercial-size (50 MWe or greater) power plants will not be considered by these firms until the results from the pilot plants are known.

Nor are the detailed results from the pilot plants or other private developments likely to be given to the general public. In contrast, the demonstration project will yield technical, economic, and environmental information which will be immediately distributed to the geothermal industry and other interested parties. Such information will influence corporate decisions about proceeding with the commercial development of geothermal resources. Similar information from private developments in Imperial Valley and elsewhere will not be made available so freely or quickly.

Even if information from plants in Imperial Valley were freely available, it would probably not stimulate development at many new locations. The geothermal resources in Imperial Valley occupy a sedimentary basin, a reservoir type which is representative of less than half of this nation's known geothermal resources. The demonstration project will use a fracture-dominated reservoir, the predominant type outside Imperial Valley. Thus information from the demonstration power plant will have broader applicability than similar information from Imperial Valley plants.

At the present time, Baca is the best place to prove the commercial viability of hot-water geothermal resources from fracture-dominated reservoirs. The size of the resource at Baca is large, and DOE's industrial partners have affirmed their intention to proceed with full scale development as quickly as possible. This intention is consistent with DOE's objectives for the demonstration program and satisfies the national policy of hastening the commercial use of alternative energy sources.

The geothermal demonstration power plant project at Baca was selected through a competitive procurement process. A Program Opportunity Notice was issued by DOE on September 30, 1977. Two firm proposals were received. They were ranked by a Source Evaluation Board, and the proposal by Union-PNM was judged superior.

The advantages of supporting Union-PNM to build and operate a demonstration plant at Baca include:

1. *System Design.* These are no technological uncertainties; all major components have proven performance records. The hydrogen sulfide abatement system employs the best commercially available technology. Cooling tower makeup will be supplied by steam condensate, thereby minimizing the plant's water requirements. The plant is very likely to perform at or better than design specifications.

2. *Geothermal Resource.* The geothermal resource is high grade, having a high temperature (260 deg C) and a low salinity (10,000 ppm TDS), and is typical of many other high grade resources in the country. The geothermal reservoir is very likely to provide sufficient energy to operate a 50 MWe power plant for 30 years. Estimates of the ultimate commercial potential of the resource range from a minimum of 400 MWe to greater than 2000 MWe. The resource could figure prominently in the future energy supply of New Mexico and nearby states.

3. *Service Area.* The plant will serve Los Alamos, an area which has experienced voltage drop problems in the past and will likely have an increased power demand in the future. The Los Alamos Scientific Laboratory, a weapons development facility of national importance, will use a sizeable fraction of the power generated.

4. *Capabilities of the Government's Partners.* Union Geothermal Company, a subsidiary of Union Oil Company, is a major industial concern with 20 years of experience in geothermal energy development. The Public Service Company of New Mexico is a privately-owned utility serving over half the residents of New Mexico. Both partners have made firm commitments to developing and using geothermal energy, and they have assembled a capable, experienced staff to manage the project.

5. *Cost Sharing.* Project costs will be shared about equally between the Government and its partners. Both partners have more than adequate financial resources to complete the project. Union Oil Company has an AA credit rating; PNM's bond rating is AA. Under terms of the cooperative agreement, the Government's share in the cost of the plant is fixed; Union-PNM will pay for any cost overruns except those caused by delays in completing the NEPA process. After six years of

successful commercial operation, Union will reimburse the Government for up to as much as 50 percent of DOE's share in the cost of the plant.

6. *Information Gathering and Dissemination.* Technical, economic, and environmental data from all phases of the project will be collected and analyzed. The resultant information will be promptly and freely distributed to the geothermal industry, regulatory agencies, and the interested public. A comprehensive public communications effort will be conducted.

The project's major disadvantage is the potential for environmental and institutional impacts. The major issues of concern are: (1) Degradation of air quality due to the release of hydrogen sulfide; (2) depletion of surface and ground water supplies; (3) infringement on Indian religious practices; (4) reduction in the number of land use options for the Baca; (5) destruction of habitat of the Jemez Mountains salamander, a New Mexico State endangered species; and (6) scenic intrusion from the transmission line.

Should the 50 MWe demonstration project prove successful, there is a reasonable likelihood that DOE's industrial partners would pursue development of the entire geothermal resource at Baca. The environmental effects of exploiting those resources could be proportionately greater than the effects from a single 50 MWe power plant. Environmental information from the demonstration project will be available to help in determining the extent of those effects. DOE believes that with proper planning and mitigation the impacts from full scale geothermal development can be held within acceptable limits.

In summary, the geothermal demonstration power plant project fulfills the congressional mandate given in 1974 to include demonstrations as part of the national geothermal program. The project satisfies DOE's programmatic need to show the economic integrity of commercial power generation from hot water resources. If successful, the project should foster rapid geothermal development in the Baca and elsewhere. That development is essential if geothermal energy is to achieve its potential of up to 20,000 MWe by the year 2000.

Discussion of Environmentally Preferred Alternatives

Of the seven action alternatives, alternatives 1, 2, 5, and 6 were judged to be environmentally preferred. Alternatives 3, 4, and 7 would impact the Baca area at least as much as the proposed project. Any nonelectric use equivalent to a 50 MWe power plant (alternative 3) would cause greater environmental impact, besides being inconsistent with the goals of the demonstration. Since alternatives 3, 4, and 7 offered no substantive advantages over the proposed project, they were rejected.

The ultimate environmental consequences of alternative 1 (no Federal action) and alternative 2 (delay funding of the project) are essentially the same. Although DOE may withdraw from the project (i.e., no Federal action), the industrial partners would be free to proceed if they so choose. The resultant delay in the development of the Baca's geothermal resources could be as long as 5 to 10 years. A delay in Federal funding (alternative 2) would probably cause a somewhat shorter hiatus in development. No major breakthroughs in plant design or control technology that would reduce environmental impacts are likely during the interim. Therefore, the ultimate environmental impacts from the two alternatives would probably not differ greatly from each other or those of the proposed project.

Alternatives 1 and 2 appear to offer no clearcut environmental advantages over the proposed project in the long term. However, they do have major programmatic disadvantages. Alternative 1 would result in neither a demonstration as authorized by Congress nor information on the economics of power production from hot-water resources. Alternative 2 would postpone the transfer of information to the geothermal industry, thereby retarding the development of those resources. Both alternatives contradict national energy policy to accelerate the use of alternative energy sources. The adoption of either one would indicate to the public a lack of urgency on the Government's part to develop new energy sources. In view of these consideration, the two alternatives were rejected.

Under alternative 5, three different areas were considered as candidate sites for a demonstration project: (1) Imperial Valley, California; (2) Roosevelt Hot Springs, Utah; and (3) Beowawe, Nevada. Of these, only Heber in the Imperial Valley was actually proposed as a site in response to the Program Opportunity Notice. Heber has several environmental advantages in comparison with Baca. At Heber, there are no conflicts over land use; the natural setting has already been altered by agricultured practices; there are no rare and endangered species, nor are there any cultural or archeological resources nearby; and there is a ready supply of cooling water. Institutionally, there are no known impacts on Indian tribes or other groups.

Despite its positive environmental and institutional aspects, Heber was rejected as the site of the demonstration project. The Heber proposal was judged to have major technical, management and business weaknesses; it was not fully responsive to several program objectives.

Moving the demonstration plant to another site would require reissuing the Program Opportunity Notice. This action would produce an additional 2–3 year delay in the demonstration program. And there is still no assurance that an acceptable project at an environmentally preferred site would be proposed. The resultant delay in finding another site would probably reinforce industry's hesitancy to use geothermal energy. An effect contrary to national energy policy may be produced: geothermal energy development plans by industry could be cancelled or deferred. In addition, several of the advantages inherent to the Baca project would probably be lost or changed. These include the provisions for a Government cost ceiling and revenue sharing. A similar demonstration plant at another locality would cost more, resulting in higher costs to the Government. On the basis of these factors, alternative 5 was rejected.

Design variations in major plant systems affecting the environment were also considered (alternative 6). These included the cooling system, hydrogen sulfide abatement system, and power cycle.

Of the available cooling system options, dry cooling towers and wet/dry cooling towers are environmentally preferable. Both system consume far less water than wet towers. Dry cooling towers are especially effective, and they also eliminate the cooling system as an emission source for noncondensable gases and drift. However, dry cooling towers operate at high turbine back pressures with concomitant losses in plant efficiency. Wet/dry towers, which operate in either wet or dry mode depending on air temperature, would have intermediate effects in terms of water consumption, emissions, and plant efficiency. Industry studies show both options would increase power plant costs per kilowatt at least 50 percent over the cost of a plant using a wet cooling system. The demonstration plant's wet cooling system will use steam condensate for makeup, thereby minimizing fresh-water requirements. Hence, the net benefits gained by using optional cooling systems were judged not to be worth the increased cost.

The plant will employ the Stretford process for hydrogen sulfide abatement. This process represents the best commercially available technology for removing hydrogen sulfide from geothermal fluids. The copper sulfate process currently under development may be superior, but a scrubbing system using this process has not been operated at a commercial scale. Since commercially available technology is a key requisite of the demonstration, the copper sulfate process was rejected. Other commercially available abatement systems are either too expensive or too inefficient to be considered. Furthermore, the Stretford-based system will enable the plant to meet the New Mexico ambient air standard for hydrogen sulfide.

The plant will have a single-flash design for extracting geothermal heat. This power cycle design is consistent with the quality of the resource. A binary cycle design, in which heat is transferred to a working fluid, has environmental advantages: the geothermal fluid is contained; there are practically no gaseous emissions, and all fluids are returned to the reservoir. On the other hand, all cooling water makeup must be obtained from an external source. Binary cycles operate more efficiently at moderate temperatures (150–200 deg C), whereas the geothermal fluids at Baca exceed 250 deg C. A binary design was rejected at Baca because of higher costs, cooling water requirements, and inefficient use of the geothermal resource.

Considerations in Implementation of the Decision

DOE is acutely aware of the many concerns that have been expressed about the potential environmental and institutional impacts from the Baca demonstration project. The Pueblo Indians have been expecially concerned about depletion of their water supply and interference with their religious practices. In implementing its decision DOE will use every reasonable means to avoid or minimize harm to the environmental and Indian religious practices.

The plant design incorporate various features intended to mitigate environmental impacts. The best commercially available hydrogen sulfide abatement system will be used. All cooling water makeup will be obtained from geothermal condensate thereby eliminating the need for an external water supply. All waste waters will be injected into the geothermal reservoir, minimizing the chance of contaminating fresh water supplies.

In addition, mitigation measures will be employed during both the construction and operation of the plant. These measures, along with plans for environmental monitoring, are described in Chapter 11 of the FEIS and summarized in Attachment 1. Special considerations to be taken with regard to each of the major environmental issues are summarized below.

The power plant will comply with the New Mexico ambient air quality standard for hydrogen sulfide. Although recently relaxed, this standard is still the most stringent of any in the country. Hydrogen sulfide emissions form the plant are expected to meet the standard. Precautionary measures will be taken to limit the amount of gases released to the atmosphere during well testing. The New Mexico State Health and Environment Department is responsible for enforcing the standard.

The effects of geothermal fluid withdrawals on the fresh water supplies of the Baca area are uncertain. The best available information suggests the depletion would be minor (i.e., one percent of lowest flow recorded in the Jemez River). But the information is limited. Depletion of water supplies will be offset by a reduction of water use in the Jemez River basin. Union will acquire the water rights to 34.6 acres of irrigated land at the headwaters of the Jemez River. About 14 of those acres will be withdrawn from production to counteract the expected depletion from the plant. In order to verify the depletion estimates, an intensive hydrologic monitoring program will be instituted. All major streams in the Baca area will be sampled and gaged. The All Indian Pueblo Council, an organization of Pueblo tribes, has proposed to collect data from water sources on Indian lands. If monitoring reveals a depletion of supplies greater than expected, additional irrigated lands will be withdrawn from use.

Infringement on Indian religious practices is the most difficult issue to mitigate satisfactorily. This difficulty is due mainly to the refusal by the Pueblo Indians to furnish specific information on these practices.

DOE has made an exhaustive effort to determine the potential impacts of the demonstration project on Indian religious practices. Pursuant to the Congressional Joint Resolution on American Indian Religious Freedom (Pub. L. 95–341), DOE consulted extensively with Indian tribal leaders and outside experts on Pueblo religion in order to ascertain whether the project is located on or near sacred Indian religious sites involving the conduct of specific religious practices. Comments pertaining to the infringement issue were received on the draft environmental impact statement, and comments were made by tribal leaders at a DOE-sponsored hearing conducted by the All Indian Pueblo Council.

During the preparation of the FEIS, DOE carried out additional consultations with Pueblo representatives. Despite repeated efforts, however, DOE was unable to obtain detailed information on specific religious practices and, therefore, was unable to evaluate the potential impacts of the project on the practice of religion. Several Pueblos have protested against the project, but they have not provided examples of infringements of specific religious practices on the grounds that secrecy is an important principle of the Pueblo religion.

As a result of its consultations with the Pueblo Indians, a review of property rights in the project area, and currently available information, DOE has determined that:

(1) The Pueblos do not possess property rights in the Baca sufficient to support a valid claim of infringement on any specific religious activities that occur on the Baca;

(2) There has been no showing by the Pueblos that the project will infringe their religious freedom.

However, DOE will make every effort to pursue a mitigation plan to minimize those generalized impacts that the Pueblos allege. The All Indian Pueblo Council has proposed to assist DOE in the preparation and execution of such a plan.

The Baca is a National Natural Landmark and is being considered for possible public acquisition. Various options for public ownership and management have been studied. The only one that conflicts directly with geothermal development is inclusion of the Baca as part of the national park system under the National Park Service. Since Union holds an unencumbered geothermal lease to the Baca, suitable accomodations for development would have to be negotiated between Union and the future landowners. DOE can take no direct mitigative action on this issue.

Large numbers of the Jemez Mountains salamander are present in Redondo Canyon, site of the demonstration project. Ecological surveys have shown that habitat for this New Mexico endangered species is abundant throughout the site but patchily distributed. The best way to effectively mitigate impacts on the species is to avoid the habitat. Where possible, all project facilities including transmission lines will be located so as not to disturb salamander habitat. If

some habitat must be disturbed, the affected individuals will be captured alive and relocated. The New Mexico Game and Fish Department has approved these mitigation measures.

The Baca corridor, the northerly of the two transmission alternatives, has been selected for the project. This corridor has the least visual impact of any alternative anyalyzed in the FEIS. In addition, steps will be taken to reduce visibility of the transmission line from public use areas: the right-of-way will be routed through the less visible portions of the corridor; long spans will be used at road crossings; a vegetation screen will be maintained along roads and near other public use areas.

Mitigation plans will also be carried out for the following environmental issues: ecological effects from construction activities; reduction in water quality; loss of historic and archeological information; effects of noise due to construction and operation; and the consequences of accidents. Plans for dealing with these issues are listed in Attachment 1.

Conclusion

The benefits derived from the demonstration project have been balanced against the potential environmental and institutional impacts, including those allegations by certain Indian tribes of infringement on religious freedom. In addition, reasonably available project alternatives have been considered. As a result of these evaluations, DOE has decided to proceed with its participation in the project. Nevertheless, DOE is concerned about the project's potential environmental and institutional impacts and is taking reasonable measures to mitigate them.

Dated: May 5, 1980.

Ruth M. Davis,

Assistant Secretary, Resource Applications, United States Department of Energy.

Concurrence:

Dated: April 30, 1980.

Richard J. Stone,

Director, Office of Intergovernmental Affairs, Office of the Secretary of Energy.

ATTACHMENT 1.—ENVIRONMENTAL MITIGATION AND MONITORING PLANS FOR THE 50 MWe GEOTHERMAL DEMONSTRATION POWER PLANT, BACA LOCATION No. 1, NEW MEXICO (SUMMARY)

Mitigation of Construction Impacts

• Land use—Nighttime construction traffic will be avoided.

• Water quality and use—Accepted construction practices to prevent erosion will be used. Roads and drill pads will be diked. Runoff will be directed to settling ponds before discharge to streams.

• Air quality—Disturbed areas will be watered to control dust. Gaseous emission during well testing will be vented through submerged discharge tubes and well flow will be reduced after testing.

• Impacts on biota—Clearing of forest areas will be minimized. Disturbed areas will be revegetated with native species. A survey will be conducted to determine presence of rare plants immediately before construction. Areas with rare plant populations will be avoided if possible.

Identified elk herd wallows and favored feeding areas will be avoided as much as possible. Forest cover will be maintained around construction areas to screen them from elk herd use areas.

Dense Jemez Mountain salamander population areas will be avoided where possible. Where avoidance is not possible, removal and relocation of individual salamanders will be carried out by biologists.

Erosion control measures will be carried out to prevent adverse effects on aquatic biota.

• Historic and archaeologic sites—An extensive program of archaeological testing and evaluation by the University of New Mexico Office of Contract Archeaology, Department of Anthropology, will be conducted in advance of surface disturbance activities.

• Indian religious and cultural activities—The policies and procedures outlined in the report to the President by the Interagency Task Force on Indian Religious Freedom for compliance with the American Indian Religious Freedom Act (Pub. L. 93-341) have been followed. A plan to lessen perceived impacts on the Pueblo religion will be developed in cooperation with the All Indian Pueblo Council, an organization of Pueblo tribes.

• Noise impacts—Use of noisy construction equipment will be restricted to daylight hours. Muffled diesel drilling rigs will be used. Wells will be vented through submerged discharge diffusers.

Mitigation of Plant Operation Impacts

• Water quality and use—A comprehensive spill mitigation and prevention plan is on file with the State of New Mexico. This plan covers containment of spill, control of spill sources, cleanup, repair of damages, responsibilities of individuals, notification of spills, and training of personnel.

Fluids will not be withdrawn from or injected into shallow aquifers. Drilling fluids and vented fluids will be held in high freeboard pits with impermeable linings.

Depletion of Jemez River flow will be mitigated by acquisition and retirement of water rights.

• Air quality—The Stretford process will be used to remove hydrogen sulfide from the gothermal fluid.

Drift eliminators will be used on the cooling towers to reduce drift to the lowest practicable level.

• Accidents—Pipeline ruptures will be isolated by shutting back production on appropriate wells and diverting flow into reserve pits.

Blowout prevention equipment will be used on both exploration and production wells.

Mitigation of Transmission Line Impacts

• U.S. Department of Agriculture criteria for route planning, tower design, right-of-way clearing and line construction will be adhered to.

• Vegetation clearing will be held to a minimum.

• Long spans will be used at stream crossings to minimize disturbance to stream banks and reparian vegetation.

• A detailed engineering and soil stability survey of the transmission line route will be carried out to identify locations where soil conditions are unsuitable for construction. The line will be routed to avoid these areas.

• The line corridor will be surveyed for archaeological resources before final line placement. A detailed mitigation plan submitted to the State Historic Preservation Officer will be implemented.

• Disturbed areas will be reseeded immediately after line construction.

• Line construction near elk calving areas will not occur during the calving season.

• Line will consist of wooden towers and non-specular cable to lessen visibility.

• Right-of-way will be placed to reduce visibility of line from public use areas.

• A screen of vegetation will be maintained between the line and public use areas and roads.

Preoperational Monitoring

• Terrestrial biology—Five baseline studies were completed between 1974 and 1978 and included vegetational surveys, sampling of small mammal populations by live trapping, bird transect surveys, elk pellet group transect counts, and general observation of sign and scat for larger mammals. A detailed survey of rare and endangered species was conducted.

• Aquatic biology—Preoperational monitoring of aquatic biota in Redondo Creek, Sulphur Creek, and the San Antonio River has been completed, including physical descriptions, sampling and taxonomic description of algal communities, and sampling and qualitative description of macroinvertebrate benthic communities.

• Hydrologic—Limited monitoring of discharges of Redondo Creek, Sulphur Creek, San Antonio Creek, and the East Fork of the Jemez River have been carried out during the past five years.

The commercial partners will carry out a preoperational ground water monitoring program to establish regional baseline ground water quality, water levels, and movement. Three data collections will be made per calendar year.

Additional surface and ground water monitoring will be conducted on or near Pueblo Indian lands.

• Atmospheric—Air Quality monitoring has been carried out, including sampling at 50 stations for hydrogen sulfide. Meteorological data (wind speed and direction) were collected at locations in the project area. Temperature, humidity, and precipitation at the project office site are also recorded.

Operational Monitoring

• Terrestrial biology—Operational monitoring will extend over the first five years of plant operation and will include avian, mammalian, faunal reconnaissance, Jemez Mountains Salamander, and Peregine Falcon monitoring.

Monitoring of flora will include:

(1) Completion of identification of both taxa and plant associations,

(2) Delineation of study points,

(3) Monitoring components seasonally for changes in vegetation type and physiological stresses.

• Aquatic biology—Operational monitoring will include:

(1) Collection and species identification of macrophytes,

(2) Sampling and generic identification of periphyton,

(3) Sampling and qualitative description of macroinvertebrate benthos, and

(4) Qualitative description of fish communities.

• Hydrologic—Surface water quality and aquatic biota will be monitored at seven locations in the Baca area. Monitoring will include measurements of water velocity and discharge, dissolved oxygen, free carbon dioxide, carbonate and bicarbonate alkalinity, conductivity, water temperature, turbidity, suspended solids, dissolved solids, pH, total nitrogen, and total phosphorus. The preoperational ground water monitoring program will be continued, as will hydrologic monitoring on or near Pueblo Indian lands.

• Atmospheric—Data will be collected at four stations, two fixed and two mobile. Hydrogen sulfide and suspended particulates will be measured. Winds and atmospheric stratification will also be measured.

[FR Doc. 80-14699 Filed 5-12-80; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1490-8]

Ambient Air Monitoring Reference and Equivalent Methods; Equivalent Method Designation; Meloy Laboratories, Inc.; Model SA 700 Fluorescence Sulfur Dioxide Analyzer

Notice is hereby given that EPA, in accordance with 40 CFR Part 53 (40 FR 7044, 41 FR 11255, 41 FR 52694), has designated another equivalent method for the measurement of ambient concentrations of sulfur dioxide. The new equivalent method is an automated method (analyzer) which utilizes a measurement principle based on ultraviolet stimulated fluorescence. The method is described as follows:

ESQA-0580-046, "Meloy Model SA 700 Fluorescence Sulfur Dioxide Analyzer," operated on the 0-250 ppb,* the 0-500 ppb, or the 0-1000 ppb range with a time constant switch position of either 2 or 3. The analyzer may be operated at temperatures between 20° and 30°C and at line voltages between 105 and 130 volts, with or without any of the following options:

FS-1 Current Output
FS-2 Rack Mount Conversion
FS-2A Rack Mount Conversion
FS-2B Rack Mount Conversion
FS-3 Front Panel Mounted Digital Meter
FS-5 Auto/Manual Zero/Span with Status
FS-6 Remote/Manual Zero/Span with Status
FS-7 Auto Zero Adjust

Note.—Users should be aware that designation of ranges less than 500 ppb are based on meeting the same absolute performance specifications required for the 0-500 ppb range. EPA is considering but has not yet established proportionately more restrictive performance specifications applicable to ranges less than 0-500 ppb. Thus, designation of this lower range does not guarantee commensurably better performance than that obtained on the 0-500 ppb range.

This method is available from Meloy Laboratories, Inc., 6715 Electronic Drive, Springfield, Virginia 22151.

A notice of receipt of application for this method appeared in the **Federal Register**, Volume 45, April 2, 1980, page 21703.

A test analyzer representative of this method has been tested by the applicant, in accordance with the test procedure specified in 40 CFR Part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file at the address shown below and will be available for inspection to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

As an equivalent method, this method is acceptable for use by States and other control agencies for purposes of 40 CFR Part 58, Ambient Air Quality Surveillance (44 FR 27571, May 10, 1979). For such use, the method must be used in strict accordance with the operation or instruction manual provided with the method and is subject to any limitations (e.g., operating range) specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of Part 58 are permitted only with prior approval of EPA, as provided in Part 53. Provisions concerning modification of such methods by users are specified under Section 2.8 of Appendix C to Part 58 (44 FR 27585).

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B-1 of Part 53 for at least 1 year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with Part 53.

(5) If such an analyzer has one or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been cancelled or if adjustment of the analyzers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 538(b) of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated non-compliance with any of these conditions should be reported to: Director, Environmental Monitoring Systems Laboratory, Department E (MD-77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this equivalent method will provide assistance to the States in establishing and operating their air quality surveillance systems under Part

58. Additional information concerning this action may be obtained by writing to the address given above. Technical questions concerning the method should be directed to the manufacturer.

Courtney Riordan,

Acting Assistant Administrator for Research and Development.

May 7, 1980.

[FR Doc. 80-14651 Filed 5-12-80; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1490-6 OPP-50475]

Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants under the Federal Insecticide, Fungicide, and Rodenticide Act. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 476-EUP-96. Stauffer Chemical Co., Richmond, CA 94804. This experimental use permit allows the use of 4,000 pounds of the herbicide *S*-ethyl dipropylthiocarbamate on field corn to evaluate control of weeds. A total of 800 acres are inolved; the program is authorized only in the States of Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, Nebraska, and Wisconsin. The experimental use permit is effective from April 15, 1980 to September 15, 1981. This permit is being issued with the limitation that all treated crops will be destroyed or used for research purposes only. (PM-25, Robert J. Taylor, Room: E-359, Telephone: 202/755-2196)

No. 707-EUP-88. Rohm and Haas Co., Philadelphia, PA 19105. This experimental use permit allows the use of 129 pounds of the herbicide 3',4'-dichloropropionanilide on spring wheat, barley, and oats to evaluate control of weeds. A total of 100 acres are involved; the program is authorized only in the States of Minnesota, Montana, North Dakota, and South Dakota. The experimental use permit is effective from June 2, 1980 to June 2, 1981. This permit is being issued with the limitation that all treated crops will be destroyed or used for research purposes only. (PM-25, Robert J. Taylor, Room: E-359, Telephone: 202/755-2196)

Persons wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW, Washington, DC 20460. Inquiries regarding these permits should be directed to the contact person given above. It is suggested that interested persons call before visiting the EPA Headquarters Office so that the appropriate file may be made available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

(Sec. 5, 92 Stat. 819 as amended, (7 U.S.C. 136))

Dated: May 7, 1980.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-14650 Filed 5-12-80; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1490-7 OPTS-51060]

Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of two PMN's and provides a summary of each.

DATES: Written comments by:
PMN 80-82: June 17, 1980.
PMN 80-85: June 21, 1980.

ADDRESS: Written comments to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, 202-755-8050.

FOR FURTHER INFORMATION CONTACT:

Notice manager, PMN No., and Telephone

Ann Radosevich, 80-82, 202-426-2601.
George Bagley 80-85, 202-426-3936.

Mail Address for Notice Managers: Premanufacturing Review Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: Section 5(a)(1) of TSCA requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** of May 15, 1979 (44 FR 28558). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 6, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in Section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and uses of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use, and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register.** EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The

section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before the date shown under "DATES" for each specific PMN, submit to the Document Control Officer (TS–793), Rm. E–447, Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS–51060]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604)

Dated: May 7, 1980.

Blake A. Biles,

Acting Deputy Assistant Administrator for Chemical Control.

PMN 80–82. Thefollowing summary is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. July 17, 1980.

Manufacturer's Identity. Claimed confidential. The manufacturer intends to manufacture the new chemical substance at a plant in the east-north central region of the country. The submitter's three digit standard industrial classification code is 285.

Specific Chemical Identity. Polymer of: Epoxy resin, diallylamine, 2-ethyl hexyl methacrylate, hydroxy ethyl acrylate, dimethyl amio propyl methacrylamide, and dimethololpropionic acid.

Use. Claimed confidential. Generic use description: The polymer will be used in an open use that will release less than 50 kilograms of the polymer to the environment per year (kg/yr). The use may possibly involve potential daily exposure to skin and eye contact to non-chemical industrial employees.

Production Estimates

Production year	Kilograms per year	
	Minimum	Maximum
First year	7,363	14,727
Second year	49,090	79,772
Third year	98,182	135,000

Physical Chemical Properties

	Polymer solution	Dried polymer
Solids content	28.6 percent	
Density	1.01 g/ml	1.24 g/ml
Solubility in water		4 percent
Average molecular weight		21,000–29,000
Flash point (closed cup)	72°F	above 212°F
Residual monomers	≤0.50%	
Elemental analysis		%C=70.000 %H=8.41 %N=2.07 %O=19.52
Chemical oxygen demand	1,034,000 ug%/g.	
pK(a)	6.39	

Toxicity of Raw Materials

Epoxy Resin. This is a high molecular weight solid resin. The oral LD_{50} in rat is about 30,000 mg/kg. The skin and eye exposure in rabbits has not been found to cause irritation or sensitization.

Dimethyl amino propyl methacrylamide. A reactive monomer used in the synthesis of the polymer. The oral LD_{50} in rats is 3.54 ml/kg. (slightly toxic). The dermal LD_{50} in rabbits is 2.50 ml/kg. (slightly toxic). The monomer's low vapor pressure minimizes inhalation hazard.

2-Ethyl hexyl methacrylate. The intra peritoneal LD_{50} in mice is 2614 mg/kg. (slightly toxic). Exposure may produce irritation of eyes, skin and respiratory tract. A threshold limit value (TLV) of 25 parts per million (ppm) is recommended to prevent irritation.

Diallyl amine. The skin LD_{50} in rabbits is 356 mg/kg and the oral LD_{50} in rats is 578 mg/kg. Vapor is extremely irritating to respiratory tract, eyes, and mucous membranes. Contact liquid is very irritating and may cause burns.

2-Hydroxy ethyl acrylate. The oral LD_{50} in rats is in the range of 500 mg/kg, the skin LD_{50} in rabbits is in the range of 63–128 mg/kg. Exposure to the vapor may cause irritation of nose, throat, lungs and possible organic injury.

Dimethyllol propionic aid. A mild irritant to the skin and eyes. The oral LD_{50} in mice is 1400 mg/kg.

Vazo catalyst (Azo bis butyronitrile). The oral LD_{50} in mice is 700 mg/kg (moderately toxic). Thermal decomposition by burning may release cyanide.

Butyl cellosolve. Used as a solvent. The American Conference of Governmental Industrial Hygienists (ACGIH) has established a TLV of 500 ppm to protect against irritation and systemic effects.

Methyl ethyl ketone. Used as a diluent. A TLV of 200 ppm has been established to protect against irritation. The skin LD_{50} in rabbits is 12.6 ml/kg.

Exposure

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration	
			Hour/day	Day/year	Average	Peak
Manufacture	Dermal and inhalation.	3	4	7	0–1 ppm	0–1 ppm.
Disposal	Dermal and inhalation.	2	8	2	0–1 ppm	0–1 ppm.

Physical states of the chemical substance to which workers may be exposed: Solid or liquid.

One employee will obtain samples from the reactor during polymerization. The employee may be exposed to a peak concentration of 1–10 ppm during collection of the samples.

Employees will wear personal protective devices during the manufacturing processes.

Environmental Release/Disposal

Manufacturing	Amount/duration of chemical release (Kilograms per year)
Media: Air	Less than 10. 17h/d.; 7d./yr.

Each reactor at the manufacturing plant is equipped with an exhaust and fume condenser. The effluent (air borne)

is also treated by an exhaust fume scrubber. Scrubber water goes to biological treatment lagoon with a 60-day retention period. Sludge is transported by state licensed carriers to a state licensed landfill.

PMN 80–85. The following summary is taken from data submitted by the manufacturer in the PMN.

Close of Review Period. July 21, 1980.

Manufacturer's Identity. Claimed confidential. The submitter has total annual sales of over $500,000,000 and intends to manufacture the substance at a plant in the northeast region of the country.

Specific Chemical Identity. Claimed confidential. Generic name provided: Copolymer of substituted ethenylheterocycle and substituted ethenylbenzene.

Use. Claimed confidential. The PMN indicates that the substance will be used in a way that will release more than 50 kilograms (kg), but less than 5,000 kg, of the substances to the environment per year. There will be release to the environment as an industrial waste stream to a publicly owned treatement works (POTW) and/or to a chemical landfill. The end-use will involve incorporating the chemical into an article.

Production Estimates

Production year	Kilograms per year	
	Minimum	Maximum
First year	10,000	100,000
Second year	10,000	100,000
Third year	10,000	100,000

Toxicity Data

Acute oral LD_{50} (male and female rats)—>5g/kg.

Eye irritation (albino rabbits)—Mild irritant.

Skin irritation (albino rabbits)—Non-irritant.

Ames Salmonella mutagenicity screen—Negative.

Exposure

Activity	Exposure route	Maximum number exposed	Maximum duration		Concentration	
			Hour/day	Day/year	Average	Peak
Manufacture	Dermal	20	24	75	0–1 mg/m³	0–1 mg/m³
Processing	Dermal	10	24	100	0–1 mg/m³	0–1 mg/m³

Physical states of substance to which workers may be exposed: Solid or liquid (solution).

Environmental Release/Disposal

Manufacturing	Amount of chemical release (Kilograms per year)
Media:	
Air	
	Less than 10.
Water	
	100 to 1,000.
Land	
	1,000 to 10,000.

[FR Doc. 80–14649 Filed 5–12–80; 8:45 am]

BILLING CODE 6560–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19660; RM–690]

International Record Carrier's Scope of Operations in the Continental United States, Including Possible Revisions to the Formula Prescribed Under Section 222 of the Communications Act; Order Extending Time for Filing Requested Information

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the time for Comsat and the international record carriers to file their solution to the access problem at INTELSAT earth stations pursuant to the Commission's Gateways Order in Docket No. 19660.

DATES: The solution or summary of efforts made to seek a resolution must be filed on or before May 27, 1980.

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

FOR FURTHER INFORMATION CONTACT: Stuart Chiron, Common Carrier Bureau, (202) 632–7265.

SUPPLEMENTARY INFORMATION:

Adopted: April 30, 1980.

Released: May 6, 1980.

1. Western Union International, Inc. (WUI), on behalf of Comsat and the other international record carriers, filed a letter on April 24, 1980, requesting a second one-month extension of time until May 27, 1980, to make certain filings prescribed by the *Policy Statement and Order* in Docket No. 19660, released February 27, 1980.

2. In Paragraph 98 of the *Policy Statement and Order* the Commission endorsed the concept of direct IRC-customer access at U.S. international earth stations, but recognized the problem of allowing equal access to all carriers. The Commission requested the interested parties to attempt to find a solution through private meetings and to submit a summary of the efforts made to seek a solution and alternative proposed solutions 30 days from the release of the Order.

3. Comsat initiated a meeting with the IRCs, which took place on March 10, 1980, to discuss these issues. At that meeting the carriers agreed to provide Comsat with specific necessary information, and a second meeting was held on March 27. WUI states that an agreement in principle is now near at hand.

4. We note that this matter has long been pending before the Commission, and any delay will only forestall the initiation of better service to the public. However, we believe it is in the public interest for the parties to suggest the solution or solutions which can most easily and efficiently be utilized. Therefore, so long as the possibility of a quick, workable solution exists, we find the foregoing adequate cause for the requested extension of time.

5. Accordingly, WUI's request is hereby granted, and the time in which all parties may file the requested information is extended until May 27, 1980.

Federal Communications Commission.

Philip L. Verveer,

Chief, Common Carrier Bureau.

[FR Doc. 80–14657 Filed 5–12–80; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Petitions Filed

The Federal Maritime Commission hereby gives notice that the following petition(s) have been filed with the Commission for approval pursuant to section 14b of the Shipping Act, 1916, as amended (75 Stat. 762, 46 U.S.C. 813a).

Interested parties may inspect and obtain a copy of the petition(s) and the justification(s) offered therefor at the Washington Office of the Federal

Maritime Commission, 1100 L Street, NW., Room 10218; or may inspect the petition(s) 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 the petition(s), including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before June 2, 1980. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed petition(s). Comments shall discuss with particularity allegations that the petition 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 is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the petition(s) and the statement should indicate that this has been done.

Agreement No. 9548–DR–5.

Filing party: John R. Attanasio, Esq., Billig, Sher & Jones, P.C., 2033 K Street, N.W., Washington, D.C. 20006.

Summary: Agreement No. 9548–DR–5 would amend Articles 2(d) and 3(a) of the North Atlantic Mediterranean Freight Conference's dual rate contract to expressly provide that the granting of contract rates shall be limited to those shipments of the merchant signatory for which it has the legal right to select the carrier at the time of shipment and create a further "legal right" test that whoever pays the freight charges (shipper or consignee) to the carrier shall be deemed *prima facie* to have the legal right to select the carrier.

By Order of the Federal Maritime Commission.

Dated: May 8, 1980.

Francis C. Hurney,

Secretary.

[FR Doc. 80–14617 Filed 5–12–80; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

Open Committee Meetings

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, June 5, 1980.
Thursday, June 12, 1980.
Thursday, June 19, 1980.
Thursday, June 26, 1980.

The meetings will convene at 10 a.m., and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW, Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives of five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives of five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the prevailing rate system and other matters pertinent to the establishment of prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management thereon.

These scheduled meetings will convene in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would impair to an unacceptable degree the ability of the Committee to reach a consensus on the matters being considered and disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public on the basis of a determination made by the Director of the Office of Personnel Management under the provisions of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C., section 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations thereon, and related activities. These reports are also available to the public, upon written request to the Committee Secretary.

Members of the public are invited to submit material in writing to the Chairman concerning Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information concerning these meetings may be obtained by contacting the Secretary, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, D.C. 20415 (202–632–9710).

Jerome H. Ross,

Chairman, Federal Prevailing Rate Advisory Committee.

May 5, 1980.

[FR Doc. 80–14643 Filed 5–12–80; 8:45 am]

BILLING CODE 6325–01–M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed De Novo Nonbank Activities; Correction

This notice corrects a previous **Federal Register** notice (80–13712) appearing at page 29634 of the issue for Monday, May 5, 1980. The notice appeared incorrectly under the heading of the Federal Reserve Bank of Philadelphia and is being republished under the correct heading of the Federal Reserve Bank of Cleveland. The end of the comment period remains the same.

The bank holding company listed in this notice has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(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 the 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 the 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.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for the application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate

Federal Reserve Bank not later than May 23, 1980.

A. *Federal Reserve Bank of Cleveland* (Harry W. Hunning, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

Mellon National Corporation, Pittsburg, Pennsylvania (consumer finance and credit insurance activities; Kentucky): To engage through its subsidiary Freedom Financial Services Corporation, in general consumer finance activities including acting as insurance agent with respect to the sale of credit life insurance, credit accident and health insurance, and credit property insurance. These activities would be conducted from an office in Louisville, Kentucky, serving Jefferson County, Kentucky.

B. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, May 6, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-14660 Filed 5-12-80; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

National Advisory Council on Indian Education; Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Executive Committee of the National Advisory Council on Indian Education. It also describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (5 U.S.C. Appendix I, Section 10(a)(2)). This document is intended to notify the general public of their opportunity to attend.

DATES: Executive Committee Meetings: May 28, 1980, 9:00 a.m. to 5:00 p.m., open; and May 29, 1980, 9:00 a.m. to 5:00 p.m., open: and May 30, 1980, 9:00 a.m. to 5:00 p.m., closed.

ADDRESS: 425 13th Street, N.W., Room 326, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dr. Michael P. Doss, Executive Director, National Advisory Council on Indian Education, Suite 326, 425 13th Street, N.W., Washington, D.C. 20004, (202) 376-8882.

The National Advisory Council on Indian Education is established under Section 442 of the Indian Education Act, Title IV of Pub. L. 92-318 as amended (20 U.S.C. 1221g).

The Council is directed to:

(1) Submit to the Commissioner of Education a list of nominees for the position of Deputy Commissioner of the Office of Education/OE;

(2) Advise the Commissioner of Education with respect to the administration (including the development of regulations and of administrative practices and policies) of any program in which Indian children or adults participate from which they can benefit, including Title III of the Act of September 30, 1950 (Pub. L. 81-874) and Section 810, Title VIII of the Elementary and Secondary Education Act of 1965 (as added by Title IV of Pub. L. 92-318 and amended by Pub. L. 93-380), and with respect to adequate funding thereof;

(3) Review applications for assistance under Title III of the Act of September 30, 1950 (Pub. L. 81-874), Section 810 of Title VIII of the Elementary and Secondary Education Act of 1965 as amended and Section 314 of the Adult Education Act (as added by Title IV of Pub. L. 92-318, and make recommendations to the Commissioner with respect to their approval;

(4) Evaluate programs and projects carried out under any program of the Department of Health, Education, and Welfare in which Indian children or adults can participate or from which they can benefit, and disseminate the results of such evaluations;

(5) Provide technical assistance to local educational agencies and to Indian educational agencies, institutions, and organizations to assist them in improving the education of Indian children;

(6) Assist the Commissioner of Education in developing criteria and regulations for the administration and evaluation of grants made under Section 303(b) of the Act of September 30, 1950 (Pub. L. 81-874) as added by Title IV, Part A of Pub. L. 92-318;

(7) Submit to Congress not later than June 30 of each year a report on its activities, which shall include any recommendations it may deem necessary for the improvement of Federal education programs in which Indian children and adults participate, or from which they can benefit, which report shall include a statement of the Council's recommendations to the Commissioner with respect to the funding of any such program; and

(8) Be consulted by the Commissioner of Education regarding the definition of the term "Indian", as follows:

Sec. 453(a) [Title IV, Pub. L. 92-318]. For the purposes of this title, the term "Indian" means any individual who (1) is a member of a tribe, band, or other organized group of Indians, including those tribes, bands or groups terminated since 1940 and those recognized by the State in which they reside, or who is a descendent, in the first or second degreee of any member, or (2) is considered by the Secretary of the Interior to be an Indian for any purpose, or (3) is an Eskimo or Aleut or other Alaska Native, or (4) is determined to be an Indian under regulations promulgated by the Commissioner, after consultation with the National Advisory Council on Indian Education which regulations shall further define the term "Indian."

The meetings on May 28 and 29, 1980 will be open to the public. The meeting on May 30, 1980 is a closed session for the purpose of reviewing proposals based on the provisions of the Indian Education Act, Title IV, Pub. L. 92-318, as amended. The reviewing of proposals must be held in the highest confidence until the announcement is released by the proper authorities as to which projects will be funded. Financial, privileged, and confidential information in and related to these proposals will be discussed at the review session. Personal information, the disclosure of which would constitute a clearly unwarranted invasion of privacy, will also be discussed. Such matters are protected by exemptions (4) and (6) of Section 552b(c), Title 5 U.S.C.

The Commissioner of Education has determined that the May 30, 1980 session should be closed in accordance with the provisions of Section 10(d) of the Federal Advisory Committee Act (5 U.S.C. Appendix I and the exemptions contained in the Government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552b(c) (4) and (6).

The proposed agenda includes:

(1) Discussion of the Department of Education.
(2) Executive Director's Report.
(3) Committee Reports
(4) Review of NACIE fiscal year 1980 Budget.
(5) Plans for future NACIE activities.
(6) Review of Proposal Review Slate.

Records shall be kept of all Council proceedings and shall be available for public inspection at the office of the National Advisory Council on Indian Education located at 425 13th Street, N.W., Suite 326, Washington, D.C. 20004. A summary of activities at the closed meeting will be made available to the public within 14 days of the closed meeting.

For further information call Dr. Michael P. Doss, Executive Director, National Advisory Council on Indian Education, (202) 376-8882.

Dated: April 21, 1980, signed at Washington, D.C.

Dr. Michael P. Doss,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 80-14703 Filed 5-12-80; 8:45 am]

BILLING CODE 4110-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Committee name. 1. Obstetrics-Gynecology Devices Section of the Obstetrics-Gynecology and Radiologic Devices Panel.

Date, time, and place. June 2, 9 a.m., Rm. 6821, 200 C St. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 4 p.m.; Lillian Yin (HFK-470), Bureau of Medical Devices, Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7555.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes appropriate recommendations for their regulation.

Agenda—Open public hearing. Interested persons are encouraged to present information pertinent to the reclassification of cervical mucus viscosity ovulation detectors from class III (premarket approval) to class II (performance standards). Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify Lillian Yin by March 27, 1980, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Open committee discussion. The Panel will discuss the reclassification from class III (premarket approval) to class II (performance standards) of ovulation detectors that operate by measuring the cervical mucus viscosity. The Panel will also discuss a premarket approval application.

Applications for reimbursement. Must be received by May 23, 1980.

Committee name. 2. Psychopharmacologic Drugs Advisory Committee. *Date, time, and place.* June 2 and 3, 9 a.m., Conference Rm. F, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD. *Type of meeting and contact person.* Open public hearing, June 2, 9 a.m. to 10 a.m.; open committee discussion, June 2, 10 a.m. to 4:30 p.m., June 3, 9 a.m. to 4:30 p.m.; Robert C. Nelson (HFD-120), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3800.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in the practice of psychiatry.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the Committee. *Open Committee discussion.* The Committee will discuss the update of FDA Guidelines for the Clinical Evaluation of Hypnotic Drugs; Antidepressant Drugs; and Antianxiety Drugs; and Mylidrin (Arlidin-USV)—an evaluation of an NDA supplement for geriatric indications.

Applications for reimbursement. Must be received by May 23, 1980.

Committee name. 3. Ophthalmic Devices Section of the Ophthalmic; Ear, Nose, Throat; and Dental Devices Panel.

Date, time, and place. June 2 and 3, Rm. 6104, 400 Maryland Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, June 2, 9 a.m. to 12 m.; open committee discussion, 1 p.m. to 5 p.m.; open public hearing, June 3, 9 a.m. to 12 m.; open committee discussion, 1 p.m. to 5 p.m.; Max W. Talbott (HFK-460), Bureau of Medical Devices, Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

General function of the Committee. The Committee reviews and evaluates available data concerning safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues related to contact lenses (June 2) and intraocular lenses (June 3) pending before the Committee.

Open committee discussion. The Committee will discuss and recommend any changes of the revised guidelines for contact lenses and associated items (June 2) and review the current status of the clinical investigation of intraocular lenses including their use in children (June 3). Interested persons wishing to make a presentation should notify Max Talbott by May 21, 1980.

Applications for reimbursement. Must be received by May 23, 1980.

Committee name. 4. Endocrinologic and Metabolic Drugs Advisory Committee.

Date, time, and place. June 3 and 4, 8:30 a.m., Masur Auditorium, Clinical Center, National Institutes of Health, Bethesda, MD.

Type of meeting and contact person. Open committee discussion, June 3, 8:30 a.m. to 5 p.m., June 4, 8:30 a.m. to 5 p.m., A. T. Gregoire (HFD-130), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3520.

General function of the Committee. The Committee reviews and evaluates available data concerning safety and effectiveness of marketed and investigational prescription drugs for use in endocrine and metabolic disorders.

Agenda—Open committee discussion. The Committee will discuss current advances in insulin, specifically (a) recombinant DNA methodolgy, (b) purification of insulin of animal origin, and (c) therapeutic uses; also human growth hormone, preparation by recombinant DNA methodology and therapeutic use.

The Committee will not consider specific investigational new drugs or new drug applications. The current state of the art of manufacturing and use of insulin and growth hormone will be presented by invited speakers from industry, academia, and government agencies. Any interested person may present data, information, or views, orally or in writing, on issues pending before the Committee.

Applications for reimbursement. Must be received by May 23, 1980.

Committee name. 5. Panel Review of Antimicrobial Agents.

Date, time, and place. June 6 and 7, 9 a.m., Conference Rm. J, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD (June 6), Holiday Inn, Bethesda, MD (June 7.)

Type of meeting and contact person. Open public hearing, June 6, 9 a.m. to 10 a.m.; open committee discussion, June 6, 10 a.m. to 4:30 p.m., June 7, 9 a.m. to 4:30 p.m.; Lee Geismar (HFD-512), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6057.

General function of the Committee. The Committee reviews and evaluates

available data on the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the Committee. Those who desire to make such a presentation should notify the contact person before June 2, 1980, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The Panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this Panel (see also 21 CFR 330.10(a)(2)). The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Applications for reimbursement. Must be received by May 27, 1980.

Committee name. 6. Panel on Review of Miscellaneous Internal Drug Products.

Date, time, and place. June 6 and 7, 9 a.m., Conference Rm. A, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD (June 6), Holiday Inn, Bethesda, MD (June 7).

Type of meeting and contact person. Open public hearing June 6, 9 a.m. to 10 a.m.; open committee discussion June 6, 10 a.m. to 4:30 p.m., June 7, 9 a.m. to 4:30 p.m.; John R. Short (HFD–510), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the Committee. Those who desire to make such a presentation should notify the contact person before May 30, 1980, and submit a brief statement of the geneal nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The Panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this Panel (see also 21 CFR 330.10(a)(2)). The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Applications for reimbursement. Must be received by May 27, 1980.

Committee name. 7. Peripheral and Central Nervous System Drugs Advisory Committee.

Date, time, and place. June 12 and 13, 9 a.m., Conference Rooms G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, June 12–13, 9 a.m. to 10 a.m.; open committee discussion, June 12–13, 10 a.m. to 4:30 pm.; Robert C. Nelson (HFD–120), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3800.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in neurologic disease.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. The Committee will discuss bromocriptine as an anti-Parkinson agent; isoprinosine in subacute sclerosing panencephalitis (SSPE); clorazepate disodium as an anticonvulsant; and pediatric and neonatal dosage determination for anticonvulsants.

Applications for reimbursement. Must be received by May 28, 1980.

Committee name. 8. Panel on Review of Miscellaneous External Drug Products.

Date, time, and place. June 22 and 23, 9 a.m., Holiday Inn, Bethesda, MD (June 22), Conference Rm. C, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD (June 23.)

Type of meeting and contact person. Open committee discussion, June 22, 9 a.m. to 4:30 p.m.; open public hearing, June 23, 9 a.m. to 10 a.m.; open committee discussion, June 23, 10 a.m. to 4:30 p.m.; John T. McElroy (HFD–510), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1430.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the Committee. Those who desire to make such a presentation should notify the contact person before June 18, 1980, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The Panel will review data submitted pursuant to the over-the-counter (OTC) review's call for data for this Panel (see also 21 CFR 330.10(a)(2)). The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Applications for reimbursement. Must be received by June 2, 1980.

Committee name. 9. Oncologic Drugs Advisory Committee.

Date, time, and place. June 26, 9 a.m., Conference Rm. G, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, 9 a.m. to 12 m.; open public hearing, 12 m. to 1 p.m.; open committee discussion, 1 p.m., to 5 p.m.; Ann Greenstein (HFD–150), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4250.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of cancer.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. The Committee will discuss the application for classification of THC as a Group C Drug to control nausea and vomiting associated with antineoplastic chemotherapy; whether the Phase I safety monitoring in National Cancer Institute master file and Phase I safety parameters in the proposed Clinical Guidelines for Antineoplastic Drugs require expansion in view of the new animal toxicology guidelines; and final review of the Clinical Guidelines for Antineoplastic Drugs.

Applications for reimbursement. Must be received by June 4, 1980.

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour

long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

FDA has established a pilot program for financial assistance to participants in certain agency proceedings, including hearings under 21 CFR Part 14. This program is described in regulations that were published in the **Federal Register** of October 12, 1979 (44 FR 59174) and that became effective October 25, 1979 (44 FR 72585; December 14, 1979). Subject to the availability of funds and other factors, FDA may reimburse participants meeting the criteria set forth in these regulations for certain costs of participating in this proceeding. Although reimbursement may be made available for hearings under Part 14, the program's priority will be given to funding participation in formal evidentiary public hearings under Part 12 or public boards of inquiry under Part 13 of FDA's regulations (21 CFR Part 12 or 13).

Applications for reimbursement for participation in the meetings listed above should be sent to Ronald Wylie (HF–70), Office of Consumer Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, rather than to the Hearing Clerk as prescribed in § 10.210 of the regulations (21 CFR 10.210). If you wish to submit an application or wish more information regarding the reimbursement program, please call Ron Wylie at 301–443–2932.

FDA has established expedited procedures for review of any application for reimbursement for participation in the meeting(s) announced in this notice. The Office of Consumer Affairs, FDA will file any applications for reimbursement for participation in the meeting(s) announced in this notice in the docket for this notice.

Dated: May 8, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80–14740 Filed 5–12–80; 8:45 am]

BILLING CODE 4110–03–M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Committee name. 1. Gastrointestinal Drugs Advisory Committee.

Date, time, and place. June 2 and 3, 9 a.m., Conference Rooms G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, June 2, 9 a.m. to 10 a.m.; open committee discussion, June 2, 10 a.m. to 5 p.m.; closed committee deliberations, June 3, 9 a.m. to 12 m.; Joan C. Standaert (HFD–110), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4730.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. The committee will discuss Tagamet

(cimetidine) NDA 17-920; report of subcommittee on hepatotoxicity (pediatric guidelines); report of subcommittee for revision of guidelines for motility modifying agents; and Metoclopramide for diabetic gastroparesis (NDA 17-854).

Closed committee deliberations. The committee will discuss IND 10,971 (Rowell Laboratories); IND 12,916 (Gerald Salen); IND 14,862 (ICI Industries); and IND 17,004 (Glaxo). This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Applications for reimbursement. Must be received by May 23, 1980.

Committee name. 2. Immunology Devices Section of the Immunology and Microbiology Devices Panel.

Date, time, and place. June 2 and 3, 9 a.m., Room 425, 8757 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Closed committee deliberations, June 2, 9 a.m. to 5 p.m.; open public hearing, June 3, 9 a.m. to 10 a.m.; open committee discussion, June 3, 10 a.m. to 5 p.m.; Srikrishna Vadlamudi (HFK-440), Bureau of Medical Devices, Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550. At the June 2 meeting, FDA may redesignate portions of the meeting as open committee discussion rather than closed committee deliberations if the discussion concerns information in the premarket approval applications that is not trade secret information.

Agenda—Closed committee deliberations. The Panel will review and discuss premarket approval applications P780001, P790021, and P80005. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Open public hearing. Interested persons are encouraged to present information pertinent to the use of alpha-fetroprotein tests for detection of neural tube defects, and carcinoembryonic antigen assays. Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify Srikrishna Vadlamudi by May 20, 1980, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Open committee discussion. The Panel will review and discuss clinical data concerning premarket approval applications P780001, P790021, and P80005.

Applications for reimbursement: Must be received by May 23, 1980.

Committee name. 2a. Circulatory System Devices Panel.

Date, time, and place. June 6, 8:30 a.m., Rm. 303 and 305, 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public 8:30 a.m. to 9:30 a.m.; open committee discussion 9:30 a.m. to 12 m.; closed committee deliberations 12 m. to 4 p.m.; Glenn Rahmoeller (HFK-450), Bureau of Medical Devices, Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7559.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda-Open public hearing. Interested persons are encouraged to present information pertinent to the Food and Drug Administration's (FDA) draft guidelines for replacement heart valves and oxygenators. Those desiring to make formal presentation should notify Glenn A. Rahmoeller by May 26, 1980, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, reference to any data to be relied on, and also an indication of the approximate time required to make their comments.

Open committee discussion. The Panel will review the draft guidelines for replacement heart valves and oxygenators. The purpose of these guidelines is to inform the industry of the type of data which should be submitted in premarket approval applications (PMA's) for currently marketed devices, when FDA requires the submission of such PMA's. FDA will probably require the submission of PMA's for replacement heart valves and oxygenators in the fall of 1982.

Closed committee deliberations. The panel may review trade secret information from one or more PMA's which are currently being reviewed by FDA. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Applications for reimbursement. Must be received by May 27, 1980.

Committee name. 3. General and Personal Use Devices Section of the General Medical Devices Panel.

Date, time, and place. June 16, 9 a.m., Room 425, 8757 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Closed presentation of data, 9 a.m. to 10 a.m.; open public hearing, 10 a.m. to 11 a.m.; open committee discussion, 11 a.m. to 4:30 p.m.; Robert R. Gatling (HFK-420), Bureau of Medical Devices, Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

Agenda—Closed presentation of data. The sponsor of premarket approval application P790028 will present trade secret information concerning the device and answer questions from the Section members. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Open public hearing. Those desiring to make formal presentations should notify Robert Gatling by June 2, 1980, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relief on, and also an indication of the approximate time required to make their comments.

Open committee discussion. The Section will review and discuss the safety and effectiveness data in premarket approval application P790028.

Applications for reimbursement. Must be received by May 30, 1980.

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who

does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

FDA has established a pilot program for financial assistance to participants in certain agency proceedings, including hearings under 21 CFR Part 14. This program is described in regulations that were published in the **Federal Register** of October 12, 1979 (44 FR 59174) and that became effective October 25, 1979 (44 FR 72585; December 14, 1979). Subject to the availability of funds and other factors, FDA may reimburse participants meeting the criteria set forth in these regulations for certain costs of participating in this proceeding. Although reimbursement may be made available for hearings under Part 14, the program's priority will be given to funding participation in formal evidentiary public hearings under Part 12 or public boards of inquiry under Part 13 of FDA's regulations (21 CFR Part 12 or 13).

Applications for reimbursement for participation in the meetings listed above should be sent to Ronald Wylie (HF–70), Office of Consumer Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, rather than to the Hearing Clerk as prescribed in § 10.210 of the regulation (21 CFR 10.210). If you wish to submit an application or wish more information regarding the reimbursement program, please call Ron Wylie at 301–443–2932.

FDA has established expedited procedures for review of any application for reimbursement for participation in the meeting(s) announced in this notive. The Office of Consumer Affairs, FDA, will file any application for reimbursement for participation in the meeting(s) announced in this notice in the docket for this notice.

Dated: May 8, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

[FR Doc. 80–14741 Filed 5–12–80; 8:45 am]

BILLING CODE 4110–03–M

[Docket No. 80P–0004/CP]

Tomato Juice Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces that a temporary permit has been issued to Libby, McNeill & Libby, Inc., to market test tomato juice from concentrate to which ascorbic acid is added to attain a vitamin C level of 4 milligrams per fluid ounce. The purpose of the temporary permit is to permit the applicant to measure consumer acceptance of the food.

DATES: The permit is effective for 15 months, beginning on the date the new food is introduced into or caused to be introduced into interstate commerce, but no later than August 11, 1980. However, the permit may terminate sooner, depending upon the final action on the Food and Drug Administration's proposal to amend the standard of identity for tomato juice published in the **Federal Register** of May 9, 1978 (43 FR 19864). If the proposal is affirmed, the permit will terminate on the effective date of the final regulation. If the proposal is rejected, the permit will expire 30 days after such negative ruling on the proposal.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF–214), Food and Drug Administration, Department of Health and Human Services, 200 C St. SW, Washington, DC 20204, 202–245–1164.

SUPPLEMENTARY INFORMATION: In accordance with § 130.17 (21 CFR 130.17) concerning temporary permits to facilitate market testing of foods varying from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), notice is given that a temporary permit has been issued to Libby, McNeill & Libby, Inc., Chicago, IL 60604. This permit covers limited interstate marketing tests of tomato juice that deviates from the standard of identity prescribed in § 156.145 (21 CFR 156.145). The product is prepared from tomato paste that complies with the requirements of § 155.191(a)(1) (21 CFR 155.191(a)(1)). The test product is equivalent to a

single-strength tomato juice normally found in the marketplace. The finished product contains not less than 5.5 percent tomato soluble solids. In addition, ascorbic acid is added to attain a level of 4 milligrams per fluid ounce of vitamin C in the finished product. The permit provides for the temporary marketing of 100,000 cases of twelve 46-ounce cans, 17,000 cases of twenty-four 12-ounce cans and 60,000 cases of forty-eight 5½-ounce cans per month of the product to be distributed in all States, except Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Washington.

The test product is to be packed at the Libby, McNeill & Libby, Inc., plants located in Kokomo, IN, and Leipsic, OH.

The principal display panel of the label states the product name as "tomato juice from concentrate". Each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101, except that the tomato ingredient complying with the requirements of § 155.191(a)(1) is declared as "tomato concentrate". This permit is effective for 15 months, beginning on the date the new food is introduced or caused to be introduced into interstate commerce, but no later than August 11, 1980. However, the permit may terminate sooner, depending upon the final action on the Food and Drug Administration's proposal to amend the standard of identity for tomato juice published in the **Federal Register** of May 9, 1978 (43 FR 19864). If the proposal is affirmed, the permit will terminate on the effective date of the final regulation. If the proposal is rejected, the permit will expire 30 days after the negative ruling on the proposal.

Dated: May 6, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-14631 Filed 5-12-80; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79P-0030]

Universal City Studios, Inc.; Approval of Variance for the Universal Studios Tour Laser Display (Battle of Galactica)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that a variance from the performance standard for laser products has been approved by the Bureau of Radiological Health for the Universal Studios Tour Laser Display (Battle of Galactica). The tour is on a tram through a building that simulates a spaceship and contains the laser display to produce a variety of special effects. The principal use of this product is to provide entertainment to general audiences.

DATES: The variance became effective March 13, 1980, and ends March 13, 1990.

ADDRESS: The application and all correspondence on the application have been placed on display in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. 80-256.

FOR FURTHER INFORMATION CONTACT: Glenn E. Conklin, Bureau of Radiological Health, (HFX-460), Food and Drug Administration, Department of Health and Human Services, 5600 Fishers Lane, Rockville, MD 20857. 301-443-3426.

SUPPLEMENTARY INFORMATION: Under the provisions of § 1010.4 (21 CFR 1010.4), Universal City Studios, Inc., 100 Universal City Plaza, Universal City, CA 91608, has been granted a variance from § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser products. The variance permits the manufacturer to introduce into commerce the demonstration laser product known as the Universal Studios Tour Laser Display (Battle of Galactica) with levels of accessible laser radiation up to 10 watts in the wavelength range of greater than 400 nanometers (nm) but less than or equal to 710 nm in any one beam rather than Class II levels. Suitable means of radiation protection will be provided by constraints on the physical and optical design, by warnings in the user manual and on the product and by procedures for Universal City Studio personnel. The product shall bear the Variance Number 79P-0030.

By letter of March 13, 1980, the Director of the Bureau of Radiological Health approved the requested variance which teminates on March 13, 1990.

In accordance with § 1010.4 (21 CFR 1010.4), the application and all correspondence (including the written notice of approval) on this application have been placed on public display in the office of the Hearing Clerk, Food and Drug Administration, and may be seen from 9 a.m. to 4 p.m., Monday through Friday.

Dated: May 5, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-14630 Filed 5-12-80; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Mangement

[Int Des 80-33]

Colorado and Wyoming; Availability of Draft Environmental Impact Statement and Request for Surface Owner Consent Agreements

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management (BLM), Department of the Interior, has prepared a draft environmental impact statement (EIS) for the proposed development of Federal coal resources in the Green River-Hams Fork Federal Coal Production Region of Colorado and Wyoming, has made copies of the draft EIS available for public review, and is seeking public comment on the document.

In addition, the Bureau of Land Management (BLM) is issuing a call for submission to the BLM of surface owner consents given by qualified surface owners that would permit surface mining of Federal coal on the identified tracts where the Federal coal is overlain by privately owned surface.

DATES: *Written comments* on the draft EIS will be accepted on or before July 8, 1980. *Public hearings* to accept written comments and to receive testimony will be held at 1:00 p.m. and 7:30 p.m. on June 23, 1980; at 7:30 p.m. June 24, 1980; at 7:30 p.m. June 25, 1980, and at 7:30 p.m. on June 26, 1980. The dates for filing surface owner consent agreements, or evidence thereof, is contained in the Supplementary Information section of this notice.

ADDRESSES: *Written comments* on the draft EIS should be sent to the EIS Team Leader, Craig District Office, Bureau of Land Management, P.O. Box 248, 455 Emerson Street, Craig, Colorado 81625. *Single copies* of the draft EIS may be obtained from the EIS Team Leader at the address listed above and from the Office of Public Affairs, Bureau of Land Management, 18th and C Streets, N.W., Washington, D.C. 20240. Information related to surface owner consent agreements is contained in the Supplmentary Information section of this notice.

FOR FURTHER INFORMATION CONTACT: Dan Martin, EIS Team Leader, Craig District Office, Bureau of Land Management, P.O. Box 248, 455 Emerson

Street, Craig, Colorado 81625, Telephone (303) 824–3417.

SUPPLEMENTARY INFORMATION: The draft EIS, which is part of the leasing process under the Federal coal management program (43 CFR 3400), analyzes the environmental impacts that would result from the development of five Federal coal tracts proposed for leasing in Wyoming and eleven Federal coal tracts proposed for leasing in Colorado. In addition, the EIS analyzes the cumulative regional environmental impacts of five leasing level alternatives as well as other related regional coal developments in the Green River-Hams Fork Federal Coal Production Region.

Public comments on the draft EIS are being sought before preparing the final EIS and should be sent to the EIS Team Leader at the address listed above. All comments on the draft EIS, whether written or oral, which are received by July 8, 1980, will receive equal consideration in the preparation of the final EIS.

A series of public hearings have been scheduled to accept written and/or oral comments on the draft statement. The first public hearing will consist of an afternoon session beginning at 1:00 p.m. and an evening session beginning at 7:30 p.m. Both sessions will be held in the Auditorium of the Denver Public Library, 1357 Broadway, Denver, Colorado, on June 23, 1980. The three remaining public hearings will begin at 7:30 p.m. and will be held on June 24, 1980, in the Auditorium of the Moffat County Courthouse, W. Victory Way, Craig, Colorado; on June 25, 1980, in the West Room of the Jeffery Center, 3d and Spruce, Rawlins, Wyoming; and on June 26, 1980, at Little America, West of Cheyenne, Cheyenne, Wyoming.

Those individuals wishing to testify at the public hearings should notify, in writing, the EIS Team Leader at the address listed above by June 18, 1980. This notification should identify the organization that is being represented (if speaking for an organization), should be signed by the individual who will be testifying, and, for the first hearing, should state which session (afternoon or evening) at which he/she wishes to testify. The cutoff date is necessary so that a witness list can be reviewed in the Colorado State Office on the day before the first public hearing.

Only one witness will be allowed to represent the views of a single organization. However, if a member of an organization wishes to speak as a private citizen, the testimony will be permitted. Speakers will be heard in the order set forth on the witness list. After the last listed speaker has been heard, the presiding officer will consider the request of any person present who wishes to testify.

At the public hearings on the draft EIS, oral testimony of ten minutes duration will be accepted from each witness in lieu of, or in addition to, any written comments. The 10-minute limitation will be strictly enforced by the presiding officer. The complete text of prepared remarks should be filed at the hearing and will be included as part of the hearing record regardless of whether or not the speaker completes those remarks in the allotted 10 minutes.

Copies of the draft EIS are available for inspection at the following locations:

Colorado State Office, Bureau of Land Management, Colorado State Bank Building, Room 700, 1600 Broadway, Denver, Colorado 80202.

Craig District Office, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625.

Wyoming State Office, Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82001.

Rawlins District Office, Bureau of Land Management, 1300 Third Street, Rawlins, Wyoming 82301.

Office of Public Affairs, Bureau of Land Management, Room 5623, 18th and C Streets, N.W., Washington, D.C. 20240.

In addition to comments on the draft EIS, the BLM is requesting that surface owner consent agreements, or evidence thereof, given by qualified surface owners be submitted to the appropriate State Office (listed above) in the Green River-Hams Fork Region. The consent agreements, or evidence thereof, will be used by the regional coal team to aid in determining the competitive nature of the potential coal lease tracts. Section 714(c) of the Surface Mining Control and Reclamation Act (SMCRA) states that, "The Secretary shall not enter into any lease of Federal coal deposits until the surface owner has given written consent to enter and commence surface mining operations and the Secretary has obtained evidence of such consent." Valid written consents given by qualified surface owners prior to August 4, 1977, are considered to be acceptable for leasing and surface mining of Federal coal overlain by privately owned surface (split-estate lands).

As defined in the regulations (43 CFR 3400.0–5 (pp)), qualified surface owner "means the natural person or persons (or corporation, the majority stock of which is held by a person or persons) who:

(1) Hold legal or equitable title to the surface of split estate lands;

(2) Have their principal place of residence on that land, or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface mining operations; or receive directly a significant portion of their income, if any, from such farming and ranching operations and;

(3) Have met the conditions of paragraphs (1) and (2) of this subsection for a period of at least 3 years, except for persons who gave written consent less than 3 years after they met the requirements of both paragraphs (1) and (2) of this section. In computing the three year period the authorized officer shall include periods during which title was owned by a relative of such person by blood or marriage if, during such periods, the relative would have met the requirements of this subsection."

Valid written consent is defined in the regulations (43 CFR 3400.0–5(zz)) as "the document or documents that a qualified surface owner has signed that: (1) Permit a coal operator to enter and commence surface mining of coal; (2) describe any financial or other consideration given or promised in return for permission, including in-kind considerations; (3) describe any consideration given in terms of type or methods of operation or reclamation for the area; (4) contain any supplemental or related contracts between the surface owner and any other person who is a party to the permission; and (5) contain a full and accurate description of the area covered by the permission."

As required by 43 CFR 3427.2, it is the Bureau's responsibility to review all consents received. The Bureau will verify that the named surface owner is a qualified surface owner as defined in the regulations and that the title for all split estate lands described in the filing is held by the named qualified surface owner(s). In addition, to be considered valid, the consent must be transferable to whoever makes the successful bid in a lease sale for the tract that includes the lands to which the consent applies. A written consent shall be considered transferable only, if, at a minimum, it allows that after the lease sale for the tract to which the consent applies (i) the payment for the consent may be made by the successful bidder or (ii) the successful bidder may reimburse, at the purchase price of the consent, the party that first obtained the consent. If a filing is from anyone other than the named qualifed surface owner, the Bureau shall contact the named qualified surface owner and request confirmation, in writing, that the filed, transferable, written consent, or evidence thereof, to enter and commence surface mining has been granted and that the filing fully

discloses all of the terms of the written consent.

Those valid written consents that were given prior to August 4, 1977, must be filed with the Colorado or Wyoming State Director, as appropriate, at the addresses provided above by July 8, 1980. This corresponds with the close of the public comment period on the draft regional lease sale EIS. Those consents granted after August 4, 1977, must be filed 30 working days prior to the notice of sale for the tracts. It is anticipated that such a notice will be published December 8, 1980, if a decision to lease tracts is made. If no valid consent for surface mining has been granted for a particular tract and there is interest in bidding on it at a competitive lease sale, it is incumbent upon the individual or corporation to obtain valid written consent and file it with the Bureau by October 23, 1980, or 30 working days before publication of the notice of sale for the tract under the Secretary's schedule, whichever is later. If no valid written consent to surface mine a particular tract is received by October 23, 1980, it will not be possible for the Secretary to offer the tract for competitive sale in January of 1981.

Dated: May 6, 1980.

Ed Hastey,

Associate Director, Bureau of Land Management.

May 8, 1980.

Approved:

James H. Rathlesberger,

Special Assistant to Assistant Secretary of the Interior.

[FR Doc. 80-14622 Filed 5-12-80; 8:45 am]

BILLING CODE 4310-84-M

Filing of Existing Surface Owner Consent for Surface Coal Mining

May 6, 1980.

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of existing surface owner consent for surface coal mining.

SUMMARY: This notice is to advise the public that, pursuant to 43 CFR 3427, valid written consent for surface coal mining given by qualified surface owners should be filed with the Montana State Office, Bureau of Land Management, Billings, Montana.

This notice applies only to areas identified as acceptable for further leasing consideration in the Miles City District's Redwater Management Framework Plan in eastern Montana and the Dickinson District's Golden Valley Management Framework Plan in western North Dakota.

The consent documents should contain evidence that qualified surface owners have agreed: (1) To permit a coal operator to enter and commence surface mining of Federal coal; (2) to describe any financial or other consideration given or promised in return for the permission, including in-kind considerations; (3) to describe any consideration given in terms of type or method of operation or reclamation for the area; (4) to provide any supplemental or related contracts between the surface owner and any other person who is a party to the permission; and (5) to provide a full and accurate description of the area covered by the permission.

These consents, when filed, will be used by the Fort Union Regional Coal Team to assist in determining, during the tract delineation, ranking, and selection process, the competitive nature of the possible lease tracts.

DATES: All surface owner consents for the Redwater Planning Unit within the State of Montana and the Golden Valley Planning Unit within the State of North Dakota of the Fort Union Coal Region should be received by the Bureau of Land Management, Montana State Office, by June 24, 1980, in order to assist in the tract delineation. However, consent or evidence of written consent shall be filed 30 working days prior to the publication of lease sale notice of the lands to which it applies. It shall be the responsibilities of parties intending to file consent to be aware of pending lease sale notice dates.

ADDRESSES: Written consents should be sent to: Mr. Michael Penfold, State Director, Bureau of Land Management, Attn: MSEL, P.O. Box 30157, Billings, Montana 59107.

Maps showing the areas acceptable for further coal leasing consideration in the Redwater and Golden Valley Framework Plan areas may be obtained at the Miles City and Dickinson District Offices or the Montana State Office.

Mr. George Neuberg, Miles City District Manager, Bureau of Land Management, P.O. Box 940, Miles City, MT 59301 (Tel.: 406-232-4331).

Mr. Charles Steele, Dickinson District Manager, Bureau of Land Management, P.O. Box 1229, Dickinson, ND 58601 (Tel.: 701-225-9148).

Mr. Bill Frey, Bureau of Land Management, Montana State Office, P.O. Box 30157, Billings, MT 59107 (Tel.: 406-657-6632).

FOR FURTHER INFORMATION CONTACT: Mr. George Neuberg, Mr. Charles Steele, or Mr. Bill Frey at the addresses shown above.

Robert T. Webb,

Acting State Director.

[FR Doc. 80-14659 Filed 5-12-80; 8:45 am]

BILLING CODE 4310-84-M

Status of Wilderness Review of Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of status of wilderness review of public land.

SUMMARY: This notice summarizes the present status of the wilderness review of roadless public lands and islands required by the Federal Land Policy and Management Act (FLPMA), section 603(a). The purposes of this notice and calendar of events are to provide (1) one source of information summarizing current wilderness review activities, and (2) advance notice of upcoming decisions, public review periods, etc.

DATE: All information in this notice is current through May 2, 1980.

FOR FURTHER INFORMATION CONTACT: Andy Gibbs, Bureau of Land Management, Division of Wilderness and Environmental Areas, 18th and C Streets, N.W., Washington, D.C. 20240, Telephone: (202) 343-6064.

SUPPLEMENTARY INFORMATION: This calendar of events is the fourth of a series whose last notice appeared in the **Federal Register** April 11, 1980 (p. 24924). The calendar of events focuses only on the current status of all ongoing wilderness review activities. Those inventories whose final decisions are in effect, as well as studies or reports not yet initiated, are not reported in this notice. For detailed information regarding each specific activity, reference is made either to the appropriate notice previously appearing in the **Federal Register**, or to notices which are anticipated to be published in the upcoming 30 days. It must be noted that "anticipated" dates are projected only, and thus are subject to change.

The Bureau of Land Management wilderness review includes (1) an inventory of public lands to identify roadless lands and islands having wilderness characteristics; (2) a study of those areas found to have wilderness characteristics (wilderness study areas or "WSA's"); and (3) a report from the Secretary of the Interior to the President as to whether each WSA is more suitable for wilderness or other resource uses. The President will send his recommendations to Congress. Only

Congress can actually designate an area as wilderness.

The inventory process has two stages: (1) an initial inventory designed to quickly identify and release from wilderness review those lands which clearly and obviously lack wilderness characteristics; and (2) an intensive inventory for those lands which may posses wilderness characteristics. The initial inventory process was completed in the contiguous Western States by October 1, 1979. In instances where important resource use decisions are pending, the inventory process may be accelerated in order to reach final decisions as quickly as possible. Such inventories are referred to as "special project inventories" or "accelerated intensive inventories."

The FLPMA also requires early study of 55 natural and primitive areas which were formally identified by the Secretary of the Interior prior to November 1, 1975. By July 1, 1980, the Secretary will submit to the President reports on the wilderness suitability of these areas. They are referred to as "instant study areas" (ISA's).

Dated: May 7, 1980.

Ed Hastey,

Associate Director.

Calendar of Events

Alaska

Accelerated Nonwilderness Assessment

—Alaskan section of Alaska Natural Gas Transportation System proposed decision on nonwilderness assessment within existing utility and transportation corridors announced in **Federal Register** April 4, 1980 (p. 23071); public comment period ended May 5, 1980; final decision anticipated by June 1, 1980.

Arizona

Statewide Intensive Inventory

—Proposed decision anticipated late May 1980.

Accelerated Intensive Inventory

—Hualapai-Aquarius proposed decision announced in **Federal Register** September 7, 1979 (p. 52340); comment period ended December 12, 1979; final decision anticipated May 1980. Affects units 2–37, 2–43, 2–46, 2–48, 2–50, 2–51 to 2–54, 2–56 to 2–63, 2–65, 2–67.

—Overthrust Belt final decision announced in **Federal Register** February 22, 1980 (p. 11919); protest period ended March 26, 1980, with protests; State Director's announcement of decision on protests anticipated May 1980. Affects units: 1–105 to 1–109, 1–112 to 1–115, 1–119 to 1–124, 1–127 to 1–130, 1–134, 1–135.

—Safford District units contiguous to Coronado National Forest proposed decision announced in **Federal Register** April 30, 1980 (p. 28822); public comment period ends June 9, 1980. Affects units 4–66, 4–70, 4–72, 4–73, 4–79, 4–80, 4–81.

Study/Reporting

—Aravaipa Canyon Instant Study Area final environmental impact statement and suitability report complete; under Secretarial review.

—Paiute, Paria, and Vermillion Cliffs ISA's draft suitability report and draft environmental impact statement availability along with scheduled hearings announced in **Federal Register** April 22, 1980 (p. 27022); public comment period ends June 9, 1980.

California

Statewide Intensive Inventory

—Final decision announced in **Federal Register** January 7, 1980, (p. 1457); protest period ended February 5, 1980; 93 units under protest as announced in **Federal Register** April 3, 1980 (p. 22198); State Director's announcement of decision on protests anticipated in June or July.

—Proposed decisions for Oregon-California and Nevada-California interstate units announced in **Federal Register** April 3, 1980 (p. 22198); began 90-day public comment period which ends June 25, 1980.

Units Under Formal Appeal to IBLA

—Notice of appeal announced in **Federal Register** January 7, 1980, (p. 1456). Affects CDCA intensive inventory units: 117, 131, 136, 137–A, 143, 150, 156, 158, 172, 207, 217, 221, 222, 227, 242, 251, 251A, 263 to 266, 271, 299, 305, 321, 325, 334, 343, 348, 376.

—Notice of appeal announced in **Federal Register** January 7, 1980, (p. 1457). Affects non-CDCA initial inventory units: CA–010–031, 033, 047, 069, 087, 101; CA–020–701, 901, 1001; CA–030–300, 400, and 500.

Study/Reporting

—CDCA draft Plan Alternatives and Environmental Impact Statement released February 15, 1980; 90-day public comment period ends May 15, 1980.

Colorado

Statewide Intensive Inventory

—Proposed decision announced in **Federal Register** February 1, 1980 (p. 7312); 90-day public comment period ended April 30, 1980.

Units Under Formal Appeal to IBLA

—Notice of appeal filed with IBLA January 21, 1980. Affects initial inventory unit 070–031.

Study/Reporting

—Powderhorn ISA draft environmental impact statement and draft suitability report availability, along with scheduled hearings, to be announced early May; begins public comment period which will end July 1, 1980.

Eastern States

Statewide Initial Inventory (Wisconsin and Michigan)

—Proposed decision anticipated June 1980.

Statewide Initial Inventory (Minnesota Only)

—Final decision announced in **Federal Register** March 21, 1980 (p. 18492); appeal period ended April 21, 1980, without appeal; decision in effect.

Statewide Intensive Inventory (Minnesota Only)

—Proposed decision anticipated May 1980.

Idaho

Statewide Initial Inventory

—Amended decision announced in **Federal Register** February 8, 1980 (p. 8732) after State Director requested IBLA to remand an earlier appealed decision for reconsideration; protests received; State Director's decision on protest regarding unit 23–1 announced in **Federal Register** April 22, 1980 (p. 27023) initiating 30-day appeal period; announcement of State Director's decision on protests regarding following three units anticipated late May 1980: 35–3, 35–4, 35–5.

Statewide Intensive Inventory

—Proposed decision announced in **Federal Register** April 3, 1980 (p. 22195); 90-day public comment period ends July 3, 1980.

Accelerated Intensive Inventory

—Owyhee Planning Area final decision announced in **Federal Register** January 16, 1980 (p. 3114); protest period ended February 15, 1980; protests received as announced in **Federal Register** April 17, 1980 (p. 26140); State

Director's announcement of decision on protests anticipated June 1980. Affects units 16–26, 16–28, 16–36, 16–40 to 16–42, 16–44, 16–45, 16–47, 16–49 a, b, d, e, and 16–52.

Study/Reporting

—Great Rift (Grassland Kipuka) ISA draft environmental impact statement availability announced in **Federal Register** March 5, 1980 (p. 14251); public comment period ends May 27, 1980, as announced in **Federal Register** April 25, 1980 (p. 27997).

Units Under Formal Appeal to IBLA

—Notice of Appeal filed with IBLA April 11, 1980, affecting stateline initial inventory units 16–48 a, b, and c, 16–53, 16–56a, 16–59, 16–70e, 17–19, 17–21, 17–26, 22–1.

—Two notices of Appeal filed with IBLA April 11, 1980, affecting Challis Planning Area intensive inventory units 46–11, 46–13, 46–14, 46–14a.

Montana

Statewide Intensive Inventory

—Proposed decision announced in **Federal Register** March 28, 1980 (p. 20570); public comment periods ends June 30, 1980.

Accelerated Intensive Inventory

—Bitter Creek (unit 064–356) as affected by proposed Alaska Natural Gas Transportation System final decision announced in **Federal Register** April 9, 1980 (p. 24254); protest period ends May 9, 1980.

—Overthrust Belt final decision announced in **Federal Register** February 22, 1980 (p. 11920); protest period announced in **Federal Register** March 28, 1980 (p. 20570); protest period ended April 30, 1980, with protests; announcement of protests received anticipated May, 1980. Affects units 074–151 a and b, 074–155, 075–102, 075–105, 075–106, 075–110, 075–114, 075–115, 075–123 to 126, 075–133, 075–134, 075–138, 076–001 to 004, 076–007, to 011, 076–015, 076–022, 076–024 to 026, 076–028, 076–029, 076–031, 076–033, 076–034, 076–042, 076–043, 076–047, 076–051, 076–054, 076–059, 076–063, 076–069 to 071.

Study/Reporting

—Humbug Spires and Bear Trap Canyon ISA's draft environmental impact statements and draft suitability reports availability and hearings announced in **Federal Register** April 18, 1980 (p. 26477) and April 30, 1980 (p. 28823); public comment period ends June 17, 1980.

Nevada

Statewide Intensive Inventory

—Proposed decision announced in **Federal Register** April 1, 1980 (p. 21356); 90-day public comment period ends June 30, 1980.

Accelerated Intensive Inventory

—Overthrust Belt final decision announced in **Federal Register** February 8, 1980 (p. 8731); protest period ended March 17, 1980, with protests as announced in **Federal Register** April 9, 1980; State Director's announcement of decision on protests anticipated late May 1980. Affects units 0161, 0231 to 0233, 0235, 0236, 0238, 0411, 0412, 0423 04R–15, 0438.

New Mexico

Statewide Intensive Inventory

—Proposed decision announced in **Federal Register** March 28, 1980 (p. 20572); corrections announced in **Federal Register** May 2, 1980 (p. 29417); 90-day public comment period ends June 30, 1980.

Oregon

Statewide Intensive Inventory (Includes Washington)

—Proposed decision announced in **Federal Register** March 27, 1980 (p. 20167); 90-day public comment period ends June 25, 1980.

Accelerated Intensive Inventory

—Thirty selected units final decision announced in **Federal Register** March 27, 1980 (p. 20166); protest period ended April 28, 1980 with protests; announcement of protests received and decisions which are in effect anticipated May 1980. Affects units: 1–76, 1–78, 1–105, 1–111, 2–1, 2–2, 2–11 to 2–17, 2–21, 2–23, 2–24, 2–26, 2–74, 2–79, 2–81, 2–82, 3–36, 3–151, 3–154, 3–156, 3–199, 5–14, 5–57, 5–58.

Units Under Formal Appeal to IBLA

—Notice of appeal announced in **Federal Register** November 29, 1979 (p. 68526); affects initial inventory unit 11–6.

Utah

Statewide Intensive Inventory

—Proposed decision announced in **Federal Register** March 28, 1980 (p. 20576); unit-by-unit supplement announced in **Federal Register** April 24, 1980 (p. 27831); 90-day public comment period ends June 30, 1980.

Accelerated Intensive Inventory

—Deep Creek Mountains (units 020–066 and 050–020) final decision announced in **Federal Register** March 14, 1980 (p. 16569); protest period ended April 14, 1980, without protest; decision in effect as announced in **Federal Register** May 1, 1980 (p. 29124).

—Dirty Devil (unit 050–236) final decision announced in **Federal Register** February 15, 1980 (p. 10462); protest period ended March 17, 1980, with protests as announced in **Federal Register** March 17, 1980, with protests as announced in **Federal Register** March 28, 1980 (p. 20576); State Director's announcement of decision on protests anticipated June 1980.

—Devil's Garden, Joshua Tree, Book Cliffs, and Link Flats ISA's proposed intensive inventory decision announced in **Federal Register** January 16, 1980 (p. 3114); comment period ended February 15, 1980; final decision anticipated early May 1980.

Units Under Formal Appeal to IBLA

—Notice of appeal filed with IBLA January 24, 1980. Affects accelerated intensive inventory units 060–007, 060–011, 060–012, 050–233.

Wyoming

Statewide Intensive Inventory

—Proposed decision announced in **Federal Register** April 4, 1980 (p. 23073); 90-day public comment period ends July 7, 1980.

Accelerated Intensive Inventory

—State Director's decision on protests in Overthrust Belt announced in **Federal Register** March 6, 1980 (p. 14667); appeal period ended April 11, 1980, with appeals (see below). Affects units: 040–110, 040–221 to 223.

Units Under Formal Appeal to IBLA

—Three Notices of Appeal filed with IBLA April 14, 1980. Affects accelerated intensive inventory units 040–110, 040–221, 040–222, and 040–223.

[FR Doc. 80–14600 Filed 5–12–80; 8:45 am]
BILLING CODE 4310–84–M

Heritage Conservation and Recreation Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before May 2, 1980. Pursuant to § 1202.13 of 36 CFR Part 1202, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, Heritage

Conservation and Recreation Service, U.S. Department of the Interior, Washington, D.C. 20243. Written comments should be submitted by May 28, 1980.

Sarah G. Oldham,

Acting Chief, Registration Branch.

CALIFORNIA

Alameda County

Oakland, *Main Post Office and Federal Building,* 201 13th St.

Los Angeles County

Los Angeles, *Fire Station No. 23,* 225 E. 5th St.
Los Angeles, *Sunset Towers,* 8358 Sunset Blvd.
Pasadena, *Pasadena Civic Center District,* roughly bounded by Raymond and Euclid Aves., Walnut and Green Sts.
Santa Fe Springs, *Hawkins-Nimocks Estate and Patricio Ontiveros Adobe* Whittier, *Standard Oil Building,* 7257 Bright Ave.

Nevada County

Nevada City, *Kidd and Knox Building,* 228–236 Broad St.

Orange County

Fullerton, *Muckenthaler House,* 1201 W. Malvern Ave.
Santa Ana, *Minter, George W., House,* 322 W. 3rd St.

Riverside County

Riverside, *Masonic Temple,* 3650 11th St.
Riverside, *Riverside-Arlington Heights Fruit Exchange,* 3391 7th St.

San Diego County

San Diego, *Lee, Robert E., Hotel (Lyceum Theater)* 815 3rd Ave. and 314 F St.

San Francisco County

San Francisco, *Payne, Theodore F., House,* 1409 Sutter St.

San Joaquin County

Stockton, *Elks Building,* 42 N. Sutter St.
Tracy, *Bank of Tracy,* 801 Central Ave.

San Luis Obispo County

San Simeon vicinity, *Archeological Site 4–SLO–187.*

San Mateo County

Half Moon Bay, *Methodist Episcopal Church at Half Moon Bay,* 777 Miramontes St.
Menlo Park, *Church of the Nativity,* 210 Oak Grove Ave.
Pescadero, *First Congregational Church of Pescadero,* San Gregorio St.
Pescadero, *Methodist Episcopal Church of Pescadero,* 108 S. Gregorio St.
Pescadero, *St. Anthony's Church,* North St.

Santa Clara County

Palo Alto, *Professorville Historic District,* Roughly bounded by Embarcadero Rd., Addison Ave., Emerson and Cowper Sts.
San Jose, *Hamilton, Capt. James A., House,* 2295 S. Basom Ave.
San Jose, *Hotel Sainte Claire,* 302 and 320 S. Market St.

COLORADO

Huerfano County

La Veta, *La Veta Pass Narrow Gauge Railroad Depot,* Off U.S. 160.

Lake County

Leadville, *Leadville National Fish Hatchery,* W. of Leadville.

DISTRICT OF COLUMBIA

Washington

Stevens, Thaddeus, School, 21st and L Sts., NW.

GEORGIA

Clarke County

Athens, *Clarke County Jail,* Courthouse Sq.

Pierce County

Blackshear, *Pierce County Jail,* Taylor St.

MICHIGAN

Allegan County

Allegan, *Second Street Bridge,* 2nd St.

Calhoun County

Marshall, *Brooks, Harold C., House,* 310 N. Kalamazoo Ave. (boundary increase).

MINNESOTA

Blue Earth County

Mankato, *Federal Post Office and Courthouse,* 401 S. 2nd St.

MISSISSIPPI

Washington County

Avon vicinity, *Swan Lake Archeological District,* Yazoo National Wildlife Refuge.

NEBRASKA

Douglas County

Omaha, *Drake Court Apartments and the Dartmore Apartments Historic District,* Jones St.
Omaha, *St. John's A. M. E. Church,* 2402 N. 22nd St.

NEW MEXICO

Valencia County

Belen, *Chaves, Felipe, House,* 325 Lala St.

NORTH CAROLINA

Cleveland County

Boiling Springs vicinity, *Irvin-Hamrick Log House,* NW of Boiling Springs on SR 1153.
Shelby vicinity, *Beam, Joshua, House,* NE of Shelby.

Currituck County

Corolla vicinity, *Currituck Shooting Club,* S. of Corrolla.

Nash County

Middlesex vicinity, *Taylor's Mill*
Rocky Mount, *Rocky Mount Central City Historic District,* Roughly bounded by Robinson and Atlantic Aves, Holly and Franklin Sts.

Richmond County

Ellerbe vicinity, *Ellerbe Springs Hotel,* 1 mi. N. of Ellerbe.

Rockingham, *Covington Plantation House,* SW of Rockingham on U.S. 1.

Rockingham County

Madison, *Boxwoods, The,* Penn Lane.

PENNSYLVANIA

Armstrong County

Bradys Bend, *St. Stephen's Church,* PA 68.

Chester County

West Chester, *Butler House,* 228 W. Miner St.

Lancaster County

Lititz, *Sutter, Johann Agust, House,* 17–19 E. Main St.
Manheim vicinity, *Mount Hope Estate,* NW of Manheim on PA 72.

TEXAS

Bexar County

San Antonio, *Meerscheidt, Otto, House,* 322 Adams St.

Dallas County

Dallas, *Busch Building,* 1501–1509 Main St.

VERMONT

Bennington County

Manchester, *Equinox House Historic District,* Main and Union Sts.

Essex County

Canaan, *Jacobs Stand (Alice M. Ward Memorial Library)* W. Park St.

Windsor County

Weathersfield Center, *Weathersfield Center Historic District,* Center Rd.

* * * * *

Determinations of Eligibility

A list of additions, deletions, and corrections to the list of properties which were determined to be eligible for inclusion in the National Register of Historic Places, will be published May 20, 1980.

[FR Doc. 80-14419 Filed 5-12-80; 8:45 am]

BILLING CODE 4310-03-M

Office of the Secretary

[Int Des 80-32]

Auburn Dam, Auburn-Folsom South Unit, Central Valley Project; Availability of Draft Supplement No. 2 to the Final Environmental Statement, Seismicity and Dam Safety

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a draft supplement on alternative Auburn Dam designs and a reevaluation of seismic parameters at the site. The two principal alternatives are: (1) a curved concrete gravity dam at mile 20, and (2) an earth and rockfill structure at mile 20.

Written comments may be submitted to the Regional Director with a copy to Director, Office of Environmental Affairs, (addresses below) by July 7, 1980.

Copies are available for inspection at the following locations:

Office of Environmental Affairs, Room 7622, Water and Power Resources Service, Department of the Interior, Washington, DC 20240, telephone (202) 343–4991.

Division of Management Support, Library Branch, Code D–950, Engineering and Research Center, Denver Federal Center, Denver, CO 80225, telephone (303) 234–3019.

Office of the Regional Director, Water and Power Resources Service, 2800 Cottage Way, Sacramento, CA 95825, telephone (916) 484–4792.

Single copies of the draft statement may be obtained upon request to the Commissioner of Water and Power Resources Service or the Regional Director. Please refer to the statement number above.

Dated: May 8, 1980.

James H. Rathlesberger,

Special Assistant to Assistant Secretary of the Interior.

[FR Doc. 80-14619 Filed 5-12-80; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

[Rule 19, Ex Parte No. 241; Eighty-Third Revised Exemption No. 90]

Exemption Under Provision of Mandatory Car Service Rules Ordered

It appearing, That the railroads named below own numerous 50-ft. plain boxcars; that under present conditions there are substantial surpluses of these cars on their lines; that return of these cars to the owners would result in their being stored idle; that such cars be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and the compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, 50-ft. plain boxcars described in the Official Railway Equipment Register, ICC RER 6410–D, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM," and bearing reporting marks assigned to the railroads named below, shall be exempt from provisions of Car Service Rules 1, 2(a) and 2(b).

Aberdeen and Rockfish Railroad Company
Reporting Marks: AR

The Ahnapee & Western Railroad Company
Reporting Marks: AHW

Ann Arbor Railroad System, Michigan Interstate Railroad Company, Operator
Reporting Marks: AA

Apalachicola Northern Railroad Company
Reporting Marks: AN

The Arcata and Mad River Railroad Company
Reporting Marks: AMR

The Atchison, Topeka and Santa Fe Railway Company
Reporting Marks: ATSF

Atlanta & Saint Andrews Bay Railway Company
Reporting Marks: ASAB

Bath and Hammondsport Railroad Company
Reporting Marks: BH

Berlin Mills Railway, Inc.
Reporting Marks: BMS

Cadiz Railroad Company
Reporting Marks: CAD

Camino, Placerville & Lake Tahoe Railroad Company
Reporting Marks: CPLT

Central Vermont Railway, Inc.
Reporting Marks: CV

Chesapeake Western Railway
Reporting Marks: CHW

City of Prineville
Reporting Marks: COP

The Clarendon and Pittsford Railroad Company
Reporting Marks: CLP

*Columbia & Cowlitz Railway Company
Reporting Marks: CLC

Columbus and Greenville Railway Company
Reporting Marks: CAGY

Delaware and Hudson Railway Company
Reporting Marks: DH

*Delray Connecting Railroad Company
Reporting Marks: DC

Delta Valley & Southern Railway Company
Reporting Marks: DVS

Detroit and Mackinac Railway Company
Reporting Marks: D&M–DM

Detroit, Toledo and Ironton Railroad Company
Reporting Marks: DT&I–DTI

Duluth, Missabe and Iron Range Railway Company
Reporting Marks: DMIR

East Camden & Highland Railroad Company
Reporting Marks: EACH

East St. Louis Junction Railroad Company
Reporting Marks: ESLJ

*Ferdinand Railroad Company
Reporting Marks: FRDN

Galveston Wharves
Reporting Marks: GWF

Genessee and Wyoming Railway Company
Reporting Marks: GNWR

Green Bay and Western Railway Company
Reporting Marks: GBW

Green Mountain Railroad Corporation
Reporting Marks: GMRC

Greenville and Northern Railway Company
Reporting Marks: GRN

The Hutchinson and Northern Railway Company
Reporting Marks: HN

Helena Southwestern Railroad Company
Reporting Marks: HSW

Illinois Terminal Railroad Company
Reporting Marks: ITC

Indiana Eastern Railroad and Transportation, Inc. d.b.a. The Hoosier Connection
Reporting Marks: HOSC

Lake Erie, Franklin & Clarion Railroad Company
Reporting Marks: LEF

Lake Superior & Ishpeming Railroad Company
Reporting Marks: LSI

Lamoille Valley Railroad Company
Reporting Marks: LVRC

Lancaster and Chester Railway Company
Reporting Marks: LC

Lenawee County Railroad Company, Inc.
Reporting Marks: LCRC

Longview, Portland & Northern Railway Company
Reporting Marks: LPN

Louisiana Midland Railway Company
Reporting Marks: LOAM

*The Louisiana and North West Railroad Company
Reporting Marks: LNW

Louisville and Wadley Railway Company
Reporting Marks: LW

Louisville, New Albany & Corydon Railroad Company
Reporting Marks: LNAC

Manufacturers Railway Company
Reporting Marks: MRS

Maryland and Delaware Railroad Company
Reporting Marks: MDDE

McCloud River Railroad Company
Reporting Marks: MR

Middletown and New Jersey Railway Company, Inc.
Reporting Marks: MNJ

Mississippian Railway
Reporting Marks: MISS

Missouri-Kansas-Texas Railroad Company
Reporting Marks: MKT–BKTY

Moscow, Camden & San Augustine Railroad
Reporting Marks: MCSA

New Hope and Ivyland Railroad Company
Reporting Marks: NHIR

New Jersey, Indiana & Illinois Railroad Company
Reporting Marks: NJII

New Orleans Public Belt Railroad
Reporting Marks: NOPB

New York, Susquehanna and Western Railroad Company
Reporting Marks: NYSW

Norfolk and Western Railway Company
Reporting Marks: ACY–N&W–NKP–WAB

Norfolk, Franklin and Danville Railway Company
Reporting Marks: NFD

North Lousiana & Gulf Railroad Company
Reporting Marks: NL&G

Octararo Railway, Inc.
Reporting Marks: OCTR

Ontario Midland Railroad Corp.
Reporting Marks: OMID

*Oregon & Northwestern Railroad Co.
Reporting Marks: ONW

Oregon, California & Eastern Railway Company
Reporting Marks: OCE

Oregon, Pacific and Eastern Railway Company
Reporting Marks: OPE

Pearl River Valley Railroad Company
Reporting Marks: PRV

Peninsula Terminal Company
Reporting Marks: PT

Pittsburgh, Allegheny & McKees Rocks Railroad Company

Reporting Marks: PA&M
The Pittsburgh and Lake Erie Railroad Company
Reporting Marks: P&LE
Port Huron and Detroit Railroad Company
Reporting Marks: PHD
Port of Tillamook Bay Railroad
Reporting Marks: POTB
Prairie Trunk Railway
Reporting Marks: PARY
*Rahway Valley Railroad Company
Reporting Marks: RV
Raritan River Rail Road Company
Reporting Marks: RR
St. Lawrence Railroad
Reporting Marks: NSL
St. Louis Southwestern Railway Company
Reporting Marks: SSW
St. Marys Railroad Company
Reporting Marks: SM
Sandersville Railroad Company
Reporting Marks: SAN
Savannah State Docks Railroad Company
Reporting Marks: SSDK
Sierra Railroad Company
Reporting Marks: SERA
Southern Pacific Transportation Company
Reporting Marks: SP
Southern Railway Company
Reporting Marks: CG–NS–SA–SOU
Terminal Railway, Alabama State Docks
Reporting Marks: TASD
The Texas Mexican Railway Company
Reporting Marks: TM
Toledo, Peoria & Western Railroad Company
Reporting Marks: TPW
Transkentucky Transportation Railroad, Inc.
Reporting Marks: TTIS
Union Railroad of Oregon
Reporting Marks: UO
Upper Merion and Plymouth Railroad Company
Reporting Marks: UMP
*Valley and Siletz Railroad Company
Reporting Marks: VS
Vermont Railway, Inc.
Reporting Marks: VTR
The Virginia and Maryland Railroad Company
Reporting Marks: VAMD
Virginia Central Railway
Reporting Marks: VC
Warwick Railway Company
Reporting Marks: WRWK
Wabash Valley Railroad Company
Reporting Marks: WVRC
WCTU Railway Company
Reporting Marks: WCTR
Youngstown & Southern Railway Company
Reporting Marks: YS
Yreka Western Railroad Company
Reporting Marks: YW

Effective May 1, 1980, and continuing in effect until further order of this Commission.

Issued at Washington, D.C, April 28, 1980.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 80–14633 Filed 5–12–80; 8:45 am]

BILLING CODE 7035–01–M

Commission Issuance Regarding Amendments Reflecting Merging of Bureau of Operations and the Bureau of Investigations and Enforcement Into the Office of Consumer Protection

AGENCY: Interstate Commerce Commission.

ACTION: Notice of amendments.

SUMMARY: The following are amendments to the Commission Issuance of December 19, 1978. The purpose of these amendments is to reflect the merging of the Bureau of Operations and the Bureau of Investigations and Enforcement into the Office of Consumer Protection. All of the amendments implement a name change and several involve a change in responsibility. A new Section, which was formerly a Chairman's Issuance, has also been added.

Section 41, Employee Boards Under Section 10304, has been updated to reflect the membership of employee boards and the addition of the Revocation Board and the Regional Motor Carrier Boards, which were formerly part of the Bureau of Operations.

Section 51 Criminal Prosecutions and Civil Forfeitures and Injunction Proceedings has been amended to reflect modifications relating to the relationship between the Director of the Office of Consumer Protection (formerly the Bureau of Investigations of Enforcement) and the staff of the Office. We have also added a new *Section 73, Authorization to Commission Employees to Divulge Information,* which was originally part of the Commission's "Internal Minutes" and was subsequently issued as Chairman's Issuance No. 79–4 on January 4, 1979.

The material here supercedes the previous material relating to the Bureau of Operations and the Bureau of Investigations and Enforcement in the Commission Issuances. A notice of these revisions will appear in the **Federal Register.** Because the provisions of this document govern the internal operations and procedures of the Commission, it is being issued in final form, and public comments are not being requested

EFFECTIVE DATE: May 18, 1980.

FOR FURTHER INFORMATION CONTACT: Kathleen King, (202) 275–0956.

Agatha L. Mergenovich,

Secretary.

Processing and Printing Decisions

24. Clearance Procedures

Paragraph (d) *Responsibilites* is amended to read as follows:

(1) *Originating Office.*—Sections of the Office of Proceedings, Boards, Bureau of Accounts, Offices of Consumer Protection, Hearing, Policy and Analysis, General Counsel, and others will continue to prepare and circulate matters to the divisions of the Commission in accordance with the above criteria and pertinent issuances. All matters circulated for vote by a division will contain information as to any specific issues that must be approved, e.g., market dominance, suspension, or fitness; any controlling time limits, including the date by which a matter must be cleared in order to be served by the deadline (in setting deadlines, one day shall be allowed for clearance if at all possible); and any other information pertinent to final disposition of the matter under review. More specifically, originating offices shall develop completed packages for circulation to divisions which generally include the following numbered items. Exceptions may be made in circulations to the entire Commission or where the division is already familiar with the subject matter.

Boards

41. Employee Boards under Section 10304

Paragraph (d) *Current listing of employee board members* is amended to read as follows:

Office of Consumer Protection

Motor Carrier Leasing Board

Director
Associate Director
Deputy Director, Section of Consumer Assistance

Insurance Board

Director
Associate Director
Deputy Director, Section of Consumer Assistance

Railroad Service Board

Director
Associate Director
Deputy Director, Section of Consumer Assistance

Revocation Board

Director
Associate Director
Deputy Director, Section of Consumer Assistance

Regional Motor Carrier Boards (Regions 1–6)

Regional Director
Regional Operations Director
Assistant Regional Operations Director

Special Authorizations

51. Criminal Prosecutions and Civil Forfeiture and Injunction Proceedings.

Paragraph (a) *Institution of proceedings* is amended to read as follows:

The Director of the Office of Consumer Protection is authorized to approve staff recommendations to the Department of Justice or to the United States Attorneys institution of criminal proceedings, civil forfeiture penalty suits or civil injunction proceedings for violations of the Interstate Commerce Act, related Acts, or supplementary Acts administered by the Commission, or any other Federal, civil, and criminal statutes. The Office further is authorized to institute civil injunction proceedings which the Commission is empowered to institute in its own name under the provisions of the Interstate Commerce Act. The Commission reserves to itself the determination of what further action, if any, should be taken in the event a Federal Court of Appeals renders the decision adverse to the Commission's position in the criminal or civil proceeding that was instituted by the Office of Consumer Protection.

Paragraph (b) *Settlement of proceedings* is amended to read as follows:

The Director of the Office of Consumer Protection as the Commission's designee is authorized, within the framework of the Federal's Claims Collection Act of 1966, the applicable standards promulgated by the Attorney General and the Comptroller General and pursuant to Commission procedures to negotiate and approve staff recommendations to compromise, suspend, or terminate enforcement claims arising under the civil penalty or forfeiture provisions of the Interstate Commerce Act. Elkins Act, and amendatory and supplemental legislation related to such Acts.

Paragraph (c)(1) and (c)(2) *Intervention in private party actions* are amended to read as follows:

(1) The Director of the Office of Consumer Protection is authorized to approve staff recommendations to intervene on behalf of the Commission in any civil action instituted by private persons under the provisions of Section 11708 of the Interstate Commerce Act and to notify the court in which such an action is brought that the Commission has instituted or has pending before it a recommendation to institute an administrative proceeding which will embrace the same subject matter as is involved in the court action.

(2) Applications or complaints, with all supporting papers, filed under Section 11708 of the Act, served upon or received by any member of the Commission's staff, either in the Washington headquarters or in the field, shall be forwarded immediately to the Director, Office of Consumer Protection.

Paragraph (d) *Representation in the Supreme Court* is amended to read as follows:

The Office of the General Counsel will represent the Commission in the Supreme Court in cases brought by the Office of Consumer Protection in the lower courts.

Paragraph (e) *Delegation* is amended to read as follows:

Any power delegated to the Director of the Office of Consumer Protection under this issuance may be sub-delegated to the Associate Director, Deputy Director of the Section of Enforcement, Regional Directors and Regional Counsels.

Instructions for Employees

61. Appearances of Employees as Expert Witnesses

Paragraph (c) *Internal Procedures* is amended to read as follows:

Any employee receiving a subpoena shall immediately notify, through the employee's supervisor, the director of the employee's bureau or office. The director shall notify the General Counsel or Director of the Office of Consumer Protection, as appropriate under (d) below. The General Counsel and the Director of the Office of Consumer Protection shall keep each other informed of subpoena matters and coordinate their handling of them.

Paragraph (d)(1) and (d)(2) *The handling of subpoenas* are amended to read as follows:

(1) With respect to court cases, if a subpoena is issued in an enforcement action, including one initiated by a private party, or in any other litigation, if the subpoena seeks evidence resulting from an investigation conducted by the employee, it will be handled by the Office of Consumer Protection in consultation with other appropriate bureau or office directors. In all other instances involving court cases, subpoenas will be handled by the General Counsel, in consultation with the appropriate bureau or office head, unless the General Counsel shall determine that for cost or other considerations the matter should more appropriately be handled by the Office of Consumer Protection, in which case he may refer the matter to that Office for disposition.

(2) With respect to Commission proceedings, whenever an employee is subpoenaed to testify on behalf of a party, the subpoena will be handled by the Office of Consumer Protection unless that office is a party, in which case the matter will be handled by the General Counsel.

73. Authorization to Commission Employees to Divulge Information

Paragraph (a) *To Federal Law Enforcement Agencies* is amended to read as follows:

The Director of the Office of Consumer Protection or his or her designee, is authorized to make available to other Federal agencies engaged in law enforcement activities, including the Federal Bureau of Investigation and the Internal Revenue Service, any Commission investigatory file or files or other information obtained by examination of the records or properties of carriers or other persons under the authority of the Interstate Commerce Act. Upon the release of any data to another Federal agency, a memorandum of the transmittal will be placed in the carrier's file for record purposes.

Paragraph (b) *To State, County, and Local Agencies* is amended to read as follows:

The Director of the Office of Consumer Protection and the Director of the Bureau of Accounts, or their designees, are authorized to make available to State, County, and local enforcement and regulatory agencies any Commission investigatory file or files or other information obtained by examination of the records or properties of carriers or other persons under the authority of the Interstate Commerce Act. Upon the release of data to any State law enforcement or regulatory agency, a memorandum of the transmittal shall be placed in the carrier's file for record purposes.

Paragraph (c) *To the Department of Transportation* is amended to read as follows:

Any employee of the Commission who, in the course of his or her work, discovers an apparent violation of the safety regulations of the Department of Transportation, shall immediately transmit this information to his or her supervisor who will, in turn, inform the bureau or office director. It will be the responsibility of the latter to bring the information to the attention of the Department of Transportation for handling.

Paragraph (d) *To Members of the ICC—CAB—FMC Liaison Group on Audits and Cost Finding* is amended to read as follows:

The Directors of the Bureau of Accounts and the Office of Consumer Protection are authorized to divulge to

proper representatives of the Civil Aeronautics Board and the Federal Maritime Commission facts and information obtained in a field examination of accounts or other records of carriers under the joint jurisdiction of the Commission and one of the other agencies, and to exchange such other information with those agencies as may be mutually useful and avoid duplication of effort.

Paragraph (e) *To the Federal Maritime Commission* is amended to read as follows:

Any employee of the Commission who, in the course of his or her work, discovers an apparent violation of laws or regulations administered by the Federal Maritime Commission shall refer that information to his or her supervisor, who shall, in turn, inform the office or bureau director. It will be the responsibility of the latter to refer the matter to the Federal Maritime Commission for handling.

Paragraph (f) *Information Warranting Income Tax Consideration* is amended to read as follows:

The Director of the Bureau of Accounts and the Director of the Office of Consumer Protection are authorized to advise the Internal Revenue Service of information coming to the attention of the Commission's staff that may warrant income tax consideration, to permit revenue of relevant files by members of the staff of the Internal Revenue Service, to permit them to copy any material in the Commission's files that is pertinent to income tax matters, and to interview employees of the Commission having knowledge of possible tax evasions.

Paragraph (g) *Violations by Carriers Domiciled in Canada* is amended to read as follows:

Any employee of the Commission who, in the course of his or her work, discovers an apparent violation of the laws or regulations administered by the Commission by a carrier domiciled in the Dominion of Canada shall immediately refer such information to his or her supervisor who, in turn, shall inform the appropriate bureau or office director or Regional Director. It shall be the responsibility of the latter to transmit this information to the appropriate Canadian officials.

Paragraph (h) *Complaints of Racial Discrimination by Carriers is amended to read as follows:*

The Director of the Office of Consumer Protection is authorized to forward copies of every informal complaint alleging racial discrimination by a carrier under the Commission's jurisdiction which is received by the Commission to the Civil Rights Division of the Department of Justice and to transmit directly to the Civil Rights Division any reports of Commission staff investigators or other employees which involve alleged instances of racial discrimination by carriers.

[FR Doc. 80-14632 Filed 5-12-80; 8:45 am]

BILLING CODE 7035-01-M

Long-and-Short-Haul Application for Relief (Formerly Fourth Section Application)

May 8, 1980.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. on or before May 28, 1980.

No. 43818, Southwestern Freight Bureau, Agent No. B-65, on perlite rock, in carloads, from Antonite, CO., to stations in Southwestern Territory published in Item 18605-H of Supplement 397 to Southwestern Freight Bureau, Agent's Tariff ICC SWFB 3270-F, effective June 13, 1980. Grounds for relief—need for more revenue to offset increased costs.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-14634 Filed 5-12-80; 8:45 am]

BILLING CODE 7035-01-M

[Amdt. No. 1 to I.C.C. No. 65 Under S.O. No. 1344]

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order No. 65, and good cause appearing therefor:

It is ordered,

I.C.C. Service Order No. 65 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* The order shall expire at 11:59 p.m., June 15, 1980, unless otherwise modified, amended or vacated.

Effective date. This order shall become effective at 11:59 p.m., April 25, 1980.

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. A copy of the order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., April 25, 1980.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 80-14635 Filed 5-12-80; 8:45 am]

BILLING CODE 7035-01-M

Permanent Authority Decisions Notice

Correction

In FR Doc. 5230 appearing at page 11202, in the issue of Wednesday, February 20, 1980, on page 11240, the third column, second complete paragraph, MC 145359 (Sub-15F), Thermo Transport, Inc., line 10, "LA" should be corrected to read "IA".

BILLING CODE 1505-01-M

Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc. 80-10083, appearing at page 22209 in the issue for Thursday April 3, 1980, on page 22305, in the middle column, in the paragraph MC 134286 (Sub-162F), Applicant: Illini Express, Inc., in the twenty-second line, "WI" should read "WY".

BILLING CODE 1505-01-M

Permanent Authority Decision; Decision-Notice

Correction

In FR Doc. 80-11110 appearing at page 25498 in the issue for Tuesday, April 15, 1980, make the following correction:

1. On page 25535, in the second column, the first full paragraph "MC 149297" should be corrected to read "MC 149297F".

2. Also on page 25535, in the second column, the eleventh line of paragraph MC 149297F "points in OH, IN, IL, MO, AR, LA, MS," should be corrected to read "points in OH, IN, IL, MO, AR, LA, MS, AL,".

3. On page 25545, in the first column, "FR Doc. 80-11112" should be corrected to read "FR Doc. 80-11110".

BILLING CODE 1505-01-M

Permanent Authority Decision; Decision-Notice

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is

published in the **Federal Register**. Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected.* A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner, (b) the effect of the decision which may be rendered upon petitioner's interest, (c) the availability of other means by which the petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. § 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and this Commission's regulation. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In 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 petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. § 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. § 10930(a) [formerly section 210 of the Interstate Commerce Act.]

In the absence of legally sufficient petitions for intervention, filed on or before June 13, 1980 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices on or before June 13, 1980, application shall stand denied.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

Volume No. 121

Decided: March 5, 1980.

By the Commission, Review Board Number 2, Members Eaton, Liberman and Jensen. Member Jensen not participating.

FF 16 (Sub-1F), filed June 29, 1979, previously published in the **Federal Register** issue of February 26, 1980, and republished as corrected this issue. Applicant: SPRINGMEIER SHIPPING COMPANY, INC., 1123 Hadley St., St. Louis, MO 63101. Representative: S. S. Eisen, 370 Lexington Ave., New York, NY 10017. To operate as a *freight forwarder*, in interstate commerce, of *general commodities*, from points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, and DC to points in AR, IL, KS, KY, LA, MS, MO, NE, OK, TN, and TX. Condition: To the extent the permit to be issued in this proceeding authorizes the transportation of classes A and B explosives, it shall be limited in point of time to a period expiring 5 years from its date of issue. (Hearing site: St. Louis, MO.)

Note.—The purpose of this republication is to include the condition.

MC 5227 (Sub-62F), filed February 5, 1980. Applicant: ECKLEY TRUCKING, INC., P.O. Box 201, Mead, NE 68041. Representative: A. J. Swanson, 226 N. Phillips Ave., Sioux Falls, SD 57101. Transporting *beverages and* (2) *materials, equipment, and supplies used in the* manufacture; packaging, and distribution of beverages, between Chicago, IL, Ottumwa, IA, and Omaha, NE, on the one hand, and, on the other, points in WI, MN, ND, SD, IA, NE, and KS. (Hearing site: Lincoln, NE, or Heartland, WI.)

MC 5227 (Sub-63F), filed February 8, 1980. Applicant: ECKLEY TRUCKING, INC., P.O. Box 201, Mead, NE 68041. Representative: A. J. Swanson, P.O. Box 1103, 226 N. Phillips Ave., Sioux Falls, SD 57101. Transporting *lumber and lumber products*, from points in AR, TX, and OK, to points in KS, NE, SD, CO, IA,

IL, IN, WI, MN, and MO. (Hearing site: Sioux Falls, SD, or Halstead, KS.)

MC 8457 (Sub-11F), filed February 11, 1980. Applicant: MILWAUKIE TRANSFER & FUEL CO., a corporation, 15462 S. E. Railroad, Clackamas, OR 97015. Representative: Lawrence V. Smart, Jr., 419 N. W. 23rd Ave., Portland, OR 97210. Transporting (1) *heating, ventilating, and air conditioning equipment,* and (2) *materials, supplies and equipment* used in the manufacture and installation of the commodities in (1) above, between Portland, OR, on the one hand, and, on the other, points in WA, CA, NY, ID, MT, UT, CO, AZ, and NM. (Hearing site: Portland, OR.)

MC 21866 (Sub-140F), filed January 24, 1980. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, Esquire, 1920 Two Penn Center Plaza, Philadelphia, PA 19102. Transporting *iron* and *steel articles,* between the facilities of LaSalle Steel Company at Hammond, IN, on the one hand, and, on the other, points in PA. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 21866 (Sub-142F), filed February 11, 1980. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 1430 Land Title Building, Philadelphia, PA 19110. Transporting (1) *pressure vessels and lubricating and sealing oil systems,* and (2) *materials, equipment, and supplies,* (except commodities in bulk), used in the manufacture distribution, and installation of the commodities named in (1) above, between the facilities of CryoChem Engineering and Fabrication, Inc., at or near Boyertown, PA, on the one hand, and, on the other, points in the United States (except AK, HI and PA). (Hearing site: Phildelphia, PA, or Washington, DC.)

MC 21866 (Sub-143F), filed February 11, 1980. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 14th Floor, Land Title Building, 100 South Broad St., Philadelphia, PA 19110. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring the use of special equipment), between Lititz, PA, on the one hand, and, on the other, points in the United States (except AK, HI and PA), restricted to the transportation of traffic originating at or destined to the facilities of Woodstream Corporation. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 21866 (Sub-144F), filed February 19, 1980. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 1430 Land Title Building, Philadelphia, PA 19110. Transporting *confectionery* from the facilities of Just Born, Inc., at Bethlehem, PA, to points in the United States (except AK, HI, and PA). (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 51146 (Sub-776F), filed October 22, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Neil A. DuJardin (same address as applicant). Transporting *such commodities* as are dealt in, or used by, manufacturers or converters of paper and paper products (except commodities in bulk) between the facilities of the Mead Corporation at Chillicothe and Schooleys, OH, on the one hand, and, on the other, points in MD, VA, DC, those in NC east of U.S. Hwy 25, and those in SC east of a line beginning at the NC-SC State Line and extending along U.S. Hwy 176 to Junction Interstate Hwy 20, thence along Interstate Hwy 20 the Junction U.S. Hwy 76, thence along U.S. Hwy 76 to Junction U.S. Hwy 52, thence along U.S. Hwy 52 to Charleston, SC. (Hearing site: Chicago, IL.)

MC 63417 (Sub-270F), filed February 15, 1980. Applicant: BLUE RIDGE TRANSFER COMPANY, INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). Transporting *glass,* from Crystal City, MO, Nashville, TN and Tulsa, OK, to Galax, VA. (Hearing site: Roanoke, VA, or Washington, DC.)

MC 70947 (Sub-25F), filed August 13, 1979, previously published in the **Federal Register** issue of March 6, 1980, and republished as corrected this issue. Applicant: MT. HOOD STAGES, INC., d.b.a. PACIFIC TRAILWAYS, 1068 N.W. Bond Street, Bend, OR 97701. Representative: Earle V. White, 2400 S.W. Fourth Avenue, Portland, OR 97201. Transporting *passengers and their baggage,* in one-way charter and special operations, between points in ID, OR, and UT, on the one hand, and, on the other, points in the United States (except AK, AZ, CA, HI, MA, NV, NY, and TX, and DC). Applicant also proposes by joinder of proposed authority with that issued in No. MC 70947 Sub 19, 20, and 21 to provide throught service between points in its present operating authority, on the one hand, and, on the other, points in the United States including AK but excluding HI. (Hearing site: Portland, OR.)

Note.—The purpose of this republication is to indicate the service as one-way instead of round-trip.

MC 75406 (Sub-51F), filed February 15, 1980. Applicant: SUPERIOR FORWARDING COMPANY, INC., 2600 South Fourth St., St. Louis, MO 63118. Representative: Joseph E. Rebman, 314 North Broadway, Suite 1330, St. Louis, MO 63102. Transporting *pesticides and fertilizer compounds,* (except commodities in bulk), between Helena and West Helena, AR, and Clarksdale, MS. (Hearing site: Memphis, TN or St. Louis, MO.)

MC 86247 (Sub-27F), filed Feburary 15, 1980. Applicant: ICL-INTERNATIONAL CARRIERS LIMITED, 7701 West Jefferson Ave., Detroit, MI 48209. Representative: Alex J. Miller, P.O. Box 244, Bloomfield Hills, MI 48013. In foreign commerce only, transporting *limestone products,* in bulk, from the ports of entry on the international boundary line between the United States and Canada, at Detroit and Port Huron, MI, to Charlotte, MI. (Hearing site: Detroit, MI.)

MC 109397 (Sub-500F), filed February 15, 1980. Applicant: TRI-STATE MOTOR TRANSIT CO., a corporation, P.O. Box 113, Joplin, MO 64801. Representative: Max G. Morgan, P.O. Box 1540, Edmond, OK 73034. Transporting *foam plastic carpet cushion,* from the facilities of Urethane Foam Division of Leggett and Platt, at High Point, NC, to those points in the United States in and east of MN, IA, MO, AR, and LA. (Hearing site: Washington, DC, or Kansas City, MO.)

MC 114457 (Sub-565F), filed Feburary 7, 1980. Applicant: DART TRANSIT COMPANY, a corporation, 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills, General Counsel, 2102 University Avenue, St. Paul, MN 55114. Transporting *beverages* from the facilities used by King Cola North Central, Inc., at Omaha, NE to Fargo, ND. (Hearing site: Madison, WI, or St. Paul, MN.)

MC 121496 (Sub-44F), filed February 5, 1980. Applicant: CANGO CORPORATION, Suite 2900, 1100 Milam Bldg., Houston, TX 77002. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St. NW, Washington, DC 20001. Transporting *chemicals,* in bulk, in tank or hopper type vehicles, from the facilities of E. I. du Pont de Nemours & Co., at or near Victoria, Orange, Beaumont and Houston, TX, to points in the United States (except AK and HI). (Hearing site: Wilmington, DE.)

MC 123407 (Sub-611F), filed September 4, 1979, previously published in the **Federal Register** issue of March

14, 1980, and republished as corrected this issue. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Route 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr. (same address as applicant). Transporting *such commodities* as are dealt in and used by manufacturers and distributors of containers (except commodities in bulk), between points in the United States (except AK and HI). (Hearing site: Chicago, IL, or Washington, DC.)

Note.—The purpose of this republication is to correct the commodity description.

MC 128246 (Sub-52F), filed July 30, 1979. Applicant: SOUTHWEST TRUCK SERVICE, a corporation, P.O. Box A.D., Watsonville, CA 95076. Representative: William F. King, Suite 400, Overlook Building, 6121 Lincolnia Road, Alexandria, VA 22312. *Contract carrier,* transporting (1) *such commodities* as are dealt in by wholesale, retail and chain grocery and food business houses and dealers and manufacturers of feed and feed ingredients (except in bulk), (2) *soybean products* (except in bulk), (3) *paste flour products* (except in bulk), and (4) *materials, ingredients, equipment and supplies* used in the development, manufacture, distribution and sale of products listed in (1), (2), (3) and (4) above (except in bulk), between points in the United States (except AK and HI), under a continuing contract(s) with Ralston Purina Company. (Hearing site: Washington, DC, or St. Louis, MO.)

MC 128746 (Sub-62F), filed February 7, 1980. Applicant: D'AGATA NATIONAL TRUCKING CO., a corporation, 3240 So. 61st St., Philadelphia, PA 19153. Representative: Edward J. Kiley, Suite 501, 1730 M St., NW., Washington, DC 20036. Transporting *malt beverages and materials, equipment, and supplies* used in the manufacture and distribution of malt beverages, between the facilities of the Joseph Schlitz Brewing Company, at Winston-Salem, NC, on the one hand, and, on the other, points in CT, ME, MA, NH, PA, RI, MD, NY, NJ, DE, and VT. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 128927 (Sub-6F), filed February 1980. Applicant: MARTIN TRUCKING COMPANY, INC., P.O. Box 118, Wilton, WI 54670. Representative: James A. Spiegel, Olde Towne Office Park, 6425 Odana Rd., Madison, WI 53719. Transporting *malt beverages,* from La Crosse, WI, and St. Paul, MN, to the facilities of Andro Pucin Distributing Company, Inc., at Waukegan, IL, restricted to traffic destined to the named destinations. (Hearing site: Chicago, IL, or Madison, WI.)

MC 129486 (Sub-12F), filed September 4, 1979. Applicant: PAGE TRUCKING CO., INC., P.O. Box 14, Hines, MN 56647. Representative: Charles E. Johnson, P.O. Box 1982, Bismarck, ND 58501. To operate as a *contract carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *canned and preserved foodstuffs,* from the facilities of Heinz USA, at or near Muscatine and Iowa City, IA, to points in MN, ND, and SD, restricted to the transportation of traffic originating at the indicated origins and destined to the indicated destinations, under continuing contract(s) with Heinz USA, of Pittsburgh, PA. (Hearing site: Muscatine, IA, or Minneapolis, MN.)

MC 134286 (Sub-164F), filed February 11, 1980. Applicant: ILLINI EXPRESS, INC., P.O. Box 1564, Sioux City, IA 51102. Representative: Julie Humbert (same address as above). Transporting, *corn products,* in bags from Muscatine, IA, to points in the U.S. (except AK and HI). (Hearing site: Sioux City, IA, or Denver, CO.)

MC 134467 (Sub-59F), filed February 6, 1980. Applicant: POLAR EXPRESS, INC., P.O. Box 845, Springdale, AR 72764. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. Transporting *foodstuffs* (except in bulk), from Jacksonville, IL, Humboldt, TN, and Sherman, TX, to: points in AR, CT, IL, KS, MD, MA, MI, MN, MS, MO, NJ, NY, OH, OK, OR, PA, CA, TN, TX, VA, CO, WI, and DC, restricted to the transportation of traffic originating at the named origins. (Hearing site: Dallas, TX, or Little Rock, AR.)

MC 135797 (Sub-247), filed July 16, 1979, published in the **Federal Register** issue of March 6, 1980, and republished this issue. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant, Esq., P.O. Box 130, Lowell, AR 72745. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *foodstuffs,* from points in the U.S. (except AK and HI), to Greenfield, MA. (Hearing site: Boston, MA, or Washington, DC.)

Note.—The purpose of this republication is to correctly state the territorial description.

MC 138157 (Sub-222F), filed February 5, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 So. Market St., Chattanooga, TN 37410. Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. Transporting (1) *Refractory products and insulation,* and (2) *materials, equipment and supplies,* used in the manufacture, distribution and installation of the commodities in (1) above, between Pryor, OK on the one hand, and on the other, points in the United States (except AK and HI), restricted against the transportation of (a) commodities which by reason of size or weight require the use of special equipment, and (b) commodities in bulk. (Hearing site: St. Louis, MO.)

Note.—Dual operations may be involved.

MC 138157 (Sub-223F), filed February 1, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a SOUTHWEST MOTOR FREIGHT, 2931 So. Market St., Chattanooga, TN 37410. Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. Transporting (1) *Coal burning, wood burning, and gas burning stoves and heaters,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, between Chattanooga and St. Pittsburg, TN, on the one hand, and, on the other, points in the United States (except AK and HI), restricted against the transportation of (1) commodities in bulk, and (2) those which by reason of size or weight require the use of special equipment. (Hearing site: Atlanta, GA.)

Note.—Dual operations may be involved.

MC 138157 (Sub-244F), filed February 11, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a SOUTHWEST MOTOR FREIGHT, 2931 So. Market St., Chattanooga, TN 37410. Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. Transporting *household appliances, and materials, equipment, and supplies* used in the manufacture and distribution of household appliances (except commodities in bulk, and those which by reason of size or weight require the use of special equipment), between Chattanooga, TN, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to traffic originating at or destined to the facilities of Modern Maid Co. (Hearing site: Chattanooga, TN.)

Note.—Dual operations may be involved.

MC 140786 (Sub-4F), filed February 11, 1980. Applicant: THE UNITED STATES CARGO & COURIER SERVICE, INC., 1362 Essex Ave., P.O. Box 1169, Columbus, OH 43216. Representative: Boyd B. Ferris, 50 West Broad St., Columbus, OH 43215. Transporting *such commodities* as are dealt in or used by banks and banking institutions in the conduct of their business, between Cleveland, Columbus, and Cincinnati, OH, and Pittsburgh, PA, on the one hand, and, on the other, points in KY, OH, and WV, and those points in PA on and West of U.S. Hwy 15. (Hearing site: Washington, D.C., or Columbus, OH.)

MC 144527 (Sub-13F), filed February 11, 1980. Applicant: BULS EYE TRANSPORT, INC., Suite 2424, 33 No. Dearborn St., Chicago, IL 60602. Representative: Patric H. Smyth, Suite 521, 19 So. LaSalle St., Chicago, IL 60603. Transporting *non-alcoholic beverages and bottled water*, from Akron, OH, to points in AL, AR, FL, GA, KY, MO, MS, NC, SC, TN, VA, and WV. (Hearing site: Toledo, OH, or Chicago, IL.)

MC 144926 (Sub-11F), filed February 8, 1980. Applicant: E. W. WYLIE CORPORATION, P.O. Box 1188, Fargo, ND 58107. Representative: Thomas J. Van Osdel, 502 First National Bank Bldg. Fargo, ND 58126. Contract carrier, transporting *wallboard, fibreboard, pulpboard and strawboard*, from the facilities of Boise Cascade Corporation, at or near International Falls, MN, to points in MT, ND, and SD, under continuing contract(s) with Boise Cascade Corporation. (Hearing site: Minneapolis, MN, or Portland, OR.)

MC 147957 (Sub-3F), filed February 8, 1980. Applicant: ROGERS MOTOR EXPRESS, a corporation, 2928 Yosemite, Modesto, CA 95352. Representative: Robert Fuller, 13215 E. Penn St., Suite 310, Whittier, CA 90602. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, frozen foods, commodities in bulk, and those which require special equipment), between points in Sacramento, Alameda and San Francisco Counties, CA, Washoe County, NV, and Multnomoh County, OR, on the one hand, and, on the other, points in CA, NV, and OR, restricted to the transportation of traffic moving on the bills of lading on freight forwarders as defined in 49 U.S.C. § 10102(8). (Hearing site: Sacramento or San Francisco, CA.)

MC 148257 (Sub-1F), filed February 6, 1980. Applicant: GEORGE J. WEBB, JR, AND GEORGE J. WEBB III d.b.a. WEBB TRUCKING, Rt. No. 2, McLeansboro, IL 62859. Representative: Robert T. Lawley, 300 Reisch Building, Springfield, IL 62701. Transporting (1) *lumber and wood products*, from (a) McLeansboro, IL to points in IN, KY, MO, OH, TN, and WI, (b) between McLeansboro, IL, on the one hand, and, on the other, Louisville, KY, and (c) from Central City, KY, to Chicago and McLeansboro, IL, and (2) *lumber*, from Cambria, IL, to points in IN, KY, MI, OH, PA, TN, and WI, and (3)(a) *wood pallets, wood skids, wood boxes, and wood blocking*, and (b) *materials and supplies* used in the manufacture of the commodities in (3)(a) above, between McLeansboro, IL, on the one hand, and, on the other, points in AR, IN, IA, KY, LA, MO, MI, MN, OH, TN, and WI, and between Poplar Bluff, MO, on the one hand, and, on the other, points in AR, IN, IA, IL, KY, LA, MI, MN, OH, TN, and WI. (Hearing site: St. Louis, MO, or Chicago, IL.)

MC 149357F, filed February 11, 1980. Applicant: FLOYD DUNFORD, LTD., Box 381, Peterborough, Ontario, Canada K9J 6Z3. Representative: William J. Lavelle, 2310 Grant Building, Pittsburgh, PA 15219. In foreign commerce only, transporting *nepheline syenite*, in bulk, in pneumatic tank vehicles, from ports of entry on the international boundary line between the United States and Canada located on the Niagara River, in NY to the facilities of Glass Containers Corporation at Knox, Parker and Marienville, PA. Hearing site: Buffalo, NY or Pittsburgh, PA.

MC 149367F, filed January 24, 1980. Applicant: TRAFIK SERVICES, INC., 11 Newark St., Province, RI 02908. Representative: A. Joseph Mega (same address as applicant). Contract carrier, transporting *bank steel, flat wire, and cold roll steel strip*, from the facilities of Newman Crosby Steel Co., Inc., at or near Pawtucket, RI, to the facilities of the Morse Chain Company, at or near Ithaca, NY, under continuing contract(s) with Newman Crosby Steel Co. (Hearing site: Providence, NY.)

MC 150037 (Sub-1F), filed February 7, 1980. Applicant: TANSIT, INC., P.O. Box 81081, A.M.F., Cleveland, OH 44181. Representative: William J. Lavelle, 2310 Grant Building, Pittsburgh, PA 15219. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those which require the use of special equipment), (1) between the Cleveland-Hopkins International Airport, at or near Cleveland, OH on the one hand, and, on the other, John F. Kennedy International Airport and LaGuardia International Airport, at or near New York, NY, Newark International Airport, at or near Newark, NJ, Detroit Metropolitan Airport, at or near Detroit, MI, McGee Tyson Airport, at or near Knoxville, TN, Douglas Municipal Airport, at or near Charlotte, NC, Miami International Airport, at or near Miami, FL, Dallas-Fort Worth Airport, at or near Dallas, TX and Houston Intercontinental Airport, at or near Houston, TX, and (2) between the John F. Kennedy International Airport and the LaGuardia International Airport, at or near New York, NY, and Newark International Airport, at or near Newark, NJ, on the one hand, and, on the other, Logan International Airport, at or near Boston, MA, Bradley International Airport, at or near Hartford, CT, Philadelphia International Airport, at or near Philadelphia, PA, Baltimore-Washington International Airport, at or near Baltimore, MD, and Dulles International Airport, at or near Washington, D.C. restricted in (1) and (2) above to the transportation of shipments having a prior or subsequent movement by air. (Hearing site: Pittsburgh, PA, or Washington, DC.)

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Decided: April 2, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 26396 (Sub-336F), filed July 17, 1979. Applicant: THE WAGGONERS TRUCKING, a corporation, P.O. Box 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Transporting *petroleum and petroleum products, vehicle body sealer and sound deadening compounds* (except in bulk), from Buffalo and Tonawanda, NY, Emlenton, Farmers Valley, New Kensington, and North Warren, PA, Congo and St. Marys, WV, to points in IL, IN, MI, and WI. (Hearing site: Billings, MT.)

MC 26396 (Sub-345F), filed February 22, 1980. Applicant: THE WAGGONERS TRUCKING, a corporation, P.O. Box 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Transporting *iron and steel articles*, from Jewett, TX, to points in WA, OR, CA, MT, ID, NV, UT, AZ, WY, CO, NM, ND, SD, NE, KS, OK, MN, IA, MO, AR, LA, WI, IL, IN, and OH. (Hearing site: Houston, TX or Billings, MT.)

MC 42487 (Sub-974F), filed January 31, 1980. Applicant: CONSOLIDATED FREIGHTWAYS, corporation of Delaware, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. Over regular routes, transporting *general commodities (except those of unusual value, household goods as defined by the Commission, commodities in bulk and those requiring special equipment)*, (1) between Macon, GA and Savannah, GA, over U.S. Hwy 80, serving all intermediate points, (2) between Augusta, GA, to junction U.S. Hwy 25 and U.S. Hwy 80, over U.S. Hwy 25, serving no intermediate points, (3) between Savannah, GA, and Jacksonville, FL, over U.S. Hwy 17, serving the intermediate points of Brunswick, GA, (4) between Savannah, GA, and Columbia, SC, serving no intermediate points: from Savannah over U.S. Hwy 17 to junction Alternate U.S. Hwy 17, then over Alternate U.S. Hwy 17 to junction U.S. Hwy 15, then

over U.S. Hwy 15 to junction Interstate Hwy 26, then over Interstate Hwy 26 to junction U.S. Hwy 321, then over U.S. Hwy 321 to Columbia, and return over the same route, serving McIntyre and Milledgeville, GA, as off-route points in connection with (1) through (4) above. (Hearing site: Savannah or Atlanta, GA.)

Note.—Applicant intends to tack the authorities described above. Applicant also intends to tack to its existing authority and any authority it may acquire in the future. The proposed authority will tack with present authority at Macon, GA, Columbia and North Augusta, SC, and Jacksonville, FL, to provide a through service to all points in the United States.

MC 42487 (Sub-983F), filed February 26, 1980. Applicant: CONSOLIDATED FREIGHTWAYS, corporation of Deleware, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. Over regular routes, transporting *general commodities, (except those of unusual value, household goods as defined by the Commission, commodities in bulk and commodities requiring special equipment),* (1) between Atlanta, GA, and Gainesville, GA, over U.S. Hwy 23, serving all intermediate points, (2) between Gainesville, GA, and Toccoa, GA, serving all intermediate points: from Gainesville over U.S. Hwy 23 to Cornelia, GA, then over U.S. Hwy 123 to Toccoa, and return over the same route, (3) between Toccoa, GA, and Hartwell, GA, serving the intermediate point of Lavonia, GA: from Toccoa over GA Hwy 17 to Lavonia, then over GA Hwy 77 to Hartwell, and return over the same route, (4) between Gainesville, GA, and Cleveland, GA, over U.S. Hwy 129, serving all intermediate points, (5) between Gainesville, GA, and Dahlonega, GA, over GA Hwy 60, serving all intermediate points, (6) between Cornelia, GA, and Clarksville, GA, over U.S. Hwy 441, serving the intermediate point of Demorest, GA, (7) between Dalton, GA, and Chatsworth, GA, over U.S. Hwy 76, serving all intermediate points, (8) between Chatsworth, GA, and Cartersville, GA, over U.S. Hwy 411, serving all intermediate points, (9) between Athens, GA, and Greenville, SC, over U.S. Hwy 29, serving all intermediate points, (10) between Athens, GA, and Atlanta, GA, over U.S. Hwy 78, serving all intermediate points, (11) between Athens, GA, and Thomson, GA, over U.S. Hwy 78, serving all intermediate points, (12) between Atlanta, GA, Greenville, SC, over Interstate Hwy 85, serving no intermediate points. (Hearing site: Atlanta, GA.)

Note.—Applicant intends to tack the authorities described above. Applicant also intends to tack to its existing authority and any authority it may acquire in the future. The proposed authority will tack with present authority at Atlanta, Dalton, Cartersville, and Athens, GA, and Greenville, SC. to provide a through service to all points in United States.

MC 60066 (Sub-17F), filed November 14, 1979. Applicant: BEE LINE MOTOR FREIGHT, INC., 1804 Paul Street, Omaha, NE 68102. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. Transporting *general commodities* (except commodities in bulk, house trailers, mobile homes and prefabricated buildings by truckaway method), (1) between points within the area beginning at the junction of NE Hwy 15 and 41, then east on NE Hwy 41 to its junction with NE Hwy 50, then north on NE Hwy 50 to its junction, with NE Hwy 92, then west on NE Hwy 92 to its junction with NE Hwy 15, then south on NE Hwy 15 to the place of beginning; and (2) between points within the area described in (1) above, on the one hand, and, on the other, all points in NE. Tacking with applicant's regular route authority is intended. (Hearing site: Omaha, NE.)

MC 75406 (Sub-52F), filed February 8, 1980. Applicant: SUPERIOR FORWARDING COMPANY, INC., 2600 South 4th St., St. Louis, MO 63118. Respresentative: James M. Duckett, 927 Pyramid Life Building, Little Rock AR 72201. Over regular routes, transporting *general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment),* (1) between Arkadelphia, AR, and Longview, TX: from Arkadelphia, AR, over Interstate Hwy 30 to junction U.S. Hwy 259, then over U.S. Hwy 259 to Longview, TX, and return over the same route, serving the intermediate point of Texarkana, AR–TX, (2) between Arkadelphia, AR, and Longview, TX: from Arkadelphia, AR over U.S. Hwy 67 to junction U.S. Hwy 259, then over U.S. Hwy 259 to Longview, TX, and return over the same route, serving the intermediate point of Texarkana, AR–TX, (3) between Magnolia, AR, and junction U.S. Hwy 82 and Interstate Hwy 30, over U.S. Hwy 82, serving the intermediate point of Texarkana, AR–TX, (4) between El Dorado, AR, and Longview, TX: from El Dorado, AR over U.S. Hwy 167 to the AR–LA State Line, then over LA Hwy 9 to junction U.S. Hwy 79, then over U.S. Hwy 79 to junction U.S. Hwy 80, then over U.S. Hwy 80 to Longview, TX, and return over the same route, serving the intermediate point of Shreveport, LA, (5) between El Dorado, AR, and Longview, TX: from El Dorado, AR over U.S. Hwy 167 to the AR–LA State Line, then over LA Hwy 9 to junction U.S. Hwy 79, then over U.S. Hwy 79 to junction Interstate Hwy 20, then over Interstate Hwy 20 to junction U.S. Hwy 259, then over U.S. Hwy 259 to Longview, TX, and return over the same route, serving the intermediate point of Shreveport, LA, (6) between Magnolia, AR, and junction U.S. Hwy 79 and LA Hwy 9 at or near Homer, LA, over U.S. Hwy 79, (7) between Magnolia, AR, and junction LA Hwy 7 and Interstate Hwy 20 and U.S. Hwy 80: from Magnolia, AR, over AR Hwy 132 to the AR–LA State Line, then over LA Hwy 7 to junction Interstate Hwy 20 and U.S. Hwy 80, and return over the same route, (8) between junction Interstate Hwy 30 and AR Hwy 29 at or near Hope, AR and Shreveport, LA: from junction Interstate Hwy 30 and AR Hwy 29 at or near Hope, AR over AR Hwy 29 to the AR–LA State Line, then over LA Hwy 3 to Shreveport, LA, and return over the same route, (9) between Texarkana, AR–TX and Shreveport, LA, over U.S. Hwy 71, and (10) between Texarkana, AR–TX and junction U.S. Hwy 59 and Interstate Hwy 20 and U.S. Hwy 80, over U.S. Hwy 59; with service at designated highway junctions for purposes of joinder only. Hearing site: St. Louis, MO, or Memphis, TN.

MC 78687 (Sub-69F), filed June 13, 1979, previously noticed in the **Federal Register** issue of February 26, 1980, and republished as corrected this issue. Applicant: LOTT MOTOR LINES, INC., West Cayuga St., P.O. box 751, Moravia, NY 13118. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh St., NW., Washington, DC 20001. Transporting (1) *(a) paper and paper products, (b) plastic and plastic products, (c) chemicals except those described in (b), (d) building products,* and (2) *materials, supplies and equipment* used in the manufacture and distribution of the commodities named in (1) above (except in bulk, in tank vehicles), between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Union Camp Corporation. Hearing site: Washington, DC

Note.—The purpose of this republication is to correct the restriction. Dual operations may be involved.

MC 107496 (Sub-1203F), filed March 14, 1979, and previously noticed in the **Federal Register** issue of February 26, 1980. Applicant: RUAN TRANSPORT CORPORATION, 3200 Ruan Center, 666

Grand Ave., Des Moines, IA 50309. Representative: E. Check, P.O. Box 855, Des Moines, IA 50304. Transporting (A) *foundry sand additives and ingredients,* in bulk, and (B) *bentonite clay ingredients,* in bulk, (1) from points in Hennepin and Ramsey Counties, MN, and Waterloo, IA, to points in the United States (except AK and HI), and (2) from points in (a) Butte County, SD, (b) Weston, Crook and Big Horn Counties, WY, and (c) points in Phillips County, MT, to points in the United States (except AK and HI), restricted to the transportation of traffic originating at the facilities of American Colloid Co. Hearing site: Des Moines, IA, or Chicago, IL.

Note.—The purpose of this republication is to correct the requested authority.

MC 111956 (Sub-49F), filed April 12, 1979, and previously noticed in the **Federal Register** issue of December 11, 1979. Applicant: SUWAK TRUCKING COMPANY, a corporation, 1105 Fayette St., Pittsburgh, PA 15301. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. Transporting *general commodities,* (Except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), in containers or in trailers, between points in DE, MD, NY, NJ, PA, and VA, on the one hand, and, on the other points in OH, the lower peninsula of MI, and Allegheny, Bedford, Blair, Cambria, Fayette, Greene, Indiana, Somerset, Washington, and Westmoreland Counties, PA, restricted to the transportation of traffic having an immediately prior or subsequent movement by water in foreign commerce. (Hearing site: Washington, DC or Pittsburgh, PA.)

Note.—The carrier must satisfy the Commission that its common control possibilities are either aproved by the Commission or do not require Commission approval.

Note.—This republication is to correctly reflect the territorial description.

MC 115667 (Sub-14F), filed September 19, 1979, previously noticed in the **Federal Register** issue of March 14, 1980. Applicant: ARROW TRANSPORTATION SYSTEMS, INC., 320 Seymour Blvd., North Vancouver, B.C., Canada V7J 2J3. Representative: Cylde H. MacIver, 1900 Peoples National Bank Building, 1415 5th Ave., Seattle, WA 98171. Transporting *commodities,* the transportation of which, because of size and weight, requires the use of special equipment, between points in WA, OR and CA. (Hearing site: Seattle, WA.)

Note.—This republication is to reflect the representative's correct address.

MC 115667 (Sub-15F), filed September 19, 1979, and previously noticed in the **Federal Register** issue of March 14, 1980. Applicant: ARROW TRANSPORTATION SYSTEMS, INC., 320 Seymour Blvd., North Vancouver, B.C., Canada V7J 2J3. Representative: Clyde H. MacIver, 1900 Peoples National Bank Bldg., 1415 5th Ave., Seattle, WA 98171. Transporting *lumber, lumber products* and *wood products* between points in WA, OR and CA. (Hearing site: Seattle, WA.)

Note.—This republication is to reflect the representative's correct address.

MC 115667 (Sub-17F), filed October 22, 1979, and previously noticed in the **Federal Register** issue of March 14, 1980. Applicant: ARROW TRANSPORTATION SYSTEM, INC., 320 Seymour Blvd., North Vancouver, B.C. Canada V7J 2J3. Representative: Clyde H. MacIver, 1900 Peoples National Bank Bldg., 1415 5th Ave., Seattle, WA 98171. Contract carrier, transporting *general commodities,* in containers (except classes A and B explosives and empty containers), between points in WA and OR, restricted to the transportation of traffic having a prior or subsequent movement by water, under continuing contract(s) with Asia American Lines, of Seattle, WA, and ITEL Container Division, of Seattle, WA. (Hearing site: Seattle, WA.)

Note.—The purpose of this republication is to reflect the representative's correct address.

MC 115826 (Sub-513F), filed July 9, 1979, and previously noticed in the **Federal Register** issue of March 6, 1980. Applicant: W. J. DIGBY, INC., 6015 East 58th Ave., Commerce City, CO 80022. Representative: Howard Gore (same address as applicant). Transporting *confectionery,* in vehicles equipped with mechanical refrigeration, from the facilities of M & M/Mars, Division of Mars, Inc., at or near Elizabeth and Hackettstown, NJ, and Elizabethtown, PA, to points in AZ, CA, CO, IA, ID, IL, IN, MI, MN, MO, NE, NV, OH, OR, UT, WA, WI, and WY, restricted to the transportation of traffic originating at the named orgins and destined to the named destinations. (Hearing site: Denver, CO.)

Note.—This republication is to correctly reflect the territorial description.

MC 117786 (Sub-69F), filed July 9, 1979, and previously noticed in the **Federal Register** issue of March 6, 1980. Applicant: RILEY WHITTLE, INC., P.O. Box 19038, Phoenix, AZ 85009. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. Transporting *alcoholic beverages,* from Lynchburg, TN, to points in AZ, CA, and NV. (Hearing site: Phoenix, AZ.)

Note.—This republication is to correctly reflect the territorial description.

MC 135007 (Sub-78F), filed October 15, 1979, and previously noticed in the **Federal Register** issue of March 14, 1980. Applicant: AMERICAN TRANSPORT, INC., 7850 "F" St., Omaha, NE 68127. Representative: Arthur J. Cerra, 2100 Ten Main Center, P.O. Box 19251, Kansas City, MO 64141. Contract carrier, transporting *meats, meat products, meat byproducts, and articles distributed by meat-packing houses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Spencer Foods, Inc., at or near Oakland, CA, and Omaha, NE, to points in AL, CT, DE, FL, GA, IL, IN, KS, ME, MD, MA, MO, NE, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VE, VA, WV, WI, and DC under continuing contract(s) with Spencer Foods, Inc., of Schuler, NE. (Hearing site: Omaha, NE.)

Note.—The purpose of this republication is to show MA as being a destination point in the above proceeding.

MC 138157 (Sub-205F), filed November 19, 1979, previously noticed in the **Federal Register** issue of March 14, 1980, and republished as corrected this issue. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 S. Market St., Chattanooga, TN 37410. Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. Transporting, *floor covering materials and materials, equipment and supplies* used in the installation of floor covering materials, betweeen points in Alameda County, CA, on the one hand, and on the other, points in the United States in and East of MT, WY, CO, and NM. (Hearing site: San Francisco, CA.)

Note.—The purpose of this republication is to change MN to "NM" in the territorial description. Dual operations may be involved.

MC 143607 (Sub-9F), filed May 31, 1979. Applicant: BAYWOOD TRANSPORT, INC., P.O. Box 2611 Route 6, Waco, TX 76706. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh St., NW., Washington, DC 20001. Contract carrier, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from the facilities of Hi-Port Industries, Inc., at or near Highland, TX, to points in the United States (except AK and HI), under

continuing contract(s) with Hi-Port Industries, Inc., of Highlands, TX. (Hearing site: Dallas, TX.)

MC 144527 (Sub-7F), filed November 6, 1979. Applicant: BULS EYE TRANSPORT, INC., Suite 2424, 33 No. Dearborn St., Chicago, IL 60602. Representative: Patrick H. Smyth, Suite 521, 19 So. LaSalle St., Chicago, IL 60603. Transporting *new furniture,* from Archbold, OH, to those points in the U.S. in and east of MN, IA, MO, AR, and LA (except AR, LA, and MS), restricted to the transportation of traffic originating at the facilities of Sauder Woodworking Co. (Hearing site: Toledo, OH, or Chicago, IL.)

MC 146646 (Sub-8F), filed July 27, 1979, and previously noticed in the **Federal Register** issue of March 6, 1980. Applicant: BRISTOW TRUCKING COMPANY, P.O. Box 63558, Birmingham, AL 35217. Representative: Henry Bristow, Jr. (same address as applicant). Transporting (1) *construction materials, and (2) materials and supplies* used in the manufacture and distribution of construction materials (except in bulk), between the facilities of the Celotex Corporation at or near Pittston, PA, on the one hand, and, on the other, points in the US (except AK and HI). (Hearing site: Tampa, FL, or Birmingham, AL.)

Note.—This republication is to correctly reflect the territorial description.

MC 146646 (Sub-13F), filed July 30, 1979, and previously noticed in the **Federal Register** issue of March 6, 1980. Applicant: BRISTOW TRUCKING COMPANY, P.O. Box 63558, Birmingham, AL 35217. Representative: Henry Bristow, Jr. (same address as applicant). Transporting (1) *construction materials, and (2) materials and supplies* used in the manufacture and distribution of construction materials (except in bulk), between the facilities of the Celotex Corporation at or near Clinton, OH, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Tampa, FL, or Birmingham, AL.)

Note.—This republication is to correctly reflect the territorial description.

MC 148527F, filed October 9, 1979, and previously noticed in the **Federal Register** issue of March 14, 1980, and republished as corrected this issue. Applicant: H. BRUCE BAGLEY AND C. E. BAGLEY, a partnership, d.b.a. BAGLEY & SON, Route 6, Box 485–A, Anderson, IN 46011. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Contract carrier,* transporting *batteries and battery parts, and materials* used in the manufacture of batteries, (1) between the facilities of Prime Batteries, Inc., at Anderson, IN, on the one hand, and, on the other, points in KY, OH, TN, WI, IL, GA, MS, AL, SC, TX, LA, AR, MO, and NC and (2) between the facilities of Western Kentucky Batteries, Inc., at Benton, KY, on the one hand, and, on the other, points in OH, TN, IN, GA, MS, AL, SC, TX, LA, AR, MO, and NC, under continuing contract(s) in (1) above with Prime Batteries, Inc., and in (2) above with Western Kentucky Batteries, Inc. (Hearing site: Indianapolis, IN.)

Note.—The purpose of this republication is to include LA, AR, and MO in the territorial description.

Volume No. 145

Decided: April 7, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 11207 (Sub-530F), filed March 6, 1980. Applicant: DEATON, INC., 317 Avenue W, P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20423. Transporting (1) *knocked down metal buildings,* and (2) *machinery, materials, equipment, and supplies* used in the manufacture of the commodities in (1) between the facilities of Republic Buildings Corp., at Rainsville, AL, on the one hand, and, on the other, points in AL, CA, CO, IN, KS, and UT. (Hearing site: Birmingham, AL, or Washington, DC.)

MC 21866 (Sub-151F), filed March 3, 1980. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting (1) *automobile parts,* and (2) *materials, equipment, and supplies* used in the manufacture, and distribution of motor vehicles, between points in AL, DE, GA, IL, IN, KS, LA, MA, MD, MI, MO, MS, NH, NJ, NY, OH, OK, PA, TX, WV, and WI, restricted to the transportation of traffic originating at or destined to the facilities of General Motors Corporation. (Hearing site: Washington, DC.)

MC 39167 (Sub-17F), filed March 3, 1980. Applicant: C. J. ROGERS TRANS. CO., 2947 Greenfield Rd., Melvindale, MI 48122. Representative: Robert D. Schuler, 100 West Long Lake Rd., Suite 102, Bloomfield Hills, MI 48013. Transporting (1) *Prestressed concrete building components* (except in bulk), and (2) *materials, supplies and equipment,* used in the manufacture or installation of the commodities used in (1) (except in bulk), (a) between the facilities of Price Brothers Company, at or near (i) Livonia, MI and (ii) Dayton, OH, on the one hand, and, on the other, points in AR, DE, IL, IN, IA, KY, MD, MO, NJ, NY, NC, PA, TN, VA, WI, and WV, (b) between the facilities of Price Brothers Company, at Livonia, MI and points in OH, and (c) between the facilities of Price Brothers Company, at Dayton, OH and points in MI. (Hearing site: Cincinnati or Columbus, OH or Washington, DC.)

MC 42487 (Sub-948F), filed November 26, 1979, previously noticed in the **Federal Register** issue of March 25, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. Over regular routes, transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and commodities requiring special equipment), (1) between Wilmington, DE and Salisbury, MD, over U.S. Hwy 13, (2) between Washington, D.C. and Salisbury, MD, over U.S. Hwy 50, (3) between Baltimore, MD and junction MD Hwy 2 and U.S. Hwy 50, over MD Hwy 2, (4) between junction U.S. Hwy 113 and U.S. Hwy 13 (near Dover, DE) and Salisbury, MD: From junction U.S. Hwy 113 and U.S. Hwy 13 (near Dover, DE) over U.S. Hwy 113 to junction U.S. Hwy 13 (at or near Pocomoke City, MD), then over U.S. Hwy 13 to Salisbury, and return over the same route, (5) between junction U.S. Hwy 50 and U.S. Hwy 301 (at or near Queenstown, MD) and junction DE Hwy 299 and U.S. Hwy 13 (at or near Odessa, DE): From junction U.S. Hwy 50 and U.S. Hwy 301 (at or near Queenstown, MD) over U.S. Hwy 301 to junction DE Hwy 299 (at or near Middletown, DE), then over DE Hwy 299 to junction DE Hwy 299 and U.S. Hwy 13 (at or near Odessa, DE), and return over the same route, (6) between Ocean City, MD and junction DE Hwy 1 and U.S. Hwy U.S. Hwy 113 (near Milford, DE): From Ocean City over MD Hwy 528 to the MD–DE state line, then over DE Hwy 1 to junction DE Hwy 1 and U.S. Hwy 113, (near Milford, DE) and return over the same route, (7) between Ocean City, MD and junction U.S. Hwy 50 and U.S. Hwy 113 (near Berlin, MD), over U.S. Hwy 50, serving all intermediate points in connection with the routes described in (1) to (7) above; and all points in Kent, New Castle, Sussex Counties, DE, and Caroline, Cecil, Dorchester, Kent, Queen Annes, Somerset, Talbot, Wicomico and Worcester Counties, MD, as either intermediate or off-route points. The purpose of this republication is to indicate the correct Hwys in (6) above. (Hearing site: Washington, DC.)

Note.—Applicant intends to tack the authorities described above. Also, applicant intends to tack to its existing authority and any authority it may acquire in the future.

MC 59557 (Sub-19F), filed January 10, 1980, previously noticed in the **Federal Register** issue of April 15, 1980. Applicant: AUCLAIR TRANSPORTATION, INC., P.O. Box 5195, Manchester, NH 03108. Representative: Elliott Bunce, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the commercial zones of (a) Atlanta, GA, (b) Chicago, IL, (c) Dallas, TX, (d) Fort Worth, TX, (e) Houston, TX, (f) Los Angeles, CA, (g) Oakland, CA, (h) San Francisco, CA, (i) Jacksonville, FL, (j) Orlando, FL, (k) St. Petersburg, FL, (l) Miami, FL, and (m) Tampa, FL, restricted to traffic having a prior or subsequent movement by rail. (Hearing site: Boston, MA, or Concord, NH.)

Note.—The purpose of this republication is to correct the territorial description.

MC 78687 (Sub-100F), filed December 27, 1979, previously published in the **Federal Register** issue of March 27, 1980, and republished this issue. Applicant: LOTT MOTOR LINES, INC., Box 751, Moravia, NY 13118. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW, Washington, DC 20001. Transporting (1) *paper, paper products and plastic articles and* (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) (except commodities in bulk), between the facilities of Sonoco Products Company, at or near Downingtown, Hanover and Robesonia, PA, on the one hand, and, on the other, points in the U.S. in and east of MN, IA, MO, AR, and LA. (Hearing: Washington, DC.)

Note.—This republication is to state correctly the territorial description.

MC 79577 (Sub-41F), filed March 7, 1980. Applicant: OILFIELDS TRUCKING COMPANY, a corporation, 1601 S. Union Ave., P.O. Box 751, Bakersfield, CA 93302. Representative: R. Y. Schureman, 1545 Wilshire Blvd., Los Angeles, CA 90017. Transporting *gasoline and distillate fuel oils,* from the facilities of Calnev Pipeline Co., at or near Daggett, CA, to points in AZ, NV, and UT. (Hearing: Los Angeles, CA.)

MC 79687 (Sub-35F), filed February 29, 1980. Applicant: WARREN C. SAUERS COMPANY, INC., 200 Rochester Rd., Zelienople, PA 16063. Representative: Henry M. Wick, Jr., 2310 Grant Bldg., Pittsburgh, PA 15219. Transporting *canned baby food and dry cereal,* from Canajoharie, NY, to points in AL, CT, DE, FL, GA, IL, LA, ME, MD, MA, MI, MN, MS, NH, NJ, NY, NC, RI, SC, TN, TX, VT, VA, WI, points in PA east of U.S. Hwy 15, and DC. (Hearing: Pittsburgh, PA, or Washington, DC.)

MC 89617 (Sub-24F), filed March 5, 1980. Applicant: LEWIS TRUCK LINES, INC., P.O. Box 1494, Conway, SC 29526. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. Transporting *construction materials* (except commodities in bulk), and *materials, equipment and supplies* (except commodities in bulk), used in the manufacture or distribution of construction materials, from the facilities of Delotex Corporation, at or near Goldsboro, NC, to points in AL, FL, GA, SC, and VA. (Hearing: Charleston, SC, or Tampa, FL.)

MC 91306 (Sub-26F), filed February 29, 1980. Applicant: JOHNSON BROTHERS TRUCKERS, INC., 1858 9th Ave., NE, Hickory, NC 28601. Representative: Erick Meierhoefer, Suite 423, 1511 K St., NW, Washington, DC 20005. Transporting *plastic tips and holders* used in the manufacture of cigars, from Gastonia, NC, to Kingston, PA. (Hearing: Charlotte, NC.)

MC 105566 (Sub-218F), filed February 22, 1980. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: Thomas F. Kilroy, Suite 406, Executive Bldg., 6901 Old Kenne Mill Rd., Springfield, VA 22150. Transporting *water treating and industrial process products* (except in bulk, in tank vehicles), in vehicles equipped with mechanical refrigeration, (1) from the facilities of Nalco Chemical Company, at Sugarland, TX, Garyville, LA, and Jonesboro, GA, to points in CT, DE, IL, IN, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VT, VA, and WV, and (2) from the facilities of Nalco Chemical Company, at Jonesboro, GA, to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY. (Hearing site: Washington, DC.)

MC 108937 (Sub-63F), filed February 5, 1980. Applicant: MURPHY MOTOR FREIGHT LINES, INC., 2323 Terminal Road, St. Paul, MN 55113. Representative: Jerry E. Hess, P.O. Box 43640, St. Paul, MN 55164. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving Beaver Dam, Beloit, Burlington, Columbus, Delevan, Edgerton, Elkhorn, Fall River, Ft. Atkinson, Fredonia, Horicon, Janesville, Kohler, Lake Geneva, Lake Mills, Madison, Manitowoc, Markesan, New Holstein, Oconomowoc, Oostburg, Plymouth, Portage, Sheboygan, Sheboygan Falls, Slinger, Two Rivers, Waterford, Watertown, Williams Bay and Wilmot, WI as off-route points in connection with applicant's regular route operations. (Hearing site: Milwaukee, WI, or South Bend, IN.)

MC 111856 (Sub-11F), filed December 4, 1979, previously noticed in the **Federal Register** issue of March 27, 1980. Applicant: CHOCTAW TRANSPORT, INC., 800 Bay Bridge Rd., Prichard, AL 36610. Representative: George M. Boles, 727 Frank Nelson Bldg., Birmingham, AL 35203. Over *regular routes,* transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Ft. Walton Beach, FL and Prichard, AL: (a) from Ft. Walton Beach, FL over U.S. Hwy 98 to junction U.S. Hwy 90 at or near Pensacola, FL, then over U.S. Hwy 90 to junction U.S. Hwy 43 at or near Mobile, AL, then over U.S. Hwy 43 to Prichard, AL, and return over the same route, serving Mobile, AL, and all intermediate points in FL, and (b) from Ft. Walton Beach, FL over U.S. Hwy 98 to junction U.S. Hwy 29, then over U.S. Hwy 29 to junction Interstate Hwy 10, then over Interstate Hwy 10 to junction U.S. Hwy 43 at or near Mobile, AL, then over U.S. Hwy 43 to Prichard, AL, and return over the same route, serving Mobile, AL, and all intermediate points in FL, serving Century and Cantonment, FL, as off-route points in conjunction with (a) and (b) above. (Hearing site: Birmingham or Mobile, AL.)

Note.—The purpose of this republication is to correct the territorial description.

MC 114457 (Sub-567F), filed March 3, 1980. Applicant: DART TRANSIT COMPANY, a corporation, 2102 University Ave., St. Paul, MN 55114. Representative: James H. Wills (same address as applicant). Transporting (1) *snowthrowers and lawnmowers,* and (2) *materials, equipment, and supplies* used in the manufacture of snowthrowers and lawnmowers, from Johnson Creek, WI, to points in the U.S. (except AK and HI). (Hearing site: Milwaukee, WI, or St. Paul, MN.)

MC 114606 (Sub-15F), filed March 3, 1980. Applicant: S. F. DOUGLAS TRUCK LINE, INC., 587 S. W. First St., New Brighton, MN 55551. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440. Transporting *packaging materials,* from Minneapolis,

MN, to Grand Forks, ND. (Hearing site: Minneapolis or St. Paul, MN.)

MC 115826 (Sub-520F), filed July 31, 1979. Applicant: W. J. DIGBY, INC., 6015 East 58th Ave., Commerce City, CO 80022. Representative: Howard Gore (same address as applicant). Transporting *meats, meat products, and meat byproducts, and articles distributed by meat-packing houses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from points in TX on and north of U.S. Hwy 180 and on and west of U.S. Hwy 83 and Clovis and Portales, NM, to points in MT, ID, OR, WA. (Hearing site: Denver, CO.)

MC 116519 (Sub-83F), filed February 26, 1980. Applicant: FREDERICK TRANSPORT LIMITED, R.R. #6, Chatham, Ontario, Canada, N7M 5J6. Representative: Jeremy Kahn, Suite 733, Investment Bldg., 1511 K St., NW., Washington, DC 20005. In foreign commerce only, transporting *medicines and chemicals*, between Kalamizoo, MI, on the one hand, and, on the other, ports of entry on the international boundary line between the United States and Canada in MI. (Hearing site: Washington, DC.)

MC 117786 (Sub-97F), filed March 5, 1980. Applicant: RILEY WHITTLE, INC., P.O. Box 19038, Phoenix, AZ 85005. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. Transporting (1) *motor vehicle parts, and steel tubing*, and (2) *commodities* used in the manufacture of the commodities in (1) between the facilities of Rockwell International, at Florence, KY and points in OH. (Hearing site: Phoenix, AZ.)

MC 120636 (Sub-2F), filed February 12, 1980. Applicant: BRUNTON STORAGE & VAN CO., INC., 6th and Locust Street, P.O. Box 577, Chatsworth, IL 60921. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. Transporting *general commodities* (except Classes A and B explosives, household goods as defined by the Commission, and liquid commodities, in bulk) between points in IL. (Hearing site: Chicago, IL.)

Note.—The purpose of this application is to convert applicant's Certificate of Registration in MC 120636 Sub-1F to a Certificate of Public Convenience and Necessity.

MC 120636 (Sub-3F), filed February 12, 1980. Applicant: BRUNTON STORAGE & VAN CO., INC., 6th and Locust Street, P.O. Box 577, Chatsworth, IL 60921. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, DC 20001. Transporting *polystyrene packaging articles*, from the facilities of Tuscarora Plastics, Inc., at or near Streator and Quincy, IL, to points in IN, MI, WI, IA, and MO. (Hearing site: Chicago, IL.)

MC 121496 (Sub-41F), filed December 28, 1979, previously published in the **Federal Register** issue of March 27, 1980, and republished this issue. Applicant: CANGO CORPORATION, Suite 2900, 1100 Milam Bldg., Houston, TX 77002. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St. NW., Washington, DC 20001. Transporting *liquefied petroleum gases*, in bulk, in tank vehicles, between Mont Belvieu, TX, Arcadia, LA, and Petal, MS, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing: Houston, TX.)

Note.—The purpose of this republication is to state correctly the commodity description.

MC 123407 (Sub-634F), filed March 5, 1980. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Rt. 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr., (same address as applicant). Transporting *metal products*, from the facilities of Steel King Industries, Inc., at New London, and Stevens Point, WI, to points in the U.S. in and east of MN, IA, NE, KS, OK, and TX. (Hearing: Chicago, IL.)

MC 123987 (Sub-34F), filed March 10, 1980. Applicant: JEWETT SCOTT TRUCK LINE, INC., P.O. Box 267, Mangum, OK 73554. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408. Transporting *brick and tile*, from Lubbock, TX, to points in LA, AR, OK, KS, NM, AZ, and CO. (Hearing: Lubbock, or Dallas, TX.)

MC 129387 (Sub-113F), filed March 3, 1980. Applicant: PAYNE TRANSPORTATION, INC., P.O. Box 1271, Huron, SD 57350. Representative: Charles E. Dye (same address as applicant). Transporting *pumps, pump parts and accessories*, from Fresno, CA, to points in IA, MN, NE, ND, and SD. (Hearing: San Francisco or Los Angeles, CA.)

MC 134467 (Sub-55F), filed November 29, 1979, previously noticed in the **Federal Register** issue of March 25, 1980. Applicant: POLAR EXPRESS, INC., P.O. Box 845, Springdale, AR 72764. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. Transporting *materials, equipment and supplies* used in the manufacture and distribution of poultry and poultry products, from points in GA, IA, IL, MA, MS, NY, NC, NJ, OH, PA, TN, TX, and WV, to points in Benton, Carroll, Howard, Pulaski, and Washington Counties, AR; Webster Parish, LA, Barry and Lawrence Counties, MO, and Grundy County, TN, restricted to the transportation of traffic destined to the facilities of Tyson Foods, Inc. (Hearing site: Fayetteville, or Little Rock, AR.)

Note.—The purpose of this republication is to correct the restriction.

MC 134477 (Sub-406F), filed February 29, 1980. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Rd., West St. Paul, MN 55118. Representative: Thomas D. Fischbach, P.O. Box 43496, St. Paul, MN 55164. Transporting *chemicals* (except in bulk), from points in AR, LA, OK, and TX, to points in IL, IN, IA, KS, MN, MO, NE, and WI, restricted to the transportation of traffic originating at the named origins and destined to the named destinations. (Hearing: St. Paul, MN.)

MC 134477 (Sub-407F), filed March 7, 1980. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Rd., West St. Paul, MN 55118. Representative: Thomas D. Fischbach, P.O. Box 43496, St. Paul, MN 55164. Transporting (1) *toilet preparations*, and (2) *such commodities* as are used in the distribution of toilet preparations (except commodities in bulk), from the facilities of Landers Company, at or near Binghamton, NY, to points in AR, IL, IN, IA, KS, MI, MN, MO, NE, ND, OH, OK, SD, TN, TX, and WI. (Hearing: St. Paul, MN.)

MC 134477 (Sub-410F), filed February 29, 1980. Applicant: SCHANNO TRANSPORTATION, INC., 5 West Mendota Rd., West St. Paul, MN 55118. Representative: Thomas D. Fischbach, P.O. Box 43496, St. Paul, MN 55164. Transporting (1) *cleaning compounds, buffing and polishing compounds, textile softener, lubricants, hypochlorite solution, deodrants, disinfectants, paints, plastic bags and filters* (except commodities in bulk), and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities named in (1) (except commodities in bulk), between points in AL, AR, CO, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV, WI, and DC, restricted to the transportation of traffic originating at or destined to the facilities of Economics Laboratory, Inc. (Hearing: St. Paul, MN.)

MC 135797 (Sub-320F), filed March 10, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant (same address as applicant). Transporting (1) *such commodities* as are dealt in by manufacturers of foodstuffs (except commodities in bulk),

from San Leandro, Hayward and Union City, CA, and Hereford, TX, to points in the U.S. (except AK and HI), and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities named in (1) from points in the U.S. (except AK and HI), to San Leandro, Hayward and Union City, CA, St. Augustine, FL, and Hereford, TX. (Hearing: Washington, DC.)

MC 135797 (Sub-324F), filed March 6, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant (same address as applicant). Transporting (1) *containers,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities named in (1) between the facilities of Chattanooga Glass Co., at Corsicana, TX, on the one hand, and, on the other, points in AR, IA, IL, IN, KS, LA, MO, MS, OH, OK, and TN. (Hearing: Chattanooga, TN, or Washington, DC.)

MC 136786 (Sub-198F), filed January 10, 1980. previously noticed in the FR issue of April 3, 1980. Applicant: ROBCO TRANSPORTATION, INC., 4475 N.E. 3rd St., Des Moines, IA 50313. Representative: Stanley C. Olsen, Jr., 7400 Metro Blvd., Suite 411. Edina, MN 55435. Transporting *foodstuffs,* and *materials, equipment and supplies* used in the manufacture, distribution and sale of foodstuffs (except commodities in bulk), from Portland and Milwaukie, OR, and Aberdeen and Markham, WA, to points in AZ, CA, CO, ID, MT, NV, OR, and UT.

MC 138197 (Sub-2F), filed March 3, 1980. Applicant: L. SURRATT TRUCKING, INC., 7900 Old Rockside Rd., Cleveland, OH 44131. Representative: Earl N. Merwin, 85 East Gay St., Columbus, OH 43215. *Contract carrier,* transporting (1)(a) *prefabricated masonry panels,* and (b) *materials, equipment, and supplies* (except commodities in bulk), used in the manufacture of the commodities in (1) between Brunswick, OH, on the one hand, and, on the other, points in IL, IN, KY, MI, NY, PA, VA, and WV, under continuing contract(s) with Vetovitz Bros., Inc., of Brunswick, OH, and (2)(a) *pre-cast concrete products and building brick,* and (b) *materials, equipment, and supplies* (except commodities in bulk), used in the manufacture of pre-cast concrete products, between Cleveland, OH, on the one hand, and, on the other, points in IL, IN, KY, MI, NY, PA, and WV, under continuing contract(s) with Alpha Concrete Corp., of South Euclid, OH (Hearing site: Cleveland, OH.)

MC 138686 (Sub-12F), filed March 6, 1980. Applicant: L. C. W. TRUCKING, INC., 119 E. Chavez, Edinburg, TX 78539 Representative: M. Ward Bailey, 2412 Continential Life Bldg., Fort Worth, TX 76102. Transporting *malt beverages,* from Galveston, TX, to points in NM. (Hearing site: Houston, TX.)

MC 138956 (Sub-16F), filed March 6, 1980. Applicant: ERGON TRUCKING, INC., 202 East Pearl St., Jackson, MS 39201. Representative: Donald B. Marrison, 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. Transporting *barite,* in bulk, in tank vehicles, from points in Hot Spring County, AR, to points in AL, FL, LA, and MS. (Hearing site: Houston, TX, or Jackson, MS.)

MC 139697 (Sub-6F), filed March 10, 1980. Applicant: WAGONER TRANSPORTATION COMPANY, INC., P.O. Box 2975, South Bend, IN 46680. Representative: Morton E. Kiel Suite 1832, Two World Trade Center, New York, NY 10048. *Contract carrier,* transporting *foodstuffs, and materials, equipment and supplies* used in the manufacture and distribution of foodstuffs (except commodities in bulk, and those which because of size or weight, require the use of special equipment), between the facilities of McCormick Company, Inc., at or near (a) Dallas, TX, (b) Atlanta, GA, (c) Cockeysville, MD, and (d) San Fernando and Salinas, CA, on the one hand, and, on the other, points in the U.S. (except AK and HI), under continuing contract(s) with McCormick Company, Inc., of Hunt Valley, MD. (Hearing site: Washington, DC.)

MC 140247 (Sub-4F), filed August 30, 1979, previously noticed in the **Federal Register** issue of March 11, 1980. Applicant: ALLSTATE CHARTER LINES, INC., P.O. Box 9022, Fresno, CA 93790. Representative: Michael J. Stecher, 256 Montgomery St., 5th Floor, San Francisco, CA 94104. Transporting *passengers and their baggage,* in the same vehicle with passengers, limited to the the transportation of not more than 25 passengers in any one vehicle, not including the driver thereof, and not including children who do not occupy a seat or seats, in charter and special operations, between points in AZ, CA, NV, OR, and WA, on the one hand, and, on the other, points in the United States, including AK, but excluding HI. (Hearing site: San Francisco, CA.)

Note.—The purpose of this republication is to correct the territorial description.

MC 141097 (Sub-24F), filed March 4, 1980. Applicant: CAL-TEX, INC., P.O. Box 1678, Costa Mesa, CA 92626. Representative: Eric Meierhoefer, Suite 423, 1511 K St., NW., Washington, DC 20005. *Contract carrier,* transporting (1) *synthetic yarn and fiber, and chemical products* (except in bulk), and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) between points in the U.S. (except AK and HI), under continuing contract(s) with Badische Corporation, of Williamsburg, VA. (Hearing site: Richmond, VA.)

Note.—Dual operations may be involved.

MC 143127 (Sub-64F), filed December 12, 1979, previously noticed **Federal Register** issue of April 1, 1980. Applicant: K. J. TRANSPORTATION, INC., 6070 Collett Rd., Victor, NY 14564. Representative: Linda A. Calvo (same address as applicant). Transporting *malt beverages,* from Jacksonville, FL, Merrimack, NH, and Williamsburg, VA to points in NY. (Hearing site: Buffalo, NY.)

Note.—The purpose of this republication is to correct the destination point. Dual operations may be involved.

MC 144887 (Sub-112F), filed March 7, 1980. Applicant: SHELTON TRUCKING SERVICE, INC., Rt., 1, Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. Transporting *construction materials,* between those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX, restricted to the transportation of traffic originating at or destined to facilities of Hall Metal Products. (Hearing site: Jacksonville or Tallahassee, FL.)

MC 144946 (Sub-2F), filed March 6, 1980. Applicant: BIG T TRUCK SERVICE, INC., 5878 Buford Hwy, Suite 5, Atlanta, GA 30360. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers S, 3390 Peachtree Rd., NE., Atlanta, GA 30326. *Contract carrier,* transporting *such commodities* as are dealt in by grocery and food business houses (except frozen foods and commodities in bulk), from the facilities of The Clorox Company, at Forest Park, GA, to points in KY, under continuing contract(s) with The Clorox Company, of Forest Park, GA. (Hearing site: Atlanta, GA.)

MC 145557 (Sub-9F), filed June 22, 1979, previously noticed in the **Federal Register** issue of March 18, 1980. Applicant: LIBERTY TRANSPORT, INC., 3409 South Belt Highway, St. Joseph, MO 64503. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. Transporting (1) *meats, meat products and meat by-products, and articles distributed by meat-packinghouses* as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from Kansas City, MO, to points in AZ,

CO, IA, KS, MN, ND, NE, NM, OK, SD, IL, TX, WI, and WY; and (2) *foodstuffs* and such commodities as are dealt in by retail variety, discount and drug stores, and wholesale houses serving such store (except commodities in bulk), between Kansas City, MO, and points in CO, IA, MN, ND, NE, NM, OK, SD, TX, and WY. (Hearing site: Kansas City, MO.)

MC 145577 (Sub-20F), filed December 13, 1979, previously noticed in the **Federal Register** issue of April 1, 1980. Applicant: GULLETT-GOULD, LDT., P.O. Box 406, Union City, IN 47390. Representative: Jerry B. Sellman, 50 West Broad St., Columbus, OH 43215. Transporting (1) *castings, molds, machine parts and clay parts* used in the manufacture or production of glass containers from points in OH, IN, and PA on and west of U.S. Hwy 219 to points in the United States (except AK and HI); (2) *glass containers,* between points in CT, GA, MS, PA on and west of U.S. Hwy 219, TN, and TX, on the one hand, and, on the other, points in CA; (3) *materials, equipment, supplies and parts* (except commodities in bulk) used in the manufacture or productions of glass containers, between points in CA, CT, GA, MS, PA on and west of U.S. Hwy 219, TX, IN and OH; and (4) *paint,* from Washington, PA to Madera, CA, restricted in (2) and (3) above to the transportation of traffic originating at or destined to the facilities of Glass Containers Corporation. (Hearing site: Chicago, IL, or Washington, DC.)

Note.—The purpose of this republication is to exclude AK as a destination point in (1) above in lieu of AL.

MC 146616 (Sub-11F), filed February 18, 1980. Applicant: B & H MOTOR FREIGHT, INC., 3314 East 51st St., Suite B, Tulsa, OK 74135. Representative: Fred Rahal, Jr., Suite 305 Reunion Center, 9 East Fourth St., Tulsa, OK 74103. Contract carrier, transporting: *slab zinc spelter,* from the facilities of National Zinc Company at Bartlesville, OK to points in the United States (except AK and HI), under continuing contract(s) with National Zinc Company, of Bartlesville, OK. (Hearing site: Tulsa, OK.)

MC 146927 (Sub-9F), filed March 3, 1980. Applicant: DIXIE TRANSPORT, INC., P.O. Box 1126, Hattiesburg, MS 39401. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. Transporting *paper and paper products, and materials, equipment and supplies* used in the manufacture and distribution of paper and paper products (except in bulk), between the facilities of Georgia Pacific Corporation, at or near Crossett and Pine Bluff, AR, and Port Hudson, LA, on the one hand, and, on the other, points in FL, AR, TN, AL, LA, GA, TX, and MS. (Hearing site: Washington, DC.)

MC 147427 (Sub-78F), filed March 5, 1980. Applicant: G. G. PARSONS TRUCKING CO., a corporation, P.O. Box 1085, North Wilkesboro, NC 28659. Representative: Dean N. Wolfe, Gimmel & Weiman, 4 Professional Drive—Suite 145, Gaithersburg, MD 20760. Transporting *lumber, poles,* and *posts,* from points in TN, to points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Washington, DC or Winston-Salem, NC.)

MC 147607 (Sub-2F), filed August 27, 1979, previously noticed in the **Federal Register** issue of March 11, 1980, and republished this issue. Applicant: RONALD D. OFFUTT, JR., d.b.a. RONALD OFFUTT & SONS, Box 126, Glyndon, MN 56547. Representative: William J. Gambucci, P.O. Box 1680, 414 Gate City Bldg., Fargo, ND 58107. Transporting *carpet,* from points in GA to points in MN, ND, SD, and WI. (Hearing site: Atlanta, GA.)

Note.—The purpose of this republication is to correctly state the territorial description. Dual operations may be involved.

MC 147766 (Sub-2F), filed February 29, 1980. Applicant: COLORADO-DENVER/WAREHOUSE-DELIVERY, INC., 4902 Smith Rd., Denver, CO 80216. Representative: Edward C. Hastings, 666 Sherman St., Denver, CO 80203. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), between Frisco and Vail, CO over U.S. Hwy 70, serving all intermediate points. (Hearing site: Denver, CO.)

MC 147946 (Sub-2F), filed March 7, 1980. Applicant: MIRMAN TRANSPORTATION, INC., 26240 Industrial Blvd., Hayward, CA 94545. Representative: T. M. Brown, P.O. Box 1540, Edmond, OK 73034. Transporting (1) *general commodities* (except classes A and B explosives), between ports of entry on the international boundary line between the U.S. and Canada, in CA, OR, and WA, on the one hand, and, on the other, points in WA, OR, CA, ID, NV, AZ, UT, MT, WY, CO, and NM, and (2) *trailer chassis,* between points in WA, OR, CA, ID, NV, AZ, UT, MT, WY, CO, and NM. (Hearing site: San Francisco, or Los Angeles, CA.)

MC 150306 (Sub-1F), filed March 5, 1980. Applicant: WARD TRUCK SERVICE, INC., 993 Main St., Shrewsbury, MA 01545. Representative: James F. Martin, Jr., 8 W. Morse Rd., Bellingham, MA 02019. *Contract carrier,* transporting *such commodities* as are dealt in by retail and discount department stores (except commodities in bulk) between the facilities of Spag's Supply, Inc., at Worcester and Shrewsbury, MA, on the one hand, and, on the other, points in ME, NH, VT, CT, RI, NY, NJ, and PA, under continuing contract(s) with Spag's Supply, Inc., of Shrewsbury, MA. (Hearing site: Boston, MA.)

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Decided: April 9, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 5227 (Sub-66F), filed March 10, 1980. Applicant: ECKLEY TRUCKING, INC., P.O. Box 201, Mead, NE 68041. Representative: A. J. Swanson, 226 N. Phillips Avenue, Sioux Falls, SD 57101. Transporting *chemical and ore processing equipment and parts,* from Colorado Springs, CO, to points in the United States (except AK, HI and CO). (Hearing site: Sioux Falls, SD, or Denver, CO.)

MC 21866 (Sub-146F), filed February 20, 1980. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting *food and food products,* (except commodities in bulk), between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Bachman Foods, Inc. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 51146 (Sub-830F), filed February 25, 1980. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Matthew J. Reid, Jr., (same address as applicant). Transporting *such commodities* as are dealt in, or used by, manufacturers and distributors of educational and office supplies, between the facilities of The Mead Corporation at (a) Alexandria, PA, (b) Atlanta, GA, (c) St. Joseph, MO, and (d) Terrell and Garland, TX on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, KS, OK, and TX, restricted to the transportation of traffic between the named origins and destinations. (Hearing site: Chicago, IL.)

MC 55896 (Sub-135F), filed March 4, 1980. Applicant: R-W SERVICE SYSTEM, INC., 20225 Goddard Rd., Taylor, MI 48180. Representative: George E. Batty (same address as applicant). Transporting *aluminum scrap,* from Wheeling, WV, to Cleveland, Gnadenhutten, Sandusky,

and Holgate, OH, points in IL, KY, and MI. (Hearing site: Toledo, OH.)

MC 63417 (Sub-272F), filed February 25, 1980. Applicant: BLUE RIDGE TRANSFER COMPANY, INCORPORATED, P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). Transporting *general commodities* (except commodities in bulk), between the facilities of Kimberly Clark Corporation, at points in Richmond County, GA, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the named facilities. Condition: To the extent the certificate to be issued in this proceeding authorizes the transportation of classes A and B explosives, it shall be limited in point of time to a period expiring 5 years from its date of issue. (Hearing site: Washington, DC.)

MC 78687 (Sub-105F), filed March 10, 1980. Applicant: LOTT MOTOR LINES, INC., West Cayuga St., P.O. Box 751, Moravia, NY 13118. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW., Washington, D.C. 20001. Transporting *refractory brick and refractory materials*, from York, PA, to those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Philadelphia, PA.)

MC 95876 (Sub-341F), filed February 25, 1980. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Ave. No., St. Cloud, MN 56301. Representative: William L. Libby (same address as applicant). Transporting (1) *building stone*, from Concord, NH, to points in the U.S. (except AK and HI); and (2) *materials, equipment, and supplies* used in the manufacture and installation of building stone, in the reverse direction. (Hearing site: Boston, MA, or Washington, DC.)

MC 95876 (Sub-343F), filed March 3, 1980. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Ave. No., St. Cloud, MN 56301. Representative: William L. Libby (same address as applicant). Transporting (1) *dust collection apparatus*, and (2) *parts* for dust collection apparatus, from Terre Haute, IN, to points in the U.S. (except AK and HI). (Hearing site: Chicago, IL, or Minneapolis, MN.)

Note.—Dual operations may be involved.

MC 98776 (Sub-7F), filed February 6, 1980, previously noticed in the **Federal Register** issue of April 3, 1980. Applicant: ELDRIDGE TRUCK LINE, INC., P.O. Box 659, Somerset, KY 42501. Representative: Robert H. Kinker, 314 West Main St., P.O. Box 464, Frankfort, KY 40602. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), serving points in IN within the commercial zone of Louisville, KY in connection with applicant's presently authorized regular-route operations. (Hearing site: Louisville, KY.)

Note.—The purpose of this republication is to correctly reflect the territorial description. Applicant states it will tack at Louisville, KY.

MC 100666 (Sub-532F), filed March 3, 1980. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, Shreveport, LA 71107. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Transporting *casual and leisure furniture*, between the facilities of Sun Terrace Casual Furniture, at or near Brooksville, FL and Nacogdoches, TX. (Hearing site: Shreveport, LA.)

MC 103926 (Sub-104F), filed March 3, 1980. Applicant: W.T. MAYFIELD SONS TRUCKING CO., a corporation, P.O. Box 947, Mapleton, GA 30059. Representative: K. Edward Wolcott, P.O. Box 56387, Atlanta, GA 30343. Transporting (1) *construction, mining and quarry machinery and equipment*, (2) *industrial machinery and equipment*, and (3) *materials, equipment and supplies* for the commodities in (1) and (2) above, (except commodities in bulk), between points in AL, AR, DE, FL, GA, IA, IL, IN, KY, LA, MO, MS, MD, NC, OH, OK, PA, TN, TX, VA, WV, and DC, restricted to the transportation of traffic originating at or destined to the facilities or construction sites of The Hardaway Company. (Hearing site: Atlanta, GA.)

MC 114457 (Sub-568F), filed March 4, 1980. Applicant: DART TRANSIT COMPANY, a corporation, 2102 University Ave., St. Paul, MN 55114. Representative: James H. Willis (same address as applicant). Transporting (1) *plastic articles*, and (2) *such commodities* as are used by or dealt in by the distributors of floral products (except commodities in bulk), from Kent, OH, to points in the United States (except AK, AR, HI, IL, IN, IA, KS, KY, MI, MN, MO, NE, and WY.) (Hearing site: Cincinnati, OH, or St. Paul, MN.)

MC 116457 (Sub-52F), filed March 4, 1980. Applicant: GENERAL TRANSPORTATION, INC., 1804 S. 27th Ave., P.O. Box 6484, Phoenix, AZ 85005. Representative: D. Parker Crosby (same address as applicant.) Transporting (1) *construction materials* (except commodities in bulk), and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between the facilities of the Celotex Corporation, at or near Tracy, CA, on the one hand, and, on the other, those points in the United States in and west of MN, IA, MO, AR, and LA. (Hearing site: Phoenix, AZ, or Los Angeles, CA.)

MC 117786 (Sub-96F), filed March 4, 1980. Applicant: RILEY WHITTLE, INC., P.O. Box 19038, Phoenix, AZ 85005. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. Transporting *such commodities as are dealt in by chain grocery and food business houses* (except frozen commodities and commodities in bulk), (1) from Reno, NV, to Oakland and Fairfield, CA, (2) from Houston, TX, to points in LA and NM, (3) from Los Angeles, CA, to points in AZ, (4) from Oakland and Fairfield, CA, to points in OR and WA, and (5) from Kansas City, MO, to points in CO, restricted to the transportation of traffic originating at the facilities of The Clorox Company. (Hearing site: Phoenix, AZ.)

MC 117786 (Sub-99F), filed March 10, 1980. Applicant: RILEY WHITTLE, INC., P.O. Box 19038, Phoenix, AZ 85005. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. Transporting *such commodities as are dealt in by wholesale, retail and chain grocery and food business houses, and equipment, materials and supplies used in the conduct of such business* (except commodities in bulk), between points in GA, FL, IN, OH, CA, AZ, IL, MI, MO, AR, TX, TN, LA, KY, PA, VA and WV (Hearing site: Phoenix, AZ.)

MC 118776 (Sub-45F), filed February 25, 1980. Applicant: GULLY TRANSPORTATION, INC., 3820 Wisman Lane, Quincy, IL 62301. Representative: Herman W. Huber, 101 East High Street, Jefferson City, MO 65101. Transporting *paper bags*, from the facilities of the St. Regis Paper Co. at Quincy, IL to Mentone, IN, Rushville, IN, Montgomery City, MO and Janesville, WI. (Hearing site: St. Louis, MO, or Springfield, IL.)

MC 119767 (Sub-367F), filed February 25, 1980. Applicant: BEAVER TRANSPORT CO., 100 Waukegan Road, P.O. Box 1000, Lake Bluff, IL 60044. Representative: John R. Sims, Jr., 915 Pennsylvania Building, 425, 15th Street NW., Washington, DC 20004. Transporting (1) *alcoholic liquors*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of alcoholic liquors (except in bulk, in tank vehicles), (1) between Ft. Smith, AR on the one hand, and, on the other, points in the United States (except AK &

HI), (2) between Bardstown, KY, Louisville, KY on the one hand, and, on the other, points in AR, TN, IL, IN, MI, OH, NY, PA, WV, NC, SC, GA, FL, MN, MO, ND, SD, and WI, (3) between New Orleans, LA, on the one hand, and on the other, points in AZ, CA, NM, TX, OK, AR, MS, AL, GA,and FL, (4) between Plainfield, IL on the one hand, and, on the other, points in WI, MI, IN, MN, IA, MO, ND, SD, NE, KS, OK, MT, WY, CO, and NM, restricted to the transportation of traffic originating at or destined to the facilities of Hiram Walker & Sons, Inc. (Hearing site: Chicago, IL, or Washington, DC)

MC 119777 (Sub-466F), filed March 10, 1980. Applicant: LIGON SPECIALIZED HAULER, INC., Highway 85, East, Madisonville, KY 42431. Representative: Carl U. Hurst, P.O. Drawer "L" Madisonville, KY 42431. Transporting *lumber,* from Houston, TX, to points in NM, AZ, UT, ID, NV and CA. (Hearing site: Houston or Dallas, TX.)

MC 119777 (Sub-467F), filed March 10, 1980. Applicant: LIGON SPECIALIZED HAULER, INC., Highway 85, East, Madisonville, KY 42431. Representative: Carl U. Hurst, P.O. Drawer "L" Madisonville, KY 42431. Transporting *hardwood flooring,* from Magnolia, AR, to points in the U.S. (except AK and HI). (Hearing site: Little Rock AR, or Memphis, TN.)

MC 119777 (Sub-468F), filed March 10, 1980. applicant: LIGON SPECIALIZED HAULER, INC., Highway 85, East, Madisonville, KY 42431. Representative: Carl U. Hurst, P.O. Drawer "L" Madisonville, KY 42431. Transporting *iron and steel articles,* from Oklahoma City, OK, to points in the U.S. (except AK and HI). (Hearing site: Oklahoma City, OK.)

MC 121517 (Sub-14F), filed February 25, 1980. Applicant: ELLSWORTH MOTOR FREIGHT LINES, INC., P.O. Box 15627, Tulsa, OK 74112. Representative: Wilburn L. Williamson, suite 615 East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Transporting *barite,* in bulk, in tank vehicles, from points in Hot Springs County, AR and Washington County, MO, to points in KS, LA, OK, and TX. (Hearing site: Houston or Dallas, TX.)

MC 128007 (Sub-156F), filed March 4, 1980. Applicant: HOFER, INC., 20th and 69 Bypass, P.O. Box 583, Pittsburg, KS. Representative: William B. Barker, 641 Harrison Street, P.O. Box 1979, Topeka, KS 66601. Transporting (1) *aluminum dross and scrap,* (2) *materials and supplies* used in distribution of the commodities in (1) above, from points in AR, CO, IL, IN, IA, KY, LA, MI, MN, MO, NE, NM, OH, OK, TN, TX, and WI, to the facilities of Pittsburg Aluminum Recycling Company, Inc., at or near Pittsburg, KS; and (3) *aluminum ingots,* in the reverse direction. (Hearing site: Kansas City, MO.)

MC 129057 (Sub-5F), filed March 3, 1980. Applicant: ACADEMY MOVERS, INC., 421 West Sycamore, Junction City, KS 66441. Representative: Alan F. Wohlstetter, 1700 K Street, N.W., Washington, DC 20006. Transporting *used household goods,* between points in KS, restricted to the transportation of traffic having a prior or subsequent movement in containers, and further restricted to the performance of pickup and delivery service in connection with packing, crating and containerization or unpacking, uncrating and decontainerization of such traffic. (Hearing site: Junction City or Topeka, KS.)

MC 135326 (Sub-25F), filed March 4, 1980. Applicant: SOUTHERN GULF TRANSPORT, INC., P.O. Box 7959, 4277 N. Market Street., Shreveport, LA 71107. Representative: Hugh T. Matthews, 2340 Fidelity Union Tower, Dallas, TX 75210. Transporting (1) *building materials* (except commodities in bulk), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of building materials, (except commodities in bulk), between the facilities of Celotex Corporation, at (a) Birmingham, AL, on the one hand, and, on the other, points in AR, GA, KS, LA, MO, MS, OK, TN, and TX, (b) Camden and Texarkana, AR, on the one hand, and, on the other, points in AL, GA, KS, LA, MO, MS, OK, TN, and TX, (c) Houston and San Antonio, TX, on the one hand, and, on the other, points in AL, AR, GA, KS, LA, MO, MS, OK, and TN, (d) Memphis and Paris, TN, on the one hand, and, on the other, points in AL, AR, GA, KS, LA, MO, MS, OK, and TX, and (e) Marrero, LA, on the one hand, and, on the other, points in AL, AR, GA, KS, MO, MS, OK, TN, and TX. (Hearing site: Dallas, TX.)

MC 135797 (Sub-323F), filed March 11, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant (same address as applicant). Transporting *molding,* from Turlock, CA, to points in United States (except AK and HI). (Hearing site: San Francisco, CA, or Washington, DC.)

MC 136407 (Sub-32F), filed March 3, 1980. Applicant: COORS TRANSPORTATION CO., a corporation, 5101 York St., Denver, CO 80216. Representative: Leslie R. Kehl, 1660 Lincoln Street, Denver, CO 80264. *Contract carrier,* transporting (1) *such commodities* as are dealt in by grocery and food business houses, and (2) *commodities,* the transportation of which is otherwise exempt from economic regulation under 49 U.S.C. § 10526(a)(6), in mixed loads with the commodities in (1) above, from AR, CA, ID, IL, IA, MO, OR, TX, and WA, to points in CO, under continuing contract(s) with King Sooper Discount Division of Dillon, Co., Inc., of Denver, CO. (Hearing site: Denver, CO.)

MC 136786 (Sub-213F), filed March 10, 1980. Applicant: ROBCO TRANSPORTATION, INC., 4475 N.E. 3rd Street, Des Moines, IA 5033. Representative: Stanley C. Olsen, Jr., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. Transporting, *mulch,* from Mattoon, IL, to points, in the U.S. (except AK and HI), restricted to the transportation of traffic originating at the facilities of R. R. Donnelly & Sons Co. (Hearing site: Minneapolis, MN, or Chicago, IL.)

MC 136786 (Sub-214F), filed March 10, 1980. Applicant: ROBCO TRANSPORTATION, INC., 4475 N.E. 3rd Street, Des Moines, IA 50313. Representative: Stanley C. Olsen, Jr., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. Transporting (1) *foodstuffs,* (2) *materials, equipment and supplies* used in the manufacture and distribution of foodstuffs, and (3) *agricultural commodities,* the transportation of which is otherwise exempt from economic regulation under Section 10526(a)(6) of the Interstate Commerce Act, when moving in mixed loads with the commodities named in (1) and (2) above (except commodities in bulk and those requiring special equipment), between the facilities of Tenneco West, Inc., on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Minneapolis, MN, or Chicago, IL.)

MC 136786 (Sub-215F), filed March 10, 1980. Applicant: ROBCO TRANSPORTATION INC., 4475 N.E. 3rd Street, Des Moines, IA 50313. Representative: Stanley C. Olsen, Jr., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. Transporting (1) *malt beverages,* from points in Jefferson County, CO, to points in AR, ID, MT, TX, and WA, and (2) *empty beverage containers* and *materials and supplies* used in or dealt with by breweries, in the reverse direction. (Hearing site: Minneapolis, MN, or Chicago, IL.)

Note.—Dual Operations may be involved.

MC 136916 (Sub-22F), filed February 19, 1980. Applicant: LENAPE TRANSPORTATION CO., INC., P.O. Box 227, Lafayette, NJ 07848. Representative: Morton E. Kiel, Suite

1832, 2 World Trade Center, New York, NY 10048. Transporting *salt and salt products*, from the facilities of International Salt Co. in Retsof, NY to points in PA. (Hearing site: Scranton, PA, or Washington, DC.)

Note.—Dual Operations may be involved.

MC 138126 (Sub-44F), filed December 31, 1979, previously noticed in the **Federal Register** issue of March 27, 1980. Applicant: WILLIAMS REFRIGERATED EXPRESS, INC., Old Denton Road, P.O. Box 47, Federalsburg, MD 21632. Representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth Street, NW, Washingon, DC 20005. Transporting *such commodities as are dealt in by chain grocery stores and food business houses, and materials, equipment, and supplies* used in the manufacture and distribution of the aforementioned commodities (except commodities in bulk), between Omaha, NE, on the one hand, and, on the other, those points in the United States in and east of MN, IA, MO, AR, and LA, restricted to traffic originating at or destined to the facilities of Campbell Soup Company and its subsidiaries. (Hearing site: Washington, DC.)

Note.—The purpose of this republication is to include the subsidiaries of Campbell Soup Company.

MC 138157 (Sub-225F), filed February 20, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, P.O. Box 9596, Chattanooga, TN 37412. Representative: Patrick E. Quinn (same address as applicant). Transporting *paper and paper products*, from Kingsport, TN, to those points in the U.S. in and east of MN, IA, MO, AR, and MS. (Hearing site: Atlanta, GA.)

Note.—Dual operations may be involved.

MC 138157 (Sub-226F), filed February 22, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, P.O. Box 9596, Chattanooga, TN 37412. Representative: Patrick E. Quinn (same address as applicant). Transporting (1) *electronic equipment*, and (2) *materials, equipment, and supplies* used in the manufacture of electronic equipment, between Sunnyvale, CA, Wheeling, IL, Edison, NJ, and El Paso, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: San Francisco, CA.)

Note.—Dual operations may be involved.

MC 138157 (Sub-227F), filed February 25, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, P.O. Box 9596, Chattanooga, TN 37412. Representative: Patrick E. Quinn (same address as applicant). Transporting (1) *chemicals*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of chemicals (except commodities in bulk), between Chattanooga, TN, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Atlanta, GA.)

Note.—Dual operations may be involved.

MC 138157 (Sub-228F), filed February 26, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, P.O. Box 9596, Chattanooga, TN 37412. Representative: Patrick E. Quinn (same address as applicant). Transporting *carpeting*, from Columbus, GA, to points in the U.S. (except AK and HI). (Hearing site: Atlanta, GA.)

Note.—Dual operations may be involved.

MC 141747 (Sub-9F), filed February 19, 1980. Applicant: DONALD ENGLE AND JAMES ENGLE, d.b.a. ENGLE BROTHERS FARMS, Rural Route No. 1, Rector, AR 72461. Representative: Don Garrison, P.O. Box 1065, Fayettesville, AR 72701. Transporting (1) *dry fertilizer*, between points in AL, AR, IL, IN, KY, LA, MO, MS, OK, and TN, (2) *dry fertilizer*, in bulk, from Friars Point and New Albany, MS, to points in AL, AR, KY, LA, MO, and TN, (3) *urea*, from Memphis, TN, to points in AL, AR, IL, IN, KS, KY, LA, MS, MO, OK, and TX, (4) *dry fertilizer*, from Memphis, TN, to points in AL, AR, IL, KY, MO, and MS, (5) *fertilizer and fertilizer materials*, between Walnut Ridge, AR, Birmingham, AL, Lakeland, FL, Macon, GA, Humboldt, IA, Garden City, KS, Bowling Green, KY, Columbia, MO, Pascagoula, MS, Grand Island, NE, Lavergne, TN and Farwell, TX, on the one hand, and, on the other, points in AL, AR, FL, GA, IA, KS, KY, MO, MS, NE, TN, and TX, and (6) *animal, fish and poultry feed, feed ingredients, insecticides, fungicides and animal medicines and health products*, between Memphis, TN, on the one hand, and, on the other points in AR, IL, MO, OK, TN, and TX on the other points in AR, IL, MO, OK, TN, and TX. (Hearing site: Memphis, TN, or Atlanta, GA.)

MC 143246 (Sub-9F), filed February 25, 1980. Applicant: LAND TRANSPORT CORP, 24 Sabrina Road, Wellesley, MA 02181. Representative: James E. Mahoney, 148 State Street, Boston, MA 02109. *Contract carrier* transporting (1) *such commodities* as are dealt in or used by drug, discount and department stores, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk, in tank vehicles), between the facilities of Automatic Radio Manufacturing Co., Inc., at points in MA, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) in (1) and (2) above with Automatic Radio Manufacturing Co., Inc., of Melrose, MA. (Hearing site: Boston, MA, or Providence, RI).

MC 144557 (Sub-17F), filed March 10, 1980. Applicant: HUDSON TRANSPORTATION, INC., Post Office Box 847, Troy, AL 36081. Representative: William P. Jackson, Jr., 3426 N. Washington Boulevard, Post Office Box 1240, Arlington, VA 22210. Transporting *such commodities* as are manufactured or dealt in by wholesale and retail chain and grocery houses (except in bulk), between the facilities of Hudson Industries, Inc., at or near Lexington, NC, on the one hand, and, on the other, points in the U.S. (except AK and HI). (Hearing site: Birmingham, AL)

MC 147677 (Sub-2F), filed July 24, 1979, previously noticed in the **Federal Register** issue of March 18, 1980. Applicant: J & L TRUCK LINES, INC., 620 West 2d Street, Odessa, TX 79760. Representative: Joe L. White (same address as applicant). Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Odessa, TX and Artesia, NM, serving all intermediate points in NM, including the off-route points of Monument and Oil Center, NM: from Odessa over U.S. Hwy 385 to Andrews, TX, then over TX Hwy 176 to junction NM Hwy 18, then over NM Hwy 18 to junction U.S. Hwy 82, then over U.S. Hwy 82 to Artesia, and return over the same route, and (2) between Odessa, TX and Artesia, NM, serving all intermediate points in NM: from Odessa over TX Hwy 302 to juction TX Hwy 18, then over TX Hwy 18 to junction U.S. Hwys 62 and 180 then over U.S. Hwys 62 and 180 to junction U.S. Hwy 285, then over U.S. Hwy 285 to Artesia, and return over the same route. (Hearing site: Odessa, TX, or Hobbs, NM)

Note.—The purpose of this republication is to properly describe the territorial description in (2) above.

MC 148076 (Sub-1F), filed July 7, 1979. Applicant: RICHARD LIGHT, d.b.a. PRONTO PARCEL, 145 Palisade Sreet, Dobbs Ferry, NY 10522. Representative: Michael R. Warner, 167 Fairfield, Road, P.O. Box 1409, Fairfield, NJ 07006. *Contract carrier*, transporting (1) *printed materials*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of printed materials, between points in Putnam and

Westchester Counties, NY, on the one hand, and, on the other, points in CT, DE, MA, ME, NH, NJ, PA, RI, and VT, under continuing contract(s) in (1) and (2) above with Currie Litho, of Paterson, NY, Hodes-Daniel, of Elmsford, NY, and Transkirt Corporation, of Elmsford, NY. (Hearing site: New York, NY)

MC 148137 (Sub-2F), filed February 19, 1980. Applicant: STANTON SALES & TRANSPORTATION CO., 11135 S. W. Industrial Way, Tualatin, OR 97602. Representative: Thomas Y. Higashi, 2075 S.W. First Avenue No. 2–N, Portland, OR 97201. *Contract carrier,* transporting (1) *new mattresses, beds, bed springs, and* (2) *such commodities* as are used in the manufacture and sale of bedding, between the facilities of Van Vorst-Englander, at or near (a) Los Angeles, CA and points in AZ, CO, ID, MT, NM, NV, OK, OR, TX, UT, and WA, (b) Denver, CO, and points in AZ, CA, ID, MT, NM, NV, OK, OR, TX, UT, and WA, (c) Dallas and Houston, TX, and points in AZ, CA, CO, ID, MT, NM, NV, OK, OR, UT, and WA, (d) Seattle, WA, and points in AZ, CA, CO, ID, MT, NM, NV, OK, OR, UT and TX, under continuing contract(s) with Van Vorst-Englander, of Seattle, WA. (Hearing site: Seattle, WA)

MC 149206 (Sub-1F), filed March 10, 1980. Applicant: BREWTON EXPRESS, INC., P.O. Box 508, Winnfield, LA 71483. Representative: Brian E. Brewton (same address as applicant). Transporting *iron and steel articles,* from the facilities of Northwestern Steel and Wire Company, at or near Sterling and Rock Falls, IL, to points in AL, AR, AZ, CA, ID, LA, MS, NM, NV, OK, OR, TX, UT, and WA. (Hearing site: Chicago, IL, or Washington, DC.)

MC 150077 (Sub-1F), filed February 12, 1980. Applicant: LYN TRANSPORT, INC., 37 North Central Avenue, Elmsford, NY 10532. Representative: Bruce J. Robbins, 118–21 Queens Boulevard, Forest Hills, NY 11375. *Contract carrier,* transporting *meats, meat products, meat by-products and articles distributed by meat packinghouses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), in vehicles equipped with mechanical refrigeration, from Muncie and Indianapolis, IN, to points in the U.S. in and east of MI, IN, KY, TN and AL, under continuing contract(s) with Meadow Meats, Inc., of Muncie, IN. (Hearing site: New York, NY.)

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Decided: April 2, 1980.

By the Commission, Review Board Number 2, Members Eaton, Liberman and Jensen. Member Jensen not participating.

MC 21866 (Sub-124F), filed July 6, 1979, previously noticed in the **Federal Register** issue of March 6, 1980, and republished this issue. Applicant: WEST MOTOR FREIGHT, INC., 740 South Reading Avenue, Boyertown, PA 19512. Representative: Alan Kahn, 1920 Two Penn Center Plaza, Philadelphia, PA 19103. Transporting (1) *steel valves,* from the facilities of Mosser Industries, Inc., at Allentown and Emmaus, PA, to points in the United States (except AK and HI), and (2) *materials* used in the manufacture of steel valves (except in bulk), from points in CT, NC, OH, and VA, to the facilities of Mosser Industries, Inc., at Allentown and Emmaus, PA. (Hearing site: Washington, DC, or Philadelphia, PA.)

Note.—The purpose of this republication is to correctly state the commodity description in Part (2).

MC 119787 (Sub-9F), filed October 19, 1979, and previously noticed in the **Federal Register** issue of March 14, 1980, and republished this issue. Applicant: F. W. GROVES TRUCKING COMPANY, a corporation, Route 4, Box 89, Leland, NC 28451. Representative: Ralph McDonald, P.O. Box 2246, Raleigh, NC 27602. Transporting *forest products, lumber, lumber products, poles, pilings, and fence posts,* between the facilities of The Burke-Parsons-Bowlby Corporation, at Leland, NC, on the one hand, and, on the other, points in NC, SC, GA, AL, MS, OH, DE, PA, TN, VA, WV, CT, IN, KY, MD, MI, NJ, NY, RI, MA, VT, ME, NH, FL, and DC. (Hearing site: Wilmington, NC.)

Note.—The purpose of this republication is to correctly state the territorial description.

MC 139457 (Sub-24F), filed February 21, 1980. Applicant: G. L. SKIDMORE d.b.a. JELLY SKIDMORE TRUCKING CO., P.O. Box 38, Paris, TX 75460. Representative: Paul D. Angenend, P.O. Box 2207, Austin, TX 78768. *Contract carrier,* transporting (1) *canned and preserved foodstuffs,* and (2) *animal food,* in containers, from the facilities of Campbell Soup (Texas) Inc., at or near Paris, TX, to Napoleon, OH and those points in IN on and south of U.S. Hwy 50, under continuing contract(s) with Campbell Soup, Inc., of Paris, TX. (Hearing site: Dallas, TX, or Washington, DC.)

MC 140717 (Sub-25F), filed June 29, 1979, previously noticed in the **Federal Register** issue of March 6, 1980, and republished as corrected this issue. Applicant: JULIAN MARTIN, INC., Highway 25 West, P.O. Box 3348, Batesville, AR. Representative: Theodore Polydoroff, suite 301, 1307 Dolley Madison Boulevard, McLean, VA 22101. *Contract carrier,* transporting *foodstuffs* (except commodities in bulk), between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Swift and Company, and under continuing contract(s) with Swift and Company, of Chicago, IL. (Hearing site: Washington, DC.)

Note.—The purpose of this republication is to correctly reflect the territorial description. Dual operations may be involved.

MC 141187 (Sub-11F), filed February 19, 1980. Applicant: BLUFF CITY TRANSPORTATION, INC., 3359 Cazassa Road, P.O. Box 18391, Memphis, TN 38116. Representative: Roger A. Graul, 200 Gateway Bank Building, 61st and O Street, P.O. Box 80693, Lincoln, NE 68501. *Contract carrier,* transporting (1) *vinyl plastic and vinyl plastic products,* (2) and *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between the facilities of Intex Corporation, at or near (a) Corinth, MS, and (b) Gardena and Long Beach, CA, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Intex Corporation, of Long Beach, CA.) (Hearing site: Memphis, TN, or Los Angeles, CA.)

Note.—Dual operations may be involved.

MC 141396 (Sub-9F), filed February 20, 1980. Applicant: DELP, INC., Highway 71 South, P.O. Box 369, Springdale, AR 72764. Representative: Stanley W. Ludwig, P.O. Box 285, 529 South Holcomb Street, Springdale, AR 72764. Transporting *canned and preserved foodstuffs,* and *frozen foodstuffs,* (1) from the facilities of Allen Canning Company, at or near (a) Oak Grove, LA, and (b) Moorehead, MS, (c) points in Sebastina, Benton, Washington, and Crawford Counties, AR, and (d) in Haskell and Adair Counties, OK, and the facilities of Stilwell Foods, Inc., at or near Stilwell, OK, to points in AL, AR, FL, GA, IL, IN, IA, LA, MN, MS, NE, NC, ND, SC, SD, TX, and WI, and (2) from the facilities of Rio Grande Foods, at or near McAllen, TX, to Johnson, AR, and Tulsa and Stilwell, OK. (Hearing site: Little Rock, AR, or Tulsa, OK.)

MC 141767 (Sub-4F), filed February 21, 1980. Applicant: HARRIS EXPRESS CO., INC., 41 Cedar Street, East Hartford, CT 06108. Representative: John E. Fay, 630 Oakwood Avenue, suite 127, West Hartford, CT 06110. *Contract carrier,* transporting *silica sand and silica sand products,* between points in CT, MA,

NH, RI, VT, ME, NY, NJ, PA, DE, VA, WV, NC, SC, IL, IN, IA, MI, KY, OH, and MD, under continuing contract(s) with Ottawa Silica Company, of Ottawa, IL. (Hearing site: Hartford, CT.)

MC 142157 (Sub-3F), filed February 19, 1980. Applicant: LOBIANCO TRUCKING CO., INC., R.D. 22 (Crone Road), York, PA 17402. Representative: Paul F. Sullivan, 711 Washington Building, Washington, DC 20005. Transporting *trailers and trailer parts,* from the facilities of Bush-Hog Loadcraft, Division of Allied Products, at or near Brady, TX, to points in ME, NH, VT, MA, CN, RI, NY, PA, OH, WV, NJ, DE, MD, VA, FL, NC, SC, GA, AL, and DC. (Hearing site: Washington, DC.)

MC 142757 (Sub-6F), filed February 19, 1980. Applicant: ROBERTSON TRUCKING, INC., P.O. Box 100, Elkhart, KS 67950. Representative: Clyde N. Christey, Kansas Credit Union Building, 1010 Tyler, suite 110L, Topeka, KS 66612. Transporting *liquid fertilizer solutions,* from points in Finney County, KS, to points in CO, OK, and TX. (Hearing site: Kansas City, MO.)

MC 143127 (Sub-68F), filed February 28, 1980. Applicant: K. J. TRANSPORTATION, INC., 6070 Collett Road, Victor, NY 14564. Representative: Linda A. Calvo (same address as applicant). Transporting *sugar* (except in bulk), from the facilities of National Sugar Refining Company, at Philadelphia, PA, to points in CT, MA, MI, NY, and OH. (Hearing site: Philadelphia, PA, or Buffalo, NY.)

Note.—Dual operations may be involved.

MC 143267 (Sub-106F), filed February 22, 1980. Applicant: CARLTON ENTERPRISES, INC., P.O. Box 520, Mantua, OH 44255. Representative: Neal A. Jackson, 1156 15th Street N.W., Washington, DC 20005. Transporting *pipe, pipe fittings, valves, and hydrants,* from Litchfield and Springfield, IL, and Booneville, MS, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Cleveland, OH, or Washington, DC.)

MC 143427 (Sub-3F), filed December 4, 1979. Applicant: WINSTON LIMOUSINE SERVICE, INC., 1650 Sycamore Avenue, Bohemia, NY 11716. Representative: Sidney J. Leshin, Esq., 575 Madison Avenue, New York, NY 10022. Transporting *passengers and their baggage,* limited to the transportation of not more than eleven (11) passengers in any one vehicle (excluding the driver), special non scheduled door-to-door service, between points in Orange and Rockland Counties, NY, on the one hand, and, on the other, Newark, NJ, and New York, NY, restricted to passengers having an immediately prior or subsequent movement by air or water. (Hearing site: New York, NY, or Newark, NJ.)

MC 143867 (Sub-2F), filed February 21, 1980. Applicant: SINGER CONTRACTING COMPANY, INC., P.O. Box 218, Lumpkin, GA 31815. Representative: Ralph B. Matthews, P.O. Box 872, Atlanta, GA 30301. Transporting *wood residuals,* (1) from points in Muscogee, Harris, Talbot, Marion, Schley, Quitman, Clay, and Sumter Counties, GA to points in Barbour, Henry, and Russell Counties, AL, and (2) from points in Russell County, AL, to points in Dooly, Dougherty, and Macon Counties, GA. (Hearing site: Columbus, GA.)

MC 143876 (Sub-2F), filed February 26, 1980. Applicant: CURLY'S DELIVERY SERVICE, INC., P.O. Box 238, Swisher, IA 52338. Representative: C. J. Cacioppo (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the United States (except AK and HI), restricted to traffic originating at and destined to the facilities of Ardan Wholesale Co. (Hearing site: Des Moines, IA.)

MC 145267 (Sub-7F), filed August 7, 1979. Applicant: CAMPBELL TRANSPORT, INC., P.O. Box 386, Vineland, NJ 08360. Representative: Mark D. Russell, suite 348, Pennsylvania Building, 425 13th Street NW., Washington, DC 20004. *Contract carrier,* transporting (1) *drugs and toilet preparations,* and (2) *materials and supplies* used in the manufacture and distribution of the commodities named in (1) above, between Elkhart, IN, Forest Park, GA, Dallas, TX, and points in Fairfield County, CT, those in DE and MD (except Garrett and Allegany Counties), those in NY in and south of Dutchess, Ulster and Sullivan Counties, those in PA in and east of Wayne, Lackawanna, Wyoming, Sullivan, Lycoming, Union, Snyder, Juniata, Perry, and Franklin Counties, and those in VA in and east of Loudoun, Prince William, Stafford, King George, Westmoreland, Richmond, Lancaster, and Accomack Counties, under continuing contract(s) with Whitehall Laboratories, of New York, NY. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 145337 (Sub-8F), filed November 1, 1979. Applicant: P.M.E., LTD., P.O. Box 181, Group 261, R.R. 2, Winnipeg, Manitoba, Canada R3C 2E6. Representative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108. In foreign commerce only, transporting (1) *fruit juice and fruit juice concentrate,* and (2) *commodities,* the transportation of which is otherwise exempt from economic regulation under 49 U.S.C. § 10526(a)(6), in mixed loads with the commodites in (1) above, from points in FL, to the ports of entry on the international boundary line between the United States and Canada at points in MN and ND. (Hearing site: Fargo, ND.)

Note.—Dual operations may be involved.

MC 145577 (Sub-25F), filed February 21, 1980. Applicant: GULLETT-GOULD, LTD., P.O. Box 406, Union City, IN 47390. Representative: Jerry B. Sellman, 50 West Broad Street, Columbus, OH 43215. Transporting (1) *Compressors,* and *evaporator coils,* from Fosteria, Sidney, Wapokeneta and West Union, OH, Rushville, IN, and Hartselle, AL, to points in CA, AZ, NM, TX, CO, AR, IA, and MN, and (2) *used compressors,* in the reverse direction. (Hearing sites: Columbus, OH or Washington, DC.)

MC 146927 (Sub-6F), filed January 18, 1980. Applicant: DIXIE TRANSPORT, INC., P.O. Box 1126, Hattiesburg, MS 39401. Representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1240, Arlington, VA 22210. Transporting *paper and paper products,* from the facilities of American Can Company, at or near (a) Naheola and Livingston, AL and (b) Meridian, MS, to points in FL, GA, TN, MS, LA, AR, and TX. (Hearing site: Washington, DC.)

MC 147136 (Sub-6F), filed February 19, 1980. Applicant: TOMORROW TRANSPORTS, INC., 1257 Central Avenue., Hamilton, OH 45011. Representative: Jerry B. Sellman, 50 West Board Street, Columbus, OH 43215. Transporting *valves,* from Cincinnati and Wadsworth, OH, to points in CA and TX. (Hearing site: Columbus, OH, or Washington, DC.)

Note.—Dual operations may be involved.

MC 147196 (Sub-2F), filed September 11, 1979. Applicant: ECONOMY TRANSPORT, INC., 1338 Gause Boulevard, Slidell, LA 70458. Representative: Fletcher W. Cochran (same address as applicant). Transporting *paper and paper products,* from the facilities of Crown Zellerbach Corporation, at Bogalusa and Zee, LA, to points in AL, AR, DE, FL, GA, IL, IN, KS, KY, MD, MI, MN, MS, MO, NJ, NY, NC, OH, OK, PA, SC, TN, TX, VA, WV and WI, under continuing contract(s) with Crown Zellerbach Corporation. (Hearing site: New Orleans, or Baton Rouge, LA.)

MC 147257 (Sub-2F), filed February 20, 1980. Applicant: CHILD BROS., INC., 5

Blayne Avenue, Dixfield, ME 04224. Representative: Eugene Child. *Contract carrier,* transporting *coal,* in bulk, in dump vehicles, (1) from Westbrook and Winslow, ME, to Jackman, ME, (2) from Portland and Bath, ME, to points in ME, and (3) from W. Springfield, MA, to points in MA, NH, CT, NY and VT, under continuing contract(s) with Zielinski Brothers, of Agawam, MA. (Hearing site: Portland, ME or Boston, MA.)

MC 147337F, filed June 1, 1979. Applicant: RYAN EXPEDITING SERVICE, INC., 34148 Schulte, Farmington, MI 48024. Representative: Alex J. Miller, 1520 North Woodward Avenue, Suite 106, Bloomfield, MI 48013. Transporting *general commodities* (except those of unusual value, classes A and B explosives, and commodities in bulk), (1) between those points in MI on and south of a line beginning at Ludington, MI, and extending along U.S. Hwy 10 to junction U.S. Hwy 27, then along U.S. Hwy 27 to junction MI Hwy 61, then along MI Hwy 61 to junction U.S. Hwy 23, and then along U.S. Hwy 23 to Au Gres, MI, on the one hand, and, on the other, points in IN, OH, Madison, WI, those in WI on, south and east of a line beginning at Milwaukee, WI, and extending along Interstate Hwy 94 to junction U.S. Hwy 51, and then along U.S. Hwy 51 to the WI–IL state line, those in IL on, east, and north of a line beginning at the WI–IL state line and extending along IL Hwy 78 to junction U.S. Hwy 36, and then along U.S. Hwy 36 to the IL–IN state line, those in KY on and north of U.S. Hwy 64, those in Jefferson and Fayette Counties, WV, those in PA on and west of a line beginning at the WV–PA state line and extending along Interstate Hwy 70 to junction PA Turnpike, then over PA Turnpike to junction Interstate Hwy 79, then along Interstate Hwy 79 to junction Interstate Hwy 90, and then over Interstate Hwy 90 to the PA–NY state line, and those in NY on and west of a line beginning at the PA–NY state line and extending along HY Hwy 16 to junction NY Hwy 98 to Lake Ontario. (Hearing site: Detroit or Lansing, MI.)

MC 147366 (Sub-2F), filed October 2, 1979. Applicant: LEAVITT TRUCKING, INC., 1905 Covina Dr., Sparks, NV 89431. Representative: Michael W. Dyer, P.O. Box 20145, Reno, NV 89515. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), (1) over regular routes, between Reno and Carson City, NV, over U.S. Hwy 395, serving all intermediate points, and (2) over irregular routes, between points in Washoe, Carson City, Douglas, Story, and Lyon Counties, NV. (Hearing site: Carson City or Reno, NV.)

MC 147527 (Sub-2F), filed February 15, 1980. Applicant: GERALD MUELLER d.b.a. GERALD MUELLER TRUCKING, Box 115, Taylor Ridge, IL 61284. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. *Contract carrier,* transporting (1) *waste paper,* from Rock Island, IL, to Fort Madison, IA, and (2) *rolled paper,* in the reverse direction, under continuing contract(s) with Miller Container Corporation. (Hearing site: Chicago, IL.)

MC 147926 (Sub-1F), filed July 27, 1979, previously noticed in the **Federal Register** issue of February 26, 1980, as MC 147675 (Sub-1F), and republished as corrected this issue. Applicant: DICKERHOFF TRUCKING, INC., P.O. Box 116, Mentone, IN 46539. Representative: Robert A. Kriscunas, 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting (1) *animal and poultry feeding and ventilation equipment,* and (2) *parts* for the commodities in (1) above, from the facilities of C.T.B. Corporation, at (a) Milford, IN, (b) Watkinsville, GA, and (c) Decatur, AL, to points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, MD, ME, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VT, VA, WV, WI, and DC. (Hearing site: Indianapolis, IN, or Chicago, IL.)

Note.—The purpose of this republication is to correct the carrier's docket number.

MC 148817 (Sub-2F), filed February 21, 1980. Applicant: BALL MOTOR LINE, INC., P.O. Box 665, Plymouth, FL 42768. Representative: Timothy C. Miller, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. *Contract carrier,* transporting *electronic equipment, and components* for electronic equipment, from Hebron, OH, to De Leon Springs, FL, and Brownstown, IN, under continuing contract(s) with Spartan Electronics Florida, Inc., a Division of Spartan Corporation, of De Leon Springs, FL. (Hearing site: Jacksonville, FL, or Washington, DC.)

MC 148866 (Sub-2F), filed February 19, 1980. Applicant: GILBERT F. & RAYMOND L. GUSTAFSON, d.b.a. G & R GUSTAFSON TRANSPORT CO., 102 North Griffin St., Grant Park, IL 60940. Representative: Abraham A. Diamond, 29 South La Salle St., Chicago, IL 60603. Transporting (1) *plastic articles,* and *paper and paper products,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between the facilities of Malanco, Inc., and Malanco Plastics, Inc., at or near Chicago and Grant Park, IL, on the one hand, and, on the other, points in IN, IA, KY, MI, MO, OH, and WI. (Hearing site: Chicago, IL.)

MC 149026 (Sub-5F) filed December 27, 1979. Applicant: TRANS-STATES LINES, INC., 2604 Industrial Park Road, Van Buren, AR 72956. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood, Fort Smith, AR 72902. Transporting (1) *new furniture,* from Fort Smith, AR, to points in the United States (except AK and HI), (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities named in (1) above (except commodities in bulk), in the reverse direction, and (3) *rough lumber,* from points in the United States (except AK and HI) to Russellville, AR. Condition: The person or persons who appear to be in common control of applicant and other regulated carriers must either file an application for approval of common control under 49 U.S.C. § 11343, or submit an affidavit indicating why such approval is unnecessary. (Hearing site: Fort Smith, AR or Washington, DC.)

MC 149047 (Sub-3F), filed February 6, 1980. Applicant: BENNY MAGNESS, d.b.a. MAGNESS OIL COMPANY, P.O. Box 146, Cotter, AR 72626. Representative: James M. Duckett, 927 Pyramid Life Bldg., Little Rock, AR 72201. Transporting *gasoline, diesel fuel, aviation fuel, and kerosene,* in bulk, in tank vehicles,from points in Shelby County, TN, to points in Carroll, Boone, Marion, Baxter, Izard, Searcy, Independence, and Stone Counties, AR. Conditions: (1) Applicant shall maintain separate accounts and records for his for-hire carrier operations as distinct from his other business activities, and (2) he shall not at the same time and in the same vehicle transport property both as a private carrier and as a for-hire carrier. (Hearing site: Little Rock, AR.)

MC 149066F, filed December 10, 1979. Applicant: AUBURN D. ARD, Star Rt. Box 13, Chipley, FL 32428. Representative: Auburn D. Ard (same address as applicant). *Contract carrier,* transporting *dry inorganic fertilizer,* from the facilities of (1) Swift Fertilizer Co., at Dothan, AL, (2) Pelham Phosphate Co, at Pelham, GA, and (3) Kaiser Chemical Co., at Bainbridge, GA, to the facilities of Craven Farm Center at Chipley, FL, under continuing contract(s) with Craven Farm Center, of Chipley, FL. (Hearing site: Chipley or Marianna, FL.)

MC 149206 (Sub-2F), filed January 24, 1980. Applicant: BREWTON EXPRESS, INC., P.O. Box 508, Winnfield, LA 71483. Representative: Brian E. Brewton (same address as applicant). Transporting (1) *iron and steel articles, and pipe,* from

Conroe, TX, to points in the United States (including AK, but excluding HI), and (2) *materials, equipment, and supplies* used in the manufacture or distribution of the commodities in (1) above, in the reversed direction. (Hearing site: Ft. Worth or Houston, TX).

Note.—Dual operations may be involved.

MC 149216 (Sub-2F), filed January 28, 1980. Applicant: MAINE TRUCKING, INC., 67 Andrew St., Newton Highlands, MA 02161. Representative: James E. Mahoney, 148 State St., Boxton, MA 02109. *Contract carrier,* transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses,* as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), between the facilities of Wellington Cold Storage and Warehouse Corporation, in MA, on the one hand, and, on the other, those points in the United States in and east of MN, IA, MO, AR and LA, under continuing contract(s) with Wellington cold storage and Warehouse Corporation, of Medford, MA. (Hearing site: Boston, MA, or Providence, RI.)

MC 149316F, filed August 6, 1979. Applicant: ALCO MARINE AGENTS, INC., 875 W. 19th St., Hialeah, FL 33010. Representative: Bernard C. Pestcoe, Suite 511, 19 West Flagler St., Miami, FL 33010. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in Dade, Broward, and Palm Beach Counties, FL, restricted to traffic having a prior or subsequent movement by water. (Hearing site: Miami, FL, or Washington, DC.)

MC 149376F, filed January 18, 1980. Applicant: BURKS TRUCKING, INC., P.O. Box 37, Old Fort, OH 44861. Representative: E. H. Van Deusen, P.O. Box 97, 220 West Bridge St., Dublin, OH 43017. *Contract carrier,* transporting *used mining and minerals processing equipment,* between points in the United States (except AK and HI), under continuing contract(s) with Universal Equipment Company, of Fremont, OH. (Hearing site: Columbus, OH.)

MC 149377F, filed February 25, 1980. Applicant: WARRENVILLE CARTAGE CO., INC., 5500 W. 47th St., Chicago, IL 60638. Representative: James R. Madler, 120 W. Madison St., Chicago, IL 60602. Transporting *such commodities* as are dealt in or used by grocery, drug, and food business houses, between the facilities of Armour-Dial, Inc., at Montgomery, IL, on the one hand, and, on the other, points in IN and MI. (Hearing site: Chicago, IL.)

MC 149377 (Sub-1F), filed February 25, 1980. Applicant: WARRENVILLE CARTAGE CO., INC., 5500 W. 47th St., Chicago, IL 60638. Representative: James R. Madler, 120 W. Madison St., Chicago, IL 60602. Transporting *chemicals,* in bulk, between the facilities of Lake River Corporation, at Chicago, IL, on the one hand, and, on the other, points in IN and MI. (Hearing site: Chicago, IL.)

MC 149397F, filed October 4, 1979. Applicant: HELEN REAGAN, d.b.a. SOUTHEAST TRUCKING COMPANY, 8418 Tallmadge Rd., Ravenna, OH 44266. Representative: William P. Jackson, Jr., 3426 N. Washington, Blvd., P.O. Box 1240, Arlington, VA 22210. Transporting (1) *dock levelers,* (a) from the facilities of Rite Hite Corp., at or near Clare, MI, to those points in OH on and north of U.S. Hwy 40, those points in Franklin, Muskingum, Madison and Clark Counties, OH, south of U.S. Hwy 40, and those in Fairfield, Perry, and Pickaway Counties, OH, and (b) from the facilities of Rite Hite Corp., at or near Cudahy, WI, to those points in OH on, north, and east of a line beginning at the WV-OH State line and extending along U.S. Hwy 40 to junction U.S. Hwy 23, and then along U.S. Hwy 23 to the OH-MI State line, (2) *such commodities* as are dealt in or used by a manufacturer of (a) construction materials, (b) clay products, and (c) cement products, from the facilities of Universal Sewer Pipe Company, at or near Mogadore, OH, to points in IN, IL, KY, MN, IA, MI, WV, PA, NY, MD, NJ, DE, and DC, (3) *reinforcing wire and reinforcing wire fabric,* (a) from points in DE, IL, IN, IA, KY, MD, MI, MN, NJ, NY, OH, PA, WV, and DC, to the facilities of Universal Sewer Pipe Company, at or near Mogadore, OH, and the facilities of United States Concrete Pipe Company, at or near (i) Palmyra, Uhrichsville, and Newton, OH, (ii) Portage, MI, (iii) Croydon and Oakdale, PA, and (iv) Relay, MD, and (b) between the facilities named in (3)(a) above, (4) *equipment* used in the manufacture of concrete pipe, (a) between points in DE, IL, IN, IA, KY, MD, MI, MN, NJ, NY, OH, PA, WV, and DC, on the one hand, and, on the other, the facilities of Universal Sewer Pipe Company, at or near Mogadore, OH, and the facilities of United States Concrete Pipe Company, at or near (i) Mogadore, Palmyra, Uhrichsville, and Newton, OH, (ii) Portage, MI, and (iii) Croydon and Oakdale, PA, and (b) between the facilities named in (4)(a) above, and (5)(a) *such commodities* as are dealt in or used by a manufacturer of construction materials and supplies, and (b) *materials, equipment, and supplies* used in the installation of the commodities in (5)(a) above, from the facilities of United States Concrete Pipe Company in Palmyra Township, OH, to points in DE, MI, MD, NJ, NY, PA, WV, and DC. Condition: Applicant states that by this application she seeks to convert her existing authority in Permit No. MC 127527 to a certificate of public convenience and necessity. Issuance of a certificate in this proceeding is conditioned upon applicant's written request for the coincidental cancellation of her existing permits. (Hearing site: Washington, DC.)

MC 150096 (Sub-1F), filed February 19, 1980. Applicant: GLENDALE TRUCKING CORP., 69–44 Cooper Ave., Glendale, NY 11385. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *Contract carrier,* transporting *paper and paper products,* and *plastic and plastic products,* between NY, on the one hand, and, on the other, points in CT, IL, IN, KY, MA, NJ, OH, PA, and RI, under continuing contract(s) with Equitable Bag Co., Inc., of Long Island City, NY. (Hearing site: New York, NY, or Washington, DC.)

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Decided: April 18, 1980.

By the Commission, Review Board No. 1, Members Carleton, Joyce and Jones.

MC 730 (Sub-493F), filed February 25, 1980. Applicant: PACIFIC INTERMOUNTAIN EXPRESS CO., a corporation, 25 No. Via Monte, Walnut Creek, CA 94595. Representative: E. E. Reddick (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Jessop Steel Company, at Washington, PA, as an off-route point in connection with applicant's otherwise authorized regular-route operations. (Hearing site: Pittsburgh, PA, or Washington, DC.)

MC 61440 (Sub-187F), filed September 4, 1979. Applicant: LEE WAY MOTOR FREIGHT, INC., 3401 N.W. 63rd St., Oklahoma City, OK 73116. Representative: Richard H. Champlin, P.O. Box 12750, Oklahoma City, OK 73157. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special

equipment), between Nashville, TN, and Denver, CO, from Nashville over Interstate Hwy 24 to junction Interstate Hwy 57, then over Interstate Hwy 57 to junction Interstate Hwy 64, the over Interstate Hwy 64 to St. Louis, MO, then over Interstate Hwy 70 to Denver, CO, and return over the same route, serving the intermediate points of St. Louis, MO and Kansas City, MO, restricted against the transportation of traffic originating at or destined to Nashville, TN, or St. Louis, MO. (Hearing site: Oklahoma City, OK, or Washington, DC.)

Note.—Applicant intends to tack with its existing authority at Nashville, TN.

MC 106401 (Sub-71F), filed September 17, 1979. Applicant: JOHNSON MOTOR LINES, INC., P.O. Box 31577, Charlotte, NC 28231. Representative: Roger W. Rash (same address as applicant). Over regular routes, transporting (A) *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Columbus, GA, and Opelika, AL, over US Hwy 280, serving all points in Russell County, AL, as intermediate or off-route points, (2) between Columbus, GA, and the junction of US Hwys 80 and 11, near Cuba, AL, over US Hwy 80, serving all points in Russell County, AL, as intermediate or off-route points, serving Montgomery, AL, as an intermediate point, and serving the junction of US Hwys 80 and 11 for purpose of joinder only, (3) between Dawson, GA, and Montgomery, AL, over US Hwy 82, serving all intermediate points in GA, (4) between Thomasville, GA, and Opp, AL, over US Hwy 84, serving all intermediate points in GA, (5) between Arlington, GA, and Dothan, AL, from Arlington over GA Hwy 62 to the GA–AL State line, then over AL Hwy 52 to Dothan, and return over the same route, serving all intermediate points in GA, and serving Dothan for the purpose of joinder only, (6) between Rome, GA, and the junction of US Hwys 411 and 78 near Brompton, AL, over US Hwy 411, serving all intermediate points in GA, and serving the junction of US Hwys 411 and 78 for the purpose of joinder only, (7) between Rome, GA, and Birmingham, AL, from Rome over US Hwy 27 to junction US Hwy 278 at Cedartown, GA, then over US Hwy 278 to junction Interstate Hwy 59 at Gadsden, AL, then over Interstate Hwy 59 to Birmingham, and return over the same route, serving all intermediate points in GA, and serving Birmingham for purpose of joinder only, (B) *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Atlanta and Columbus, GA, from Atlanta over Interstate Hwy 85 to junction Alternate US Hwy 27, then over Alternate US Hwy 27 to junction GA Hwy 85W, then over GA Hwy 85W to junction Alternate US Hwy 27, then over Alternate US Hwy 27 to Columbus, and return over the same route, (2) between Columbus, GA, and junction GA Hwy 18 and Alternate US Hwy 27, from Columbus over US Hwy 27 to junction GA Hwy 18, then over GA Hwy 18 to junction Alternate US Hwy 27 and return over the same route, (3) between junction Alternate US Hwy 27 and GA Hwy 85W near Shiloh, GA, and junction Alternate US Hwy 27 and GA Hwy 18, from junction Alternate US Hwy 27 and GA Hwy 85W over Alternate US Hwy 27 to junction GA Hwy 85E, then over GA Hwy 85E to junction GA Hwy 18, then over GA Hwy 18 to junction Alternate US Hwy 27, and return over the same route, (4) between junction Alternate US Hwy 27 and GA Hwy 36 and junction Alternate US Hwy 27 and GA Hwy 41, from junction Alternate US Hwy 27 and GA Hwy 36 over GA Hwy 36 to junction GA Hwy 41, then over GA Hwy 41 to junction Alternate US Hwy 27, and return over the same route, (5) between junction US Hwy 278 and the GA–SC State line, and Columbus, GA, from junction US Hwy 278 and the GA–SC State line over US Hwy 278 to junction GA Hwy 16, then over GA Hwy 16 to junction GA Hwy 22, then over GA Hwy 22 to junction GA Hwy 49, then over GA Hwy 49 to junction US Hwy 80, then over US Hwy 80 to Columbus, and return over the same route, (6) between junction Interstate Hwy 20 and the GA–SC State line, and Atlanta, GA, over Interstate Hwy 20, (7) between junction Interstate Hwy 20 and GA Hwy 80, and junction US Hwy 278 and GA Hwy 80, over Ga Hwy 80, (8) between Atlanta and Albany, GA, (a) from Atlanta over US Hwy 19 to junction GA Hwy 49, then over GA Hwy 49 to junction US Hwy 82, then over US Hwy 82 to Albany, and return over the same route, and (b) from Atlanta over Interstate Hwy 75 to junction Interstate Hwy 475, northwest of Macon, GA, then over Interstate Hwy 475 to junction Interstate Hwy 75, south of Macon, GA, then over Interstate Hwy 75 to junction US Hwy 41, then over US Hwy 41 to junction GA Hwy 257, then over GA Hwy 257 to Albany, and return over the same route, (9) between junction US Hwy 1 and the GA–SC State line and junction US Hwy 280 and GA Hwy 257, from junction US Hwy 1 and the GA–SC State line over US Hwy 1 to junction US Hwy 221, the over US Hwy 221 to junction US Hwy 319, then over US Hwy 319 to junction GA Hwy 257, then over GA Hwy 257 to junction US Hwy 280, and return over the same route, (10) between Columbus and Blakely, GA, over US Hwy 27, (11) between junction US Hwys 27 and 280 and Americus, GA, over US Hwy 280, (12) between Altanta and Rossville, GA, from Atlanta over US Hwy 41 to junction GA Hwy 2, then over GA Hwy 2 to junction US Hwy 27, then over US Hwy 27 to Rossville, and return over the same route, (13) between junction US Hwys 41 and 411, and Rossville, GA, from junction US Hwys 41 and 411 over US Hwy 411 to junction US Hwy 27, then over US Hwy 27 to Rossville, and return over the same route, (14) between Rome, GA, and junction GA Hwy 53 and US Hwy 41, over GA Hwy 53, (15) between junction US Hwy 27 and GA Hwy 140, and junction GA Hwys 53 and 140, over GA Hwy 140, (16) between junction US Hwy 41 and GA Hwy 225, and Eton, GA, from junction US Hwy 41 and GA Hwy 225 over GA Hwy 225 to junction US Hwy 76, then over US Hwy 76 to junction US Hwy 411, then over US Hwy 411 to Eton, and return over the same route, (17) between junction GA Hwy 53 and US Hwy 41, and Ranger, GA, from junction GA Hwy 53 and US Hwy 41 over GA Hwy 53 to junction US Hwy 411, then over US Hwy 411 to Ranger, and return over the same route, (18) between Louisville and Cordele, GA, from Louisville over US Hwy 1 to junction GA Hwy 297, then over GA Hwy 297 to Vidalia, then over US Hwy 280 to Cordele, and return over the same route, (19) between junctions US Hwy 280 and 319, and Albany, GA, from junction US Hwys 280 and 319 over US Hwy 319 to junction US Hwy 82, then over US Hwy 82 to Albany, and return over the same route, (20) between Rochelle and Fitzgerald, GA, from Rochelle over GA Hwy 215 to junction GA Hwy 90, then over GA Hwy 90 to Fitzgerald, and return over the same route, (21) between junction US Hwy 1 and GA Hwy 297, and Waycross, GA over US Hwy 1, (22) between Waycross and Tifton, GA, over US Hwy 82, (23) between Ocilla and Nashville, GA, over US Hwy 129, (24) between Vidalia and Nashville, GA, from Vidalia over GA Hwy 130 to junction GA Hwy 135, then over GA Hwy 135 to junction GA Hwy 76, then over GA Hwy 76 to Nashville, and return over the same route, (25) between Nashville and Moultrie, GA, from Nashville over GA Hwy 76 to Adel, GA, then over GA Hwy 37 to Moultrie, and return over the same route, (26) between Albany and Thomasville, GA,

(a) from Albany over US Hwy 19 to junction Business US Hwy 19, then over Business US Hwy 19 to Thomasville, and return over the same route, and (b) from Albany over US Hwy 19 to junction GA Hwy 133, then over GA Hwy 133 to Moultrie, GA, then over US Hwy 319 to Thomasville, and return over the same route, (27) between Albany and Arlington, GA, from Albany over GA Hwy 91 to junction GA Hwy 62, then over GA Hwy 62 to Arlington, and return over the same route, (28) between Columbus, GA, and junction US Hwy 17 and the GA–SC State line, from Columbus over US Hwy 80 to junction GA Hwy 96 at Geneva, GA, then over GA Hwy 96 to junction GA Hwy 358, then over GA Hwy 358 to junction US Hwy 80 at or near Danville, GA, then over US Hwy 80 to junction US Hwy 17 at or near Garden City, GA, then over US Hwy 17 to the GA–SC State line, and return over the same route, (29) between junction US Hwy 80 and GA Hwy 49, and junction US Hwy 80 and GA Hwy 358, over US Hwy 80, and (30) between Vidalia, GA and junction US Hwy 280 and 80 at or near Blitchton, GA, over US Hwy 280, restricted in (1)–(30) above against the transportation of traffic to those points in the commercial zone of Rossville, GA, in TN. Serving in (1)–(30) all points in GA as intermediate or off-route points, and (C) *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Atlanta, GA, and Fort Worth, TX, from Atlanta over US Hwy 78 to Birmingham, AL, then over US Hwy 11 to junction US Hwy 80, then over US Hwy 80 to Monroe, LA, then over Interstate Hwy 20 to Shreveport, LA, then over US Hwy 80 to Fort Worth, and return over the same route, serving the intermediate points of Jackson, MS, Monroe and Shreveport, LA, and Dallas, TX, restricted to the transportation of traffic moving from, to, or through points in AL. CONDITION: Issuance of a certificate in this proceeding shall cancel portions of MC–106401 Subs 13 and 18 as shown in section (B) and (C) above. (Hearing site: Atlanta, GA or Dallas, TX.)

Note.—Applicant holds authority in MC 106401 Subs 13 and 18 as reflected in sections (B) and (C) above. The purpose of this application is to (1) extend applicant's operating authority in (A) above, and (2) modify the restrictions in section (B) and (C) above. Applicant intends to tack Section (B) and (C) with section (A) above.

MC 145301 (Sub-6F), filed January 8, 1980, and previously noticed in **Federal Register** issue of April 3, 1980. Applicant: R.E.M. TRANSPORT CO., INC., Building No. 431, Raritan Center, Edison, NJ 08817. Representative: Brian S. Stern, 2425 Wilson Blvd., Suite 367, Arlington, VA 22201. Transporting (1) *chemicals and plastics,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of chemicals and plastics (except commodities in bulk), from points in Harris County, TX, to points in CT, IL, IN, MA, MI, NH, NJ, NY, OH, PA, and RI. (Hearing site: Cleveland, OH.)

Note.—This republication clarifies the commodity description. Dual operations may be involved.

MC 147900 (Sub-1F), filed August 9, 1979. Applicant: COLLINS WHOLESALE BUILDING SUPPLY, INC., 4073 Hooker Road, Roseburg, OR 97470. Representative: Kerry D. Montgomery, 400 Pacific Bldg., Portland, OR 97204. Transporting *cement,* in sacks, and *masonry,* (1) from the facilities of Riverside Cement Company, at Riverside, CA, to points in OR, WA, ID, and UT, and (2) from the facilities of Oregon Portland Cement Company, at Lake Oswego, Lime and Durkee, OR, and Inkom, ID, to the facilities of Oregon Portland Cement Company, at Auburn and Kennewick, WA, and Boise, Twin Falls, Heyburn, Pocatello and Idaho Falls, ID. (Hearing site: Portland or Eugene, OR.)

MC 149390F, filed January 21, 1980. Applicant: WY-TEX LIVESTOCK TRUCKING, INC., P.O. Box 30476, Amarillo, TX 79120. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408. Transporting *dry livestock feed and feed ingredients,* between points in AR, AZ, CO, IA, ID, KS, LA, MO, NE, NM, OK, TX, and WY. (Hearing site: Amarillo or Lubbock, TX.)

Note.—Dual operations may be involved.

MC 150101 (Sub-1F), filed February 19, 1980. Applicant: BLAZER EXPRESS, INC., Route 2, Pelham Rd., Greenville, SC 29607. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. *Contract carrier,* transporting *wheels and axles* for railroad cars (1) from Charleston, SC to Pickens, SC, and (2) from Pickens, SC to Ashland City, TN, and Atlanta, GA, under continuing contract(s) with Creusot-Lorie Steel Corporation, of Bloomsfield, NJ. (Hearing site: Atlanta, GA, or Washington, DC.)

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Decided: April 4, 1980.

By the Commission, Review Board Number 2, Members Eaton, Liberman and Jensen. Member Jensen not participating.

MC 1117 (Sub-30F), filed February 19, 1980. Applicant: M.G.M. TRANSPORT CORP., 70 Maltese Drive, Totowa, NJ 07512. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. Transporting *such commodities* as are dealt in, or used by manufacturers of lamps and lamp parts, between Greensboro, NC, on the one hand, and, on the other, points in CT, DE, NJ, NY, PA and RI. (Hearing site: Greensboro, NC.)

MC 1117 (Sub-31F), filed January 25, 1980. Applicant: M.G.M. TRANSPORT CORP., 70 Maltese Dr., Totowa, NJ 07512. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. Transporting *new furniture and furniture parts,* from points in VA, to points in MA, RI, CT, NY, NJ, PA, DE, MD, and DC. (Hearing site: Richmond, VA.)

MC 11207 (Sub-527F), filed February 22, 1980. Applicant: DEATON, INC., 317 Avenue W, P.O. Box 938, Birmingham AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), between Birmingham AL, on the one hand, an on the other, Mobile AL. (Hearing site: Birmingham, AL, or Washington, DC.)

MC 11207 (Sub-528F), filed February 21, 1980. Applicant: DEATON, INC., 317 Avenue W, P.O. Box 938, Birmingham AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Transporting (1) *insulating, building, and roofing panels,* and (2) *equipment, materials, and supplies* used in the distribution, installation, or manufacture of the commodities in (1) above, between points in Dallas County, TX, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Dallas, TX, or Washington, DC.)

MC 11207 (Sub-529F), filed February 21, 1980. Applicant: DEATON, INC., 317 Avenue W, P.O. Box 938, Birmingham AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Transporting *iron and steel articles,* between Meridian, MS, on the one hand, and, on the other, points in OK and TX. (Hearing site: Jackson, MS, or Washington, DC.)

MC 21866 (Sub-145F), filed February 20, 1980. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting (1) *fabricated structural steel, and material handling equipment,* and (2) *materials,*

equipment, and supplies used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between the facilities of W. A. Schmidt, Inc., at Warrington, PA, on the one hand, and, on the other, points in the United States (except AK, HI, and PA). (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 21866 (Sub-147F), filed February 20, 1980. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting (1) *paper and paper products* (except commodities in bulk), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Packaging Corporation of America. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 21866 (Sub-148F), filed February 20, 1980. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting (1) *burial caskets*, and (2) *materials and supplies* used in the manufacture of burial caskets, (except commodities in bulk), between the facilities of Boyertown Burial Casket Company, at Boyertown, PA, on the one hand, and, on the other, points in the United States (except AK, HI, and PA). (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 21866 (Sub-149F), filed February 21, 1980. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting *laminated panels, and materials and supplies* used in the manufacture and distribution of laminated panels, (except in bulk), between the facilities of Laminators, Incorporated, at Hatfield, PA, on the one hand, and, on the other, points in the United States (except AK, HI, and PA). (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 41116 (Sub-78F), filed February 22, 1980. Applicant: FOGLEMAN TRUCK LINE, INC., P.O. Box 1504, Crowley, LA 70526. Representative: Austin L. Hatchell, P.O. Box 2165, Austin, TX 78768. *Contract carrier,* transporting (1) *paper, paper products, and polyethylene film,* and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, from the facilites of International Paper Co., at or near Camden and East Camden, AR, to points in KS and AL, under continuing contract(s) with International Paper Co., of New York, NY. (Hearing site: Dallas, TX, or Kansas City, MO.)

Note.—Dual operations may be involved.

MC 42487 (Sub-981F), filed February 19, 1980. Applicant: CONSOLIDATED FREIGHTWAYS, corporation of Delaware, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldensburg, P.O. Box 3062, Portland, OR 97208. Over regular routes, transporting *general commodities,* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between South Bend, IN and St. Joseph, MI, over U.S. Hwy 33, serving the intermediate point of Niles, MI; (2) between Niles, MI and junction U.S. Hwy 12 and Interstate Hwy 69, from Niles over Business Rt. Hwy 12 to junction U.S. Hwy 12, then over U.S. Hwy 12 to junction U.S. Hwy 12 and Interstate Hwy 69, and return over the same route, serving the intermediate points of White Pigeon, Sturgis and Coldwater, MI, and serving junction U.S. Hwys 12 and 131 for purpose of joinder only; (3) between junction U.S. Hwy 12 and Interstate Hwy 69, and Marshall, MI, from junction U.S. Hwy 12 and Interstate Hwy 69, over Interstate Hwy 69 to junction unnumbered Hwy near Marshall (formerly portion U.S. Hwy 12), then over unnumbered Hwy to Marshall, and return over the same route, serving the junction Interstate Hwy 69 and MI Hwy 60 for purpose of joinder only; (4) between Niles, MI and junction MI Hwy 60 and Interstate Hwy 69, from Niles over Business Rt. U.S. Hwy 12 to junction MI Hwy 60, then over MI Hwy 60 to junction MI Hwy 60 and Interstate Hwy 69, and return over the same route, serving the intermediate point of Three Rivers, MI, and the off-route point of Dowagiac, MI, and serving the junction of MI Hwy 60 and U.S. Hwy 131 for purpose of joinder only; and (5) between junction U.S. Hwy 13 and Kalamazoo, MI, from junction U.S. Hwy 20 and IN Hwy 13, over IN Hwy 13 to MI-IN state line, then over U.S. Hwy 131 to Kalamazoo, and return over the same route, serving the intermediate point of Constantine, MI, and serving junction U.S. Hwy 12 and U.S. Hwy 131 and junction MI Hwy 60 and U.S. Hwy 131 for purposes of joinder only. Condition: To the extent the certificate granted in this proceeding authorizes the transportation of classes A and B explosives, it will expire 5 years from the date of issuance. (Hearing site: Lansing, MI, or Chicago, IL.)

Note.—Applicant intends to tack the authorities described above with each other as well as with its existing authority and any other authority it may obtain in the future.

MC 42487 (Sub-982F), filed February 22, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. Over regular routes, transporting *general commodities,* (except those of unusual value, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), (1) between Jacksonville, FL, and Mobile, AL, over U.S. Hwy 90, serving the intermediate points of Lake City, Tallahassee, Marianna, Pensacola and Monticello, FL, and serving junction, U.S. Hwy 90 and U.S. Hwy 231 for purpose of joinder only, (2) between junction U.S. Hwy 231 and U.S. Hwy 90 and Pensacola, FL, from junction U.S. Hwy 231 and U.S. Hwy 90 over U.S. Hwy 231 to Panama City, FL, then over U.S. Hwy 98 to Pensacola, and return over the same route, serving the intermediate points of Panama City, Ft. Walton Beach, and Mary Esther, FL, and (3) between Dothan, AL and junction U.S. Hwy 231 and U.S. Hwy 90, over U.S. Hwy 231, serving no intermediate points and serving Port St. Joe and Niceville, FL, as off-route points. Condition: Any certificate issued in this proceeding to the extent it authorizes the transportation of classes A and B explosives shall be limited in term to a period of time expiring five years from its date of issuance. (Hearing site: Tampa, FL, or Atlanta, GA.)

Note.—Applicant intends to tack the authorities described above with each other as well as its existing authority and any authority it may acquire in the future.

MC 51146 (Sub-825F), filed February 19, 1980. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Matthew J. Reid, Jr., (same address as applicant). Transporting *such commodities* as are dealt in, or used by, manufacturers and distributors of chemicals, plastics food ingredients, and fertilizers (except commodities in bulk), between points in ND, SD, NE, MN, IA, WI, IL, MI, IN, KY, OH, WV, VA, PA, MD, NJ, DE, NY CT, MA, RI, NH, VT, ME, MO, and DC, restricted to the transportation of traffic originating at, or destined to the facilities of Stauffer Chemical Company. (Hearing site: Chicago, IL.)

MC 51146 (Sub-828F), filed February 19, 1980. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative:

Matthew J. Reid, Jr. (same address as applicant). Transporting *paper, paper products,* and *materials, equipment, and supplies* used in the manufacture and distribution of paper and paper products (except commodities in bulk), between Columbus, MS, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Chicago, IL.)

MC 51146 (Sub-829F), filed February 28, 1980. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: Matthew J. Reid, Jr. (same address as applicant). Transporting (1) *foodstuffs,* from Battle Creek, MI, Lancaster, PA, and Memphis, TN, to the facilities of The Kellogg Company, at points in the United States (except AK and HI), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of foodstuffs, in the reverse direction, restricted in (1) and (2) above against the tranportation of commodities in bulk. (Hearing site: Chicago, IL.)

MC 58777 (Sub-4F), filed August 15, 1979. Applicant: HAZARD EXPRESS, INC., P.O. Box 746, Hazard, KY 41701. Representative: William P. Whitney, Jr., 708 McClure Bldg., Frankfort, KY 40601. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Lexington and Jenkins, KY: from Lexington over U.S. Hwy 60 to Winchester, then over KY Hwy 15 to junction U.S. Hwy 119, and then over U.S. Hwy 119 to Jenkins, and return over the same route, serving all intermediate points except those on U.S. Hwy 60 and those on U.S. Hwy 15 between Winchester and Goff's Corner, and serving the off-route points of Neon, Fleming, McRoberts, and Hemphill, KY; (2) between Hindman and Hyden, KY, over KY Hwy 80, serving all intermediate points, and serving the off-route points of Neon, Fleming, McRoberts, and Hemphill, KY, (3) between Louisville and Lexington, KY: from Louisville over Interstate Hwy 64 to junction U.S. Hwy 60 near Frankfort, KY, then over U.S. Hwy 60 to Lexington, and return over the same route, serving no intermediate points, restricted against the transportation of traffic originating at, destined to, or interlined at Lexington, KY, or points in its commercial zone; and (4) between Cincinnati, OH, and Lexington, KY, over Interstate Hwy 75, serving no intermediate points and serving Lexington, KY for purpose of joinder only. Condition: Issuance of a certificate in this proceeding is conditioned upon either the prior or coincidental cancellation, at applicant's written request, of Certificate of Registration No. MC 58777 (Sub-2), or the successful conversion of that certificate to a certificate of public convenience and necessity. (Hearing site: Hazard or Jackson, KY.)

MC 59206 (Sub-31F), filed February 25, 1980. Applicant: HOLLAND MOTOR EXPRESS, INC., 750 East 40th St., Holland, MI 49423. Representative: Kenneth DeVries (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between the OH-IN State line and the OH-WV State line, over U.S. Hwy 30, serving all intermediate points; (2) between the OH-IN State line and OH-WV State line, over Interstate Hwy 70, serving all intermediate points; (3) between Cincinnati, OH and junction U.S. Hwy 30 and Interstate Hwy 71, over Interstate Hwy 71, serving all intermediate points; (4) between Marietta, OH and Canton, OH, over Interstate Hwy 77, serving all intermediate points; (5) between Cincinnati, OH and Chesapeake, OH, over U.S. Hwy 52, serving all intermediate points; (6) between Chesapeake, OH and junction U.S. Hwy 30 and OH Hwy 7, serving all intermediate points; (7) between the OH-IN State line and the OH-WV State line, over U.S. Hwy 33, serving all intermediate points; (8) between the OH-IN State line and the OH-WV State line, from the OH-IN State line over Interstate Hwy 70 to junction U.S. Hwy 35, then over U.S. Hwy 35 to the OH-WV State line, and return over the same route, serving all intermediate points; (9) between Cincinnati, OH and junction U.S. Hwy 127 and U.S. Hwy 30, over U.S. Hwy 127, serving all intermediate points; (10) between Cincinnati, OH and junction U.S. Hwy 42 and U.S. Hwy 30, over U.S. Hwy 42, serving all intermediate points; (11) between Kenton, OH and the OH-KY State line, over U.S. Hwy 68, serving all intermediate points; (12) between the OH-IN State line and Uhrichsville, OH, over U.S. Hwy 36, serving all intermediate points; (13) between Portsmouth, OH and Chillicothe, OH, over U.S. Hwy 23, serving all intermediate points; (14) between Aberdeen, OH and Massillon, OH, from Aberdeen over U.S. Hwy 62 to junction OH Hwy 21, then over OH Hwy 21 to Massillon, OH, and return over the same routes, serving all intermediate points; (15) between Cincinnati, OH and junction U.S. Hwy 50 and OH Hwy 7, over U.S. Hwy 50, serving all intermediate points; (16) between Cincinnati, OH and the OH-WV State line, over U.S. Hwy 22, serving all intermediate points; (17) between Cincinnati, OH and Bucyrus, OH, over U.S. Hwy 4, serving all intermediate points; (18) between Covington, OH and Aberdeen, OH, over OH Hwy 41, serving all intermediate points; (19) between Ironton, OH and junction OH Hwy 93 and U.S. Hwy 30, over OH Hwy 93, serving all intermediate points; (20) between Washington Court House, OH and Marysville, OH, over OH Hwy 38, serving all intermediate points; (21) between Marysville, OH and Kenton, OH, over OH Hwy 31, serving all intermediate points; (22) between Canton, OH and the OH-WV State line; from Canton over OH Hwy 800 to junction U.S. Hwy 250, then over U.S. Hwy 250 to junction OH Hwy 800, then over OH Hwy 800 to the OH-WV State line, and return over the same route, serving all intermediate points; (23) between Buchtel, OH and Clarington, OH, over OH Hwy 78, serving all intermediate points; (24) between Cincinnati, OH and Chillicothe, OH, from Cincinnati over U.S. Hwy 50 to junction OH Hwy 28, then over OH Hwy 28 to junction U.S. Hwy 50, then over U.S. Hwy 50 to Chillicothe, and return over the same route, serving all intermediate points; (25) between Columbus, OH and Coshocton, OH, over OH Hwy 16, serving all intermediate points; (26) between Chauncey, OH and junction OH Hwy 60 and U.S. Hwy 30, over OH Hwy 60, serving all intermediate points; (27) between Marietta, OH and junction OH Hwy 60 and U.S. Hwy 30, over OH Hwy 60, serving all intermediate points; (28) between Wooster, OH and junction OH Hwy 83 and OH Hwy 60, over OH Hwy 83, serving all intermediate points; (29) between Wooster, OH and Mt. Vernon, OH, over OH Hwy 3, serving all intermediate points; (30) between Armstrongs Mills, OH and Kensington, OH, over OH Hwy 9, serving all intermediate points; (31) between Canton, OH and Steubenville, OH, over OH Hwy 43, serving all intermediate points; (32) between New Philadelphia, OH and junction U.S. Hwy 250 and OH Hwy 7, over U.S. Hwy 250, serving all intermediate points; (33) between Piqua, OH and junction OH Hwy 66 and U.S. Hwy 30, over OH Hwy 66, serving all intermediate points; (34) between Union City, OH and Waldo, OH, from Union City over OH Hwy 47 to junction OH

Hwy 423, then over OH Hwy 423 to Waldo, and return over the same route, serving all intermediate points; (35) between Wellston, OH and Marietta, OH, from Wellston over OH Hwy 327 to junction OH Hwy 124, then over OH Hwy 124 to junction OH Hwy 555, then over OH Hwy 555 to junction OH Hwy 550, then over OH Hwy 550 to Marietta, and return over the same route, serving all intermediate points; (36) between Cincinnati, OH and Albany, OH, from Cincinnati over OH Hwy 32 to junction OH Hwy 124, then over OH Hwy 124 to junction OH Hwy 346, then over OH Hwy 346 to Albany, and return over the same route, serving all intermediate points; and (37) serving as off-route points in connection with (1) through (36) all points in OH in and south of Van Wert, Allen, Hancock, Wyandot, Crawford, Richland, Ashland, Wayne, Stark and Columbiana Counties, OH. (Hearing site: Detroit, MI, or Chicago. IL.)

Note.—The purpose of this application is to convert irregular-route authority acquired by applicant in MC–F 13759 to regular-route authority, to remove certain restrictions, and to eliminate the gateway of Columbus, OH. Applicant intends to tack this authority with its present authority.

MC 59957 (Sub-62F), filed June 22, 1979. Applicant: MOTOR FREIGHT EXPRESS, a corporation, Arsenal Rd., and Toronita St., York, PA 17402. Representative: William A. Chesnutt, 1333 New Hampshire Ave., NW., Washington, DC 20036. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring the use of special equipment), (1) between Waukegan, IL, and Milwaukee, WI, serving all intermediate points, and serving the off-route points of Fox Point, Greendale, Shorewood, Wauwatosa, and Whitefish Bay, WI: (a) from Waukegan, over IL Hwy 42 to the IL–WI State line, then over WI Hwy 32 to junction WI Hwy 100, then over WI Hwy 100 to junction WI Hwy 59, and then over WI Hwy 59 to Milwaukee, and return over the same route, and (b) from Waukegan over IL Hwy 42 to the IL–WI State line, then over WI Hwy 32 to junction WI Hwy 100, then over WI Hwy 100 to junction Milwaukee County Hwy H, then over MIlwaukee County Hwy H to Milwaukee, and return over the same route; (2) between Waukegan, IL, and Milwaukee, WI, serving all intermediate points, and serving Kenosha and Racine, WI as off-route points: (a) from Waukegan, over IL Hwy 42 to junction IL Hwy 132, then over IL Hwy 132 to junction U.S. Hwy 41, then over U.S. Hwy 41 to Milwaukee, and return over the same route, and (b) from Waukegan over IL Hwy 42 to junction IL Hwy 132, then over IL Hwy 132 to junction Interstate Hwy 94, then over Interstate Hwy 94 to Milwaukee, and return over the same route; (3) between junction WI Hwy 32 and WI Hwy 100, and Milwaukee, WI, serving all intermediate points: over WI Hwy 32; (4) between Chicago, IL, and Madison, WI, serving all intermediate points: (a) over U.S. Hwy 12, and (b) over U.S. Hwy 14; (5) between Chicago, IL, and Menomonee Falls, WI, serving all intermediate points, from Chicago over IL hwy 21 to junction U.S. Hwy 45, then over U.S. Hwy 45 to junction WI Hwy 74, then over WI Hwy 74 to Menomonee Falls, and return over the same route; (6) between Rockford, IL, and Madison, WI, serving all intermediate points, from Rockford over U.S. Hwy 51 to junction U.S. Hwy 12, then over U.S. Hwy 12 to Madison, and return over the same route, (7) between Madison and Milwaukee, WI, (a) over U.S. Hwy 18, serving all intermediate points, (b) over Interstate Hwy 94, serving all intermediate points, and (c) from Madison over U.S. Hwy 151 to junction WI Hwy 19, then over WI Hwy 19 to junction U.S. Hwy 16, then over U.S. Hwy 16 to junction Interstate Hwy 94, then over Interstate Hwy 94 to Milwaukee, and return over the same route; (8) between Beloit and Milwaukee, WI, over WI Hwy 15, serving all intermediate points. (Hearing site: Washington, DC).

MC 63417 (Sub-271F), filed February 15, 1980. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). Transporting (1) *metal ductwork, fittings, and duct heaters, and* (2) *materials and supplies* used in the installation of heating and cooling systems, from the facilities of the Holbrook Company, Incorporated, at or near Kaysville, UT, to points in the US (except AK and HI). (Hearing site: Roanoke, VA, or Washington, DC.)

MC 63417 (Sub-273F), filed February 25, 1980. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Representative: William E. Bain (same address as applicant). Transporting *new furniture and fixtures,* from Temple, TX, to points in SC. (Hearing site: Roanoke, VA, or Sumter, SC.)

MC 64806 (Sub-13F), filed February 19, 1980. Applicant: R. P. THOMAS TRUCKING CO., INC., 807 W. Fayette St., Martinsville, VA 24112. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. Transporting (1) *new furniture,* from the facilities of (a) Hooker Furniture Corp., and (b) Virginia Mirror Company, Inc., in Henry County, VA, to points in AR, IA, LA, MN, MS, MO, OK, TX, and WI, and (2) *materials, equipment, and supplies* used in the manufacture of new furniture, from points in AR, IA, IL, LA, MN, MS, MO, NC, OK, TX, and WI, to the origins in (1) above. (Hearing site: Roanoke, VA, or Washington, DC.)

MC 65887 (Sub-4F), filed February 25, 1980. Applicant: PHYLLIS B. RAMSEY d.b.a. RAMSEY TRANSFER, Manning, IA 51455. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *soybean meal,* in bulk, from the facilities of AGRI Industries, at or near Manning, IA, to points in IL, MN, MO, and NE. (Hearing site: Des Moines, IA, or Kansas City, MO.)

MC 65916 (Sub-20F), filed August 16, 1979. Applicant: WARD TRUCKING CORP., Second Ave., and Seventh St., Altoona, PA 16603. Representative: Henry M. Wick, Jr., 2310 Grant Bldg., Pittsburgh, PA 15219. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Green Village, PA and Columbia, SC as follows: (a) from Green Village over PA Hwy 997 to junction Interstate Hwy 81, then over Interstate Hwy 81 to junction Interstate Hwy 77, then over Interstate Hwy 77 to Columbia, and return over the same route, serving all intermediate points, and (b) from Green Village over U.S. Hwy 11 to junction U.S. Hwy 30, then over U.S. Hwy 30 to junction Interstate Hwy 81, then over Interstate Hwy 81 to junction Interstate Hwy 77, then over Interstate Hwy 77 to Columbia, and return over the same route, serving all intermediate points; (2) between Everett, PA and Augusta, GA, from Everett over U.S. Hwy 30 to Breezewood, PA, then over Interstate Hwy 70 to junction Interstate Hwy 270, then over Interstate Hwy 270 to junction Interstate Hwy 495, then over Interstate Hwy 495 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction Interstate Hwy 20, then over Interstate Hwy 20 to Augusta, and return over the same route, serving all intermediate points; (3) between Augusta, GA and Dalton, GA, from Augusta over Interstate Hwy 20 to Atlanta, GA, then over Interstate Hwy 75 to Dalton, and return over the same route, serving all intermediate points; (4)

between Florence, SC and Brunswick, GA, from Florence over Interstate Hwy 95 to junction U.S. Hwy 341, then over U.S. Hwy 341 to Brunswick, and return over the same route, serving all intermediate points; (5) between Asheville, NC and Charleston, SC, over Interstate Hwy 26, serving all intermediate points; (6) between Roanoke, VA and Charleston, SC, from Roanoke over U.S. Hwy 220 to junction U.S. Hwy 1, then over U.S. Hwy 1 to junction U.S. Hwy 52, then over U.S. Hwy 52 to Charleston, and return over the same route, serving all intermediate points; (7) between Richmond, VA and LaGrange, GA, from Richmond over Interstate Hwy 95 to junction Interstate Hwy 85, then over Interstate Hwy 85 to junction U.S. Hwy 29, then over U.S. Hwy 29 to LaGrange, and return over the same route, serving all intermediate points; (8) between Savannah, GA and Atlanta, GA, from Savannah over Interstate Hwy 16 to junction Interstate Hwy 75, then over Interstate Hwy 75 to Atlanta, and return over the same route, serving all intermediate points; (9) between Macon and Valdosta, GA, from Macon over Interstate Hwy 75 to junction U.S. Hwy 84, then over U.S. Hwy 84 to Valdosta, and return over the same route, serving all intermediate points; (10) between Asheville, NC and Morehead City, NC, from Asheville over Interstate Hwy 40 to junction Interstate Hwy 85, then over Interstate Hwy 85 to junction U.S. Hwy 70, then over U.S. Hwy 70 to Morehead City, and return over the same route, serving all intermediate points; (11) between Charlotte, NC and Wilmington, NC, over U.S. Hwy 74, serving all intermediate points; (12) between Columbus, GA, and Brunswick, GA, from Columbus over U.S. Hwy 280 to junction GA Hwy 55, then over GA Hwy 55 to junction U.S. Hwy 82, then over U.S. Hwy 82 to junction U.S. Hwy 84, then over U.S. Hwy 84 to Brunswick, and return over the same route, serving all intermediate points; (13) between Columbus, GA, and Savannah, GA, from Columbus over U.S. Hwy 80 to Macon, GA, then over Interstate Hwy 16 to Savannah, and return over the same route, serving all intermediate points; (14) between Roanoke and Norfolk, VA, from Roanoke over U.S. Hwy 460 to junction VA Hwy 307, then over VA Hwy 307 to junction U.S. Hwy 360, then over U.S. Hwy 360 to junction Interstate Hwy 64, then over Interstate Hwy 64 to Norfolk, and return over the same route, serving all intermediate points; (15) between Martinsville and Norfolk, VA, over U.S. Hwy 58, serving all intermediate points; (16) between Culpeper and Danville, VA, over U.S. Hwy 29, serving all intermediate points; and (17) serving as off route points in connection with (1), (2), and (3) above, all points in GA, NC, and SC and those points in VA on and south of a line beginning at the WV–VA state line, and extending over U.S. Hwy 50 to junction U.S. Hwy 17, then over U.S. Hwy 17 to junction U.S. Hwy 360, and then over U.S. Hwy 360 to the VA–MD state line; restricted in (1) through (17) above to the transportation of traffic originating at or destined to points in GA, NC, SC, and VA. (Hearing site: Washington, DC, or Augusta, GA.)

MC 69116 (Sub-263F), filed February 25, 1980. Applicant: SPECTOR INDUSTRIES, INC., d.b.a. SPECTOR FREIGHT SYSTEM, 1050 Kingery Highway, Bensenville, IL 60106. Representative: Edward G. Bazelon, 39 South LaSalle Street, Chicago, IL 60603. Over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Omaha, NE, and Lincoln, NE, over U.S. Hwy 6 (also Interstate Hwy 80), serving all intermediate points. (Hearing site: Washington, DC, or Lincoln, NE.)

Note.—Applicant proposes to tack the requested authority with its existing authority.

MC 78687 (Sub-74F), filed July 16, 1979, and previously noticed in the **Federal Register** issue of March 6, 1980. Applicant: LOTT MOTOR LINES, INC., West Cayuga St., P.O. Box 751, Moravia, NY 13118. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW., Washington, DC 20001. Transporting *building* and *insulating materials*, and *accessories* and *supplies* used in the production of building and insulating material (except commodities in bulk), between the facilities of Masonite Corporation, at or near Towanda, PA, on the one hand, and, on the other, those points in the United States in an east of ND, SD, NE, KS, OK, and TX. (Hearing site: Washington, DC.)

Note.—This republication is to correctly reflect the docket number in this proceeding. Dual operations may be involved.

MC 93186 (Sub-7F), filed February 25, 1980. Applicant: EUDELL WATTS, III, d.b.a. WATTS TRANSFER CO., 825 First Ave., Rock Island, IL 61201. Representative: Daniel C. Sullivan, 10 S. LaSalle, Suite 1600, Chicago, IL 60603. Transporting *such commodities* as are dealt in by department stores (except commodites in bulk), from Davenport and Bettendorf, IA, and Rock Island and Moline, IL, to points in IL and IA, restricted to the transportation of traffic originating at, or destined to the facilities of The Target Store, Division of Dayton-Hudson Corporation. (Hearing site: Chicago or Rock Island, IL.)

MC 101117 (Sub-3F), filed February 21, 1980. Applicant: W. J. PLUMLY, INC., Box 86, Somerton, OH 43784. Representative: Earl N. Merwin, 85 East Gay Street, Columbus, OH 43215. *Contract carrier*, transporting (1) *coal mining supplies, materials, equipment, and accessories*, and (2) *materials and supplies* used in the manufacture of the commodities in (1) above, between Barnesville, OH, on the one hand, and on the other, points in IL, IN, KY, PA, WV, and VA, under continuing contract(s) with Watt Car and Wheel Company, of Barnesville, OH. (Hearing site: Columbus, OH.)

MC 102567 (Sub-251F), filed February 19, 1980. Applicant: McNAIR TRANSPORT, INC., 4295 Meadow Lane, P.O. Drawer 5357, Bossier City, LA 71111. Representative: Joe C. Day, 13403 Northwest Fwy., Suite 130, Houston, TX 77040. Transporting *pulp mill liquids*, in bulk, in tank vehicles, between points in AL, AR, LA, MS, and TX. (Hearing site: New Orleans, LA.)

MC 102616 (Sub-1028F), filed February 19, 1980. Applicant: COASTAL TANK LINES, INC., 250 North Cleveland-Massillon Rd, Akron, OH 44313. Representative: David F. McAllister, (same address as applicant). Transporting *refined soy bean oil*, in bulk, in tank vehicles, from Walton Hills, OH, to points in IN, KY, GA, TN, and NC. (Hearing site: Cleveland or Columbus, OH.)

MC 102616 (Sub-1029F), filed February 22, 1980. Applicant: COASTAL TANK LINES, INC., 250 North Cleveland-Massillon Rd., Akron, OH 44313. Representative: David F. McAllister (same address as applicant). Transporting *fertilizer solutions*, in bulk, in tank vehicles, from Mount Carmel, IL, to points in IN. (Hearing site: Chicago, IL, or Indianapolis, IN.)

MC 112107 (Sub-13F), filed October 29, 1979, previously noticed in the FR issue of March 25, 1980. Applicant: NEW ENGLAND MOTOR FREIGHT, INC., 454 Main Ave., P.O. Box 3427, Wallington, NJ 07057. Representative: Eugene M. Malkin, Suite 1832, 2 World Trade Center, New York, NY 10048. Over *regular routes*, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), (1) between Pittsfield, MA and Niagara

Falls, NY; from Pittsfield over U.S. Hwy 20 to Buffalo, NY, then over Interstate Hwy 190 to Niagara Falls, and return over the same route, (2) between Albany and Niagara Falls, NY: from Albany over Interstate Hwy 90 to junction Interstate Hwy 290, then over Interstate Hwy 290 to junction Interstate Hwy 190, then over Interstate Hwy 190 to Niagara Falls, and return over the same route, (3) between Buffalo, NY, and Pittsburgh, PA, from Buffalo over U.S. Hwy 219 to junction U.S. Hwy 119, then over U.S. Hwy 119 to junction U.S. Hwy 522, then over U.S. Hwy 522 to junction U.S. Hwy 22, then over U.S. Hwy 22 to Pittsburgh, and return over the same route, (4) between Westfield, NY, and Newark, NJ: from Westfield over NY Hwy 17 to the NY–NJ State line, then over NJ Hwy 17 to Newark, and return over the same route, (5) between the ports of entry on the international boundary line between the United States and Canada at or near Rouses Point, NY, and New York, NY over U.S. Hwy 9 (also Interstate Hwy 87), (6) between Scranton, PA and Watertown, NY, over Interstate Hwy 81, (7) between Waterbury, CT, and Scranton, PA, over Interstate Hwy 84, (8) between Scranton, PA, and Washington, DC: from Scranton over Interstate Hwy 81 to Harrisburg, PA, then over Interstate Hwy 83 to Baltimore, MD, and then over U.S. Hwy 1 to Washington, DC, and return over the same route, (9) between Scranton, PA, and Baltimore, MD: from Scranton over PA Hwy 309 to Dunmore, PA, then over U.S. Hwy 611 to Philadelphia, PA, and then over U.S. Hwy 1 to Baltimore, and return over the same route, (10) between Washington, DC and Pittsburgh, PA: from Washington over Interstate Hwy 270 to Frederick, MD, then over U.S. Hwy 40 to Uniontown, PA, and then over U.S. Hwy 119 to Pittsburgh, and return over the same route, (11) between Corning, NY and Frederick, MD, over U.S. Hwy 15, (12) between the port of entry on the international boundary line between the United States and Canada at or near Champlain, NY, and the MD–WV State line at or near Martinsburg, WV, over U.S. Hwy 11, (13) between Wilmington, DE and Salisbury, MD, over U.S. Hwy 13, (14) between Washington, DC and Ocean City, MD, over U.S. Hwy 50, (15) between New York, NY and Harrisburg, PA, (a) from New York over U.S. Hwy 1 to Newark, NJ, then over U.S. Hwy 22 to Harrisburg, and return over the same route, and (b) from New York to Newark as described in (a) above, then over Interstate Hwy 78 to junction Interstate Hwy 81, then over Interstate Hwy 81 to Harrisburg, and return over the same route, (16) between New York, NY and Pittsburgh, PA: from New York over Interstate Hwy 80 to junction Interstate Hwy 79, then over Interstate Hwy 79 to Pittsburgh, and return over the same route, (17) between Cumberland, MD and Williamsport, PA over U.S. Hwy 220; Serving, in all routes described above, all intermediate points and all off-route points in DE, MD, NY, and PA, (18) between Pittsfield, MA and Boston, MA, (a) from Pittsfield over MA Hwy 9 to Boston, and return over the same route, (b) from Pittsfield over U.S. Hwy 7 to junction Interstate Hwy 90, then over Interstate Hwy 90 to Boston, and return over the same route, and (c) from Pittsfield over U.S. Hwy 7 to junction U.S. Hwy 20, then over U.S. Hwy 20 to junction Interstate Hwy 90, then over Interstate Hwy 90 to Boston, and return over the same route, (19) between New Haven, CT and Springfield, MA: (a) from New Haven over Interstate Hwy 91 to Springfield, and return over the same route, and (b) from New Haven over U.S. Hwy 5 to Springfield, and return over the same route, (20) between Springfield, MA and Boston, MA: (a) from Springfield over Interstate Hwy 90 to Boston, and return over the same route, and (b) from Springfield over U.S. Hwy 20 to Boston, and return over the same route, (21) between Providence, RI and Boston, MA: (a) from Providence over Interstate Hwy 95 to Boston, and return over the same route, and (b) from Providence over U.S. Hwy 1 to Boston, and return over the same route, and (22) between Pittsburgh, PA and Atlantic City, NJ over U.S. Hwy 30; Serving, in all routes described above all intermediate points and all off-route points in CT, DE, MD, MA, NJ, NY, PA, and RI. (Hearing site: New York, NY, or Philadelphia, PA.)

Note.—The purpose of this republication is to include (18) through (22) in the above authority.

MC 147127 (Sub-2F), filed June 8, 1979. Applicant: MCLAURIN TRUCKING COMPANY, a corporation, P.O. Box 26506, 217 West 24th St., Charlotte, NC 28213. Representative: Donald J. Balsley, Jr., 2310 Grant Bldg., Pittsburgh, PA 15219. Transporting (1) *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (a) between points in Mecklenburg County, NC, and points in SC, (b) between points in Chatham County, GA, on the one hand, and, on the other, points in NC and SC, (c) from points in Mecklenburg County, NC, to points in VA, WV, Columbia and Richmond Counties, GA, and Greene, Hawkins, Knox and Sullivan Counties, TN, (d) from points in Kanawha and Cabell Counties, WV, to points in NC, (e) from points in Gaston County, NC, to points in SC, (f) from points in SC, to points in Guilford County, NC, and (g) between points in New Hanover County, NC, on the one hand, and, on the other, points in NC and VA; and (2) *petroleum and petroleum products* (except commodities in bulk), from Charleston, SC, to points in NC and VA. (Hearing site: Charlotte, NC, or Washington, DC.)

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Decided: April 2, 1980.

by the Commission, Review Board Number 2, Members Eaton, Liberman and Jensen Member Jensen not participating.

MC 105566 (Sub-217F), filed February 21, 1980. Applicant: SAM TANKSLEY TRUCKING, INC., P.O. Box 1120, Cape Girardeau, MO 63701. Representative: Thomas F. Kilroy, Suite 406, Executive Bldg., 6901 Old Keene Mill Road, Springfield, VA 22150. Transporting *such commodities* as are dealt in or used by candy stores, in vehicles equipped with mechanical refrigeration, from the facilities of See's Candies, Inc., at South San Francisco, CA, to St. Louis, MO. (Hearing site: Washington, DC).

MC 109026 (Sub-26F), filed February 20, 1980. Applicant: MANNING MOTOR EXPRESS, INC., P.O. Box 685, Glasgow, KY 42141. Representative: Henry E. Seaton, 929 Pennsylvania Building, 425 13th Street, NW, Washington, DC 20004. Transporting (1) *printed matter* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of printed matter between Glasgow, KY, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Louisville, KY).

MC 109397 (Sub-501F), filed February 19, 1980. Applicant: TRI-STATE MOTOR TRANSIT CO., a corporation, P.O. Box 113, Joplin, MO 64801. Representative: Max G. Morgan, P.O. Box 1540, Edmond, OK 73034. Transporting *plastic foam carpet cushion*, from the facilities of Burkart Randall Division of Textron, Inc., at Cairo, IL, to points in AL, AR, IN, IA, KY, LA, OH, MI, MO, and TN. (Hearing site: Washington, DC, or Kansas City, MO).

MC 109397 (Sub-503F), filed February 21, 1980. Applicant: TRI-STATE MOTOR TRANSIT CO., a corporation, P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). Transporting *such commodities* as are dealt in or used by

manufacturers of heating and cooling systems (except commodities in bulk), between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities used by Lennox Industries, Inc., and further restricted against the transportation of traffic originating at Stuttgart, AR. (Hearing site: Dallas, TX)

MC 109397 (Sub-502F), filed February 20, 1980. Applicant: TRI-STATE MOTOR TRANSIT CO., a corporation, P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). Transporting *metal buildings,* and *parts and accessories* for metal buildings, from Columbus, GA, to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Atlanta, GA).

MC 109397 (Sub-504F), filed February 21, 1980. Applicant: TRI-STATE MOTOR TRANSIT CO., a corporation, P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). Transporting (1) *switchgears and circuit breakers,* and (2) *parts, equipment, materials and supplies* used in the manufacture, servicing, and distribution of the commodities named in (1) above, between the facilities of Westinghouse Electric Corporation, Switchgear Division, in Greenwood County, SC, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 112617 (Sub-472F), filed February 25, 1980. Applicant: LIQUID TRANSPORTERS, INC., 1292 Fern Valley Road, P.O. Box 2139, Louisville, KY 40221. Representative: Larry W. Thompson (same address as applicant). Transporting *petroleum products,* in bulk, in tank vehicles, (1) from Owensboro, KY, to points in AR, IN, IL, MO, and TN, (2) from Memphis and Nashville, TN, to points in AR, IN, IL, MO, and KY, (3) from Oakland City, Evansville, and Mt Vernon, IN, to points in AR, IL, MO, KY, and TN, (4) from Wood River, IL, to points in AR, IN, MO, KY, and TN, and (5) from West Memphis, AR, to points in IN, IL, MO, TN, and KY. (Hearing site: Louisville, KY, or Washington, DC.)

MC 114457 (Sub-566F), field February 28, 1980. Applicant: DART TRANSIT CO., a corporation, 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills (same address as applicant). Transporting *bentonite, cat litter, and clay products,* from Middleton, TN, to points in the United States (except AK and HI). (Hearing site: Nashville, TN, or St. Paul, MN.)

MC 115826 (Sub-579F), filed February 25, 1980. Applicant: W. J. DIGBY, INC., 6015 East 58th Avenue, Commerce City, CO 80022. Representative: Howard Gore, (same address as applicant). Transporting (a) *alcoholic beverages and mixes* for alcoholic beverages, from points in CA, FL, IL, IN, KY, MA, MI, MO, NJ, NY, OH, PA, TN, and TX, to Cheyenne, WY, (b) *malt beverages,* from Pittsburgh, PA, to Denver, CO, and (c) *alcoholic beverages,* from Somerville and Boston, MA, and points in NY and NJ, to Denver, CO. (Hearing site: Denver, CO.)

MC 116947 (Sub-81F), filed February 25, 1980. Applicant: SCOTT TRANSFER CO., INC., 1190 Sylvan Road, Atlanta, GA 30310. Representative: William Addams, Suite 212, 5299 Rosewell Road, NE., Atlanta, GA 30342. *Contract carrier,* transporting (1) *industrial cleaners, deodorizers, weed-killers, and insecticides,* and (2) *materials and supplies* used in the distribution of the commodities in (1) above, between Atlanta, GA, on the one hand, and, on the other, Charlotte, NC, Birmingham, AL, Indianapolis, IN, Camp Hill and Middletown, PA, Robinson, IL, and Toledo, OH, under continuing contract(s) in (1) and (2) above, with Oxford Chemicals, Inc., of Atlanta, GA. (Hearing site: Atlanta, GA.)

Note.—Dual operations may be involved.

MC 117416 (Sub-68F), filed February 20, 1980. Applicant: NEWMAN AND PEMBERTON CORPORATION, 2007 University Ave., NW., Knoxville, TN 37921. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. Transporting (1) *such commodities* as are dealt in by grocery, drug, and food business houses, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between the facilites of Hunt Wesson Foods, Inc., at or near (a) Chicago, IL, and (b) Toledo, OH, on the one hand, and, on the other, points in IN and KY. (Hearing site: Washington, DC.)

MC 117416 (Sub-69F), filed February 22, 1980. Applicant: NEWMAN AND PEMBERTON CORPORATION, 2007 University Ave., NW., Knoxville, TN 37921. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Spring, MD 20910. Transporting *sodium sulphate* (except in bulk, in tank vehicles), from the facilities of JM Huber Corporation, at or near Etowah, TN, to points in IN, MI, OH, and KY. (Hearing site: Washington, DC.)

MC 117956 (Sub-11F), filed February 19, 1980. Applicant: SCOTT TRANSFER CO., INC., 920 Ashby St., SW., Atlanta, GA 30310. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, GA 30349. Transporting (1) *lighting fixtures and lighting equipment,* and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between the facilities of Gibson Metalux Corporation, at or near (a) Eufaula, AL, and (b) Anericus, GA, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Atlanta, GA.)

Note.—Dual operations may be involved.

MC 120636 (Sub-4F), filed February 27, 1980. Applicant: BRUNTON STORAGE & VAN CO., INC., 6th and Locust Streets, P.O. Box 578, Chatsworth, IL 60921. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW., Washington, DC 20001. Transporting (1) *glass products, metal products, plastic products, clay products, feldspar, and talc* (except commodities in bulk), (2) *molds and machinery* used in the manufacture of glass products, (3) *bottle coating systems,* (4) *parts and accessories* for the commodities in (2) and (3) above (except commodities in bulk), and (5) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1), (2), (3), and (4) above (except commodities in bulk), between the facilities of Flat River Glass Co., at or near Flat River, MO, on the one hand, and, on the other, points in the United States (excpet AK and HI). (Hearing site: Washington, DC.)

MC 120636 (Sub-5F), filed February 27, 1980. Applicant: BRUNTON STORAGE & VAN CO., INC., 6th and Locust Streets, P.O. Box 578, Chatsworth, IL 60921. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW., Washington, DC 20001. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the facilities of Wheaton Industries, at or near Des Plaines, IL, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Washington, DC.)

MC 120636 (Sub-6F), filed February 27, 1980. Applicant: BRUNTON STORAGE & VAN CO., INC., 6th and Locust Sts., P.O. Box 577, Chatsworth, IL 60921. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW., Washington, DC 20001. Transporting (1) *glass products, metal products, plastic products, clay, clay products, feldspar, and talc* (except

commodities in bulk), (2) *molds and machinery* used in the manufacture of glass products, (3) *bottle coating systems*, (4) *parts and accessories* for the commodities in (2) and (3) above (except commodities in bulk), and (5) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), (2), (3), and (4) above (except commodities in bulk), between the facilities of Wheaton Industries, at or near Centralia, IL, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Washington, DC.)

MC 120737 (Sub-63F), filed February 21, 1980. Applicant: STAR DELIVERY & TRANSFER, INC., P.O. Box 39, Canton, IL 61520. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. Transporting *iron and steel pipe*, from Galveston, TX, to points in LA, MS and AL. (Hearing site: Houston, TX, or Chicago, IL.)

MC 121236 (Sub-8F), filed February 19, 1980. Applicant: SERVICE TRANSPORTATION LINES, INC., 729 34th Ave., Rock Island, IL 61201. Representative: Alki E. Scopelitis, 1301 Merchants Plaza, Indianapolis, IN 46204. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Milwaukee, WI and Antioch, IL, over U.S. Hwy 41, serving all intermediate points and the off-route point of Kenosha, WI, and (2) between Milwaukee, WI and South Beloit, IL, over WI Hwy 15, serving all intermediate points. (Hearing site: Indianapolis, IN, or Chicago, IL.)

Note.—Applicant intends to tack the sought rights with its existing authority.

MC 126736 (Sub-133F), filed January 28, 1980. Applicant: FLORIDA ROCK & TANK LINES, INC., 155 East 21st St., Jacksonville, FL 32206. Representative: Martin Sack, Jr., 1754 Gulf Life Tower, Jacksonville, FL 32207. Transporting *petroleum products*, in bulk, in tank vehicles, from Panama City, FL, to points in AL and GA. (Hearing site: Jacksonville, FL.)

MC 128007 (Sub-155F), filed February 22, 1980. Applicant: HOFER, INC., 20th and 69 ByPass, P.O. Box 583, Pittsburg, KS 66762. Representative: Larry E. Gregg, 641 Harrison St., P.O. Box 1979, Topeka, KS 66601. Transporting (1) *fabricated concrete reinforcing materials and joints*, from the facilities of Superior Concrete Accessories, Inc., at or near (a) Houston, TX, (b) Parker, AZ, (c) Santa Fe Springs, CA, (d) Red Hook, NY, and (f) South Bend, IN, to Points in the United States (except AK and HI); and (2) *materials and supplies* used in the manufacture of the commodities in (1) above, in the reverse direction. (Hearing site: San Diego, CA, or Kansas City, MO.)

MC 128837 (Sub-18F), filed February 19, 1980. Applicant: TRUCKING SERVICE, INC., P.O. Box 229, Carlinville, IL 62656. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. Transporting *aluminum and zinc*, from Alton and Madison, IL, and St. Louis, MO, to points in AL, AR, LA, MS, MO, OK, and TX. (Hearing site: Chicago, IL.)

Note.—Dual operations may be involved.

MC 134467 (Sub-60F), filed February 11, 1980. Applicant: POLAR EXPRESS, INC., P.O. Box 845, Springdale, AR 72764. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. Transporting *foodstuffs* (except in bulk), from the facilities of J. H. Filbert, Inc., (a) at or near Baltimore, MD and (b) at points in Anne Arundel, Baltimore, Howard, and Prince Georges Counties, MD, to points in ME, NH, VT, MA, CT, RI, NJ, DE, VA, KY, IL, WI, OH, PA, WV, GA, IN, MI, NY, NC, SC, TN, AL, MS, LA, FL, TX, MO, and AR. (Hearing site: Baltimore, MD or Little Rock, AR.)

MC 135047 (Sub-2F), filed February 6, 1980. Applicant: GRADY MOVING & STORAGE, INC., Brynn Marr Rd., P.O. Box Q, Jacksonville, NC 28540. Representative: Robert J. Gallagher, Suite 1200, 1000 Connecticut Ave. NW., Washington, DC 20036. Transporting *household goods*, as defined by the Commission, between points in NJ, PA, DE, MD, VA, NC, SC, GA, FL, and DC. (Hearing site: Jacksonville, NC.)

MC 135197 (Sub-26F), filed February 21, 1980. Applicant: LEESER TRANSPORTATION, INC., P.O. BOX 545, Palmyra, MO 63461. Representative: Leonard A. Jaskiewicz, 1730 M Street NW., Suite 501, Washington, DC 20036. Transporting *(1) animal and poultry feeds, plant growth regulants, and pesticides and (2) materials, equipment and supplies used in the manufacture and distribution of the commodities named in (1) above (except liquid commodities, in bulk)*, between points in IL, IN, IA, MN, MO and NE, on the one hand, and, on the other, points in the United States, (except AL and HI), restricted to traffic originating at or destined to the facilities of American Cyanamid Company. (Hearing site: St. Louis, MO.)

MC 135797 (Sub-313F), filed February 22, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant (same address as applicant). Transporting *animal feed additives and animal feed ingredients*, between the facilities of Micro Blenders, at Liberty, MO, and points in AL, AZ, FL, GA, IN, KY, LA, MS, NC, OH, SC, VA, and WV. (Hearing site: Kansas City, MO, or Washington, DC.)

MC 135797 (Sub-314F), filed February 22, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant (same address as applicant). Transporting (1) *new furniture*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of new furniture, between Kansas City, KS, and Denver, CO, on the one hand, and, on the other, points in ID, MN, MT, MD, SD, and WY. (Hearing site: Atlanta, GA, or Washington, DC.)

MC 135797 (Sub-315F), filed February 22, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant (same address as applicant). Transporting (1) *such commodities* as are dealt in or used by grocery and food business houses (except commodities in bulk), between points in AL, AR, CA, DE, FL, GA, IL, IN, IA, KY, LA, MD, MI, MN, MS, MO, NH, NJ, NY, NC, OH, PA, SC, TN, TX, VA, WV, and WI, restricted to the transportation of traffic originating at or destined to the facilities of the Kroger Company. (Hearing site: Cincinnati, OH, or Washington, DC.)

MC 135797 (Sub-316F), filed February 22, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant (same address as applicant). Transporting (1) *animal feed and animal feed ingredients*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of commodities in (1) above, between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Kal Kan Foods, Inc. (Hearing site: Los Angeles, CA, or Washington, DC.)

MC 135797 (Sub-317F), filed February 22, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant (same address as applicant). Transporting (1) *containers*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of containers, between the facilities of Chattanooga Glass Co., at Corsicana, TX, on the one hand, and, on the other, points in AR, IA, IL, IN, KS, LA, MO, MS, OH, OK, and TN. (Hearing site: Chattanooga, TN, or Washington, DC.)

MC 135797 (Sub-314F), filed February 22, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant (same address as applicant). Transporting *such commodities* as are produced or dealt in by manufacturers or converters of paper and paper products (except commodities in bulk), between points in Brown, Portage, and Wood Counties, WI, and Benton and Washington Counties, AR, and points in AZ, AR, CA, FL, IL, IN, LA, MI, MN, MO, NC, OH, OR, TN, TX, UT, WA, and WI. (Hearing site: Kansas City, MO, or Washington, DC.)

MC 135797 (Sub-319F), filed February 25, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant (same address as applicant). Transporting *evaporative air coolers*, from Phoenix, AZ, to points in CA, CO, FL, ID, MT, NC, NM, NV, OK, OR, TX, UT, and WA. (Hearing site: Phoenix, AZ, or Washington, DC.)

MC 136077 (Sub-19F), filed September 14, 1979. Applicant: REBER CORPORATION, 2216 Old Arch Road, Norristown, PA 19401. Representative: Sheri B. Friedman, 1600 Land Title Bldg., 100 South Broad St., Philadelphia, PA 19110. Transporting *fly ash*, in bulk, in tank vehicles, from Mercer Electric Station, at or near Trenton, NJ, to points in NY, DE, MD, VA, WV, MA, RI, and CT. (Hearing site: Philadelphia, PA.)

MC 136786 (Sub-211F), filed February 19, 1980. Applicant: ROBCO TRANSPORTATION, INC., 4475 N.E. 3rd St., Des Moines, IA 50313. Representative: Stanley C. Olsen, Jr., Suite 411, 7400 Metro Blvd., Edina, MN 55435. Transporting *frozen foodstuffs*, from Martinsburg, WV and Bedford, VA, to points in AL, CT, DC, DE, FL, GA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MS, NC, NE, NH, NJ, NY, OH, PA, RI, SC, TN, VA, VT, WI, and WV. (Hearing site: Minneapolis, MN, or Chicago, IL.)

MC 139207 (Sub-16F), filed February 20, 1980. Applicant: MCNABB–WADSWORTH TRUCKING CO., 305 S. Wilcox Dr., Kingsport, TN 37665. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St. NW., Washington, DC 20004. Transporting (1) *filtering agents* and (2) *absorbent materials* (except in bulk), from the facilities of Mid-Florida Mining Co., at or near Lowell, FL, to points in NC, SC, VA, TN, MD, and DC, and those points in GA on and north of the Interstate Hwy 20. (Hearing site: Ocala, FL.)

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By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 21866 (Sub-152F), filed March 6, 1980. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting (1) *automotive parts and equipment*, and (2) *materials and supplies* used in the manufacture of automotive parts and equipment (except commodities in bulk), between points in DE, IL, IN, MA, MI, MO, NY, OH, PA, and WI, restricted to the transportation of traffic originating at or destined to the facilities of Chrysler Corporation. (Hearing site: Philadelphia, PA, or Washington, DC.)

MC 34027 (Sub-15F), filed March 10, 1980. Applicant: GEETINGS, INC., P.O. Box 82, Pella, IA 50219. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting (1) *millwork*, (2) *sliding glass doors*, and (3) *materials and supplies* (except commodities in bulk), used in the manufacture, and distribution of the commodities in (1) and (2) above, between Pella, IA, on the one hand, and, on the other, those points in the U.S. in and west of MT, WY, CO, and NM (except AK and HI). (Hearing site: Des Moines, IA.)

MC 42487 (Sub-947F), filed September 5, 1979, previously noticed in the Federal Register issue of March 14, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. box 3062, Portland, OR 97208. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between junction U.S. Hwy 82 and U.S. Hwy 75 and Albuquerque, NM, serving the intermediate points of Gainsville, Wichita Falls, and Amarillo, TX, and serving the junction U.S. Hwy 82 and U.S. Hwy 377 for the purpose of joinder only; from junction U.S. Hwy 82 and U.S. Hwy 75 over U.S. Hwy 82 to junction U.S. Hwy 287 at Henrietta, TX, then over U.S. Hwy 287 to Amarillo, TX, then over U.S. Hwy 66 to Albuquerque, and return over the same route, (2) between Wichita Falls, TX and Fort Worth, TX, serving no intermediate points, over U.S. Hwy 287, (3) between Denton, TX and junction U.S. Hwy 377 and U.S. Hwy 82, serving no intermediate points, over U.S. Hwy 377 (Hearing site: Dallas, TX.)

Note.—The purpose of this republication is to properly describe the territory in (2) above. Applicant states the authority herein will be tacked with its existing authority.

MC 60186 (Sub-68F), filed March 3, 1980. Applicant: NELSON FREIGHTWAYS, INC., 47 East St., Rockville, CT 06066. Representative: Edward G. Villalon, 1032 Pennsylvania Bldg., Pennsylvania Ave. & 13th St., NW., Washington, DC 20004. Transporting *citrus products* (except in bulk, in tank vehicles), from points in FL, to ports of entry on the International Boundary line between the United States and Canada in NY, VT, NH, and ME. (Hearing site: Orlando, FL.)

MC 86247 (Sub-21F), filed August 3, 1979, previously noticed in the Federal Register issue of March 14, 1980, as MC 86247 (Sub-20). Applicant: I.C.L. INTERNATIONAL CARRIERS, LIMITED, 1333 College Ave., Windsor, Ontario, Canada. Representative: Joseph P. Allen, 7701 W. Jefferson, P.O. Box 09259, Detroit, MI 48209. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *general commodities* (except household goods and commodities of unusual value), (1) between Detroit, MI, and junction Interstate Hwy 94 and U.S. Hwy 12 over Interstate Hwy 94, serving all intermediate points, (2) between junction Interstate Hwy 94 and MI Hwy 60 and Niles, MI, over MI Hwy 60, serving all intermediate points, (3) between Ypsilanti, MI, and junction U.S. Hwy 12 and Interstate Hwy 94 over U.S. Hwy 12, serving all intermediate points, (4) between junction Interstate Hwy 94 and 69 and Fort Wayne, IN, from junction Interstate Hwys 94 and 69 over Interstate Hwy 69 to junction IN Hwy 3, then over IN Hwy 3 to Fort Wayne and return over the same routes, serving all intermediate points, and serving (5) Adrian, Hastings, Hillsdale, Manchester, Tecumseh, Allegan, Dowagiac, Buchannan, Benton Harbor, St. Joseph, and Milan, MI, and Churubusco, Elkhart, Grabill, South Bend, and Syracuse, IN, and Defiance and Napoleon, OH, as off-route points. Condition: To the extent the certificate to be issued in this proceeding authorizes the transportation of classes A and B explosives, it shall be limited in point of time to a period expiring 5 years from its date of issue. (Hearing site: Detroit, MI, or Washington, DC.)

Note.—The purpose of this republication is to correct the territorial description in (3) above, and to properly identify the Sub as 21F in lieu of 20F. Applicant intends to tack with its existing authority.

MC 105007 (Sub-69F), filed March 3, 1980. Applicant: MATSON TRUCK LINES, INC., 1407 St. John Ave., Albert Lea, MN 56007. Representative: Robert S. Lee, 1000 First National Bank Bldg., Minneapolis, MN 55402. Transporting *animal fat grease and tallow,* in bulk in tank vehicles, between points in MN, on the one hand, and, on the other, points in IA, ND, SD and WI. (Hearing site: Minneapolis, MN.)

MC 113666 (Sub-177F), filed June 18, 1979, previously noticed in the **Federal Register** issue of March 18, 1980. Applicant: FREEPORT TRANSPORT, INC., 1200 Butler Road, Freeport, PA 16229. Representative: R. Scott Mahood (same address as applicant). Tranporting (1) *Dicyandiamide,* from ports of entry between the United States and Canada located in MI and NY to points in LA, NC and TX; (2) *Textile treating compounds,* from ports of entry between the United States and Canada located in MI and NY to points in NC; (3) *Acrylonitrile,* from points in LA to ports of entry between the United States and Canada located in MI and NY; (4) *Pesticides and plant growth regulants,* from Atlanta, IL and Randolph, WI to ports of entry between the United States and Canada located in MI and NY; (5) *Clay,* from Attapulgus, GA, and Aiken and Langley, SC to ports of entry between the United States and Canada located in MI and NY; (6) *Alumina, hydrated and alumina oxide catalyst,* from Michigan City, IN, to ports of entry between the United States and Canada located in MI and NY; (7) *Synthetic fiber,* from Painesville, OH, to ports of entry between the United States and Canada located in MI and NY, and (8) *Salt and salt products,* from Retsof, NY, to ports of entry between the United States and Canada located in NY. (Hearing site: Pittsburgh, PA, or Washington, DC.)

Note.—The purpose of this republication is to include (8) as part of the authority.

MC 114457 (Sub-537F), filed July 30, 1979, previously noticed in the **Federal Register** issue of March 6, 1980. Applicant: DART TRANSIT COMPANY, a corporation, 2102 University Ave., St. Paul, MN 55114. Representative: James H. Wills (same address as applicant). Transporting *Confectionary* (except in bulk), from the facilities of Schrafft Candy Company, at or near Boston and Woburn, MA to those points in the United States in and east of ND, SD, NE, KS, OK, and TX. (Hearing site: Boston, MA, or St. Paul, MN.)

Note.—The purpose of this republication is to correctly describe the territorial description.

MC 115826 (Sub-581F), filed March 3, 1980. Applicant: W. J. DIGBY, INC., a Nevada corporation, 6015 East 58th Ave., Commerce City, CO 80022. Representative: William J. Boyd, 2021 Midwest Rd., Suite 205, Oak Brook, IL 60521. Transporting *such commodities* as are dealt in and used by manufacturers and distributors of alcoholic beverages, from the facilities of Heublein, Inc., at or near Hartford, CT, to points in AZ, CA, CO, GA, ID, IL, IN, KS, KY, MI, MN, MO, MT, NE, NV, OK, SD, TN, UT, WI, and WY, restricted to the transportation of traffic originating at the named facility. (Hearing site: New York, NY, or Washington, DC.)

MC 124887 (Sub-112F), filed March 3, 1980. Applicant: SHELTON TRUCKING SERVICE, INC., Rt. 1, Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Balckstone, Bldg., Jacksonville, FL 32202. Transporting (1) *pre-cut log buildings,* and (2) *materials equipment and supplies* used in the manufacture and distribution of pre-cut log buildings, between those points in the U.S. in and east of ND, SD, NE, KS, OK and TX. (Hearing site: Jacksonville, or Tallahassee, FL.)

MC 135797 (Sub-317F), filed February 22, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant (same address as applicant). Transporting *office furniture,* from Jasper, IN to points in FL, GA, LA, MD, MA, MI, MN, NY, OH, and TX. (Hearing site: Indianapolis, IN, or Washington, DC.)

MC 138157 (Sub-230F), filed March 3, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 S. Market St., Chattanooga, TN 37410. Representative: Patrick E. Quinn, P.O. box 9596, Chattanooga, TN 37412. Transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods, as defined by the Commission, commodities in bulk, and those requiring special equipment), from the facilities of Bastrum-Warren, Inc., of Seattle WA, to points in the United States (except AK and HI), restricted to the transportation of traffic originating at the named origin. (Hearing site: Seattle, WA.)

Note.—Dual operations may be involved.

MC 138157 (Sub-233F), filed March 3, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 S. Market St., Chattanooga, TN 37410. Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. Transporting *refrigerated bottle and can vending machines and materials, equipment and supplies* used in the manufacture of bottle and can vending machines, from Chattanooga, TN, to points in the United States, (except AK and HI). (Hearing site: Atlanta, GA.)

Note.—Dual operations may be involved.

MC 138106 (Sub-2F), filed March 7, 1980. Applicant: TIDWELL MOTOR CARRIERS, INC., P.O. Box 639, Haleyville, AL 35565. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202. *Contract carrier* transporting: (1)(a) *trailers,* designed to be drawn by passenger automobiles in initial movements, (b) *buildings,* in sections, mounted on wheeled undercarriages, and (c) *modular homes,* mounted on wheeled undercarriages, from Wildwood, FL, to points in the United States (except AK and HI), and (2) *returned, disabled, and repossessed* shipments of the commodities described in (1) above, in the reverse direction under continuing contract(s) with Tidwell, Inc, of Haleyville, AL. (Hearing site: Jacksonville, or Tampa, FL.)

MC 140186 (Sub-43F), filed March 3, 1980. Applicant: TIGER TRANSPORTATION, INC., P.O. Box 2248, Missoula, MT 59801. Representative: David A. Sutherlund, 1150 Connecticut Ave., NW., Washington, DC 20036. Transporting (1) *roofing and siding,* and (2) *roofing and siding materials, equipment, and supplies,* from points in CA to points in ID, MT, ND, SD, and WY. (Hearing site: Los Angeles, CA.)

MC 140186 (Sub-44F), filed March 4, 1980. Applicant: TIGER TRANSPORTATION, INC., P.O. Box 2248, Missoula, MT 59801. Representative: David A. Sutherlund, 1150 Connecticut Ave., NW., Suite 400, Washington, DC 20036. Transporting *petroleum and petroleum products* (except in bulk) from points in OK to points in AZ, CA, CO, ID, MT, NE, ND, NM, NV, OR, SD, TX, UT, WA, and WY. (Hearing site: Denver, CO.)

MC 143696 (Sub-17F), filed March 4, 1980. Applicant. AMERICAN INDUSTRIAL TRANSPORTATION, INC., P.O. Box 1416, Henderson, TX 75652. Representative: Hugh T. Matthews, 2340 Fidelity Union Tower, Dallas, TX 75201. *Contract carrier,* transporting *used machinery,* between points in the United States (except AK and HI), under continuing contract(s) with Perfection Machinery Sales, Inc., of Wheeling, IL. (Hearing site: Dallas, TX.)

MC 144547 (Sub-1F), filed March 5, 1980. Applicant: DURA-VENT TRANSPORT CORPORATION, 2525 El Camino Real, Redwood City, CA 94064.

Representative: Barry Roberts, 888 17th Street, N.W., Washington, DC 20006. *Contract Carrier,* transporting *truck and trailer parts* and *accessories* for truck and trailer parts, from points in the United States (except AK and HI), to Fontana, CA, under continuing contract(s) with Road Systems, Inc., a C. F. Company, of Fontana, CA. (Hearing site: San Francisco, CA, or Washington, DC.)

MC 144616 (Sub-8F), filed March 10, 1980. Applicant: TRUCKS, INC., P.O. Box 79113, Saginaw, TX 76179. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Rd., Fort Worth, TX 76112. Transporting canned and preserved foodstuffs, from the facilities of Heinz USA, at or near (a) Fremont and Toledo, OH, (b) Holland, MI, and (c) Pittsburgh, PA, to points in TX, OK, and KS, restricted to the transportation of traffic originating at the named facilities and destined to the indicated destinations. (Hearing site: Ft. Worth, TX, or Pittsburgh, PA.)

MC 149086 (Sub-1F), filed February 27, 1980. Applicant: TELEX-BENZ EXPRESS, INC., 3020 Santa Monica Blvd., San Monica, CA 90404. Representative: Miles L. Kavaller, 315 So. Beverly Dr., Suite 315, Beverly Hills, CA 90212. Transporting *used automobiles,* in secondary movements, in truckaway service, between Santa Monica, CA, on the one hand, and, on the other, points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Telex-Benz Sales of America, Inc. (Hearing site: Los Angeles, CA.)

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Decided: April 23, 1980.

By the Commission, Review Board Number 2, Members Eaton, Liberman and Jensen.

MC 121600 (Sub-7F), filed January 10, 1980. Applicant: AVERITT EXPRESS, INC., P.O. Box 7342, Nashville, TN 37210. Representative: Robert L. Baker, 618 United American Bank Bldg., Nashville, TN 37219. Over regular routes, transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) (A)(1) between Nashville and Knoxville, TN, over Interstate Hwy 40, serving all points in Putnam County, TN, as intermediate or off-route points, and serving all points in Clay, Fentress, Jackson, Overton, and Pickett Counties, TN, as off-route points; (2) between Cookeville and Celina, TN; from Cookeville over TN Hwy 42 to junction TN Hwy 52, then over TN Hwy 52 to Celina, and return over the same route, serving all points in Clay, Fentress, Jackson, Overton, Pickett and Putnam Counties, TN, as intermediate or off-route points; (3) between Celina, TN and junction TN Hwy 53 and Interstate Hwy 40, over TN Hwy 53, serving all points in Clay, Fentress, Jackson, Overton, Pickett and Putnam Counties, TN, as intermediate or off-route points, and serving junction TN Hwy 53 and Interstate Hwy 40 for purpose of joinder only; (4) between Livingston and Byrdstown, TN, over TN Hwy 42, serving all points in Clay, Fentress, Jackson, Overton, Pickett, and Putnam Counties, TN, as intermediate or off-route points; (5) between Livingston and Jamestown, TN, over TN Hwy 52, serving all points in Clay, Fentress, Jackson, Overton, Pickett and Putnam Counties, TN, as intermediate or off-route points; (6) serving the facilities of Firestone Tire & Rubber Company at or near Lavergne, TN, as an off-route point in connection with carrier's otherwise authorized regular route operation serving Nashville, TN, (7) between Cookeville and Chattanooga, TN: from Cookeville over TN Hwy 42 to junction U.S. Hwy 70, then over U.S. Hwy 70 to junction TN Hwy 111, then over TN Hwy 111 to junction TN Hwy 8, then over TN Hwy 8 to junction U.S. Hwy 127, then over U.S. Hwy 127 to Chattanooga, and return over the same route, serving all intermediate and off-route points in Putnam County, TN, and all points in Clay, Fentress, Jackson, Overton, and Pickett Counties, TN, as off-route points, with service at Chattanooga and points in its commercial zone restricted against the transportation of traffic originating at, destined to, or interlined at Knoxville, Nashville, and Memphis, TN; and (8) between Cookeville and Chattanooga, TN: (a) from Cookeville over Interstate Hwy 40 to junction Interstate Hwy 75, then over Interstate Hwy 75 to Chattanooga, and return over the same route, and (b) from Cookeville over Interstate Hwy 40 to junction Interstate Hwy 24, then over Interstate Hwy 24 to Chattanooga, and return over the same route, serving no intermediate points, as alternate routes for operating convenience only; and (B) between Knoxville and Oak Ridge, TN: from Knoxville over Interstate Hwy 40 to junction TN Hwy 95, then over TN Hwy 95 to Oak Ridge and return over the same route, serving all intermediate points and serving all points in Anderson, Blount, Knox, and Loudon Counties, TN, as off-route points. Condition: Issuance of a certificate of public convenience and necessity in this proceeding is conditioned upon the prior or coincidental cancellation, at applicant's written request, of the certificates of registration described above. (Hearing site: Nashville, TN.)

Notes.—(1) The purpose of part (A) of this application is to convert applicant's certificates of registration in MC–121600 and Subs 2, 3, 4, 5, and 6 to certificates of public convenience and necessity. Part (B) constitutes new authority. (2) Applicant intends to tack with existing regular-route authority.

MC 121600 (Sub-8F), filed January 14, 1980. Applicant: AVERITT EXPRESS, INC., P.O. Box 7342, Nashville, TN 37210. Representative: Robert L. Baker, 618 United American Bank Bldg., Nashville, TN 37219. Over regular routes, transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Memphis and Nashville, TN, over Interstate Hwy 40, serving no intermediate points and serving Nashville and points in its commercial zone for purposes of joinder only. Condition: The issuance of a certificate of public convenience and necessity is subject to either (a) the prior or coincidental cancellation, at applicant's written request, of applicant's certificates of registration in MC–121600 and Subs 2, 3, 4, 5, and 6, or (b) the successful conversion of those certificates to certificates of public convenience and necessity in MC–121600 Sub 7. (Hearing site: Nashville, TN.)

Note.—Applicant intends to tack with its existing regular-route auhority.

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Decided: May 1, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 61264 (Sub-34F), filed January 30, 1980. Applicant: PILOT FREIGHT CARRIERS, INC., P.O. Box 615, Winston-Salem, NC 27102. Representative: William F. King, Suite 400, Overlook Bldg., 6121 Lincolnia Rd., Alexandria, VA 22312. Over regular routes, transporting *general commodities,* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Toledo, OH, and Boston, MA, (a) over Interstate Hwy 90, and (b) over U.S. Hwy 20, (2) between Toledo, OH, and junction Interstate Hwy 80 and Interstate Hwy 95 at or near Fort Lee, NJ, over Interstate Hwy 80, (3) between Beaver Dam, OH, and Atlantic City, NJ, from Beaver Dam over U.S. Hwy 30 to

Mansfield, OH, then over U.S. Hwy 30 to Atlantic City and return over the same route, (4) between Richmond, IN, and Baltimore, MD, over Interstate Hwy 70 (also over U.S. Hwy 40), (5) between Lawrenceburg, IN, and junction U.S Hwys. 50 and 113 at or near Berlin, MD, over U.S. Hwy 50, (6) between Toledo, OH, and junction Interstate Hwy 75 and U.S. Hwy 90, at or near Lake City, FL, over Interstate Hwy 75 (also over Interstate connector Hwys I275 at Cincinnati, OH, I285 at Atlanta, GA, I475 at Macon, GA) serving intermediate points in GA north of U.S. Hwy 80 for joinder only, (7) between Cleveland, OH, and junction Interstate Hwys. 71 and 75 at or near Walton, KY, over Interstate Hwy 71 (also over Interstate connector Hwy 270 at Columbus, OH), (8) between Clevelnad, OH, and Charlotte, NC, over Interstate Hwy 77, (9) between Cincinnati, OH, and Newark, NJ, over U.S. Hwy 22, (10) between Toledo, OH, and junction Hwy 25 and Interstate Hwy 75 at Cygnet, OH, over OH Hwy 25, (11) between Findlay and Carey, OH, over OH Hwy 15, (12) between Toledo, OH, and Asheville, NC, over U.S. Hwy 23, serving intermediate points in North Coarolina for joinder only, (13) between Richmond, IN and Charleston, WV, over U.S. Hwy 35 to junction U.S. Hwy 60, then over U.S. Hwy 60 to Charleston and return over the same route, (14) between Lima and Huntesville, OH, over OH Hwy 117, (15) between Wapakoneta and Athens, OH, over U.S. Hwy 33, (16) between Xenia, OH, and junction Ky Hwy 180, and Interstate Hwy 64, from Zenia over U.S. Hwy 68 to junction U.S. Hwy 22, then over U.S. Hwy 22 to junction OH Hwy 73, then over OH Hwy 73 to Portsmouth, OH, then over U.S. Hwy 52 to junction unnumbered Hwy then over unnumbered Hwy to Ashland, KY, then over U.S. Hwy 60 to junction KY Hwy 180, then over KY Hwy 180 to junction Interstate Hwy 64, and return over the same route, (17) between Eaton, OH and junction OH Hwy 73 and Interstate Hwy 75, from Eaton over OH Hwy 122 to Middletown, OH, then over OH Hwy 73 to junction Interstate 75, and return over the same route, (18) between Eaton and Cincinnati, OH, over U.S. Hwy 127, (19) between Avery, OH and Staunton, VA, over U.S. Hwy 250, (20) between Cleveland, OH, and junction U.S. Hwy 42 and Interstate Hwy 75 at Covington, KY, over U.S. Hwy 42, (21) between Cleveland, OH, and Ebensburg, PA, over U.S. Hwy 422, (22) between Cleveland, OH, and New Castle, PA, from Cleveland over OH Hwy 14 to Deerfield, OH, then over U.S. Hwy 224 to New Castle, and return over the same route, (23) between Lodi, OH, and junction NJ Hwy 42 and NJ Turnpike, from Lodi over U.S. Hwy 224 to junction Interstate Hwy 76, then over Interstate Hwy 76 to junction NJ Hwy 42 and then over NJ Hwy 42 to the NJ Turnpike, and return over the same route, (24) between Norwalk and Akron, OH, over OH Hwy 18, (25) between Cleveland and Akron, OH, over OH Hwy 8, (26) between Ashtabula and West Point, OH, over OH Hwy 11, (27) between Youngstown, OH and junction OH Hwy 7 and Interstate Hwy 70, over OH Hwy 7, (28) between Deerfield, OH and Pittsburgh, PA, from Deerfield over OH Hwy 14A to junction OH Hwy 14, then over OH Hwy 14 to junction PA Hwy 51, then over PA Hwy 51 to junction PA Hwy 60, then over PA Hwy 60 to Pittsburgh, and return over same route, (29) between junction Interstate Hwy 90 and Interstate Hwy 271 and junction Interstate Hwy 271 and Interstate Hwy 71, over Interstate Hwy 271, (30) between Cleveland, OH and junction OH Hwy 21 and Interstate Hwy 77 at or near Strasburg, OH, over OH Hwy 21, (31) between Pittsburgh and Uniontown, PA, over PA Hwy 51, (32) between Cincinnati, OH and Lexington, VA, from Cincinnati over Interstate Hwy 75 to junction U.S. Hwy 60, then over U.S. Hwy 60 to Lexington, and return over the same route, (33) between Cincinnati, OH and Alachua, FL, over U.S. Hwy 27 (also over alternate U.S. Hwy 27, serving all intermediate points, and serving intermediate points in GA north of U.S. Hwy 80 for joinder only, (34) between junction U.S. Hwys. 42 and 25 at Covington, KY, and Jesup, GA, from junction U.S. Hwy 42 over U.S. Hwy 25 to junction U.S. Hwys 25W and 25E, then over U.S. Hwy 25W (also over U.S. Hwy 25E) to Newport, TN, then over U.S. Hwy 25 to Jesup, and return over the same route, serving all intermediate points in NC, SC, and in GA north of U.S. Hwy 80 for joinder only, (35) between Rouses Point, NY, and Chattanooga, TN, from Rouses Point over U.S. Hwy 11 to junction U.S. Hwy 11W, then over U.S. Hwy 11W (also over U.S. Hwy 11E) to junction U.S. Hwy 11, then over U.S. Hwy 11 to Chattanooga, and return over the same route, serving all intermediate points, and serving intermediate points in VA for joinder only, (36) between junction U.S. Hwy 27 and Interstate Hwy 40 and Asheville, NC, over Interstate 40, serving all intermediate points and serving intermediate points in NC for joinder only, (37) between Columbia, SC, and Asheville, NC, over Interstate Hwy 26, (38) between Savannah, GA, and Phenix City, AL, over U.S. Hwy 80, (39) between Rome and Calhoun, GA, over GA Hwy 33, (40) between Erie, PA, and Charleston, WV, over Interstate Hwy 79, (41) between Niagara Falls, NY, and Younstown, OH, over U.S. Hwy 62, (42) between Conneaut, OH, and New Bedford, MA, from Conneaut over U.S. Hwy 20 to junction U.S. Hwy 6N, then over U.S. Hwy 6N to junction U.S. Hwy 6, then over U.S. Hwy 6, to New Bedford, and return over the same route, (43) between Watertown and Malone, NY, over NY Hwy 37, (44) between Binghamton and Troy, NY over NY Hwy 7 (also over completed portions of Interstate Hwy 88, (45) between Rochester, NY, and Lucketts, VA, from Rochester over NY Hwy 15 (also over NY Hwy 15A) to junction Interstate Hwy 390, then over Interstate Hwy 390 to junction NY Hwy 17, then over NY Hwy 17 to junction U.S. Hwy 15, then over U.S. Hwy 15 to Lucketts, and return over the same route, (46) between Binghamton and Alexandria Bay, NY over NY Hwy 12, (47) between junction Interstate Hwy 276 and U.S. Hwy 130 and Champlain, NY, from junction Interstate Hwy 276 over U.S. Hwy 130 to junction U.S. Hwy 1, then over U.S. Hwy 1 to New York, NY, then over Interstate Hwy 87 to Albany, NY, then over Interstate Hwy 87 to Albany, NY, then over Interstate Hwy 87 (also over U.S. Hwy 9) to Champlain and return over the same route.

(48) between Alexandria Bay, NY, and Chattanooga, TN, from Alexandria Bay over NY Hwy 12 to junction Interstate Hwy 81, then over Interstate Hwy 81 to junction Interstate Hwy 75, then over Interstate Hwy 75 to Chattanooga, and return over the same route. (49) between Westfield, NY, and Newark, NJ, from Westfield over NY Hwy 17 to junction NJ Hwy 17, then over NJ Hwy 17 to Newark, and return over the same route. (50) between junction Interstate Hwys 76 and 276 and junction Interstate Hwy 276 and NJ Turnpike, over Interstate Hwy 276. (51) between junction Interstate Hwy 81 and Interstate Hwy 78 and New York City, NY, from junction Interstate Hwy 81 over Interstate Hwy 78 to junction Interstate Hwy 287, then over Interstate Hwy 287 to junction U.S. Hwy 22, then over U.S. Hwy 22 to junction Interstate Hwy 78, then over Interstate Hwy 78 to New York City, and return over the same route. (52) between junction Interstate Hwy 87 and U.S. Hwy 202 and Perth Amboy, NJ, from junction Interstate Hwy 87 over U.S. Hwy 202 to junction Interstate Hwy 287, then over Interstate Hwy 287 to Perth Amboy, and return over the same route. (53) between McConnellsburg, PA and Winchester, VA, over U.S. Hwy 522. (54) between Albany, NY and Boston, MA,

from Albany over Interstate Hwy 787 to junction Hwy 2, then over NY Hwy 2 to junction MA Hwy 2, then over MA Hwy 2 to Boston, and return over the same route. (55) between Boston, MA, and Jacksonville, FL, over U.S. Hwy 1, serving all intermediate points, and serving intermediate points in VA, NC, SC, and in GA north of U.S. Hwy 80 for joinder only. (56) between Boston, MA, and Jacksonville, FL, over Interstate Hwy 95 (also over Interstate Hwy 495 and Interstate Hwy 395 at Washington, DC, Interstate Hwy 695 (Baltimore Beltway) and the Harbor Tunnel Thruway at Baltimore, MD) serving all intermediate points, and serving intermediate points in VA, NC, and SC for joinder only. (57) between Savannah, GA, and Jacksonville, FL, over U.S. Hwy 17. (58) between Columbus, Ga, and junction U.S. Hwy 231 and Interstate Hwy 10 at or near Cottondale, FL, from Columbus over U.S. Hwy 431 to Dothan, AL, then over U.S. Hwy 231 to junction Interstate Hwy 10, and return over the same route. (59) between Jacksonville and Pensacola, FL, over Interstate Hwy 10. (60) between Jacksonville, FL, and Seminole, AL, over U.S. Hwy 90. (60) between Cincinnati, OH, and Pensacola, FL, from Cincinnati over Interstate Hwy 71 to Louisville, then over Interstate Hwy 65 to junction U.S. Hwy 31, at or near Evergreen, AL, then over U.S. Hwy 31 to junction U.S. Hwy 29, then over U.S. Hwy 29 to Pensacola, and return over the same route. (62) between Chattanooga, TN, and Birmingham, AL, over Interstate Hwy 59. (63) between Eufaula, AL, and Midway, GA, over U.S. Hwy 82. (64) between Dothan, AL, and Brunswick, GA, over U.S. Hwy 84. (65) between Columbus and Albany, GA, from Columbus over U.S. Hwy 280 to junction GA Hwy 55, then over GA Hwy 55 to junction U.S. Hwy 82, then over U.S. Hwy 82 to Albany, and return over the same route. (66) between Eatonton and Tifton, GA, from Eatonton over U.S. Hwy 441 to Jacksonville, GA, then over U.S. Hwy 319 to Tifton, and return over the same route. (67) between Brunswick and Macon, GA, from Brunswick over U.S. Hwy 341 to McRae, GA, then over U.S. Hwy 23 to Macon, and return over the same route. (68) between Macon and Warner Robins, Ga, over U.S. Hwy 129. (69) between Harrisburg, PA, and Baltimore, MD, over Interstate Hwy 83. (70) between Winchester, VA, and Frederick, MD, from Winchester over VA Hwy 7 to junction U.S. Hwy 340, then over U.S. Hwy 340 to Frederick, and return over the same route. (71) between Frederick, MD, and Washington, DC over Interstate Hwy 270. (72) between Morgantown, WV, and Cumberland, MD over U.S. Hwy 48. (73) between Baltimore, MD, and junction MD Hwy 3 and U.S. Hwys 50/301, and return over the same route. (74) between Baltimore, MD, and junction MD Hwy 2 and U.S. Hwys 50/301 over MD Hwy 2, and return over the same route. (75) between West Point, GA and Montgomery, AL, over Interstate Hwy 85. (76) between Danbury, CT, and junction U.S. Hwys. 44 and 202, at or near Canton, CT, from Danbury over U.S. Hwy 7/202 to New Milford, CT, then over U.S. Hwy 202 to junction U.S. Hwy 44, and return over the same route. (77) between Bridgeport, CT, and Junction MA Hwy 8 and Interstate Hwy 90 at or near East Lee, MA, from Bridgeport over CT Hwy 8 to the CT–MA State line, then over MA Hwy 8 to junction Interstate Hwy 90, and return over the same route. (78) between Winsted and Hartford, CT over U.S. Hwy 44. (79) between New Haven, CT, and Greenfield, MA over U.S. Hwy 5. (80) between Hartford, CT, and Junction Interstate Hwy 86 and Interstate Hwy 90 at interchange #9 in MA, over Interstate Hwy 86. (81) between Hartford and Norwich, CT, over CT Hwy 2. (82) between New Haven and Sandy Hook, CT over CT Hwy 34. (83) between Marion and Willimantic, CT, from Marion over CT Hwy 66 to junction U.S. Hwy 6, then over U.S. Hwy 6 to Willimantic, and return over the same route. (84) between East Lyme and Danielson, CT, over CT Hwy 52 (CT Turnpike). (85) between Norwalk and Danbury, CT over U.S. Hwy 7. (86) between Milford and Meriden, CT over CT Hwy 15. (87) between Old Saybrook and Hartford, CT, from Old Saybrook over U.S. Hwy 1 to junction CT Hwy 9, then over junction Hwy 9 to junction Interstate Hwy 91, and return over the same route. (88) between Providence, RI and Worcester, MA, from Providence over RI Hwy 146 to the RI–MA State line, then over MA Hwy 146 to Worcester, and return over the same route.

(89) between Scranton, PA, and Bolton Center, CT, over Interstate Hwy 84. (90) between Providence, RI, and junction CT Hwys 52 and 138, from Providence over U.S. Hwy 6 to junction RI Hwy 114, then over RI Hwy 114 to junction RI Hwy 138, then over RI Hwy 138 to junction RI Hwy 4, then over RI Hwy 4 to junction RI Hwy 102, then over RI Hwy 102 to junction RI Hwy 165, then over RI Hwy 165 to CT Hwy 138, then over CT Hwy 138 to junction CT Hwy 52 and return over the same route. (91) between Providence, RI and junction Interstate Hwy 95 and CT Hwy 184, from Providence over RI Hwy 2 to junction RI Hwy 3, then over RI Hwy 3 to junction Interstate Hwy 95 at or near Hopkinton, RI, then over Interstate Hwy 95 to junction CT Hwy 184, and return over the same route. (92) between junction Interstate Hwy 95 and Interstate Hwy 295 at or near Attleboro, MA and junction Interstate Hwy 295 and Interstate Hwy 95 at or near Warwick, RI, over Interstate Hwy 295 and return over the same route. (93) between Bristol Ferry, RI, and Fall River, MA, from Bristol Ferry over RI Hwy 24 to the RI–MA State Line, then over MA Hwy 24 to Fall River, and return over the same route. (94) between Elizabeth, NJ, and junction Interstate Hwy 295 and Interstate Hwy 95 at or near Newport, DE, from Elizabeth over NJ Turnpike to junction Interstate Hwy 295, then over Interstate 295 to junction Interstate Hwy 95, and return over the same route. (95) between junction U.S. Hwys 1 and 130 at or near Milltown, NJ and Baltimore, MD, from junction U.S. Hwy 1 over U.S. Hwy 130 to junction Interstate Hwy 295, then over Interstate Hwy 295 to junction U.S. Hwy 40, then over U.S. Hwy 40 to Baltimore, and return over the same route. (96) between Trenton, NJ, and Waldo, FL, from Trenton over U.S. Hwy 1 to junction U.S. Hwy 13, then over U.S. Hwy 13 to junction U.S. Hwy 301S, then over U.S. Hwy 301S to junction U.S. Hwy 301, then over U.S. Hwy 301 to Waldo, and return over the same route serving all intermediate points in VA, NC, SC, and in GA north of U.S. Hwy 80 for joinder only. (97) between junction PA Hwy 3 and U.S. Hwy 202 and Suffolk, VA, from junction PA Hwy 3 over U.S. Hwy 202 to Wilmington, DE, then over DE Hwy 141 to junction U.S. Hwy 13, then over U.S. Hwy 13 to Suffolk, and return over the same route. (98) between Dover, DE, and Pocomoke City, MD over U.S. Hwy 113. (99) between junction U.S. Hwy 301 and DE Hwy 300 and Dover, DE, from junction U.S. Hwy 301 over U.S. Hwy 300 to junction DE Hwy 44, then over DE Hwy 44 to Dover, and return over the same route. (100) between Erie, PA, and Perry, FL, over U.S. Hwy 19 (also over U.S. Hwys 19A and 19E) return over the same route, serving all intermediate points, but serving intermediate points in VA, NC, and in GA north of U.S. Hwy 80 for joinder only. (101) between Laurel, DE, and junction U.S. Hwy 9 and U.S. Hwy 1, from Laurel over U.S. Hwy 9 to Lewes, DE, then over the DE River to Cape May, NJ, then over U.S. Hwy 9 to junction U.S. Hwy 1, and return over the same route. (102) between Wilcox and Kane, PA, over PA Hwy 321. (103) between Wilmington, DE, and Waverly, NY, from Wilmington over U.S. Hwy 13

to Philadelphia, then over PA Hwy 611 to junction PA Hwy 309, then over PA Hwy 309 to Tunkhannock, PA, then over U.S. Hwy 6 to Towanda, PA, then over U.S. Hwy 220 to Waverly, and return over the same route. (104) between Bedford, PA, and Hamburg, NY, from Bedford over U.S. Hwy 220 to Bald Eagle, PA, then over PA Hwy 350 to Philipsburg, PA, then over U.S. Hwy 322 to Clearfield, PA, then over PA Hwy 153 to Penfield, PA, then over PA Hwy 255 to Johnsonburg, PA, then over U.S. Hwy 219 to Hamburg, and return over the same route. (105) between junction Interstate Hwy 81 and VA Hwy 100 at or near Pulaski, VA, and Princeton, WV, from junction Interstate Hwy 81 over VA Hwy 100 to Pearisburg, VA, then over U.S. Hwy 460 to Princeton, and return over the same route. (106) between Abingdon and Independence, VA over U.S. Hwy 58. (107) between Murphy, NC, and Chattanooga, TN, over U.S. Hwy 64. (108) between Ocoee, TN, and Chatsworth, GA over U.S. Hwy 411. (109) between Bradford, PA, and Buffalo, NY, from Bradford over PA Hwy 346 to junction PA Hwy 646, then over PA Hwy 646 to junction NY Hwy 16, then over NY Hwy 16 to Buffalo, and return over the same route. (110) between Trout Run, PA, and Horseheads, NY, from Trout Run over PA Hwy 14 to junction NY Hwy 14, then over NY Hwy 14 to Horseheads, NY, and return over the same route. (111) between Havre De Grace, MD, and Lancaster, PA, over U.S. Hwy 222. (112) Between Arlington, VA, and Baltimore, MD, over U.S. Hwy 29. (113) between junction U.S. Hwy 130 and NJ Hwy 413 at or near Burlington, NJ, and Levittown, PA, from junction U.S. Hwy 130 over NJ Hwy 413 to junction PA Hwy 413, then over PA Hwy 413 to Levittown, and return over the same route. (114) between Bridgeport, NJ, and Chester, PA, over U.S. Hwy 322. (115) between Port Jervis, NY, and Philadelphia, PA, from Port Jervis over U.S. Hwy 201 to junction PA Hwy 611 to Philadelphia, and return over the same route. (116) between junction Interstate Hwys 95/495 and Interstate Hwy 295 (Washington, DC) and Baltimore, MD, from junction Interstate Hwy 95/495 over Interstate Hwy 295 to junction MD Hwy 295, then over MD Hwy 295 to Baltimore, and return over the same route. (117) between junction U.S. Hwy 50 and George Washington Memorial Parkway and junction George Washington Memorial Parkway and U.S. Hwys 29/211, from junction U.S. Hwy 50 over George Washington Memorial Parkway to junction U.S. Hwy 29/211, and return over the same route. (118) between junction U.S. Hwys 40 and 301N and junction U.S. Hwys 301N and 301, from junction U.S. Hwy 40 over U.S. Hwy 301N to junction U.S. Hwy 301, and return over the same route. (119) between junction U.S. Hwy 50 and junction MD Hwy 404 and Georgetown, DE, from junction U.S. Hwy 50 over MD Hwy 404 to junction DE Hwy 404, then over DE Hwy 404 to junction DE Hwy 18, then over DE Hwy 18 to Georgetown, and return over the same route. (20) between Denton, MD and Milford, DE, from Denton over MD Hwy 404 to junction MD Hwy 313, then over MD Hwy 313 to junction MD Hwy 317, then over MD Hwy 317 to DE Hwy 14 and then over DE Hwy 14 to Milford, and return over the same route, serving all intermediate points in routes through 120 above, and serving all points in OH, NY, NJ, CT, RI, MA, MD, DE, DC, those points in GA on and south of U.S. Hwy 80, and those in FL, in and west of Leon and Wakulla Counties, FL, as off-route points in connection with carrier's operations. (Hearing site: Hartford, CT)

MC 61825 (Sub-119F), filed November 28, 1979, previously published in the **Federal Register** issue of March 27, 1980. Applicant: ROY STONE TRANSFER CORPORATION, V. C. Drive, P.O. Box 385, Coolinsville, VA 24078. Representative: John D. Stone (same address as applicant). Transporting (1) *furnaces, solar collectors,* and *air conditioners,* (2) *parts and accessories* for the commodities named in (1) above, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) and (2) above, between Columbus and Lima, OH, points in AL, DE, FL, GA, KY, LA, MD, MS, NC, NJ, NY, PA, SC, TN, VA, WV, and DC, restricted to the transportation of traffic originating at or destined to the facilities of Lennox Industries, Inc. (Hearing site: Washington, DC.)

Note.—This republication indicates the correct territorial description.

MC 61955 (Sub-28F), filed February 19, 1980. Applicant: CENTROPOLIS TRANSFER CO., INC., 701 North Sterling, Sugar Creek, MO 64054. Representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Suite 600, Kansas City, MO 64105. Transporting *cement,* from those points in KS on, south and east of a line beginning at the KS-OK State line and extending along KS Hwy 99 to junction U.S. Hwy 54, then along U.S. Hwy 54 to the KS-MO State line, to points in OK and AR. (Hearing site: Kansas City, MO.)

MC 107515 (Sub-1344F), filed March 4, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, 3390 Peachtree Rd., N.E., 5th Floor, Lenox Towers South, Atlanta, GA 30326. Transporting *such commodities* and are dealt in or used by Chain Grocery houses, and used in the manufacture or distribution of the foregoing commodities, between the facilities of Southern States Distribution, Inc., at or near Memphis, TN, on the one hand, and, on the other, points in the United States (except AK, HI, ID, MT, NV, OR, UT, WA, and WY). (Hearing site: Memphis, TN.)

Note.—Dual operations may be involved.

MC 108375 (Sub-44F), filed February 19, 1980. Applicant: LEROY L. WADE & SON, INC., 1050 "I" St., Omaha, NE 68127. Representative: Arnold L. Burke, 180 North LaSalle St., Chicago, IL 60601. Transportating *automobiles and trucks,* in truckaway and driveway service, (1) between Des Moines, IA, and East Moline, IL, and (2) from Des Moines, IA, to those points in IL on, west, and north of a line beginning at the IL-MO State line and extending along U.S. Hwy 36 to junction U.S. Hwy 51, then along U.S. Hwy 51 to the IL-WI State line, those points in MO on, east, and north of a line beginning at the MO-IL State line and extending along U.S. Hwy 36 to junction U.S. 65, then along U.S. Hwy 65 to the MO-IA State line, those points in WI on, west, and south of a line beginning at the WI-IL State line and extending along U.S. Hwy 51 to junction U.S. Hwy 16, then along U.S. Hwy 16 to the WI-MN State line. (Hearing site: Omaha, NE.)

MC 108835 (Sub-47F), filed February 1, 1980. Applicant: HYMAN FREIGHTWAYS, INC., 2380 Wycliff, St. Paul, MN 55114. Representative: Rodney L. Trocke, 2690 N. Prior Ave., Roseville, MN 55113. Transporting *sugar* (except in bulk), from Drayton, ND, and E. Grand Forks, Crookston, Moorhead, and Chaska, MN, to points in IL, IN, IA, KS, MO, NE, OK, SD, and WI. (Hearing site: St. Paul, or Moorhead, MN.)

MC 108835 (Sub-48F), filed February 15, 1980. Applicant: HYMAN FREIGHTWAYS, INC., 2380 Wycliff, St. Paul, MN 55164. Representative: Rodney L. Trocke, 2690 N. Prior Ave., Roseville, MN 55113. Transporting *paper and paper products* (except commodities in bulk), between points in IA, KS, MN, MO, NE, restricted to the transportation of traffic originating at or destined to the facilities of the Boise Cascade Corporation. (Hearing site: St. Paul, MN.)

MC 110325 (Sub-131F), filed February 25, 1980. Applicant: TRANSCON LINES, a corporation, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, Midland Bldg.,

1221 Baltimore Ave., Kansas City, MO 64105. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving Millville and Ne Berlin, PA, as off-route points in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Williamsport, PA.)

Note.—Applicant intends to tack this authority with its existing regular-route authority.

MC 110325 (Sub-132F), filed February 25, 1980. Applicant: TRANSCON LINES, a corporation, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, Midland Bldg., 1221 Baltimore Ave., Kansas City, MO 64105. Over regular routes, transporting general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Church and Dwight, at Green Springs, OH, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: New York, NY.)

Note.—Applicant intends to tack this authority with its existing regular-route authority.

MC 110325 (Sub-135F), filed February 25, 1980. Applicant: TRANSCON LINES, a corporation, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, Midland Bldg., 1221 Baltimore Ave., Kansas City, MO 64105. Over regular routes, transporting *general commodities* (except Classes A and B explosives, those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the facilities of Delta Faucet Co., at Decatur, MI, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Kalamazoo, MI.)

Note.—Applicant intends to tack this authority with its existing regular-route authority.

MC 117165 (Sub-60F), filed February 25, 1980. Applicant: ST. LOUIS FREIGHT LINES, INC., P.O. Box 2140, Michigan City, IN 46360. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Transporting (1) *building and construction materials,* and (2) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities in (1) (except commodities in bulk), between points in the U.S. (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of the Celotex Corporation. (Hearing site: Tampa, FL, or Chicago, IL.)

MC 119704 (Sub-4F), filed February 25, 1980. Applicant: R. A. HARRIS & SONS, INC., 3501 22nd St., Menominee, MI 49858. Representative: Dennis R. Harris, 3423 22nd St., Menominee, MI 49858. *Contract carrier,* transporting *polyethylene liners* (except commodities in bulk), from Oconto, WI, to points in MI, IL, MN, KY, IA, and OH, under continuing contract(s) with Wisconsin Film & Bag, Inc., of Oconto, WI. (Hearing site: Menominee, MI, or Marinette, WI.)

MC 123744 (Sub-79F), filed February 25, 1980. Applicant: BUTLER TRUCKING COMPANY, a corporation, P.O. Box 88, Woodland, PA 16881. Representative: E. Steward Butler (same address as applicant). Transporting *Refractories,* from York, PA, to ports of entry on the international boundary between the United States and Canada in NY, MI, and ME. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 134134 (Sub-66F), filed February 26, 1980. Applicant: MAINLINER MOTOR EXPRESS, INC., 4202 Dahlman Ave., Omaha, NE 68107. Representative: James F. Crosby, P.O. Box 37205, Omaha, NE 68137. Transporting *alcoholic beverages,* and *non-alcoholic beverage mixes,* (1) from points in NJ, NY, MD, OH, KY, MI, IN, and IL, to Minneapolis, MN, and (2) from Minneapolis, MN, to Omaha, NE, restricted to the transportation of traffic originating at or destined to the facilities of Ed Phillips & Sons Co. (Hearing site: St. Paul, MN, or Omaha, NE.)

MC 134405 (Sub-97F), filed February 26, 1980. Applicant: BACON TRANSPORT COMPANY, a corporation, P.O. Box 1134, Ardmore, OK 73401. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Transporting *barite,* in bulk, from points in Washington County, MO, to points in OK. (Hearing site: Dallas, TX.)

MC 134405 (Sub-98F), filed February 25, 1980. Applicant: BACON TRANSPORT COMPANY, a corporation, P.O. Box 1134, Ardmore, OK 73401. Representative: Wilburn L. Williamson, Suite 615 East, 2601 Northwest Expressway, Oklahoma City, OK 73112. Transporting *fly ash,* from the facilities of (a) Monticello Power Plant, at Mt. Pleasant, TX, and (b) Big Brown Power Plant, at Fairfield, TX, to points in AR, KS, LA, MS, NM, and OK. (Hearing site: Fort Worth, TX.)

MC 135524 (Sub-113F), filed February 25, 1980. Applicant: G. F. TRUCKING CO., a corporation, P.O. Box 229, 1028 West Rayen Ave., Youngstown, OH 44501. Representative: George Fedorisin, 914 Salts Springs Rd., Youngstown, OH 44509. Transporting (1) *lumber, particleboard, composition board, poles, piling, pallets, timbers, crossties,* and *wallboard* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities named in (1) above (except commodities in bulk), from Pine Bluff and Sheridan, AR, to points in the U.S. (except AK and HI). (Hearing site: Columbus, OH, or Little Rock, AR.)

MC 135524 (Sub-114F), filed February 25, 1980. Applicant: G. F. TRUCKING CO., a corporation, P.O. Box 229, 1028 West Rayen Ave., Youngstown, OH 44501. Representative: George Fedorisin, 914 Salts Springs Rd., Youngstown, OH 44509. Transporting (1) *iron and steel articles,* and (2) *materials, equipment, and supplies* used in the manufacture of iron and steel articles, between Logan, OH, East St. Louis, IL, Winfield and St. Louis, MO, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Columbus, OH, or Kansas City, MO.)

MC 135524 (Sub-115F), filed February 25, 1980. Applicant: G. F. TRUCKING CO., a corporation, P.O. Box 229, 1028 West Rayen Ave., Youngstown, OH 44501. Representative: George Fedorisin, 914 Salts Springs Rd., Youngstown, OH 44509. Transporting *composition board,* from Houston and Galveston, TX, to points in the United States (except AK and HI). (Hearing site: Columbus, OH, or New York, NY.)

MC 135605 (Sub-12F), filed February 25, 1980. Applicant: WILKINSON TRANSPORT, INC., P.O. Box 25, Barton, AR 72312. Representative: R. Connor Wiggins, Jr., Suite 909, 100 North Main Bldg., Memphis, TN 38103. Transporting (1) *agricultural fertilizers, agricultural pesticides, agricultural surfactants,* and *agricultural chemicals,* (2) *tree killing compounds,* and *weed killing compounds,* and (3) *materials and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above (except commodities in bulk, in tank vehicles, paper and paper products), between the facilities of (1) Helena Chemical Company, (b) Drexel Chemical Company, and (c) Nor-Am Agricultural Products, Inc., in AL, AZ, AR, CA, DE, FL, GA, IA, IL, KS, KY, LA, MD, MI, MO, MN, MS, NC, ND, NJ, NM, NY, OK, OR, PA, SC, TN, TX, VA, WA, WV, and WY. (Hearing site: Memphis, TN.)

MC 139445 (Sub-1F), filed February 25, 1980. Applicant: TANK TRANSPORT, INC., 9325 North 107th St., Milwaukee, WI 53224. Representative: Richard A. Westley, 4506 Regent St., Suite 100, Madison, WI 53705. *Contract carrier,* transporting *petroleum, and petroleum products,* in bulk, in tank vehicles, between points in IL, IN, IA, MI, MN, and WI, under continuing contract(s) with Wisconsin Industrial Fuel Oil, Inc., of Oak Creek, WI. (Hearing site: Milwaukee, WI, or Chicago, IL.)

MC 141804 (Sub-380F), filed February 26, 1980. Applicant: WESTERN EXPRESS, division of INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting *such commodities* as are dealt in by department stores (except commodities in bulk), between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Target Stores, Division of Dayton-Hudson Corporation. (Hearing site: Los Angeles, CA.)

MC 141804 (Sub-381), filed February 26, 1980. Applicant: WESTERN EXPRESS, division of INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting *general commodities* (except those of unusual value, household goods as described by the Commission, commodities in bulk, frozen foods, and those requiring special equipment), from City of Industry, CA, to the facilities of Montgomery Wards in ID, MT, OR, and WA, restricted to the transportation of traffic destined to the named facilities. (Hearing site: Los Angeles, CA.)

MC 141804 (Sub-383F), filed February 25, 1980. Applicant: WESTERN EXPRESS, division of INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting (1) *electrical appliances* and *electrical sending and receiving equipment,* and (2) *parts and accessories* for the commodities in (1) above, from Little Ferry, NJ to points in the United States (except AK, HI, and NJ). (Hearing site: Los Angeles, CA.)

MC 141804 (Sub-384F), filed February 25, 1980. Applicant: WESTERN EXPRESS, division of INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting (1) *bicarbonate of soda* and (2) *cleaning compounds, washing compounds and scouring compounds,* from Old Fort, OH, Green River, WY, and Syracuse, NY, to points in the United States (except AK and HI). (Hearing site: Los Angeles, CA.)

MC 141804 (Sub-385F), filed February 25, 1980. Applicant: WESTERN EXPRESS, division of INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (same address as applicant). Transporting (1) *paper and adhesive paper,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk in tank vehicles), between Aurora, OH, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Los Angeles, CA.)

MC 141914 (Sub-77F), filed February 25, 1980. Applicant: FRANKS AND SON, INC., Route 1, Box 108A, Big Cabin, OK 74332. Representative: Kathrena J. Franks (same address as applicant). Transporting *plastic products,* from Tupperlake, NY, to points in CA, GA, IL, NJ, SC, TX, VA, and WI. (Hearing site: Tupperlake, NY.)

MC 144135 (Sub-3F), filed February 4, 1980. Applicant: L & V TRUCKING, INC., 32650 Almaden Blvd., Union City, CA 94587. Representative: Eugene Q. Carmody, 15523 Sedgeman St., San Leandro, CA 94579. *Contract carrier,* transporting (1) *vermiculite* and *wall plaster,* from Newark, CA, to Reno, Sparks, South Lake Tahoe, and Carson City, NV, and Truckee, CA, and (2) *materials, equipment, and supplies* used in the application of the commodities named in (1) above, in the reverse direction, under continuing contract(s) with (a) Anning-Johnson Company, of Burlingame, CA, and (b) W. R. Grace & Co., of Cambridge, MA. (Hearing site: San Francisco or Oakland, CA.)

MC 144604 (Sub-2F), filed January 8, 1980. Applicant: J. & R. AUTO TRANSPORT, INC., P.O. Box 27, Summersville, MO 65571. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. Transporting *boats,* from Springfield, MO, to points in the United States (except AK and HI). (Hearing site: Kansas City, MO.)

MC 144715 (Sub-9F), filed February 25, 1980. Applicant: ANDERSON & WEBB TRUCKING CO., INC., P.O. Box 1523, 542 West Independence Blvd., Mt. Airy, NC 27030. Representative: Eric Meierhoefer, Suite 423, 1511 K St., N.W., Washington, DC 20005. Transporting *meat,* in boxes, from points in TX, KS, MO, IA, IL, CO, AL, NE, and WI, to points in Hanover County, VA. (Hearing site: Richmond, VA.)

MC 144844 (Sub-11F), filed February 25, 1980. Applicant: OZARK TRANSPORTATION, INC., P.O. Box 203, Greenville, MO 63944. Representative: Joseph Winter, 29 South LaSalle St., Chicago, IL 60603. Transporting (1) *rough steel forgings,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of rough steel forgings, between the facilities of Missouri Forge, Inc., at Donaphin, MO, on the one hand, and, on the other, those points in the United States in and east of ND, SD, NE, CO, and NM. (Hearing site: Chicago, IL.)

MC 146724 (Sub-6F), filed February 25, 1980. Applicant: DEAN RAPPLEYE, INC., P.O. Box 204, West Jordan, UT. Representative: Daniel O. Hands, Suite 200, 205 West Touhy Ave., Park Ridge, IL 60068. Transporting (1) *paper and paper products,* and (2) *plastic bags* (except commodities in bulk), from ports of entry on the international boundary line between the United States and Canada in ID, MT, and WA to points in CA, OR, and WA. (Hearing site: Salt Lake City, UT, or San Francisco, CA.)

MC 146964 (Sub-8F), filed February 26, 1980. Applicant: RELIABLE TRUCK LINES, INC., 1451 Spahn Ave., York, PA 17403. Representative: Christian V. Graf, 407 North Front St., Harrisburg, PA 17101. Transporting (1) *alcoholic liquors,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of alcoholic liquors (except commodities in bulk, in tank vehicles), (a) between Fort Smith, AR, on the one hand, and, on the other, those points in the U.S. in and east of WI, IA, MO, AR, and LA, (b) between Bardstown, KY and Louisville, KY, on the one hand, and, on the other, points in AR, TN, KY, IL, IN, MI, OH, NY, PA, WV, NC, SC, GA, and FL, and (c) between New Orleans, LA, on the one hand, and, on the other, points in AL, GA, and FL, restricted to the transportation of traffic originating at and destined to the facilities of Hiram Walker & Sons, Inc. (Hearing site: Washington, DC, or Harrisburg, PA.)

MC 147225 (Sub-4F), filed February 26, 1980. Applicant: BOBBY RAYMOND TRUCKING, INC., P.O. Box 6248, Phoenix, AZ 85005. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Transporting *such commodities* as are dealt in or used by manufacturers and converters of paper and paper products (except commodities in bulk), from the facilities of Nekoosa Papers, Inc., in Portage and Wood Counties, WI, to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY. (Hearing site: Milwaukee, WI, or Chicago, IL.)

MC 148035 (Sub-4F), filed February 25, 1980. Applicant: QUANDT TRANSPORT SERVICE, INC., 2606 North 11th St., Omaha, NE 68110. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Rd., Omaha, NE 68106. Transporting *petroleum and petroleum products,* (1) from Omaha, Geneva, Lincoln, Plattsmouth, and Doniphan, NE, to points in IA, and (2) from Des Moines and Council Bluffs, IA to points in NE. (Hearing site: Omaha, NE.)

Passenger

MC 1515 (Sub-290F), filed February 20, 1980. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Phoenix, AZ 85077. Representative: Lat J. Celmins (same address as applicant). Over regular routes, transporting *passengers and their baggage,* and *express and newspapers* in the same vehicle with passengers, (1) between Saint Joseph, MO, and Kansas City, MO, over interstate Hwy 29 serving all intermediate points, (2) between Saint Joseph, MO, and Junction Interstate Hwy 229 and Interstate Hwy 29 south of Saint Joseph, MO, over Interstate Hwy 229 serving all intermediate points. (Hearing site: Kansas City, MO.)

Note.—In conjunction with the above request for authority applicant proposes to abandon a portion of its authority as contained in Greyhound Lines, Inc.'s Certificate MC 1515 (Sub-71), First Revised Sheet No. 37, Route No. 1, as follows: From Saint Joseph, MO over Missouri Hwy 371 to Platte City, MO, and return over the same route.

Volume No. 170

Decided: April 18, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

(1) MC 7840 (Sub-28F). Applicant: ST. LAWRENCE FREIGHTWAYS, INC., 650 Cooper St., Watertown, NY 13601. (2) MC 48441 (Sub-59F). Applicant: R.M.E., INC., P.O. Box 418, Streator, IL 61364. (3) MC 65626 (Sub-37F). Applicant: FREDONIA EXPRESS, INC., P.O. Box 222, Fredonia, NY 14063. (4) MC 73688 (Sub-115F). Applicant: SOUTHERN TRUCKING CORPORATION, 1500 Orenda Ave., P.O. Box 7195, Memphis, TN 38107. (5) MC 78687 (Sub-106F*). Applicant: LOTT MOTOR LINES, INC., West Cayuga St., P.O. Box 751, Moravia, NY 13118. (6) MC 106920 (Sub-94F). Applicant: RIGGS FOOD EXPRESS, INC., West Monroe St., P.O. Box 26, New Bremen, OH 45869. (7) MC 115331 (Sub-538F). Applicant: TRUCK TRANSPORT, INCORPORATED, 11040 Manchester Rd., St. Louis, MO 63122. (8) MC 119349 (Sub-373*). Applicant: STARLING TRANSPORT LINES, INC., P.O. Box 1733, Fort Pierce, FL 33450. (9) MC 120636 (Sub-7F). Applicant: BRUNTON STORAGE & VAN CO., INC., 6th and Locust St., P.O. Box 577, Chatsworth, IL 60921. (10) MC 123387 (Sub-25F). Applicant: E. E. HENRY, 1128 South Military Hwy., Chesapeake, VA 23320. (11) MC 127303 (Sub-76F). Applicant: ZELLMER TRUCK LINES, INC., P.O. Box 343, Granville, IL 61326. (12) MC 133085 (Sub-17F*). Applicant: TRENCO, INCORPORATED, 2109 Marydale Ave., P.O. Box 697, Williamsport, PA 17701. (13) MC 136161 (Sub-31F). Applicant: ORBIT TRANSPORT, INC., P.O. Box 163, Spring Valley, IL 61362. (14) MC 136511 (Sub-98F). Applicant: VIRGINIA APPALACHIAN LUMBER CORPORATION, 9640 Timberlake Rd., Lynchburg, VA 23502. (15) MC 141914 (Sub-78F). Applicant: FRANKS & SON, INC., Route 1, Box 108A, Big Cabin, OK 74332. (16) MC 142873 (Sub-4F*). Applicant: DEWEY L. WILFONG, d.b.a. D & W TRUCK LINES, 209 First St., Parsons, WV 26287. (17) MC 144676 (Sub-7F*). Applicant: M & S TRANSPORT LINES, INC., P.O. Box 417, Sultana, CA 93666. (18) MC 145950 (Sub-76F*). Applicant: BAYWOOD TRANSPORT, INC., Route 6, P.O. Box 2611, Waco, TX 76706. (19) MC 146573 (Sub-11F). Applicant: LA SALLE TRUCKING, INC., P.O. Box 46, Peru, IL 61354. (20) MC 146890 (Sub-21F*). Applicant: C & E TRANSPORT, INC., d.b.a. C. E. ZUMSTEIN CO., P.O. Box 27, Lewisburg, OH 45338. (21) MC 147451 (Sub-3F*). Applicant: RAY J. FORNEY, INC., P.O. Box 207, Ashton, IL 61006. (22) MC 147452 (Sub-3F*). Applicant: W. D. W. TRUCKING, INC., 2620 S.W. 66th Terrace, Miramar, FL 33023. (23) MC 148600 (Sub-3F*). Applicant: TRANSHIELD TRUCKING, INC., 1470 N. Farnsworth Ave., P.O. Box 1617, Aurora, IL 60507. (24) MC 148655 (Sub-3F*). Applicant: ERIEVIEW CARTAGE, INC., 100 Erieview Plaza, P.O. 6977, Cleveland, OH 44114. (25) MC 149370 (Sub-3F*). Applicant: SEABOARD EXPRESS, INC., 5724 New Peachtree Rd., Atlanta, GA 30341. (26) MC 150265F. Applicant: GUY J. JOHNSON TRANSPORTATION COMPANY, INCORPORATED, 5 Timberline Dr., Newark, DE 19711. Representative for all the above-named carriers: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW., Washington, DC 20001. By applications filed March 3, 1980, the 26 above-named carriers are granted authority to transport (1) *glass, metal, plastic, paper, wax, clay, feldspar, wood products, foodstuffs, antipollution and biochemical apparatus, products used in radiological research, organic chemistry kits, talc, candles, pottery, chinaware, ceramics, gift items, and materials and supplies* used in the repair and maintenance of boats, (except commodities in bulk) (2) *machinery, parts, and accessories* for the commodities in (1) above, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, (except commodities in bulk), between the facilities used by (a) Wheaton Industries, (b) Decora, Inc., and (c) Wheaton Injection Molding Co., at points in Cumberland, Ocean, Atlantic, Gloucester, Mercer, Salem, Camden, and Cape May Counties, NJ, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Washington, DC)

*Note.—Dual operations may be involved.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-14547 Filed 5-12-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

Violent Juvenile Offender Research and Development Program; Response to Public Comment and Issuance of Program Announcement

AGENCY: Law Enforcement Assistance Administration (LEAA).

ACTION: Response to public comment and notice of issuance.

SUMMARY: This guideline is an addition to the National Priority Program and Discretionary Program Announcement, published in the Federal Register on February 15, 1980. It does not in any way impact upon the programs or regulations presently set out in that announcement or affect the eligibility of those individuals applying for previously announced programs.

SUPPLEMENTARY INFORMATION: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), Law Enforcement Assistance Administration (LEAA), published in the Federal Register for public comment on April 1, 1980, a draft Program Annoucement for the selection of a National Coordinator for the Violent Juvenile Offender Research and Development Program. This notice summarizes the public comments received pertaining to the draft announcement, responds to the issues raised, details the changes made and sets forth the final program guidelines.

FOR FURTHER INFORMATION CONTACT:
Mr. Douglas C. Dodge, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Ave., NW, Washington, DC 20531, (202) 724–7755.

Nature of Comments and LEAA'S Response

The Office of Juvenile Justice and Delinquency Prevention received two comment letters in response to the Violent Juvenile Offender Research and Development Guideline published in the **Federal Register** on April 1, 1980. An analysis of the comments indicates that the respondents are supportive of a program focused on the violent juvenile offender. The following summarizes the comments received and discusses OJJDP's response to the comments.

I. Thirty-Day Comment Period

Comment. OJJDP received one comment objecting to the thirty-day public comment period for the draft guideline.

Response. The Acting Administrator of LEAA approved waiver of the normal sixty-day public comment period to a shorter 30-day comment period because he determined it was in the best interest of the public to provide for award of the grant under this Program by October 1, 1980. This determination and approval was made in conformity with Executive Order 12044. The 30-day comment period offers the public early and meaningful opportunity to participate in the development of the guideline and does not create a delay in the award process.

II. Funding Mechanism

Comment. OJJDP received one comment which objected to the use of a single National Coordinator to administer this initiative. It suggested that some of the functions described, (e.g., program development) should be performed by OJJDP staff to avoid adding an additional bureaucratic level.

Response. Past OJJDP experience has demonstrated that a cooperative agreement with a single coordinator is an effective method for carrying out multi-project program implementation. OJJDP staff will participate jointly with the National Coordinator in the functions described. The National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) is supporting the research component of this program, including the background assessment which guided the development of the initiative, and the evaluation, which will focus on the program process, content and outcomes.

Comment. LEAA has a prescribed program development process, and it appears that the activities described in the guideline fall under The National Institute of Juvenile Justice (NIJJDP) responsiblities, and should be funded with NIJJDP funds rather than Special Emphasis funds.

Response. The National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) is supporting the evaluation component of this R&D program. The Special Emphasis Division supports the action/demonstration component. NIJJDP funded the background assessment for the development of the program initiative and will fund the evaluation of action/demonstration projects. This approach is consistent with the Action Program Development Process and with the research-action program integration provided for by the Juvenile Justice and Delinquency Prevention Act of 1974.

III. Definitions

Comment. The definition of violent offender should be changed by adding "alleged" as in the definition of status offenders in the LEAA guidelines. Using the term "adjudicated" restricts the number of youth eligible for services to an extremely small population.

Response. OJJDP does not accept this recommended change. It is recognized that the program will deal with a very small segment of the juvenile delinquent population, since the focus of the program is on the most serious violent offenders. It is expected that the program models to be developed will focus on more effective screening, prosecution and reintegration of these violent offenders. Because of the nature of the program and of this population, and because of due process considerations, OJJDP firmly believes that referred youth must be adjudicated. It should be noted that to insure a focus on the most serious violent offenders, OJJDP has added language to the definition which restricts the program to chronic violent offenders by requiring that referrals have a violent presenting offense and a history of previous felony convictions.

Office of Juvenile Justice and Delinquency Prevention Program Announcement of the Violent Juvenile Offender Research and Development Program

The Office of Juvenile Justice and Delinquency Prevention (OJJDP), Law Enforcement Assistance Administration (LEAA), pursuant to section 224(a)(1) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, is sponsoring a Violent Juvenile Offender Research and Development (R&D) Program.

A. Background

The OJJDP Assessment Center on the Juvenile Justice System has completed an extensive survey of theoretical and empirical literature on serious juvenile crime, and of programs focused on this population. (A draft of the background paper summarizing the results of this review to guide the R&D program is available for potential applicants from the OJJDP.)

A major finding from the analyses of the Uniform Crime Report arrest data and LEAA Victimization data is that, contrary to popular belief, serious juvenile crime appears to be stable or on the decline since 1975. Other significant findings include:

- In 1977, persons under 18 arrested for Index property crimes comprised 34.0% of the total juvenile arrests, and persons under 18 arrested for Index violent crimes accounted for 3.7% of the total juvenile arrests.
- In 1977, the number of juveniles arrested for violent crime was approximately 1% of the *total arrests* for persons of all ages.
- In 1977, the modal age for arrest for index offenses of persons under 18 was 16. The modal age for arrests of persons under 18 for index property offenses was 16 and for violent offenses was 17.
- Serious/violent crime appears to be primarily committed by males (81.5%). White juvenile offenders are arrested more frequently than others for property offenses; while black juvenile offenders are arrested more frequently than others for violent offenses.
- The risk of being victimized by juveniles is greatest among other juveniles.
- Data on the geographic distribution of offenses indicates that index crimes occur primarily in urban centers.

The Assessment Center's review and other research and programming efforts highlight the need for research into the nature and extent of serious/violent crime, for the development of an adequate juvenile justice system response to this population, and for systematic assessment of the impact of services and treatment models on these offenders.

In light of the lack of agreement concerning definitional, policy and programming issues, OJJDP organized a Special National Workshop on the Serious Juvenile Offender in Arlington, Virginia on January 15 and 16, 1980, consisting of 30 researchers, lawyers, judges, public interest group representatives and practitioners in the field. The purpose of the workshop was to discuss issues related to the development of a serious, violent

juvenile offender program and obtain recommendations on program strategies.

The Working Group recommended that OJJDP: (1) restrict the program to violent juveniles; (2) focus the initiative on reintegration of violent offenders and develop a second effort to focus on the prevention of violent crime in communities where there is a high incidence of juvenile violent crime; and (3) undertake a public education initiative in an effort to clarify misconceptions about violent juvenile crimes.[1]

OJJDP has therefore decided to implement a research and development program (R&D) focused on the violent juvenile offender and violent juvenile crime. This dual focus is based on the following rationale:

1. Violent Juvenile Offender

(a) Violent juvenile offenders are disproportionately involved in the juvenile justice system, i.e., although their number is very small, they account for a significant proportion of arrests for violent offenses. Their crimes also tend to generate negative public reaction and calls for harsher treatment for all juvenile offenders.

(b) Given the lack of knowledge of effective approaches for the prevention and treatment of juvenile violence and the small amount of available funds, resources should be concentrated on testing strategies for prevention of violent juvenile crime, and the screening prosecution and reintegration of violent juvenile offenders.

2. Prevention of Violent Crime

The focus on prevention of violent juvenile crime in communities is based on the following rationale:

(a) Since the violent juvenile crime occurs largely in major urban centers, it is important to test projects that hold promise of the prevention of violent crime in these communities.

(b) Indigenous community groups appear to hold promise for reaching youth who commit the largest portion of violent juvenile crime in urban communities.

In order to complete the program development activities and to implement the initiative, OJJDP will establish a two part effort.

Part One focuses on the violent juvenile offender and will be implemented through this solicitation. A cooperative agreement will be awarded to a National Coordinator, who in cooperation with OJJDP and the Evaluator, (to be funded by NIJJDP) will identify and document the most promising models for the screening, prosecution, and reintegration of violent juvenile offenders into their communities which can be tested in this research and development effort. The National Coordinator will also, in cooperation with and subject to prior OJJDP approval, develop a Request for Proposals (RFP); recommend to OJJDP for approval selected contractors who will implement specific models; award the contracts; and manage the contracts after they are awarded.

Part Two, which will focus on prevention of violent juvenile crime in communities which experience a high incidence of violent juvenile crime, will be implemented simultaneously through a contract with an 8–A contractor (Small Business Administration-designated minority-owned firm). the selected 8–A contractor, in conjunction with the Evaluator, will assist OJJDP in the identification and documentation of the most promising indigenous community group prevention models; recommend a funding strategy and guideline requirements; and develop criteria and procedures for the selection process and manage the subcontracts after they are awarded. Four hundred thousand dollars ($400,000) will be available for this contract and $2.5 million will be allocated in fiscal year 1981 to fund indigenous community prevention models in specific sites—provided that such successful models can be documented.

B. Objectives for the Part One Violent Juvenile Offender Research and Development Program

The major objectives of the Violent Juvenile Offender Research and Development Program are:

1. To test program models for the screening, prosecution, and reintegration that are designed to reduce violent crimes committed by youth in the program.

2. To test strategies for increasing the capacity of the juvenile justice system to handle violent juvenile offenders fairly, efficiently, and effectively.

This solicitation is intended to result in a cooperative agreement for a National Coordinator. The OJJDP, the National Coordinator and the Evaluator (See Par. J.) will jointly develop a Violent Juvenile Offender Research and Development program. The following tasks will be performed under the cooperative agreement.

1. The National Coordinator, in consultation with OJJDP and the Evaluator, will identify and document the most promising models for dealing with screening, prosecution, treatment and reintegration of violent juvenile offenders.

2. The National Coordinator will recommend models to OJJDP for approval.

3. The National Coordinator in consultation with OJJDP, will develop and issue an RFP, subject to OJJDP approval prior to issuance.

4. The National Coordinator, in conjunction with the Evaluator and OJJDP, will develop the selection process for contractors who will implement specific models, and submit if for OJJDP approval.

5. The National Coordinator will implement the violent juvenile offender program. OJJDP will maintain substantial operational involvement and will jointly monitor the contracts for implementation of the models with the National Coordinator.

C. Results Sought

1. The development of effective models for the screening, prosecution, treatment, and reintegration of violent juvenile offenders.

2. An increased concentration of juvenile justice system resources on the screening, prosecution, treatment and reintegration of violent juvenile offenders.

3. A reduction in the number of violent juvenile crimes committed by participating youth.

D. Dollar Range, Number and Duration of Awards

One cooperative agreement will be awarded to a public or private not-for-profit agency or organization to assist in completing the development of a violent juvenile offender program, managing the project selection process and managing the contracts for implementation of the models in selected sites. Funds in the amount of up to $400,000 will be available for the development of program models, program monitoring, and management of the cooperative agreement funded activities. This agreement will be for two years with the potential for an additional 18 month award based on satisfactory performance. In addition, the cooperative agreement will include $3,500,000 exclusively for award, on a competitive basis, to contractors who will implement program components. These contracts will initially be for eighteen (18) months, with the potential for an additional 18 months of support for successful projects, subject to the availability of funds. It is expected that approximately five sites will be selected to implement models, and the amount of funds available for each site will be

[1] This third recommendation has been accepted by OJJDP and is being implemented under auspices outside the R&D program described herein.

approximately $700,000 for the first 18 months.

E. Submission and Processing Procedures

The Violent Juvenile Offender Research and Development Program has been determined to be of national scope and a cooperative agreement will be awarded directly to the successful applicant.

Applications should be submitted to the Office of Juvenile Justice and Delinquency Prevention (OJJDP) in accordance with the form outlined in the application kits available on request from OJJDP (contact Douglas C. Dodge at (202) 724-7755). Applicants must also submit applications to appropriate A-95 Clearinghouses and Criminal Justice Councils (CJC) in accordance with A-95 and CJC requirements. Letters of verification indicating appropriate contacts with Criminal Justice Councils and A-95 Clearinghouses must be included in the applications.

F. Eligibility

Applications are invited from national public or private not-for-profit agencies and organizations that have experience in administering juvenile justice programs and that meet the specific requirements of Paragraph I.

G. Deadline for Submission of Applications

One (1) original and two (2) copies of the application must be delivered to the Office of Juvenile Justice and Delinquency Prevention (OJJDP), LEAA, Room 442, 633 Indiana Avenue, NW., Washington, DC, 20531, by 5:30 p.m. on July 9, 1980. Applications sent by mail will be considered to be received on time if sent by registered or certified mail not later than July 5, 1980, as evidenced by the U.S. Postal Service postmark on the original receipt from the U.S. Postal Service.

H. Application Requirements

These requirements are to be used in lieu of the Part D—Program Narrative Instructions in the Standard Federal Assistance Form 424. In order to be considered for funding, applications must include the following:

1. Projected Goals and Objectives

Translate the objectives outlined in Paragraph B of this solicitation into specific goals and objectives for your application. Establish a workplan which is broken down into: (1) A six (6) month segment for planning; development of the RFP and funding of the contractors who will implement the program and; (2) a thirty-six (36) month period for management of the contracts. Discuss, in detail, the tasks necessary to accomplish the objectives outlined in the solicitation and relate them to specific milestones.

2. Problem Definition

(a) Based on the background materials provided by OJJDP, and any other materials, discuss your understanding: (1) Of the nature and extent of violent juvenile crime (using the definition of violent crime in paragraph K. 1); (2) of legislative activities related to violent juvenile crime; and (3) of promising screening, prosecution, treatment and reintegration approaches.

(b) Discuss the anticipated major difficulties and problem areas in assisting with development of the violent offender initiative, management of the selection process, management of the program, and coordination with the evaluation and technical assistance contractor,[2] together with potential or recommended approaches for their solutions.

(c) Proposals must address the following points regarding qualifications and experience of the applicant, and where applicable, for the contractors.

(1) Describe experience with similar or related projects completed or now underway.

(2) Key personnel should be designated, along with their responsibilities and the approximate percentage of time and duration each will be available for this program. Resumes which indicate relevant education and experience are required. Recommended key staff, e.g. project director, will have to be approved by OJJDP.

3. Program Methodology

Provide a plan and program design to accomplish the following administrative and development tasks:

(a) *Administration.* (1) Propose an administrative, management and fiscal structure. This structure should reflect the relationship between contractors who will implement the program models and the applicant organization and the relationship between the National Coordinator and OJJDP.

(2) Provide an implementation plan which includes a schedule, management policies and organizational chart to show provisions for quality control and compliance with Federal requirements.

(b) The plan for developing the final guidelines and awarding contracts for the Violent Juvenile Offenders Program.

(1) Describe a cooperative process with OJJDP and Evaluator for identifying and documenting effective project models for implementation which can be recommended to OJJDP for approval.

(2) Describe a cooperative process with OJJDP and evaluator for developing recommendations for program guidelines to be submitted to OJJDP for final approval.

(3) Outline a plan for processing applications and selecting the most qualified applicants. This plan should include arrangement for a peer panel review of the applications. The final plan, to be developed after award in cooperation with OJJDP, must be submitted to OJJDP for final approval.

(4) Outline a technical assistance plan for assisting applicants with the development of their applications. This should focus on cluster conferences in several areas of the country, where application development issues can be addressed. The plan will be finalized during the program development period, and submitted to OJJDP for approval.

(5) Outline a plan for the management of all contracts. This plan should include (a) procedures for assuring the contractors compliance with OJJDP/LEAA program and fiscal requirements; (b) a plan for joint site monitoring to be coordinated with OJJDP, and the Evaluator; (c) a plan for assuring that all contractors meet quarterly program and fiscal reporting requirements; (d) a discussion of how the grantee will coordinate with the National Technical Assistance Contractor in the effort to provide technical assistance to the contractors, and a discussion of the cooperative relationship with the Evalution Grantee. The final detailed plan for management, will be worked out in cooperation with, and subject to the approval of, OJJDP.

I. Selection Criteria

Applicants will be evaluated on experience, methodology and management capability as evidenced by the submitted documentation.

1. *Applicant Capability*—Applicants must evidence the following qualifications and experience: (40 points).

(a) Diversified experiences in working with issues related to the juvenile justice system handling of violent or chronic serious juvenile offenders and the treatment and control of these offenders

[2] OJJDP will be issuing an RFP for a contractor to provide technical assistance in the area of alternative responses to delinquent behavior. Part of this contractor's responsibility will be to provide technical assistance to the violent juvenile offender recipients after the initial application development for the R&D models. At that point, the alternative responses to delinquent behavior contractor will assume all major technical assistance responsibilities to the violent juvenile offender recipients.

in institutions and community based alternatives. (15 points)

(b) Ability to establish effective relationships with the juvenile justice system and alternative service providers. (5 points)

(c) Availability of key staff and consultants experienced in providing diverse populations with technical expertise in substantive topics related to the development of the projects. (10 points)

(d) Capability and expertise in maintaining and managing contracts where diverse projects will be implementing selected models. (10 points)

2. *Understanding of proposed methodology.* Applicants must evidence an understanding of the following: (20 points)

(a) Provide a clear and concise discussion of violent juvenile crime, its causes and consequences, and the variety of methods which might be used to overcome these problems. (10 points)

(b) The required steps in developing promising models which can be tested, recommending program guidelines, in providing technical assistance to potential contractors during the application process, and management of the contracts, including the necessary OJJDP approval at each decision point. (10 points)

3. *Management Capability* (40 points)

Applicants must evidence management capability as follows:

(a) The completeness of the plan with respect to organization, models identification, guideline recommendation, management of the project selection process, and management of the subcontracts. (10 points)

(b) The feasibility of the workplan with respect to milestones, time frames and costs. (10 points)

(c) The understanding of research and data requirements and the ability to coordinate with the Evaluator and Technical Assistance Contractor. (10 points)

(d) The completeness of the plan for assuring compliance with LEAA, administrative and fiscal requirements. (10 points)

J. Evaluation Requirements

A separate award will be made by the National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) for the evaluation of both parts of the Violent Offender Initiative. The National Coordinator and all its contractors will be required to work jointly with the Evaluator to ensure that action projects meet the research design requirements.

K. Definitions

1. *Violent Juvenile Offender* is a person under 18 who is adjudicated and found involved (guilty) in one or more violent offenses (murder, forcible sexual intercourse, mayhem, armed robbery, kidnapping, aggravated assault, robbery—with injury requiring professional medical treatment, or arson of an occupied dwelling), and who has a history of prior felony convictions.

2. *Adjudication* is the process of determining guilt or innocence in juvenile court proceedings by either a counseled plea of guilty or a formal factfinding hearing.

3. *Disposition* is that procedure in the juvenile court process which results in the imposition of a sentence, e.g., probation or commitment.

4. *Delinquency* is the behavior of a juvenile, in violation of a statute or ordinance in a jurisdiction, which would constitute a crime if committed by an adult.

5. *Jurisdiction* is any unit of general local government such as a city, county, township, borough, parish, village or combination of such units.

6. *Juvenile* is a child or youth, defined as such by state or local law, who by such definition is subject to the jurisdiction of the juvenile court.

7. *Juvenile Justice System* refers to official structures, agencies and institutions with which juveniles may become involved including, but not limited to, juvenile courts, law enforcement agencies, probation, aftercare, detention facilities, and correctional institutions.

8. *Private Not-For-Profit Agency* is any agency, organization, or institution with two years experience in dealing with youth, designated tax exempt by the Internal Revenue Service under Section 501(c) of the Internal Revenue Code.

9. *Program* refers to the national initiative to establish projects supported by OJJDP and the overall activities related to implementing the projects.

10. *Project* refers to the specific set of activities at given site(s) designed to achieve the overall goal of reducing violent delinquent behavior through the implementation of selected/approved methods.

11. *An 8–A organization* is a firm which is designated as majority owned by the Small Business Administration.

12. *National agency or organization* is a public or private agency or organization that has a national office and/or offices and has experience in the development, coordination and management of national scope programs.

L. Civil Rights Compliance

1. All recipients of LEAA assistance must comply with:

(a) Section 815(c) of the Justice System Improvements Act (JSIA), and its implementing regulations, found at 28 CFR 42.201, *et seq.*;

(b) title VI of the Civil Rights Act of 1964, and its implementing regulation, found at 28 CFR 42.101, *et seq.*;

(c) Section 504 of the Rehabilitation Act of 1973, as amended, and its implementing regulations;

(d) The Age Discrimination Act of 1975, as amended, and its implementing regulations; and

(e) Executive Order 12138, 44 FR 29637 (May 22, 1979), requiring recipients of federal financial assistance to take appropriate affirmative action in support of women's business enterprise.

2. Each recipient of LEAA assistance within the criminal justice system that has 50 or more employees and that has received grants or subgrants totaling $25,000 or more since the enactment of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and that has a service population with a minority representation of 3% or more is required to formulate, implement and maintain in an Equal Employment Opportunity Program (EEOP). Where a recipient has 50 or more employees, and has received grants or subgrants of $25,000 or more, and has a service population with a minority representation of less than 3%, such recipient is required to formulate, implement and maintain an EEOP relating to employment practices affecting women. This requirement shall be satisfied prior to the award. An applicant for LEAA assistance for $500,000 or more must submit its EEOP with the application. *The EEOP must be approved by OJARS' Office of Civil Rights Compliance prior to award.* Failure to address this requirement will result in rejection of the proposal.

3. Applicants that do not meet any of the criteria in (2) above, educational institutions and private not-for-profit organizations shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extends

financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any grant award.

Ira M. Schwartz,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 80-14654 Filed 5-12-80; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-79-277-C]

F. Taylor Mining Corp.; Petition for Modification of Application of Mandatory Safety Standard

F. Taylor Mining Corporation, Route 1, Box 88, Jackhorn, Kentucky 41825, has filed a petition to modify the application of 30 CFR 75.1719 (illumination) to its Mine No. 1 located in Floyd County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

The substance of the petition follows:

1. This petition concerns the installation of lighting on the petitioner's mining machines.

2. The petitioner states that due to the thinness of the seams there is not sufficient clearance between the top of the equipment and the mine roof to allow for installation of lighting.

3. The miners crawl on their hands and knees and always have their heads close to the roof. If lighting were installed it would have a blinding effect thus resulting in a dimunition of safety to those involved.

4. For these reasons, the petitioner requests a modification of the application of the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 12, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: May 5, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-14669 Filed 5-12-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-37-M]

International Salt Co.; Petition for Modification of Application of Mandatory Safety Standard

International Salt Company, 3846 Retsof Road, Retsof, New York 14539 has filed a petition in behalf of the Genesee and Wyoming Railroad Company and the Oil, Chemical and Atomic Workers, both of Retsof, New York, to modify the application of 30 CFR 55.15.5 (safety belts) to its Retsof Plant located in Livingston County, New York. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of safety belts by the brakemen and car-droppers employed at the plant.

2. Switching and dropping of cars requires visual and vocal contact between brakemen, engineers, car-droppers and loading station operators. The use of safety belts hampers this practice.

3. Petitioner states that because of the location of the brake wheel on the newer style cars, it becomes very hazardous for the men to hook-up and unhook safety belts several times to look around the sides of the cars.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 12, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: May 5, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-14668 Filed 5-12-80; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-80-70-C]

Island Creek Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

The Island Creek Coal Company, 2355 Harrodsburg Road, P.O. Box 11430, Lexington, Kentucky 40511 has filed a petition to modify the application of 30 CFR 75.1100-2(c)(1) (quantity and location of fire-fighting equipment) to its Birch 2A Mine located in Nicholas County, West Virginia, in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of petitioner's statements follows:

1. A waterline is installed in the track haulage entry of the mine. It terminates about 500 feet in by the pit mouth. During periods of extreme cold, the water in the line freezes and the valves become inoperative. Water is not available during these times, and the safety of miners working in the section is diminished.

2. As an alternative to maintaining water in the waterlines at all times, the petitioner proposes to extend the waterline to the surface and connect it to the main waterline to the mine through a readily accessible freeze-protected cutoff valve. Normally water would be maintained in the line, but during times when freezing of water in the line is likely, the cutoff valve would be closed and the line drained. Should water be needed in the mine, however, a dispatcher working about 300 feet from the cutoff valve would open the valve to supply water to the line for use as needed.

3. The petitioner alleges that the proposed alternative will guarantee the same measure of protection to the miners as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 12, 1980. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: May 5, 1980.

Frank A. White,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 80-14667 Filed 5-12-80; 8:45 am]

BILLING CODE 4510-43-M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 80-28; Exemption Application No. D-1529]

Exemption From the Prohibitions for Certain Transactions Involving Aurora Casket Co. Inc., Restated Pension Plan No. 1 Located in Aurora, Ind.

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits certain proposed loans of money by the Aurora Casket Company, Inc. Restated Pension Plan (the Plan) to Aurora

Casket Company, Inc. (the employer), the sponsor of the plan.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523–7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 7, 1980, notice was published in the **Federal Register** (45 FR 14972) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the proposed loans of money by the Plan to the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that it has fully complied with the notice provisions as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978 section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed loans of money by the Plan to the Employer for a period of up to five years from the date this grant of an exemption is published in the **Federal Register** provided that the sum total of such loans shall not at that time exceed the lessor of $400,000 or 27 percent of Plan assets.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., 8th day of May, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80–14712 Filed 5–12–80; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 80–29, Exemption Application No. D–1510]

Exemption From the Prohibitions for Certain Transactions Involving the Security National Corporation Retirement Plan Located in Sioux City, Iowa

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption permits the cash sale of the Sioux Car Park by the Security National Corporation Retirement Plan (the Plan) to the Security National Bank of Sioux City, Iowa (the Employer), a party in interest.

EFFECTIVE DATE: September 1, 1979.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523–8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 21, 1980, notice was published in the **Federal Register** (45 FR 18520) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for a transaction described in an application filed by the Employer in its capacity as Plan trustee. The notice set forth a summary of facts and representations contained in the application for examination and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held

relating to this exemption. The applicant has represented that he has complied with the requirements of the notification to interested persons as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things, require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the plan.

Accordingly, the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan of the Sioux Car Park to the Employer, provided that the price was not less than the fair market value on the date of sale.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject of this exemption.

Signed at Washington, D.C., this 8th day of May, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80–14713 Filed 5–12–80; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 80–27, Exemption Application No. D–1644]

Exemption From the Prohibitions for Certain Transactions Involving the Young Electric Sign Company Employee Profit Sharing Plan Located in Salt Lake City, Utah

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption will permit the loan of funds by the Young Electric Sign Company Employee Profit Sharing Plan (the Plan) to the Young Electric Sign Company (the Employer), the Plan sponsor.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523–8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On April 1, 1980, notice was published in the **Federal Register** (45 FR 21412) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the loan of funds by the Plan to the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice has been provided to all persons to comply with the requirements of notification to interested persons as set forth in the notice of pendency. The Department received one public comment which is favorable to the exemption as proposed. The Department did not receive any requests for a public hearing.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general ficuciary responsibility provisions of section 404 of the Act, which among other things, require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the

transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the loan of funds (the Loans) by the Plan to the Employer as described in the notice of proposed exemption, provided that this exemption will only be effective with respect to Loans made within three years from the date of the grant of this final exemption.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 8th day of May, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 80-14711 Filed 5-12-80; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 80-30]

Exemption From the Prohibitions for Certain Transactions Involving Prevue Products, Inc. Retirement Plan and Prevue Products, Inc. Pension Plan Located in Manchester, New Hampshire (Exemption Application No. D-1346)

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the sale for cash by Prevue Products, Inc. Retirement Plan and Prevue Products, Inc. Pension Plan (the Plans) of 1,056 shares of first preferred stock of Prevue Products, Inc. (Prevue), the Plans' sponsor, to Prevue. The exemption would also exempt the exchange of 264 shares of Prevue first preferred stock by Mr. Zvi R. Cohen, an officer, shareholder and director of Prevue and a fiduciary of the Plans, for Prevue third preferred stock, which exchange has already occurred.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Sandler of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, (202) 523–8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On January 8, 1980 notice was published in the Federal Register (45 FR 1708) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code), by reason of section 4975(c)(1)(A) through (E) of the Code, for the above-described sale and exchange of Prevue stock. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No requests for a hearing were received by the Department. One comment was received by the Department from the applicant's representative which informed the Department that a portion of the transaction had been entered into after the notice was published, necessitating a retroactive exemption. An Extension of Time for Comments and Hearing Requests was published in the Federal Register on April 1, 1980. No requests for a hearing or comments were received after the publication of the Extension of Time for Comments and Hearing. The applicant has represented that the notice requirements set out in the proposed exemption have been complied with.

This application was filed with both the Department and the Internal Revenue Service. However, the notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or

statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly, the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plans to Prevue of the 1,056 shares of Prevue first preferred stock held by the Plans for $40 per share in cash, nor to the exchange that has already occurred, by Mr. Zvi R. Cohen of his 264 shares of Prevue first preferred stock, for an equivalent consideration in Prevue third preferred stock.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 8th day of May, 1980.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 80–14714 Filed 5–12–80; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 80–31]

Employee Benefit Plans; Exemption From the Prohibitions for Certain Transactions Involving Precision Wood Products, Inc., Profit Sharing Plan and Trust (Exemption Application No. D–1405)

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the assignment of a ground lease and the sale of the building located on said leasehold by the Precision Wood Products, Inc. Profit Sharing Plan and Trust (the Plan) to Precision Wood of Hawaii, Inc. (the Employer) in order for the Plan to disengage from a prohibited transaction in a manner which is in the best interests and protective of the Plan, its fiduciaries, and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: C. E. Beaver of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 28, 1980 notice was published in the **Federal Register** (45 FR 20592) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for a transaction described in an application filed by the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No public comments and no requests for a hearing were received by the Department.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transactions provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under sections 406(b)(3) and 407(a) of the Act and section 4975 (c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including satutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemptions

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interest of the plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the plan.

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the assignment of the ground lease for cash, by the Plan to the Employer, covering Lot 2459, 91–466 Komohana Street, located in the Campbell Industrial Park, Ewa Beach, Hawaii, and (2) the cash sale of the building located thereon, by the Plan to the Employer, for the higher amount of either the current fair market value or the sum of $167,000, within ninety (90) days of the granting of this exemption and provided that all expenses pertaining to the transactions are paid by the Employer.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms

of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 8th day of May 1980.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 80-14715 Filed 5-12-80; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee for Screening of Licensing Board Candidates; Meeting

Notice is hereby given in accordance with Section 10 of the Federal Advisory Committee Act that the NRC's Advisory Screening Committee for Technical Members will hold its second and third meetings on May 30 and June 13, 1980, respectively. The meetings on both days will begin at 9:00 a.m. and will be held at East-West Towers, 4350 East-West Highway, Room 415, Bethesda, Maryland 20014.

The Committee will meet in closed session in order to consider the qualifications of candidates who responded to NRC Vacancy Announcement No. 79-124, Permanent Technical Member (Environmental Scientist, ASLBP).

I have determined in accordance with Subsection 10(d) of Pub. L. 92-463 that it is necessary to close these meetings in order to protect information, the release of which would represent an unwarranted invasion of personal privacy under 5 U.S.C. 552b(c)(6). Any discussion not involving personal privacy will be inextricably intertwined with discussion of Exemption 6 matters.

For further information contact Charles J. Fitti, Assistant Executive Secretary, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission 20555. [Telephone AC 301-492-7814].

Dated in Washington, D.C. this 6th day of May, 1980.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80-14601 Filed 5-12-80; 8:45 am]

BILLING CODE 7590-01-M

[Byproduct Material License No. 45-02808-04]

Atlantic Research Corp., Alexandria, Virginia; Oral Argument

Notice is hereby given that, in accordance with this Board's order of May 5, 1980, oral argument on the penalty mitigation issue remanded to this Board by the Commission [1] will be heard at *10:00 a.m., Wednesday, May 14, 1980,* in the *NRC Public Hearing Room, fifth floor, East-West Towers Building, 4350 East West Highway, Bethesda, Maryland.*

For the Appeal Board.

Dated: May 6, 1980.

Barbara A. Tompkins,

Secretary to the Appeal Board.

[FR Doc. 80-14602 Filed 5-12-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-269, 50-270 and 50-287]

Duke Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 82, 82, and 79 to Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55, respectively, issued to Duke Power Company, which revised the Technical Specifications for operation of the Oconee Nuclear Station, Units Nos. 1, 2 and 3, located in Oconee County, South Carolina. The amendments are effective as of the date of issuance.

These amendments revise the Station's Common Technical Specifications related to auxiliary electrical systems and emergency power system periodic testing.

The applications for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of these amendments.

For further details with respect to this action, see (1) the applications for amendments dated February 1, 1978, and June 12, 1978, as supplemented October 31, 1978, and August 22, 1979, (2) Amendments Nos. 82, 82, and 79 to Licenses Nos. DPR-38, DPR-47 and DPR-55, respectively, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N. W., Washington, D. C. and at the Oconee County Library, 201 South Spring Street, Walhalla, South Carolina. A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland this 2nd day of May 1980.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch #4, Division of Operating Reactors.

[FR Doc. 80-14603 Filed 5-12-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220]

Niagara Mohawk Power Corp.; Issuance of Facility License Amendment

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 37 of Facility Operating License No. DPR-63 to Niagara Mohawk Power Corporation (the licensee) which revised the Technical Specifications for operation of the Nine Mile Point Nuclear Station, Unit No. 1 (the facility) located in Oswego County, New York. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications to reflect the installation of an Analog Transmitter Trip Unit System (ATTUS).

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

[1] CLI-80-7, 11 NRC—(March 14, 1980).

For further details with respect to this action, see (1) the application for amendment dated February 15, 1979 supplemented by letters dated March 27 and April 3, 1979, (2) Amendment No. 37 to License No. DPR-63, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Oswego County Office Building, 46 E. Bridge Street, Oswego, New York 13126. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland this 2nd day of May 1980.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief, Operating Reactors Branch #3, Division of Operating Reactors.

[FR Doc. 80-14604 Filed 5-12-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-277 and 50-278]

Philadelphia Electric Co., Et Al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 68 and 67 to Facility Operating License Nos. DPR-44 and DPR-56, issued to the Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, which revised Technical Specifications for operation of the Peach Bottom Atomic Power Station, Units 2 and 3 (the facility) located in York County, Pennsylvania. The amendments are effective as of its date of issuance.

The amendments revise the Technical Specifications to authorize Philadelphia Electric Company to replace existing pressure switches that sense drywell and reactor pressure with analog loops and to modify two reactor water level indication loops to improve the reliability, accuracy, and response time of this instrumentation.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendment dated August 27, 1979 as supplemented by letters dated November 5, 1979, January 30, 1980, February 13, 1980, and March 27, 1980, (2) Amendment Nos. 68 and 67 to License Nos. DPR-44 and DPR-56, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 "H" Street, NW., Washington, D.C. and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland this 5th day of May 1980.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief, Operating Reactors Branch, Division of Operating Reactors.

[FR Doc. 80-14605 Filed 5-12-80; 8:45 am]

BILLING CODE 7590-01-M

Order Modifying License (Effective Immediately)

I

Recently, the NRC has become aware of a number of teletherapy equipment malfunctions which have included faulty shutter operation and improper indication of beam status. These types of malfunctions have the potential for causing excessive (even lethal) radiation exposures of operating personnel and patients if not promptly detected and appropriately rectified.

These malfunctions are being investigated and corrective action is being pursued with the teletherapy manufacturers and users involved. In addition to these measures, however, I have determined that a teletherapy room radiation monitor will provide the capability to promptly detect and alert teletherapy unit operators of situations where the source is not fully shielded so that appropriate emergency action can be taken to avoid excessive radiation exposure. The room radiation monitor is intended to provide the teletherapy operator with continuous information on beam status. These room radiation monitors would be an additional requirement to the required door interlock system.

II

Based on the foregoing, I have determined that installation of a permanently mounted radiation monitor in each teletherapy room is necessary and that the public health, safety and interest require that this license modification be made immediately effective. Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in 10 CFR Parts 2, 30, 35, It Is Hereby Ordered, Effective Immediately, That:

Each license that authorizes possession and use of byproduct material for use in teletherapy equipment is hereby amended to add the following conditions:

(1) As soon as possible, but no later than 90 days from the date of this Order, each teletherapy room shall be equipped with a radiation monitoring device which continuously monitors the teletherapy beam condition and is equipped with a back-up battery power supply for emergency operation. This device shall energize a visible signal to make the operator continuously aware of teletherapy beam condition in order that appropriate emergency procedures may be instituted to prevent unnecessary radiation exposure. Operating procedures shall be modified to require daily operational testing of the installed radiation monitor.

(2) No later than 15 days from the date of this Order, until the room monitor required by paragraph (1) is installed, and thereafter, whenever it is not operational, any person entering the teletherapy room following an irradiation shall enter with an operable, calibrated radiation survey meter and shall determine the beam condition.

III

Any person who has an interest affected by this Order, may request a hearing within twenty (20) days of receipt of this Order. Any request for a hearing shall not stay the effectiveness of this Order. Any request for a hearing shall be filed with Mr. R. E. Cunningham, Director, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Executive Legal Director at the above address.

IV

In the event a person who has an interest affected by this Order requests a hearing as provided above and a hearing is held, the issues to be considered at such a hearing shall be:

(1) Whether the circumstances described in Section I of this Order provide an adequate basis for the actions ordered; and

(2) Whether the license should be modified to require the installation of a radiation monitoring device in each teletherapy room or use of a substitute measure as set forth in Part II of this Order.

Dated at Bethesda, Maryland this 7th day of May, 1980.

For the Nuclear Regulatory Commission.

Richard E. Cunningham,

Director, Division of Fuel Cycle and Material Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 80-14606 Filed 5-12-80; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

[Forestry Series, GS-460]

Establishment of Prescribed Minimum Educational Requirements

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management has revised the prescribed minimum educational requirements for Foresters and Research Foresters employed within the Federal service. Forestry is a professional occupation and the revised requirements will facilitate the procurement of qualified candidates for forester and research forester positions in the Federal service. The minimum educational requirement for this occupation was last revised in 1968.

EFFECTIVE DATE: May 7, 1980.

FOR FURTHER INFORMATION CONTACT: Donald G. Brauer, Chief, Engineering and Science Occupations Branch, Standards Development Center, Staffing Services Group; U.S. Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415, 202-632-5612.

SUPPLEMENTARY INFORMATION: In accordance with Section 3308 of Title 5, United States Code, the Office of Personnel Management has established a prescribed minimum educational requirement for Foresters and Research Foresters employed within the Federal service. The requirement, the duties of the positions, and the reasons for the Office of Personnel Management's decision that the requirement is necessary are set forth below:

The Forestry Series, GS-460

GS-5 through GS-15

Minimum Educational Requirement:

1. Candidates for Forester positions must demonstrate successful completion of the requirements in paragraph A or paragraph B below:

A. A full 4-year or longer course of study in an accredited college or university leading to a bachelor's or higher degree with major study in forestry or a closely related subject-matter field. This course of study must have included a total of at least 30 semester hours in any combination of biological, physical, or mathematical sciences or engineering of which at least 24 semester hours of course work are in forestry.

The curriculum must be diversified sufficiently to include at least 8 semester hours in each of the following areas:

Management of Renewable Resources. Courses in this area are concerned with study of the science and art of managing renewable resources to attain desired results. An illustration of creditable courses in this area include silviculture, forest management and operations, timber management, wildland fire science or fire management, utilization of forest resources, forest regulation, recreational land management, watershed management and wildlife or range habitat management;

Forest Biology—Courses in this area are concerned with the study of the classification, distribution, characteristics and identification of forest vegetation and the interrelationships of living organisms to the forest environment. Illustrations of creditable courses in this area include dendrology, forest ecology, silvics, forest genetics, wood structure and properties, forest soils, forest entomology, and forest pathology;

Forest Resource Measurements and Inventory—Courses in this area are concerned with the sampling, inventory, measurement and analysis techniques as applied to a variety of forest resources. Illustrations of creditable courses include forest biometrics, forest mensuration, forest valuation, statistical analysis of forest resource data, renewable natural resources inventories and analysis, and photogrammetry or remote sensing.

B. A total of at least 30 semester hours of course work in an accredited college or university in any combination of biological, physical, or mathematical sciences or engineering of which at least 24 semester hours are in forestry. The requirements for diversification of the 24 semester hours in forestry are the same as specified in paragraph A, above. In addition to these requirements, a candidate must have additional educational or experience which, when combined with the 30 semester hours of course work, will total 4 years of education or 4 years of combined education and experience.

The quality of such additional education or experience must have been sufficient to give the candidate professional and scientific knowledge equivalent to that normally acquired through the successful completion of a full 4-year course of study as described in A above. In combining undergraduate education with experience, an academic year of study which comprises 30 semester hours or 45 quarter hours will be considered equivalent to 9 months of experience.

2. Candidates for Forester (Administration) or Research Forester (Administration) must have completed the requirements described in paragraphs A or B above, or the minimum educational requirements established for other forestry related professional disciplines, e.g., Range Conservationist, GS-454; Soil Scientist GS-470; Wildlife Biologist, GS-486; Geologist, GS-1350; Landscape Architect, GS-807; Hydrologist, GS-1315; or the full 4-year college requirements which have been described for All Professional Engineering Positions, GS-800, provided that the basic professional training has been supplemented by a sufficient amount of professional experience, gained in a forestry work situation, to give the candidate a full professional knowledge of forestry adminstration. The supplemental experience must have been gained in a work situation where the program or project required the joint application of full professional knowledges of forestry and the related professions in the solving of highly technical and complex problems, where the work was largely concerned with the planning, developmental and administrative phases of multiple-use, forest land management programs, or with the carrying out of related research or special projects of a similar nature.

The total education and experience shown must clearly demonstrate that the candidate can perform the technical and administrative duties of the grade of the position for which he/she is being considered.

3. Candidates for positions which involve highly technical research or similar complex scientific functions,

must have successfully completed the full 4-year course of study described in paragraph A above.

Duties: Foresters perform professional and scientific work in the development, production, conservation, and utilization of the natural resources of forests and associated lands; the inventory, planning, evaluation, and management of each forest resource including timber, soil, land, water, wildlife and fish habitat, minerals, forage, and outdoor recreation including wilderness, in relationship with each other to meet both present and future public, local and private needs and demands; the protection of resources against fire, insects, disease, floods, erosion, and other depredations; the valuation, management and protection of forest lands and properties; the interpretation and communication of principles, facts and legislation upon which the management of forest land rests; and the development of new, improved, or more economic scientific methods, practices, or techniques necessary to perform such work.

Reasons for Establishing Requirements: A thorough knowledge of the principles, concepts, techniques, and practices of forestry and of the underlying scientific concepts is essential for performing the work of forester or research forester positions. The only method by which the necessary knowledge and training may be acquired is through a directed course of study in an accredited college or university where competent instruction and guidance are available; where there are adequate scientific libraries, laboratories, and facilities for field study; where the course work is arranged in a systematic, progressive schedule, and where progress in the acquisition of professional and scientific knowledge and skill may be completely evaluated.

The revison in the minimum educational requirement increases the required course work in biological, physical, or mathematical sciences or engineering for those who qualify on the basis of education alone to parallel the existing course work requirement in these scientific areas for candidates who currently qualify on the basis of a combination of education and experience; the grouping of course work has been modified from the requirement stated in the qualification standard published in 1968. This revision reflects the need to assure fair and equitable treatment and placement actions for those who qualify on the basis of a combination of education and experience and for those who qualify on the basis of education alone, and it reflects the changed demands on foresters and research foresters resulting from such factors as the increasing demand and need for forest products; the heightened concern for protecting the environment; and the increased requirement for multiple-use of forest lands.

United States Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 80-14644 Filed 5-12-80; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Items Under Consideration for Withdrawal of Concessions

On April 3, 1980, the Trade Policy Staff Committee conducted public hearings on quotas established by the United Kingdom for imports of synthetic fibers. These hearings, notice of which appeared in the **Federal Register** of March 21, 1980 (45 FR 18548), were conducted, as required by section 125 of the Trade Act of 1974 (19 U.S.C. 2135), to provide a reasonable opportunity to interested parties to produce evidence or to be heard concerning the withdrawal, suspension or modification of the application of equivalent trade agreement obligations of benefit to the United Kingdom.

The list following this notice indicates those items for which withdrawal or modification of concessions with respect to imports from the United Kingdom now are being considered. Interested parties are invited to submit written comments concerning the proposed withdrawal or modification of concessions granted the United Kingdom on these items.

Please submit comments in twenty copies as soon as possible, but no later than May 16, 1980, to: Carolyn Frank, Office of the United States Trade Representative, Room 735, 1800 G Street, N.W., Washington, D.C. 20506.

Ann Hughes

Chairman, Trade Policy Staff Committee.

BILLING CODE 3190-01-M

TSUS or TSUSA 1/ item No.	Article
NOTE:	The bracketed language in this list has been included only to clarify the scope of the numbered items which are being considered.
	Yarns of wool or hair:
	[Yarns of wool, colored, and cut into uniform lengths of not over 3 inches, in immediate packages or containers not over 6 ounces in weight including the weight of the immediate package or container]
	Other:
	Other:
	[Yarns, wholly of wool, of which the average fiber diameter of the fibers in the yarn is not less than 34.40 microns]
307.68	Other
	Fibers (in noncontinuous form), whether known as cut fiber, staple, or by any other name, not carded, not combed, and not otherwise processed:
	Wholly of filaments (except laminated filaments and plexiform filaments):
309.41	Nylon, over 2 but not over 8 inches in length, essentially round in cross section and over 0.008 but not over 0.020 inch in maximum cross-sectional measurement, not crimped
309.43	Other
309.50	Other

1/ Tariff Schedules of the United States Annotated (U.S.C. 1202).

TSUS or TSUSA 1/ item No.	Article
	Yarns of man-made fabrics:
	[Of glass]
	Other:
	[Wholly of continuous man-made fabrics (multifilament yarns)]
	Wholly of noncontinuous man-made fabrics:
310.40	Singles
310.50	Plied
310.60	Other
	Woven fabrics, of wool:
	Fabrics, hand-woven, with a loom width of less than 30 inches:
	[Weighing not over 4 ounces per square yard with warp wholly of vegetable fibers]
336.15	Other
	[Serges, weighing not over 6 ounces per square yard, and other fabrics weighing not over 4 ounces per square yard, all the foregoing (not including hand-woven fabrics with a loom width of less than 30 inches), of sheep's wool, valued over $4 per pound, in solid colors, imported to be used in the manufacture of apparel for members of religious orders]
	Other:
	[Weighing not over 4 ounces per square yard with warp wholly of vegetable fibers]
	Other:
336.60	Valued over $2 per pound

1/ Tariff Schedules of the United States Annotated (U.S.C. 1202).

TSUS or TSUSA 1/ item No.	Article
	Woven fabrics, or silk:
	Wholly of silk:
	Not jacquard-figured:
	Degummed, bleached, or colored:
	[Fabrics, in which the warp yarns, or the filling yarns, or both, are over 50 percent, by weight, of doupion silk (shantung)]
	Other:
337.2020	Twill-woven
	[Satin-woven]
	Other:
337.2050	Weighing over 1.46 ounces per square yard
	Woven fabrics, of man-made fibers:
	Containing over 17 percent of wool by weight:
338.15	Valued over $2 per pound

1/ Tariff Schedules of the United States Annotated (U.S.C. 1202).

TSUS or TSUSA 1/ item No.	Article
	Woven fabrics, or man-made fibers:
	[Containing over 17 percent of wool by weight]
	Other:
	[Of glass]
	Other:
	[Suitable for making typewriter and machine ribbon, containing yarns the average denier of which exceeds 25 but not 75, the total thread count (treating ply yarns as single threads) of which per inch is not less than 150 warp and 100 filling and not more than 210 warp and 140 filling and in which the thread count of the warp does not exceed 60 percent of the total thread count of the warp and filling]
	Other:
	Wholly of continuous man-made fibers:
	[Not bleached and not colored]
	Other:
	Yarn dyed, the thread count of which per inch (treating ply yarns as single threads) is over 175 but not over 360 in the warp and over 79 but not over 180 in the filling:
338.3038	Of polyester

1/ Tariff Schedules of the United States Annotated (U.S.C. 1202).

TSUS or TSUSA 1/ item No.	Article
	Men's or boys' lace or net wearing apparel, whether or not ornamented, and other men's or boys' wearing apparel, ornamented:
380.02	Of wool
	Other men's or boys' wearing apparel, not ornamented:
	Of wool:
	Knit:
380.57	Valued not over $5 per pound
	Valued over $5 per pound:
380.59	Sweaters valued over $18 per pound wholly of cashmere
380.61	Other
	Not knit:
380.63	Valued not over $4 per pound
380.66	Valued over $4 per pound
	Women's, girls', or infants' lace or net wearing apparel, whether or not ornamented, and other women's, girls', or infants' wearing apparel, ornamented:
380.02	Of wool

1/ Tariff Schedules of the United States Annotated (U.S.C. 1202).

TSUS or TSUSA 1/ item No.	Article
	Other women's, girls', or infants' wearing apparel, not ornamented:
	Of wool:
	Knit:
382.48	Infants' outerwear
	Other:
382.54	Valued not over $5 per pound
	Valued over $5 per pound:
382.56	Sweaters valued over $18 per pound wholly of cashmere
382.58	Other
	Not knit:
382.60	Valued not over $4 per pound
382.63	Valued over $4 per pound
	Acids:
	Propionic acid and sorbic acid:
425.8710	Propionic acid
	Esters of monohydric alcohols and organic or inorganic acids (except hydrogen sulfide and hydrogen halide acids):
428.62	Ethyl acrylate
428.64	Ethyl methacrylate
428.66	Methyl acrylate
	Ceramic tiles:
	Floor and wall tiles:
	[Mosaic tiles]
	Other:
532.24	Glazed
532.27	Other

1/ Tariff Schedules of the United States Annotated (U.S.C. 1202).

TSUS or TSUSA 1/ item No.	Article
	Drums, flasks, casks, cans, boxes, lift vans, and other containers (except pressure containers in items 640.05 and 640.10 and collapsible tubes in item 640.40), all the foregoing, of base metal, chiefly used in the packing, transporting, or marketing of goods:
640.20	Of stainless steel
	Locks and padlocks (whether key, combination, or electrically operated), luggage frames incorporating locks, all the foregoing, and parts thereof, of base metal; lock keys:
	Cabinet locks:
	Not of cylinder or pin tumbler construction:
646.87	Over 1.5 but not over 2.5 inches in width
	Film, strips, sheets, plates, slabs, blocks, filaments, rods, seamless tubing, and other profile shapes, all the foregoing wholly or almost wholly of rubber or plastics:
	Of cellulosic plastics materials:
771.20	Of cellulose acetate

1/ Tariff Schedules of the United States Annotated (U.S.C. 1202).

[FR Doc. 80-14673 Filed 5-12-80; 8:45 am]
BILLING CODE 3190-01-C

SECURITIES AND EXCHANGE COMMISSION

[Release No. 11155; 812-4654]

Cardinal Government Securities Trust; Filing of an Application for an Order Pursuant to Section 6(c) of the Act Granting Exemption From the Provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 Thereunder

May 5, 1980.

Notice is hereby given that Cardinal Government Securities Trust, 155 East Broad Street, Columbus, Ohio 43215, ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on April 7, 1980, requesting an order of the Commission to exempt Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to the extent necessary to permit the Applicant to compute its net asset value per share according to the amortized cost method of valuing portfolio securities. 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.

Applicant states that it has filed a registration statement on Form N–1 to register under the Act as an open-end, diversified investment company. Applicant will be a "money market" fund designed primarily as an investment vehicle for institutions and individuals with cash reserves or temporary cash balances with the objective of maximizing current income while preserving capital and maintaining liquidity.

Applicant represents that it will invest exclusively in various high-grade money market instruments maturing in one year or less, including U.S. Treasury bills, notes and bonds, other securities issued or guaranteed by the U.S. government, its agencies and instrumentalities and repurchase agreements relating to such permitted investments.

Applicant states that the experience of money market funds to date indicate that two features are necessary in a "money market" fund: (1) certainty of stability of prinicipal and (2) steady flow of predictable and competitive investment income. Applicant represents that it can provide these features to investors by maintaining a portfolio of high quality, short-term money market instruments valued at amortized cost. Under the amortized cost method of valuation, a portfolio security is valued at its historic cost (purchase price) and the interest to be earned on the security (plus any discount received or less any premium paid upon purchase) is accrued ratably over the remaining maturity of the security. According to the application, by declaring these accruals to Applicant's shareholders as a daily dividend, the value of Applicant's assets and thus, its net asset value per share, will generally remain constant.

Rule 22c–1 adopted under the Act provides, in part, that no registered investment company issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a–4 adopted under the Act provides, in pertinent part, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purpose of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a–4 further provides that portfolio securities for which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by the board of directors. Section 2(a)(41) defines, in pertinent part, the term "value" in a similar manner.

In Investment Company Act Release No. 9786, dated May 31, 1977, the Commission expressed the view that, among other things, (1) Rule 2a–4 under the Act requires that portfolio instruments of "money market" fund to value its portfolio instruments (except those having maturities of 60 days or less) on an amortized cost basis.

Section 6(c) provides, in pertinent 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 provisions of the Act or of any rule or regulation under the Act, 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.

According to the application, Applicant's Board has determined in good faith that the amortized cost method of valuation of portfolio instruments is appropriate and preferable to the use of a market based valuation method and that the amortized cost method is in the best interests of the Applicant's shareholders. The Board has further determined to monitor continuously valuation indicated by methods other than amortized cost so that any necessary changes in the valuation method may be made to assure that the valuation method being used is a fair approximation of fair value in view of all pertinent factors.

Applicant has agreed that the following conditions may be imposed in any order of the Commission granting the exemptive relief requested:

(1) In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, the Board undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase at $1.00 per share.

(2) Included within the procedures to be adopted by the Board shall be the following:

(a) Review by the Board, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of Applicant's net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds ½ of 1 percent a requirement that the Board will promptly consider what action, if any, should be initiated.

(c) Where the Board believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may

[1] To fulfill this condition, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its Board in the exercise of its discretion to be appropriate indicators of value. In addition, the quotations or estimates utilized may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which actions may include: redemption of shares in kind; the sale of portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

(3) Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days.[2]

(4) Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above, and Applicant will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board's considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board's meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

(5) Applicant will limit its portfolio investments, including repurchase agreements, to those U.S. dollar-denominated instruments which the Board determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comprable quality as determined by the Board.

(6) Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter and, if any action was taken will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than May 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; 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(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–14607 Filed 5–12–80; 8:45 am]

BILLING CODE 8010–01–M

[2] In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

[Release No. 21547; 70–6437]

The Columbia Gas System Inc.; Proposal to Issue Short-Term Notes to Banks and Commercial Paper to Dealers

May 1, 1980.

Notice is hereby given that The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, has filed an application with this Commission pursuant to the the Public Utility Holding Company Act of 1935 ("Act") designating Section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

Columbia proposes to issue notes to banks and commercial paper to dealers from time to time through May 31, 1981. The aggregate amount of bank borrowings and commercial paper will not exceed $335,000,000 at any one time outstanding. At present Columbia is authorized to make short-term borrowings in a maximum aggregate principal amount of $270,000,000 through May 31, 1980 pursuant to the Commission's order of August 22, 1979 (HCAR No. 21196). Columbia has no short-term notes outstanding pursuant to such authorization.

The proposed transaction is designed to enable Columbia to furnish funds to its subsidiary companies for purchase of gas for underground storage and liquid hydrocarbon inventories and for other short-term requirements. A separate application (File No. 70–6435) has been filed with this Commission seeking authorization to furnish such funds to its subsidiaries. The short-term gas and liquid hydrocarbon requirements of approximately $346,100,000 may make it necessary to have outstanding at any one time through May 31, 1981, short-term notes in the aggregate amount of $335,000,000.

Columbia may sell commercial paper to one or more commercial paper dealers and continue to do so as long as the effective interest rate on such commercial paper is less than the effective interest cost which Columbia would have to pay to the banks for an equivalent amount of funds as of the date of borrowing except that, in order to obtain greater flexibility, commercial paper may be issued with a maturity of not more than 60 days from the date of issue with an effective interest cost in excess of the effective interest cost on bank borrowings.

Commercial paper will be issued by Columbia in denominations of not less than $50,000 nor more than $5,000,000 and will be reoffered by the dealer or dealers in such a manner as not to constitute a public offering. Such commercial paper will be sold by Columbia to the dealer or dealers at a discount rate which will not be in excess of the discount rate per annum prevailing at the date of issuance for commercial paper of that particular maturity and rating, sold by issuers thereof to commercial paper dealers. No commission or fee will be payable by Columbia in connection with the issuance and sale of such commercial paper. The purchasing dealer, however, will reoffer such notes at a discount rate of 1/10 of 1% per annum less than such discount rate to the issuer.

The commercial paper will be reoffered by the commercial paper

dealer or dealers to not more than 200 of their customers (a total of 200 customers if more than one dealer) identified and designated in non-public lists of institutional investors prepared in advance by each of them for this purpose. It is expected that Columbia's commercial paper will be held by customers to maturity, but if they wish to resell prior thereto, the commercial paper dealer, pursuant to repurchase agreement, will repurchase the notes and reoffer the same to others in this designated list of customers.

The commercial paper shall be in the form of a promissory note with maturities to be determined by market conditions, effective interest cost to Columbia and Columbia's anticipated cash requirements at the time of issuance. The commerical paper to be issued by Columbia, in accordance with the established custom and practices in the market, would not be payable prior to maturity.

For short-term purposes, Columbia intends to secure credit lines from banks in an aggregate amount of up to $335,000,000. Borrowings under these lines of credit will be repaid by May 31, 1981. Columbia will also have the right to prepay any or all of such bank notes, in whole or in part, without penalty. Columbia is currently negotiating credit line terms with banks and the results of such negotiations, credit line terms and a list of participating banks will be filed by amendment.

The fees, commissions and expenses to be incurred by Columbia in connection with the proposed transaction are estimated at $25,000 including rating fees of $21,000. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than May 27, 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 at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-14608 Filed 5-12-80; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-5899]

U.S. Home Corp. Common Stock, $.10 Par Value and 5½ Percent Convertible Subordinated Debentures Due 1996; Application To Withdraw From Listing and Registration

April 30, 1980.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 (the "Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified securities from listing and registration on the Pacific Stock Exchange, Inc. ("PSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

1. U.S. Home Corporation's ("U.S. Home") common stock and 5½ percent debentures are currently listed and registered on both the PSE and the New York Stock Exchange ("NYSE").

2. U.S. Home has determined that the economic and administrative burdens associated with continued listing on the PSE is no longer warranted due to the small trading activity on the PSE in the above securities.

3. This application relates solely to withdrawal of the common stock and 5½ percent debentures from listing and registration on the PSE and shall have no effect upon the continued listings of such stock on the NYSE.

Any interested person may, on or before May 21, 1980 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-14614 Filed 5-12-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21549; 70-6098]

Jersey Central Power & Light Co.; Proposed Increase in Short-Term Borrowing Authorization

May 5, 1980.

Notice is hereby given that Jersey Central Power & Light Company ("Jersey Central"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, an electric utility subsidiary of General Public Utilities Corporation, a registered holding company, has filed a post-effective amendment to an application previously filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the amended application, which is summarized below, for a complete statement of the proposed transaction.

By an order dated December 28, 1979 in this matter (HCAR No. 21369) Jersey Central was authorized to issue or renew its unsecured promissory notes from time to time through December 31, 1980, provided that such borrowings, when added to Jersey Central's borrowings outstanding under a separate loan agreement (as authorized in the Commssion's orders of June 19, 1979, HCAR No. 21107) would not in the aggregate exceed the lesser of $139,000,000 or the amount permitted by Jersey Central's charter. It is now proposed that Jersey Central be permitted to issue, sell and renew its unsecured promissory notes from time to time through December 31, 1980, provided that such borrowings, when added to Jersey Central's borrowings under the loan agreement would not in the aggregate exceed the lesser of $160,000,000 or the amount permitted by Jersey Central's charter. Jersey Central states that this flexibility is sought because from time to time it may be less costly and more expeditious to borrow

under unsecured credit lines than under the loan agreement. In all other respects the transactions as heretofore authorized by the Commission will remain unchanged.

A statement of the fees, commissions and expenses to be incurred by Jersey Central in connection with the proposed transaction will be filed by further post-effective amendment. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction will be filed by further post-effective amendment. It is stated that no state or federal regulatory authority, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than May 29, 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 at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended or as it may be further amended, may be granted effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-14609 Filed 5-12-80; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Oceania Resources, Inc.; Order of Suspension of Trading

May 1, 1980.

It appearing to the Securities and Exchange Commission that there are questions which have been raised regarding the lack of current accurate and adequate information concerning an announced refinery project in the Fiji Islands, potential drilling ventures and the status of the most recent audit of Oceania Resources, Inc., the Commission is of the opinion that the public interest and the protection of investors require a summary suspension of trading in the securities of Oceania Resources, Inc.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the national securities exchange or otherwise is suspended, for the period from 11:30 a.m. on May 1, 1980 through midnight on May 10, 1980.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-14611 Filed 5-12-80; 8:45 am]

BILLING CODE 8010-01-M

Pacific Stock Exchange Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

May 6, 1980.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12(f)-1 thereunder, for unlisted trading privileges in the following common stock:

Tandy Corporation, $1 Par Value (File No. 7-5542)

This security is listed and registered on one or more other national securities exchanges.

Interested persons are invited to submit on or before June 5, 1980, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-14612 Filed 5-12-80; 8:45 am]

BILLING CODE 8010-01-M

Pacific Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

May 5, 1980.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the common stock of:

Valero Energy Corporation $1 Par Value (File No. 7-5520).

This security is listed and registered on another national securities exchange.

Interested persons are invited to submit on or before June 6, 1980 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for Hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-14613 Filed 5-12-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-16786; File No. SR-MSRB-80-5]

Self-Regulatory Organiations; Proposed Rule Changes By Municipal Securities Rulemaking Board*

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 25, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission proposed rule changes as follows:

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* *Italics* indicate new material.

Statement of the Terms of Substance of the Proposed Rule Changes

The Municipal Securities Rulemaking Board is filing herewith an amendment to rule G–12 on uniform practice (hereafter sometimes referred to as the "proposed rule change"). The text of the proposed rule change is as follows:

Rule G–12. Uniform Practice

(a) through (f) No change.

(g) Rejections and Reclamations.

(i) and (ii) No change.

(iii) Basis for Reclamation and Time Limits.

A reclamation may be made by either the receiving party or the delivering party if, subsequent to delivery, information is discovered which, if known at the time of the delivery, would have caused the delivery not to constitute good delivery, provided such reclamation is made within the following time limits:

(A) and (B) No change.

(C) Reclamation by reason of the following shall be made within 18 months following the date of delivery:

(1) and (2) No change.

(3) information pertaining to the description of the securities was inaccurate for either of the following reasons:

(i) information required by subparagraph (c)(v)(E) of this rule was omitted or erroneously noted on a confirmation, or

(ii) information material to the transaction but not required by subparagraph (c)(v)(E) of this rule was erroneously noted on a confirmatin.

(D) No change.

(iv) through (vi) No change.

(h) through (1) No change.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

Purpose of Proposed Rule Changes

Rule G–12 sets forth certain procedures and standards for the comparison, clearance and settlement of transactions in municipal securities. Under paragraph (g) of the rule, parties to an inter-dealer transaction in municipal securities have a right to reclaim, or to demand reclamation, of securities previously delivered, under certain circumstances during specified time periods. For example, the rule currently provides for reclamation in the event of a delivery of securities with mutilated coupons, securities which are the subject of an "in part" call, or securities which have been reported as missing or stolen. The proposed rule change would modify paragraph (g) to expand the circumstances under which reclamation is permitted.

Under paragraph (g), reclamation is not currently permitted in the event the securities involved in a transaction are misdescribed at the time of trade. Accordingly, reclamation is not available in the case where there is an explicit misstatement of information on an inter-dealer confirmation, such as where a transaction is effected in callable bonds that are erroneously described as "non-callable." Reclamation is also not permitted if the basic information required to be disclosed under rule G–12(c)(v)(E) is omitted from a confirmation. For example, a dealer who accepts delivery of "limited tax" securities could not reclaim such securities in the event that this restriction on the taxing power of the issuer was not disclosed on the inter-dealer confirmation as required by rule G–12.

The Board has learned of several situations involving misdescriptions of this type. In these cases, the purchasing dealers have had no recourse but to seek to obtain appropriate relief through arbitration proceedings. As reflected in the proposed rule change, the Board is of the view that a party should have the right to reclaim securities in such cases.

The proposed rule change would permit reclamation within 18 months of delivery in the following circumstances: (1) information required by subparagraph (c)(v)(E) of rule G–12 is omitted from a confirmation or (2) information material to the transaction but not required by that subparagraph is erroneously noted on a confirmation.

Subparagraph (c)(v)(E) of rule G–12 requires inter-dealer confirmations to set forth.

[a] description of securities, including at a minimum the name of the issuer, interest rate, maturity date, and if the securities are limited tax, subject to redemption prior to maturity (callable), or revenue bonds, an indication to such effect, including in the case of revenue bonds the type of revenue, if necessary for a materially complete description of the securities and in the case of any securities, if necessary for a materially complete description of the securities, the name of any company or other person in addition to the issuer obligated, directly or indirectly, with respect to debt service or, if there is more than one obligor, the statement "multiple obligors" may be shown.

This provision is designed to require municipal securities professionals to provide certain information essential to an adequate description of the securities involved in a transaction. The Board believes that the inclusion of this information is necessary to assure that the parties to a transaction agree as to its terms. The Board is therefore of the view that it is appropriate to provide a right of reclamation when there is an omission on a confirmation of the information required by this subparagraph.

Further, the Board believes that the explicit misstatement on an inter-dealer confirmation of material information relating to the description of securities should be grounds for reclamation, even if the information is not required under subparagraph (c)(v)(E) (*e.g.*, a statement that the securities have a particular rating, or that the securites are prerefunded to a particular call date and price). The misstated information, as in the cited examples, would constitute an intrinsic term of the transaction.

Basis Under the Act for Proposed Rule Changes

The Board has adopted the proposed rule change pursuant to section 15B(b)(C) of the Securities Exchange Act of 1934, and amended (the "Act"), which requires and empowers the Board to adopt rules

designed * * * to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in * * * clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *.

Comments Received From Members, Participants or Others on Proposed Rule Changes

On May 25, 1979, the Board issued an exposure draft of an amendment to rule G–12 that was substantially the same as the proposed rule change (the "exposure draft"). In response to the exposure draft the Board received six letters of comment from the following:

Adams, McEntee & Company ("Adams, McEntee").
Dealer Bank Association (the "DBA").
Mercantile Trust Company, N.A. ("Mercantile").
Northwestern National Bank of Minneapolis ("Northwestern Bank").
United California Bank ("UCB").
Wauterlek & Brown, Inc.

In addition, oral comments were received from Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("Merrill Lynch") and from participants in a meeting of the operations committee of the Public Securities Association (the "PSA").

Mercantile and UCB expressed general support for the proposed amendment. UCB noted that the proposed amendment would have been

helpful in resolving a previous delivery problem which UCB had encountered.

The DBA supported the part of the proposed amendment relating to reclamation for the misstatement of required information, but objected to the part of the amendment permitting reclamation for the misstatement of non-required information. The DBA suggested that it would be difficult to determine "what misstated (or misdescribed) information would ever effect an intrinsic term of a transaction," and that comparison of non-required information would be burdensome on those responsible for performing the comparison function.

With respect to the first point, the Board believes that the qualification in the proposed rule change that the non-required information be "material to the transaction" provides significant guidance to municipal securities dealers. As a practical matter, municipal securities dealers should be able to agree in almost all cases as to what constitutes a material term of a particular transaction. For example, the Board believes that municipal securities dealers would readily agree that if securities are sold subject to the condition that they are assigned a particular rating, the condition is an intrinsic term of the transaction.

The Board does not believe that the proposed rule change will impose an additional burden on the persons responsible for comparing confirmations. Under rule G–12, the parties to a transaction are currently required to compare transactions within specified time periods in order to assure that the parties agree as to the terms of the transaction. Although the rule does not currently permit reclamation for misdescription, the parties to a transaction are nonetheless required at present by the rule to institute verification procedures if there is a material discrepancy between the confirmations to a transaction, including any discrepancy attributable to a misstatement of information not required under rule G–12(c)(v)(E) to be on a confirmation. In addition, "information material to a transaction" is generally required to be included on inter-dealer confirmations under rule G–12(c)(vi)(F) (if it is not expressly required under some other provison), so that no new burdens would be imposed on the persons responsible for comparing transactions by reason of the adoption of the proposed rule change.

The DBA and Northwestern Bank suggested that the 18-month period for reclamation provided in the exposure draft be shortened. The DBA recommended a time limit of six months from settlement date; Northwestern Bank suggested a time limit of one week in the event of omission of required information. The Board selected the 18-month period because of the likelihood that any problems of the type addressed by the proposed rule change would be uncovered during the annual outside audit of a municipal securities dealer's activities. The 18 month period was also selected to conform it to other reclamation periods.

Adams, McEntee, and Wauterlek & Brown expressed opposition to the proposed amendment. Both firms suggested that an unscrupulous dealer might intentionally include a misdescription on a confirmation in order to support a potential claim for reclamation, or make use of minor discrepancies to institute reclamation procedures, in the event of adverse market movements. Merrill Lynch expressed a similar concern. The Board agreed with the commentators on this point and therefore decided to limit the scope of the proposed rule change explicitly to information "material to the transaction." The Board believes that this change will significantly reduce the possibility of the misuse of the relcamation procedures in misdescription cases.

Adams, McEntee and Wauterlek & Brown as well as those in attendance at the PSA meeting, suggested that the provisions of subparagraph (iii)(C)(1) of rule G–12(g) already cover the problem. This subparagraph of the rule provides for reclamation in the event of

* * * irregularity in delivery, including, but not limited to, delivery of the wrong issue (*i.e.*, issuer, coupon rate or maturity date) * * *

The subparagraph in question was not intended to apply in the case of misdescriptions of secutiries. The subparagraph is directed toward an "irregularity" in the actual physical delivery of securities, and not an "irregularity" in the information on confirmations or in the terms of the transaction giving rise to delivery problems.

Burden on Competition

The Board is of the opinion that the proposed rule change will not impose any burden on competition inasmuch as it will apply to all municipal securities brokers and municipal securities dealers equally.

On or before June 17, 1980, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule changes, or

(B) institute proceedings to determine whether the proposed rule changes should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 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 capiton above and should be submitted on or before June 3, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

May 5, 1980.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80–14610 Filed 5–12–80; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Treasury Seeks Public Comment on Revision of Income Tax Treaty Between the United States and Belgium

The Treasury Department today announced that representatives of the United States and Belgium will meet in Washington during the week of June 2 to discuss possible revisions to the income tax treaty signed in 1970.

The discussions will review all provisions of the existing treaty in the light of the 1977 U.S. and OECD model

treaties and changes in internal law. Among the issues to be considered will be the U.S. tax on premiums paid to foreign insurers, the effect of Belgium's imputation system of taxing dividends, and possible amendments to the articles on shipping, withholding at source on investment income, and capital gains.

The Treasury invites persons wishing to submit comments on any aspect of the income tax convention to write to H. David Rosenbloom, International Tax Counsel, Department of the Treasury, Room 3064, Washington, D.C. 20220.

Dated: May 7, 1980.

Donald C. Lubick,

Assistant Secretary (Tax Policy).

[FR Doc. 14638 Filed 5-12-80; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 94
Tuesday, May 13, 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-281, May 7, 1980]

CIVIL AERONAUTICS BOARD.

Short Notice of Board Meeting and Closure of Item.

TIME AND DATE: 12:30 p.m., May 6, 1980.

PLACE: Room 1012, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 1. Negotiations with New Zealand.

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-954-80, Filed 5-9-80; 3:53 pm]

BILLING CODE 6320-01-M

2

COMMODITY FUTURES TRADING COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published Monday, May 12, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., May 9, 1980.

CHANGES IN THE MEETING: Meeting canceled.

[S-949-80, Filed 5-9-80; 9:57 pm]

BILLING CODE 6351-01-M

3

FEDERAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: FR 45, April 29, 1980, 28601.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2 p.m., Monday, May 5, 1980.

CHANGES IN THE AGENDA: The Federal Trade Commission has changed the date of its previously announced oral argument meeting of Monday, May 5, 1980, 2 p.m., to Thursday, May 8, 1980, 2 p.m.

[S-952-80 Filed 5-9-80; 10:12 am]

BILLING CODE 6750-01-M

4

FEDERAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: FR 45, May 9, 1980, p. 30765.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Wednesday, May 14, 1980.

CHANGES IN THE AGENDA: The Federal Trade Commission has changed the date and time of its previously announced open meeting of Wednesday, May 14, 1980, 10 a.m., to Friday, May 16, 1980, 2 p.m.

[S-952-80 Filed 5-9-80; 1:10 pm]

BILLING CODE 6750-01-M

5

NATIONAL CREDIT UNION ADMINISTRATION.

TIME AND DATE: 9:30 a.m., Thursday, May 15, 1980.

PLACE: Seventh floor board room, 1776 G Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Review of Central Liquidity Facility Lending Rates.
2. Implementation of Statutory Increase in MCUA Share Insurance Coverage.
3. Consideration of a Waiver of the Regular Reserve Transfer for the Second Quarter of 1980.
4. Depository Institutions Deregulation Committee issues: a. Premiums paid to depositor's and finder's fees; and b. Interest as a deposit for purposes of the early withdrawal penalty rule; payment of interest on deposits after maturity.
5. Report on actions taken under delegations of authority.
6. Applications for charters, amendments to charters, bylaw amendments, mergers as may be pending at that time.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telephone (202) 357-1100.

[S-948-80 Filed 5-9-80; 9:10 am]

BILLING CODE 7535-01-M

6

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Week of May 12, 1980.

PLACE: As indicated.

STATUS: Open/closed.

MATTERS TO BE CONSIDERED: *Monday, May 12*—Commissioners conference room, 1717 H Street NW.

2 p.m.

1. Meeting with Harrisburg/Middletown Area Citizens Groups Regarding Cleanup of TMI-2 (approximately 1 hour, public meeting) (as announced).
2. Affirmation Session (approximately 10 minutes, public meeting).
   a. Request for Hearing on Point Beach.
   b. Board on TMI-2 OL Modifications.
3. Time Reserved for Discussion and Vote on Affirmation Items (if required) (approximately 15 minutes, public meeting).

Tuesday, May 13—Commissioners conference room, 1717 H Street NW.

10 a.m.

1. Discussion of Tarapur Export License (tentative) (approximately 1½ hours, closed—exemption 1).

Thursday, May 15—Room 550, East-West Towers, 4350 East West Highway, Bethesda, Md.

10 a.m.

1. Briefing on Upgrade of Operations Center (nuclear data link) (approximately 2 hours, public meeting).

2 p.m.

1. Discussion of Commission Review Procedures (approximately 1½ hours, public meeting).
2. Briefing on General Position on Protection of Routing Information (approximately 1 hour, public meeting).
3. Affirmation Session (approximately 10 minutes, public meeting).
   a. Class 9 Accidents Under NEPA.
   b. Proposed rulemaking on Reactor Siting (tentative).
   c. Susquehanna Steam Electric Station, 1 and 2.
   d. Funding of Witnesses Called by Intervenors, TMI-1.
   e. Lic. Bd. Certif. Intervenor Funding TMI-1 Restart.
   f. UCS Petition on Fire Protection & Electrical Connectors (tentative).
   g. Certification by Licensing Board in TMI-1 Restart.
4. Time Reserved for Discussion and Vote on Affirmation Items (if required) (approximately 15 minutes, public meeting).

Friday, May 16—Commissioners conference room, 1717 H Street NW.

11:15 a.m.

1. Discussion of Action Plan (approximately 1½ hours, public meeting).

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, (202) 634–1410.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR TWO DAY UPDATE: (202) 634–1498.

Note.—Recorded Message Now carries Next Two Days.

Those planning to attend a meeting should reverify the status on the day of the meeting.

May 8, 1980.

Walter Magee,

Office of the Secretary.

[S-953-80, Filed 5-9-80; 2:30 pm]

BILLING CODE 7590-01-M

7

POSTAL RATE COMMISSION.

TIME AND DATE: 2 P.M., TUESDAY, MAY 13, 1980.

PLACE: Conference room, room 500, 2000 L Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Reconsideration of Order No. 328. Closed pursuant to 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, Secretary, Postal Rate Commission, room 500, 2000 L Street NW., Washington, D.C. 20268, telephone (202) 254–5614.

[S-946-80 Filed 5-8-80; 5:06 pm]

BILLING CODE 7715-01-M

8

POSTAL RATE COMMISSION.

"FEDERAL REGISTER" CITATION FOR PREVIOUS ANNOUNCEMENT: 45 FR 30595 May 8, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE CLOSED MEETING: 2 p.m., May 7, 1980.

CHANGE IN THE MEETING: Added agenda item: OOC's proposed suit against USPS in Docket No. MC78–2. Closed pursuant to 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, Secretary, Postal Rate Commission, 2000 L St., NW., Suite 500, Washington, D.C. 20268, 202–254–3880.

[S-947-80 Filed 5-8-80; 5:07 pm]

BILLING CODE 7715-01-M

9

RAILROAD RETIREMENT BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: VOL. 45, NO. 91, P. 30595. THURSDAY, MAY 8, 1980

TIME AND DATE: 9 a.m., May 15, 1980.

PLACE: Board's meeting room eighth floor, headquarters building, 844 Rush Street, Chicago, Illinoise, 60611.

CHANGE IN THE MEETING: Additional item to be considered at the portion of the meeting which will be closed to the public:

(D) Intra-Board personnel matters.

CONTACT PERSON FOR MORE INFORMATION: R. F. Butler, Secretary of the Board, COM No. 312–751–4920, FTS No. 387–4920.

[S-951-80 Filed 5-9-80; 1:09 pm]

BILLING CODE 7905-01-M

federal register

Tuesday
May 13, 1980

Part II

Department of Agriculture

Animal and Plant Health Inspection Service

Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products; Prohibitions and Restrictions

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products; Prohibitions and Restrictions

AGENCY: Animal and Plant Health Inspection Service.

ACTION: Final rule.

SUMMARY: This document revises "Subpart—Nursery Stock, Plants, and Seeds" relating to prohibitions and restrictions on the importation of certain classes of nursery stocks, and certain other classes of plants, roots, bulbs, seeds, and other plant products. This is necessary to update regulations and to prevent the introduction into the United States of certain injurious plant diseases, injurious insect pests, and other plant pests.

EFFECTIVE DATE OF REGULATIONS: June 15, 1980.

FOR FURTHER INFORMATION CONTACT: H. V. Autry, Chief Staff Officer, Regulatory Support Staff, Plant Protection and Quarantine Programs, APHIS, USDA, Federal Building, 6505 Belcrest Road, Room 635, Hyattsville, MD, 301–436–8247. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "significant."

On June 15, 1979, the Animal and Plant Health Inspection Service published a document in the **Federal Register** (44 FR 34856–34882) proposing to revise "Subpart—Nursery Stock, Plants and Seeds" (7 CFR 319.37 through 319.37–28a). This document provided that written comments were to be received on or before September 13, 1979. A document published in the **Federal Register** on August 24, 1979 (44 FR 49695), extended the comment period until October 1, 1979. Also, in accordance with the notice in the document of June 15, 1979, a public hearing to consider the proposal was held in Baltimore, Maryland, on August 21 and 22, 1979.

Nineteen persons made statements at the public hearing. Also, 56 additional written comments were submitted in response to the proposal. Responses were received from 12 representatives of foreign governments, 3 representatives of Federal Government agencies, 5 representatives of State Departments of Agriculture, 2 representatives of universities, 7 representatives of nurserymen and florist associations, 7 representatives of botanical gardens and arboreta, 1 representative of an environmental association, and 38 individuals and private nurserymen.

Based on the reasons set forth in the proposal, the provisions in the proposal have been adopted in the final rule as proposed except as otherwise explained below. Further, all of the comments submitted pursuant to the proposal have been carefully considered and are discussed below.

The final rule sets forth prohibitions and restrictions on the importation of certain classes of plants, roots, bulbs, seeds, and other plant products based on information currently available. It is anticipated that additional relevant information will become available from time to time requiring consideration concerning whether to take action to amend the final rule. For example, we have already been advised that additional information may be presented for the purpose of establishing a basis for adding to the list of articles allowed to be imported in growing media pursuant to § 319.37–8(e) of the final rule. In this connection it should be noted that in accordance with the provisions in 5 U.S.C. 553(e) any interested person may petition for the issuance, amendment, or repeal of a rule.

A definition of the term "bulb" is added to the final rule to mean the portion of a plant commonly known as a bulb, bulbil, bulblet, corm, cormel, rhizome, tuber, or pip, and including fleshy roots or other underground fleshy growths, a unit of which produces an individual plant. This definition is added to the final rule for purposes of clarification. It is similar to the definition in the current regulations (see 6 CFR 319.37–1 of the current regulations).

Proposed § 319.37–1 defines the term "from" as follows:

"An article is considered to be 'from' any country or locality in which it was grown. *Provided,* that an article imported into Canada from another country or locality shall be considered as being solely from Canada if it meets the following conditions:

"(a) Is is imported into the United States directly from Canada after having been grown for at least 1 year in Canada,

"(b) It has never been grown in a country from which it would be a prohibited article or grown in a country other than Canada from which it would be subject to conditions of § 319.37–5 or 319.37–6,

"(c) It was not grown in a country or locality from which it would be subject to conditions of § 319.37–7 unless it was grown in Canada under postentry growing conditions equivalent to those specified in § 319.37–7, and

"(d) It was not imported into Canada in growing media."

It was suggested at the public hearing that the definition should be changed to provide that an article imported into Canada from another country or locality shall be considered as being solely from Canada even if it had been grown in a country or locality from which it would be subject to § 319.37–5(a) or (b), if imported directly into the United States. The provisions in § 319.37–5(a) relate to foreign inspection and certification requirements because of potato cyst nematodes. The provisions in § 319.37–5(b) relate to special inspection and certification requirements because of certain diseases associated with *Chaenomeles* spp. (flowering quince), *Cydonia* spp. (quince), *Malus* spp. (apple, crabapple), *Prunus* spp. (almond, apricot, cherry, cherry laurel, English laurel, nectarine, peach, plum, prune), and *Pyrus* spp. (pear). This suggestion is adopted and reference to § 319.37–5 (a) and (b) is deleted from paragraph (b) of the definition in the final rule. Canada's requirements for the importation into Canada of the articles designated in § 319.37–5(a) and (b) are essentially the same as the requirements of the United States for the importation of such articles. Accordingly, the importation of such articles from Canada would not present a significant risk of introducing the diseases and pests specified in § 319.37–5(a) and (b).

Proposed § 319.37–1 defined the term United States to include Guam and the Northern Mariana Islands, and defined the term Oceania as the islands of Micronesia, Melanesia, and Ploynesia (except Hawaii) in the central and southern Pacific Ocean. It was pointed out at the public hearing that Guam and the Northern Mariana Islands were included both as foreign areas and as part of the United States under the proposal, since they are part of Micronesia and they are specifically included in the definition of United States. The subject regulations are promulgated under the Plant Quarantine Act (7 U.S.C. 151 *et seq.*) and the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*). Guam and the Northern Mariana Islands are part of the United States within the

meaning of these laws. Accordingly, for purposes of the subject regulations, it was intended to include Guam and the Northern Mariana Islands as part of the United States and not as part of any foreign area. Therefore, the definition of Oceania has been changed to clarify that Guam and the Northern Mariana Islands are not included as part of Oceania.

Under proposed § 319.37–2(a) articles of *Anemone* spp. (anemone, windflower) from the Federal Republic of Germany (West) and the German Democratic Republic (East) would have been prohibited articles. Also, under proposed § 319.37–7 articles of *Anemone* spp. would have been subject to postentry requirements if from any other country or locality except Canada. It was suggested that the public hearing that restrictions on the importation of articles of *Anemone* spp. be lessened. The provisions concerning articles of *Anemone* spp. were proposed in §§ 319.37–2(a) and 319.37–7 because it was believed that they were necessary to prevent the introduction into the United States of Anemone alloiophylly virus. However, based on information from the Federal Republic of Germany (West) it now appears that Anemone alloiophylly virus does not exist. Accordingly, articles of *Anemone* spp. have been deleted from the list of prohibited articles and from the list of articles subject to postentry requirements.

Proposed § 319.37–2(a) listed seeds of *Berberis* spp. (barberry) from any foreign country or locality as prohibited articles. One comment requested, without providing reasons, that seeds of *Berberis* spp. be deleted from the list of prohibited articles. This comment is not adopted. Races of *Puccinia graminis* Pers. (Black stem rust) not occcurring or not widely prevalent in the United States would likely be produced on plants grown from such seeds, and it appears that many of these new races would be distructive diseases of wheat and barberry. Forms of *Puccinia graminis* Pers. occur in the United States which could cause such new races to be produced. However, such new races (or new diseases) could be produced only on susceptible articles of *Berberis* spp. or related plants. There is no means to determine at the time of importation whether seeds of *Berberis* spp. will produce resistant or susceptible plants, and, consequently, whether new races of *Puccinia graminis* Pers. (new diseases) would be produced. Accordingly, in order to prevent damage to wheat and barberry from new races of *Puccinia graminis* Pers., it is necessary to include seeds of *Berberis* spp. as prohibited articles.

Proposed § 319.37–2(a) provided that articles (except seeds) of *Chaenomeles* spp. (flowering quince) not meeting the conditions for importation in proposed § 319.37–5(b) would be prohibited articles from all countries and localities because of the diversity of diseases, including, but not limited to, three diseases, i.e., *Monilinia fructigena* (Adherh. & Ruhl.) Honey (Brown rot of fruit); *Gymnosporangium asiaticum* Miyabe ex. Yamada (Rust); and apple ringspot virus. It was also intended to specify quince sooty ringspot agent, quince yellow blotch agent, and quince stunt agent in the list of diseases since these diseases are also associated with articles of *Chaenomeles* spp. Accordingly, these diseases have been added to the list. There does not appear to be any feasible method for inspection or treatment, or other procedures with respect to articles of *Chaenomeles* spp. for preventing the possible introduction into the United States of any of these six diseases, except for such articles meeting the conditions for importation into the United States in § 319.37–5(b). These diseases which are not widely prevalent or distributed within and throughout the United States would destroy or substantially reduce the yield or marketability of articles of *Chaenomeles* spp.

Several comments requested that the proposed provisions relating to the importation of articles of *Chrysanthemum* spp. (chrysanthemum) be changed. Specific provisions relating to articles of *Chrysanthemum* spp. because of the white rust disease were contained in proposed §§ 319.37–2, 319.37–5, and 319.37–7.

Proposed § 319.37–2(a) provided that articles (except seeds) of *Chrysanthemum* spp. not meeting the conditions for importation in proposed § 319.37–5(c) would be prohibited articles if from Europe, Argentina, Brazil, Hong Kong, Japan, Korea, Malaysia, New Zealand, People's Republic of China, and Republic of South Africa.

Proposed § 319.37–5(c) provided that any article (except seeds) of *Chrysanthemum* spp. from Great Britain shall at the time of importation or offer for importation into the United States be accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration that such article was grown in a greenhouse nursery in Great Britain and found by the plant protection service of Great Britain to be free of white rust disease (caused by the rust fungus, *Puccinia horiana* P. Henn.) based on visual examination of parent stock and that such article was grown in a greenhouse nursery free of such plant disease.

Proposed § 319.37–7 provided that articles (except seeds) of *Chrysanthemum* spp., as a condition of importation would be subject to postentry conditions specified in proposed § 319.37–7 if from any country or locality except Argentina, Brazil, Canada, Europe, Hong Kong, Japan, Korea, Malaysia, New Zealand, People's Republic of China, and Republic of South Africa.

Based upon a general review of the provisions relating to the importation of articles of *Chrysanthemum* spp. prompted by the comments discussed below, certain changes have been made in § 319.37–2(a) relating to articles (except seeds) of *Chrysanthemum* spp. It now appears that white rust disease occurs in Europe (except Great Britain), Argentina, Brazil, Republic of South Africa, and all countries and localities located in part or entirely between 90° and 180° East longitude. Accordingly, such articles of *Chrysanthemum* spp. from such countries and localities are listed in the final rule as prohibited articles. There does not appear to be any feasible method for inspection or treatment, or other procedures for preventing the possible introduction into the United States of accompanying white rust disease. The white rust disease does not occur in the United States and would substantially reduce the yield or marketability of articles of *Chrysanthemum* spp.

In essence, comments asserted that the conditions imposed on the importation of articles (except seeds) of *Chrysanthemum* spp. from Great Britain pursuant to proposed § 319.37–5(c) and without postentry quarantine in accordance with the provisions in proposed § 319.37–7, would not be adequate to prevent the introduction of white rust disease from Great Britain. Based upon further review of scientific literature, it has been determined that all restricted articles (except seeds) of *Chrysanthemum* spp. from Great Britain and all other countries and localities, except Europe (other than Great Britain), Argentina, Brazil, Republic of South Africa, and all countries and localities located in part or entirely between 90° and 180° East longitude should be subject to the conditions of both § 319.37–5(c) and § 319.37–7 with certain changes from the proposal as discussed below.

Neither the provisions in proposed § 319.37–5(c) nor the provisions in § 319.37–7 by themselves provided sufficient protection against the risk of introducing white rust disease from the

countries or localities designated in the preceding sentence. It appears that these designated countries and localities allow the importation of such articles of *Chrysanthemum* spp. from countries and localities in which the white rust disease is known to occur. Consequently, examination of the parent stock in accordance with proposed § 319.37–5(c) would not necessarily establish the absence of white rust disease in the articles to be imported into the United States. After examination of the parent stock, such articles in these designated countries and localities could become infected by other articles of *Chrysanthemum* spp. which appear to be frequently imported into these designated countries and localities from other countries and localities where white rust disease is known to occur. This is a particular concern since white rust disease can spread very rapidly. Also, it should be noted that under these circumstances the imposition of postentry quarantine conditions pursuant to § 319.37–7 without additional conditions would present an unnecessary risk of importing such articles infected with white rust disease into the United States. However, it appears that with certain changes from the proposal, the imposition of the conditions in proposed § 319.37–5(c) and the postentry quarantine conditions in § 319.37–7 together would be adequate to allow the importation of such articles of *Chrysanthemum* spp. from the designated countries and localities without a significant risk of introduction of white rust disease.

The provisions in § 319.37–5(c) have been changed to require articles (except seeds) of *Chrysanthemum* spp. for importation from the designated countries and localities, the parent stock of such articles, and the greenhouse nursery in which such articles and their parent stock are grown to be inspected by a representative of the plant protection service of the country or locality in which grown, once a month for 4 consecutive months immediately prior to importation into the United States as an additional condition of importation. As noted above, articles of *Chrysanthemum* spp. grow very rapidly and it appears that there is a common trade practice of shipping articles of *Chrysanthemum* spp. from the designated countries and localities to other countries and localities, and after a period of growth, returning them to the designated countries and localities for further growing. Some of these other countries and localities are infected with white rust disease which could be transmitted to the articles of *Chrysanthemum* spp. reshipped to the designated countries and localities. Also, there is some risk that such articles grown outside of the designated countries and localities could be mistaken for articles from a designated country or locality, i.e., a country and locality where white rust disease is not known to occur. Therefore, these provisions are necessary to assure that such articles were grown in a greenhouse and in a country or locality where white rust disease does not occur.

Also, based on the comments referred to above and the subsequent review of the proposed provisions relating to the importation of articles of *Chrysanthemum* spp., the provisions for postentry quarantine have been changed from the proposal to require articles (except seeds) of *Chrysanthemum* spp. to be grown during postentry quarantine in a greenhouse or other enclosed building. White rust disease of articles of *Chrysanthemum* spp. produces airborne spores which are readily carried by the wind, and it appears that, based on experience, the disease is not likely to spread from enclosed buildings.

Under the proposal, such articles of *Chrysanthemum* spp. from Canada would be eligible for importation without special restrictions. However, the provisions in §§ 319.37–5(c) and 319.37–7 have been changed to require such articles of *Chrysanthemum* spp. (except seeds) for importation from Canada to be subject to such provisions therein. This appears to be necessary because the Canadian requirements concerning the importation of articles of *Chrysanthemum* spp. into Canada are not as stringent as the requirements for importation of such articles into the United States under this final rule.

Proposed §§ 319.37–2a and 319.37–5(f) provided that an article of *Cocos nucifera* (coconut) (including seeds) would be a prohibited article, unless accompanied by a phytosanitary certificate of inspection at the time of importation into the United States containing an accurate additional declaration that such article was found by the plant protection service of Jamaica to be of Malayan dwarf variety based on the visual examination of the parent stock. One comment requested that these provisions be changed to lessen restrictions without specifying particulars. Three other comments asserted that articles of *Cocos nucifera* (including seeds) from Jamaica could be the means of introducing lethal yellowing disease, and should therefore be designated as prohibited articles. Upon further review, it has been determined that such prohibitions and restrictions as proposed should not be lessened because such action could not be accomplished without presenting a significant risk of the introduction of cadang—cadang disease and lethal yellowing disease. However, it appears that the provisions relating to the importation of articles of *Cocos nucifera* should be changed to designate all articles of *Cocos nucifera* other than seeds as prohibited articles from Jamaica because of the occurrence of lethal yellowing disease in Jamaica. In essence, under this change no articles of *Cocos nucifera* other than seeds would be allowed to be imported into the United States from Jamaica pursuant to §§ 319.37–2(a) and 319.37–5. It appears that plants, other than seeds, of the Malayan dwarf variety may serve as carriers of lethal yellowing disease, and, accordingly, the provisions are changed to designate as prohibited articles plants of *Cocos nucifera* other than seeds. However, under the provisions of the final rule seeds of *Cocos nucifera* from Jamaica would not be designated as prohibited articles if imported in accordance with the conditions specified in § 319.37–5, since it appears that seeds are not carriers of lethal yellowing disease or cadang-cadang disease. It should also be noted that the provisions in proposed § 319.37–5(f) with respect to articles of *Cocos nucifera* have been redesignated as § 319.37–5(g) in the final rule.

Proposed § 319.37–2(a) listed all conifers from all foreign countries and localities except Canada as prohibited articles. Several comments asserted that these proposed provisions are overly broad in that there is no basis for listing all of such conifers as prohibited articles. Upon further review it has been determined that only certain genera of conifers from certain countries and localities should be designated as prohibited articles. Accordingly, in the final rule only the genera of conifers listed in the following chart from the designated countries and localities are designated as prohibited articles because of the listed diseases:

Prohibited articles (excludes seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Tree, plant, or fruit disease, or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the prohibited article
Abies spp. (fir)	All except Canada	50 or more species of rusts including *Chrysomyxa abietis* (Wallr.) Ung. (a rust causing a serious needle disease); *Phacidiopycnis pseudotsuga* (M. Wils.) Hahn (Douglas fir canker).
Cedrus spp. (cedar)	Europe	*Phacidiopycnis pseudotsuga* (M. Wils.) Hahn (Douglas fir canker); *Fusarium fuliginosporum* Sibilia (Seedling disease).
Juniperus spp. (juniper)	Austria, Finland, and Romania	*Stigmina deflectans* (Karst) Ellis (Needlecast disease).
	Europe	*Phacidiopycnis pseudotsuga* (M. Wils.) Hahn (Douglas fir canker).
Larix spp. (larch)	Europe	*Phacidiopycnis pseudotsuga* (M. Wils.) Hahn (Douglas fir canker).
Picea spp. (spruce)	Europe, Japan, and Siberia	*Chrysomyxa ledi* (Alb. & Schw.) d By var. *rhododendri* (DC) Savile. (Rhododendron-spruce needle rust).
	Europe	*Phacidiopycnis pseudotsuga* (M. Wils.) Hahn (Douglas fir canker).
Pinus spp. (pine) (2- or 3-leaved)	Europe and Japan	*Cronartium flaccidium* (Alb. & Schw.) Wint. (Rust causing serious stunting of hard pines).
	Japan	Gall-forming rust.
Pseudotsuga spp. (Douglas fir)	Europe	*Phacidiopycnis pseudotsuga* (M. Wils.) Hahn (Douglas fir canker).

It is necessary to designate such conifers as prohibited articles from the specified countries and localities because of the occurrence of diseases in these countries or localities as specified in the chart. There does not appear to be any feasible method for inspection or treatment, or other procedures with respect to such conifers for preventing the possible introduction into the United States of such accompanying diseases. These diseases are new to or not theretofore prevalent or distributed within and throughout the United States, and could cause destruction or substantial reduction of the yield or marketability of such conifers or products thereof. However, there does not appear to be a basis for including additional conifers in the list of prohibited articles since the importation of such conifers does not appear to provide a significant risk of carrying injurious insect pests, injurious plant diseases, or other plant pests.

Also, the genera of conifers listed in the following chart from the designated countries and localities have been added to the list of articles required to comply with the postentry quarantine provisions in § 319.37–7 as a condition of importation:

Restricted article (excluding seeds)	*Foreign Country(ies) or locality(ies) from which imported*
Cedrus spp. (cedar)	All except Canada and Europe.
Juniperus spp. (juniper)	All except Canada and Europe.
Larix spp. (larch)	All except Canada and Europe.
Picea spp. (spruce)	All except Canada, Japan, Siberia, and Europe.
Pinus spp. (pine) (2- or 3-leaved)	All except Canada, Japan, and Europe.
Pseudotsuga spp. (Douglas fir)	All except Canada and Europe.

These articles, which are subject to postentry quarantine conditions under the final rule, are from countries or localities where the diseases specified for such articles in the list of prohibited articles are not known to occur. However, because of the international movement of such articles and the natural spread of such diseases, the diseases, without being detected, could be carried to and become established in countries or localities where the diseases are not known to occur, including the countries or localities from which such articles are imported into the United States. Accordingly, it is necessary to require such articles to be grown under postentry quarantine as a condition of importation as a precautionary measure in order to prevent the introduction of such diseases into the United States.

Proposed § 319.37–2(a) listed articles (except seeds) of *Datura* spp. from Colombia as prohibited articles. Proposed § 319.37–7(a) lists articles (except seeds) of *Datura* spp. as subject to the postentry quarantine requirements if imported from any foreign country or locality except Canada, Colombia, and India. The proposed rule would have excluded India and Colombia from the postentry provisions because under the proposal, such articles from Colombia and India were to be listed as prohibited articles. The Background portion of the proposal stated that articles (except seeds) of *Datura* spp. from India were proposed to be designated as prohibited articles because of Datura distortion or enation mosaic virus (see 44 FR 34860). However, in § 319.37–2(a) of the proposed rule, India was omitted from the list of countries or localities from which articles (except seeds) of *Datura* spp. would be designated as prohibited articles. It is necessary to designate articles (except seeds) of *Datura* spp. from India as prohibited articles because of the occurrence of Datura distortion or enation mosaic virus in India. Under these circumstances, § 319.37–2(a) is changed to add articles (except seeds) of *Datura* spp. from India as prohibited articles because of the occurrence of Datura distortion or enation mosaic virus in India.

Proposed § 319.37–2(a) listed articles (except seeds) of *Eucalyptus* spp. (eucalyptus) from Argentina as prohibited articles. Proposed § 319.37–7(a) listed articles (except seeds) of *Eucalyptus* spp. as subject to the postentry quarantine requirements if imported from any foreign country or locality except Canada, Argentina, Sri Lanka (Ceylon), Uruguay, and Europe. The proposed rule would have excluded Sri Lanka (Ceylon), Uruguay, and Europe from the postentry provisions because, as indicated in the proposal, such articles from these countries and localities were to be listed as prohibited articles. However, Sri Lanka (Ceylon), Uruguay, and Europe were omitted from the list of countries or localities from which articles (except seeds) of *Eucalyptus* spp. would be designated as prohibited articles. Accordingly, § 319.37–2(a) has been changed to add articles (except seeds) of *Eucalyptus* spp. from Sri Lanka (Ceylon), Uruguay, or Europe as prohibited articles. This is necessary because of the occurrence of *Pestalotia disseminata* Theum. (Parasitic leaf fungus) in Sri Lanka (Ceylon), Uruguay, and Europe. It should also be noted that the final rule designating articles (except seeds) of *Eucalyptus* spp. from Sri Lanka (Ceylon), Uruguay, or Europe as prohibited articles because of the occurrence of such disease in these countries and localities, does not represent a change from the current regulations (see 7 CFR 319.37(b)).

These actions with respect to such articles (except seeds) of *Datura* spp. and *Eucalyptus* spp. are necessary because there does not appear to be any feasible method for inspection or treatment, or other procedures for preventing the possible introduction into the United States of such accompanying diseases. It appears that these diseases which are not widely prevalent or distributed within and throughout the

United States would destroy or substantially reduce the yield or marketability of such articles.

Proposed § 319.37–2(a) listed articles (except seeds) of *Fragaria* spp. (strawberry) as prohibited articles if from, among other places, Austria, Czechoslovakia, France, Great Britain, Italy, the Netherlands, Northern Ireland, Republic of Ireland, Switzerland, or the Union of Soviet Socialist Republics because of the occurrence of *Phytophthora fragariae* Hickman (red stele disease) in these places. Three comments requested that these articles from one or more of these places in Europe be deleted from the prohibited list. Strains of *Phytophthora fragariae* Hickman not occurring in the United States occur in these places in Europe. Further, the Department is not aware of any feasible methods for inspection or treatment, or other procedures for preventing the introduction into the United States of these foreign strains of such plant diseases if such articles of *Fragaria* spp. were to be imported into the United States from these places. Accordingly, no changes have been made based on these requests.

Articles (except seeds) of *Fraxinus* spp. (ash), *Philadelphus* spp. (mock orange), *Populus* spp. (aspen, cottonwood, poplar), and *Syringa* spp. (lilac) were listed in proposed § 319.37–2(a) as prohibited articles if from Europe. One comment suggested that these articles should not be listed as prohibited articles if from the Netherlands. The comment based this suggestion on the conclusion that articles of *Fraxinus* spp., *Populus* spp., *Philadelphus* spp., and *Syringa* spp. are regularly inspected during the growing season in the Netherlands. These articles are included in § 319.37–2(a) in the list of prohibited articles from the Netherlands because of the diseases associated with such articles and listed in § 319.37–2(a). No changes have been made based on the comment because there does not appear to be any feasibile methods for inspection or treatment, or other procedures for preventing the introduction of these diseases into the United States from the Netherlands.

Proposed § 319.37–2(a) designated articles (except seeds) of *Gladiolus* spp. (gladiolus) as prohibited articles if from Africa, Italy, Malta, or Portugal. Proposed § 319.37–7 provided that articles of *Gladiolus* spp. from all other countries except Canada would be subject to postentry requirements as a condition of importation. It was proposed to establish such prohibitions and restrictions because of the occurrence of *Puccinia mccleanii* Doidge (Rust); *Uredo gladioli-buettneri* Bub (Rust); *Uromyces gladioli* P. Henn. (Rust); and *U. nyikensis* Syd. (Rust) in Africa; and *U. transversalis* (Thuem.) Wint. (Rust) in Africa, Italy, Malta, and Portugal. Several comments suggested that bulbs (corms) of *Gladiolus* spp. should not be subject to postentry requirements as a condition of importation. Based on a further review, this suggestion has been adopted and is reflected in the final rule. As a general rule, articles listed as prohibited articles from any country or locality because of the occurrence of diseases, except for certain special provisions relating to Canada, are required to be grown under postentry quarantine conditions when imported from a country or locality in which the diseases are not known to occur. This is necessary due to the possibility of spread of the diseases because of international movement of such articles and the natural spread of such diseases. The diseases, without being detected, could be carried to and become established in countries or localities where the diseases are not known to occur, and from such countries or localities be transported to the United States. Accordingly, a period of observation under postentry quarantine would be necessary as a precautionary measure in order to detect such diseases.

However, it appears that postentry requirements are not necessary to prevent the introduction of these diseases for bulbs of *Gladiolus* spp. The specified diseases relating to *Gladiolus* spp. do not appear to occur in countries or localities of the world other than Africa, Italy, Malta, and Portugal. It appears that such diseases do not affect bulbs of *Gladiolus* spp. but there is a slight risk that such bulbs could become contaminated with and spread such diseases if from fields where the diseases are present, and, consequently, bulbs of *Gladiolus* spp. should not be deleted from the list of prohibited articles if from countries or localities where such diseases are known to occur. However, the risk of introduction of these diseases on bulbs of *Gladiolus* spp. from countries and localities where these diseases are not known to occur does not appear to be significant.

The proposal provided that articles (except seeds) of *Rosa* spp. (rose) from certain specified countries would be prohibited or restricted from being imported into the United States because of rose wilt virus. One comment suggested that there is no basis for prohibitions or restrictions on the importation of articles of *Rosa* spp. because rose wilt virus is widespread in the United States and would not cause increased damage to articles of *Rosa* spp. However, rose wilt virus is not known to occur in the United States and is a destructive disease of articles of *Rosa* spp. Accordingly, no changes have been made based on this suggestion.

Proposed § 319.37–2(a) provided that articles (except seeds) of *Rosa* spp. from South Africa would be classified as prohibited articles because of rose wilt virus. It was suggested at the public hearing that this disease does not occur in South Africa and that, therefore, such articles of *Rosa* spp. from South Africa should be deleted from the list of prohibited articles. Based on information from the Government of South Africa, it has been determined that rose wilt virus does not occur in South Africa. Accordingly, articles (except seeds) of *Rosa* spp. from South Africa are not included in the prohibited list in the final rule. However, such articles of *Rosa* spp. from South Africa are being added to the list of articles in § 319.37–7 required to be grown under postentry quarantine as a condition of importation. Such articles of *Rosa* spp. are listed as prohibited articles from some countries because of the occurrence of rose wilt virus in those countries. As noted above, as a general rule, articles listed as prohibited articles from any country or locality because of the occurrence of a disease, except for certain special provisions relating to Canada, are required to be grown under postentry quarantine when imported from a country or locality in which the disease is not known to occur. This is necessary due to the possibility of spread of the disease because of international movement of such articles and the natural spread of such diseases. The diseases, without being detected, could be carried to countries or localities where the diseases are not known to occur and from such countries to the United States. Accordingly, a period of observation under postentry quarantine would be necessary as a precautionary measure in order to detect such diseases, if present.

One comment urged that the final rule impose no additional restrictions with respect to the importation of articles of *Rosa* spp. compared to the restrictions in effect at the time of the proposal. This final rule does not impose additional restrictions in this regard.

Proposed § 319.37–2(a) provided that articles of *Solanum* spp. (potato) from all foreign countries or localities would be classified as prohibited articles. It was suggested at the public hearing that this be listed as "*Solanum* spp. (tuber-bearing species only=Section

Tuberarium) (potato)" because the diseases specified in proposed § 319.37–2(a) affecting articles of *Solanum* spp. affect the tuber-bearing species only. It appears that these diseases affect the tuber-bearing species only, and, therefore, this suggestion has been adopted and is reflected in the final rule. Also, information has been added to clarify that the term "*Solanum* spp. (tuber-bearing species only=Section Tuberarium) (potato)" only refers to articles of *Solanum* spp. other than potato tubers, since the importation of potato tubers is subject to the provisions in 7 CFR Part 321 and is not subject to the provisions in this document (see the definition of "restricted article" in § 319.37–1 of the final rule). Accordingly, "*Solanum* spp. (potato)" in the list of § 319.37–2(a) is changed to "*Solanum* spp. (tuber-bearing species only=Section Tuberarium) (potato) (including seeds but excluding potato tubers which are subject to 7 CFR Part 321)."

It was also suggested at the public hearing that such articles of *Solanum* spp. from Canada be deleted from the proposed list of prohibited articles. It was not intended that the proposal include such articles of *Solanum* spp. from Canada in the list of prohibited articles. Articles of *Solanum* spp. were proposed to be designated as prohibited articles because of the risk of carrying any of the diseases specified in § 319.37–2(a) for articles of *Solanum* spp. None of these diseases occur in Canada, and Canada prohibits the importation of articles of *Solanum* spp. except from the United States. Therefore, § 319.37–2(a) is changed to delete such articles of *Solanum* spp. from Canada from the list of prohibited articles.

The notes at the end of proposed § 319.37–2(a) and § 319.37–7 listed certain States and indicated that certain articles would be prohibited or restricted by State laws from entering into such States. The Plant Industry Division of the State of Michigan requested that the note at the end of § 319.37–2(a) be amended to reflect that articles of *Ribes nigrum* (black currant) (including seeds) are prohibited by Michigan from entry into that State. These lists have been deleted from the final rule. It appears that it would be extremely difficult to keep such lists up to date, and to the extent the lists would not be kept up to date, they could be extremely misleading to persons relying on them.

A comment from the California Department of Food and Agriculture requested that the final rule include provisions providing for the enforcement by the U.S. Department of Agriculture of laws of California prohibiting the entry into California of certain articles. There is no authority for the U.S. Department of Agriculture to enforce such State laws.

The proposal in § 319.37–2(b) (2) and (6) provided for determinations of size of certain plants, trees, and shrubs based on "height." It was suggested at the public hearing that the term "height" should be changed to "length" because some of the articles grow horizontally and the term "height" could be confusing when applied to determinations concerning these articles. The proposal intended for the term "height" to include the "length" of plants growing horizontally since the length is the important factor concerning inspection. Accordingly, since the term "length" would include both the "height" of articles growing vertically and the "length" of articles growing horizontally, the term "height" is changed to "length" in both places.

The measurement for articles in proposed § 319.37–2(b)(2) was inadvertently stated in inches with the approximate measurement in millimeters added in parentheses. It was intended that the measurement be in millimeters and that the approximate reference to inches be in parentheses. Accordingly, the provisions are changed to reflect what was intended.

Proposed § 319.37–2(b)(3) listed as prohibited articles from all foreign countries and localities except Canada, herbaceous perennials imported in the form of root crowns or clumps exceeding 102 millimeters (approximately 4 inches) in diameter. Such articles specified in proposed § 319.37–2(b)(3) were proposed to be designated as prohibited articles because such articles exceeding this diameter would be likely to harbor diseases and pests, and would be difficult to inspect and treat because of the density of small roots and stems found in such articles. One comment suggested that this should not include epiphytes such as orchids. This suggestion has been adopted and, therefore, epiphytes are excepted from this list. Epiphytes are plants that grow on other plants or objects nonparasitically, and are much less likely to harbor diseases or pests than the other articles included in § 319.37–2(b)(3). Many of the diseases and pests found with herbaceous perennials are present because the plants were grown in soil; however, epiphytes do not grow in soil. Also, epiphytes are much easier to inspect for diseases and pests than those other articles included in § 319.37–2(b)(3) because of the absence of fibrous roots.

Proposed § 319.37–2(b)(4) listed as prohibited articles from all countries and localities except Canada, certain stem cuttings without roots exceeding 102 millimeters (approximately 4 inches) in diameter or exceeding 1.83 meters (approximately 6 feet) in length. Such articles were proposed to be designated as prohibited articles because they would be difficult to inspect and treat because of size and density of growth. One comment questioned whether stem cutting of epiphytes with aerial roots would be included in the list in § 319.37–2(b)(4). It was intended that cuttings of epiphytes with aerial roots be included in the list. The risk of introduction of diseases and pests with stem cuttings of epiphytes with aerial roots is similar to such risk for the importation of other stem cuttings without roots.

Proposed § 319.37–2(b)(4) listed as prohibited articles from all foreign countries and localities except Canada, stem cuttings (without leaves, roots, sprouts, or branches) exceeding 102 millimeters (approximately 4 inches) in diameter or exceeding 1.83 meters (approximately 6 feet) in length. One comment questioned whether this refers to all stem cuttings since the discussion concerning this section in the proposal (see 44 FR 34861) referred to "certain stem cuttings." The discussion in the **Federal Register** referred to "certain stem cuttings" because the information in parentheses, i.e., without leaves, roots, sprouts, or branches, was not restated in that particular part of the discussion and section 319.37–2(b)(4) only refers to stem cuttings without leaves, roots, sprouts, or branches.

Proposed § 319.37–2(b)(6) listed as prohibited articles from all foreign countries and localities except Canada, plants (other than stem cuttings, cacti cuttings, and artificially dwarfed plants) exceeding 305 millimeters (approximately 12 inches) in height from soil line to terminal growing point and whose growth habits simulate the woody character of trees and shrubs, including but not limited to cacti, cycads, yuccas, and dracaenas. The rationale for listing such plants as prohibited articles was that such large plants of these kinds would be difficult to inspect and treat. A substantial number of the comments and a substantial amount of the discussion at the public hearing concerned such size limitations. Virtually all of the comments and statements submitted on this issue came from affected industry and favored a change in the proposed requirements to allow the importation of

larger plants of the specified kinds. The current regulations in 7 CFR 319.37–18a provide that such plants are prohibited articles if greater than 12 inches in height exclusive of foliage. There appears to be some confusion concerning the interpretation and application of this provision. This was intended to designate as prohibited articles such plants higher than 12 inches from the soil line to the farthest terminal growing point (see discussion below concerning farthest terminal growing point). However, it has also been interpreted to designate as prohibited articles plants greater than 12 inches in height measured from the soil line to the base of the lowest leaf. Under the latter interpretation plants up to approximately 18 inches from the soil line to the farthest terminal growing point have been permitted to be imported into the United States.

Some persons in written comments and oral presentations at the public hearing, argued that the maximum height requirements for such plants should be extended further, even up to as high as 6 feet. Some argued that the proposed height limitation for such plants would cause severe economic hardship to certain foreign exporters as well as to importers in the United States.

All of the different views have been carefully considered and it has been determined that the provisions in the proposal should be changed to provide that such plants will be designated as prohibited articles if they exceed 460 millimeters (approximately 18 inches) in length from the soil line to the farthest terminal growing point. Based on experience with respect to the inspection and treatment of such plants at plant inspection stations, it has been shown that such plants no longer than 460 millimeters from the soil line to the farthest terminal growing point can be adequately inspected and given any necessary treatment. However, larger plants cannot be feasibly inspected at inspection stations for injurious plant diseases, injurious insect pests, and other plant pests. The larger plants provide additional hiding places for such diseases and pests because of a larger number of branches and increased foliage. It should also be noted that the larger plants are more difficult to handle for inspection. Further, it would not be feasible to allow such plants to be imported based on treatment because of treatment facility limitations and because numerous treatments could be necessary for the various types of diseases and pests associated with such plants.

Also, proposed § 319.37–2(b)(6) referred to height from "soil line to terminal growing point." Some of the plants referred to therein may be produced by air layering. The roots of these plants are produced in the air, and consequently these plants do not have a soil line. The equivalent of the soil line for these plants is the top of the rooting zone. Therefore, as a matter of clarification, the language "top of the rooting zone for plants produced by air layering" is included in parentheses after the words "soil line."

Also, proposed § 319.37–2(b)(6) referred to measurements which were intended to relate to the maximum size of a plant, including branches. The proposal stated that the "terminal growing point" was to be one of the reference points of measurement. Since many plants are branched and have more than one terminal growing point, the language from the proposal has been clarified to specify that such point of reference will be the "farthest terminal growing point."

Proposed § 319.37–2(c) contained provisions to allow prohibited articles to be imported into the United States if imported by the U.S. Department of Agriculture for experimental or scientific purposes, and imported under conditions specified on the permit and found by the Deputy Administrator to be adequate to prevent the introduction into the United States of any tree, plant, or fruit diseases, of any injurious insects, or of any other plant pests, i.e., conditions of treatment, processing, growing, shipment or disposal. The provisions have been clarified in the final rule to specify additional criteria for the importation of such articles. Under the provisions in the final rule prohibited articles will be allowed to be imported into the United States if imported by the U.S. Department of Agriculture for experimental or scientific purposes; imported at the Plant Germplasm Quarantine Center, Building 320, Beltsville Agricultural Research Center East, Beltsville, MD 20705 or at a port of entry with special inspection and treatment facilities; imported pursuant to a Departmental permit issued for such article and kept on file at the port of entry; imported under conditions specified on the Departmental permit and found by the Deputy Administrator to be adequate to prevent the introduction into the United States of any tree, plant, or fruit diseases, of any injurious insects, or of any other plant pests, i.e., conditions of treatment, processing, growing, shipment, or disposal; and imported with a Departmental tag or label securely attached to the outside of the container containing the article or securely attached to the article itself if not in a container, and with such tag or label bearing the Departmental permit number corresponding to the Departmental permit issued for such article. Provisions in 7 U.S.C. 154, 155, and 159 specifically authorize such articles to be imported for experimental or scientific purposes by the U.S. Department of Agriculture pursuant to prescribed regulations. The procedures specified in the final fule appear to be necessary for purposes of identifying prohibited articles imported for experimental or scientific purposes; for assuring that the conditions for treatment, processing, growing, shipment, and disposal would be understood; and for assuring that qualified personnel would be available to take any necessary action in accordance with such conditions.

Comments from representatives of arboreta and botanical gardens requested that arboreta and botanical gardens be allowed to import prohibited articles under special exemptions. There is no basis for granting a general exemption for importation of prohibited articles. As noted above, the Plant Quarantine Act in 7 U.S.C. 154, 155, and 159 authorizes the importation of prohibited articles only for experimental or scientific purposes by the U.S. Department of Agriculture under such conditions and regulations as the Secretary of Agriculture may prescribe. Section 319.37–2(c) specifies a mechanism under which prohibited articles may be imported. However, the importation by the U.S. Department of Agriculture of prohibited articles under the provisions of § 319.37–2(c) would not necessarily preclude the growth of such articles under quarantine at scientific institutions which could include arboreta or botanical gardens.

Under proposed § 319.37–3(a)(8) woody plants, shrubs, and trees (except seeds) grown out of doors in Prince Edward Island, Nova Scotia, the counties of Albert and Westmoreland in New Brunswick, the city of Richmond on Lulu Island in British Columbia, and Vancouver Island in British Columbia would have been eligible for importation only after issuance of a written permit by the Plant Protection and Quarantine Programs of the U.S. Department of Agriculture. Also, under proposed § 319.37–14 these articles would have been eligible to be imported only at ports of entry with special inspection and treatment facilities. These restrictions were proposed because it was believed that such articles at the time of importation would present a

substantial risk of being infested with winter moth (*Operophtera brumata* (L.)).

It was suggested at the public hearing that proposed §§ 319.37–3 and 319.37–14 be changed to allow the importation of such articles pursuant to an oral permit and to allow the importation of such articles through any port of entry listed in proposed § 319.37–14(b) and any customs designated port of entry on the United States-Canada border, if such articles are accompanied by a phytosanitary certificate containing an accurate additional declaration that the articles were inspected by the plant protection service of Canada and found free of the winter moth. Under the final rule, all of such woody plants, shrubs, and trees will be required to be accompanied by a phytosanitary certificate of inspection certifying that the article has been thoroughly inspected and is believed to be free from injurious plant diseases, injurious insect pests, and other plant pests. It has been determined that any winter moth accompanying such articles would be readily apparent upon inspection by the plant protection service of Canada at the time of inspection required for issuance of the phytosanitary certificate of inspection and that such an additional declaration would not serve any useful purpose. Therefore, it appears that these articles would present no significant risk of introduction of the winter moth if imported pursuant to an oral permit and imported at any ports of entry including those Customs designated ports of entry providing minimal inspection on the United States-Canada border. Under these circumstances these provisions have been changed to allow for the importation of such articles pursuant to an oral permit and without an additional declaration on the certificate.

Proposed § 319.37–3(a) contained provisions which would have required certain restricted articles to be imported only after issuance of a written permit. One comment questioned whether one permit could apply to more than one shipment of articles under these provisions. The provisions of § 319.37–3(a) do not by their terms limit the issuance of a permit to a single shipment.

Proposed § 319.37–3(a)(7) inadvertently listed articles (except seeds) of *Fragaria* spp. (strawberry) from Canada as requiring a written permit for importation. It was intended that such articles of *Fragaria* spp. from Canada be allowed to be imported subject to the issuance of an oral permit in accordance with the provisions in § 319.37–3(b). The Background portion to the proposed regulations set forth the reasons for requiring written permits for various articles; i.e., articles required to be inspected at special inspection facilities, articles required to be accompanied by special foreign certification, articles subject to certain State requirements. These reasons are not applicable to such articles of *Fragaria* spp., and therefore such articles of *Fragaria* spp. are deleted from the list in § 319.37–3(a)(7).

Proposed § 319.37–4(a) provided that any restricted article grown in a country maintaining an official system of inspection for the purpose of determining whether such article is free from injurious plant diseases, injurious insect pests, and other plant pests be accompanied by a phytosanitary certificate of inspection from the plant protection service of such country at the time of importation into the United States. One comment suggested that these provisions should be changed to lessen this restriction. This comment has not been adopted because sections 1 and 5 of the Plant Quarantine Act (7 U.S.C. 154 and 159) specifically require the imposition of such restriction.

It was suggested at the public hearing that each package for shipment by mail and containing a restricted article required to be accompanied by a phytosanitary certificate of inspection, should be required to be accompanied by an original or copy of the certificate. This comment is adopted and reflected in § 319.37–4(a) of the final rule. This change is necessary in order to assure that each mailed package required to be accompanied by such a certificate will in fact be accompanied by the certificate, in light of the likelihood that a shipment may consist of more than one package and that packages may become separated during shipment by mail.

One comment asserted that each shipment of restricted articles kept together during shipment should not be required to be accompanied by more than one phytosanitary certificate of inspection at the time of importation. In this connection it should be noted that the proposal merely provided that certain restricted articles would be required to "be accompanied" by a phytosanitary certificate of inspection. This was intended to allow such articles to "be accompanied" by certificates in a manner whereby the certificate and the article would be transported together. Accordingly, except for articles mailed as discussed above, one certificate could apply to more than one accompanying article. The language in § 319.37–4(a) is clarified in these respects.

Under proposed § 319.37–5, indexing of the parent stock by the plant protection service of the country in which grown would have been required as a condition of importation for certain articles. The term "indexing" in proposed § 319.37–1 is defined as "(a) Serological testing, or (b) transmitting the juices from an article suspected of being infected with a particular disease to another article known to be susceptible to such disease, by grafting or otherwise, in order to determine the presence or absence of the disease in the article suspected of being infected with such disease." It was suggested at the public hearing that serological testing was not adequate as a method of indexing. It has been determined that serological testing is not as appropriate as a method of indexing. Indexing is a process used to determine the presence of certain diseases in certain plants. However, it is commonly recognized by the scientific community that serological testing for those diseases referred to in § 319.37–5 would not be adequate for determinations concerning the presence of such diseases. Accordingly, serological testing is deleted as a method of indexing.

Proposed § 319.37–5(a) would have required that certain restricted articles from certain countries and localities at the time of importation be accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration that such article was grown on land which had been sampled and microscopically inspected by the plant protection service of the country in which grown within 12 months preceding issuance of the certificate and found free from potato cyst nematodes. One comment asserted that these provisions should not apply to articles collected from the wild. The provisions in § 319.37–5(a) have been changed to adopt this suggestion. It appears that potato cyst nematodes do not occur in wild lands. Accordingly, it appears that the importation of articles collected from the wild would not present a substantial risk of introducing potato cyst nematodes.

Proposed § 319.37–5(b) would have required that articles (except seeds) of *Chaenomeles* spp. (flowering quince), *Cydonia* spp. (quince), *Malus* spp. (apple, crabapple), *Prunus* spp. (almond, apricot, cherry, nectarine, peach, plum, prune), and *Pyrus* spp. (pear) at the time of importation must be accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration from the plant protection

service of Belgium, Canada, France, Federal Republic of Germany (West), the Netherlands, or Great Britain, that such articles, among other things, were found free of specified diseases based on the testing of parent stock by visual examination and indexing. One comment asserted that certain of the diseases for which visual examination and indexing would be required under the proposal do not occur in certain of these countries. The plant protection service of each of these countries can determine which diseases occur in their country. Also, it appears that there is no good reason for requiring visual examination and indexing for a specific disease in a country if the disease in question does not occur in that country. Accordingly, the provisions in § 319.37–5(b)(1) have been changed to provide that an accurate declaration on the phytosanitary certificate of inspection that a disease does not occur in the country in which the article was grown may be used in lieu of visual examination and indexing of the parent stock for that disease.

Proposed § 319.37–5(b) with respect to articles (except seeds) of *Chaenomeles* spp. (flowering quince) from Canada and certain countries in Europe, would have required that such articles be accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration that such article was grown in a nursery in one of these countries and found by the plant protection service of the country in which grown to be free of *Monilinia fructigena* (Aderh. & Ruhl.) honey (Brown rot of fruit) and *Gymnosporangium asiaticum* Miyabe ex. Yamada (Rust) based on the testing of parent stock by visual examination and indexing. It was intended to require that such articles of *Chaenomeles* spp. also be found free of quince sooty ringspot agent, quince yellow blotch agent, and quince stunt agent based on the testing of parent stock by visual examination and indexing. However, these diseases which attack articles of *Chaenomeles* spp. were inadvertently omitted from the list of diseases relating to articles of *Chaenomeles* spp. and, therefore, they are added to the list. These diseases accompanying articles of *Chaenomeles* spp. usually would not be detectable at a port of entry. Articles of *Chaenomeles* spp. are imported without leaves, without fruit, and without flowers; and the diseases, in most cases, are not detectable without an examination of the leaves, fruit or flowers. Further, such articles are shipped in a dormant condition rather than in a condition of active growth, and in many cases the diseases would not be detectable in any part of the article (even with the leaves, fruit, and flowers) unless the article were in a period of active growth. Indexing of the parent stock of any of these articles would indicate the presence of such diseases in the parent stock and the offspring, because the offspring originate from parts of the parent stock which would be infected with such diseases if the parent stock were infected.

Proposed § 319.37–5(d) provided that any article (except seeds) of *Dianthus* spp. (carnation, sweet-william) from Great Britan be grown under postentry quarantine conditions specified in § 319.37–7(c) as a condition of importation unless at the time of importation into the United States the phytosanitary certificate of inspection accompanying such article contains an accurate additional declaration that such article was grown in a greenhouse nursery in Great Britain and found by the plant protection service of Great Britain to be free of injurious plant diseases caused by *Phialophora cinerescens* (Wr.) U. Beyma (*Verticillium cinerescens* Wr.), carnation etched ring, carnation "streak" virus, and carnation "fleck" virus, based on visual examination and indexing of the parent stock and that such article was grown in a greenhouse nursery free of such plant diseases. One comment argued that more stringent requirements should be added in order to assure that such articles were in fact from Great Britain and that they were not diseased. It has been determined that certain changes should be made in §§ 319.37–5(d) and 319.37–7(c) as discussed below.

Articles of *Dianthus* spp. grow very rapidly and there is a common trade practice of shipping articles of *Dianthus* spp. from Great Britain to other countries, and after a period of growth, returning them to Great Britain for further growing. Some of these countries are infected with the diseases listed above and these diseases could be transmitted to such articles. Also, there is some risk that these articles could be mistaken for articles from Great Britain where such diseases are not known to occur. Accordingly, in order to help assure that these articles are grown in Great Britain in a greenhouse nursery free of such plant diseases, § 319.37–5(d) has been changed to require such articles of *Dianthus* spp., their parent stock, and the greenhouse nursery in which such articles and their parent stock are grown, to be inspected by a representative of the plant protection service of Great Britain once a month for 4 consecutive months immediately prior to importation of such articles into the United States as an additional condition of importation pursuant to § 319.37–5(d).

Also, based on the comment referred to above, the provisions for postentry quarantine have been changed from the proposal to require articles of *Dianthus* spp. to be grown during postentry quarantine in a greenhouse or other enclosed building. *Phialophora cinerescens* (Wr.) van Beyma (=*Verticillium cinerescens* Wr.), a disease of articles of *Dianthus* spp., can produce airborne spores which are readily carried by the wind, and it appears that, based on experience, the disease is not likely to spread from enclosed buildings.

The proposal did not provide for a mandatory treatment for bulbs of *Allium sativum* (garlic) from any countries as a condition of importation. However, it was suggested at the public hearing that these articles from Algeria, Austria, Czechoslovakia, Egypt, France, Greece, Hungary, Iran, Israel, Italy, Morocco, Portugal, Republic of South Africa, Spain, Switzerland, Syria, Turkey, Union of Soviet Socialist Republics, Federal Republic of Germany (West), and Yugoslavia pose a significant risk of introducing the insect pests *Brachycerus* spp. and *Dyspessa ulula* (Bkh.) and that they should be subject to mandatory treatment as a condition of importation. These pests which could substantially reduce the yield or marketability of garlic are known to occur in the specified countries and have been consistently found upon inspection to be accompanying garlic from the listed countries. It appears that the introduction into the United States of such insect pests can be feasibly prevented by treatment of garlic with methyl bromide in accordance with the Plant Protection and Quarantine Manual which has been incorporated by reference and is on file at the **Federal Register**. Under these circumstances, it has been determined that such treatment requirements are necessary as a condition for the importation of articles of *Allium sativum* from the specified countries, and such requirements are set forth in the final rule in § 319.37–6(f).

Articles of *Cydonia* spp. (quince), *Pyrus* spp. (pear), and *Vitis* spp. (grape) were listed in proposed § 319.37–6(c) as articles which would be required to be defoliated or treated as a condition of entry when imported from certain countries or localities. Proposed § 319.37–2(a) designated such articles of *Cydonia* spp., *Pyrus* spp., and *Vitis* spp. as prohibited articles from such

countries and localities because there did not appear to be any feasible method for inspection or treatment, or other procedures for preventing the possible introduction into the United States of any accompanying diseases specified in § 319.37–2(a). Since such articles of *Cydonia* spp., *Pyrus* spp., and *Vitis* spp. are designated as prohibited articles from all of these countries and localities in the final rule, references to articles of *Cydonia* spp., *Pyrus* spp., and *Vitis* spp. have been deleted from the list in § 319.37–6(c).

One comment indicated that articles of *Acacia* spp. (acacia), *Acer* spp. (maple), *Aesculus* spp. (horsechestnut), *Althaea* spp. (althaea, hollyhock), *Dahlia* spp. (dahlia), *Euonymus* spp. (euonymus), *Hibiscus* spp. (hibiscus, rosemallow), *Hydrangea* spp. (hydrangea), *Jasminum* spp. (jasmine), *Ligustrium* spp. (privet), *Quercus* spp. (oak), *Rosa* spp. (rose), and *Sorbus* spp. (mountain ash) should not be subject to postentry quarantine requirements in § 319.37–7 when imported from the Netherlands. No changes have been made based on this comment. Such requirements were not proposed with respect to articles of *Dahlia* spp. and the final rule does not contain such requirements for articles of *Dahlia* spp. Under the proposal, articles of these genera other than *Dahlia* spp. would have been subject to postentry quarantine conditions in § 319.37–7 if imported from the Netherlands. Articles of these genera other than articles of *Dahlia* spp. are listed in § 319.37–2(a) as prohibited articles if from certain countries or localities where certain diseases associated with such articles and listed in proposed § 319.37–2(a) are known to occur. There does not appear to be any feasible method for inspection or treatment, or other procedures for preventing the possible introduction into the United States of such diseases or pests which may accompany such articles. Further, because of the international movement of such articles and the natural spread of such diseases, these diseases, without being detected, could be carried to and become established in countries or localities including the Netherlands, where the diseases are not known to occur, and thereafter be transported to the United States. Accordingly, it appears to be necessary to require such articles to be grown under postentry quarantine as a condition of importation from the Netherlands as a precautionary measure in order to prevent the introduction of such diseases into the United States.

One comment questioned whether articles of *Corylus avellana contorta* would be included in the list of articles designated as fruit and nut articles and required to be grown under postentry quarantine conditions specified in § 319.37–7 as a condition of importation. Articles of *Corylus avellana contorta* do not produce a fruit or nut crop and, accordingly, are not included in the list of fruit and nut articles.

It was suggested at the public hearing that articles of *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry) from Europe, as part of the postentry quarantine conditions set forth in § 319.37–7 for such articles, should be required to be grown in a screenhouse having screening as necessary to prevent the entry of insect vectors during the postentry growing period. This suggestion was based on the conclusions that Rubus stunt virus occurs in Europe and could possibly accompany articles of *Rubus* spp. from Europe, that the Rubus stunt virus can be transmitted from plant to plant by an insect vector (such as leafhopper, *Macropsis fuscula* Zett.), that such an insect vector occurs in the United States and could be the means of transmitting Rubus stunt virus, and that the screenhouse as described would prevent the entry of such an insect vector. It appears that the above conclusions are correct. Also, based on Departmental expertise, it appears that screening of a minimum of 16 mesh per inch would be necessary to prevent the entrance of such insect vector. Accordingly, a requirement for growing articles of *Rubus* spp. in a screenhouse having screening of a minimum of 16 mesh per inch has been added to the final rule in § 319.37–7(c) as a postentry quarantine requirement for articles of *Rubus* spp. from Europe.

It was also suggested at the public hearing that articles of *Rubus* spp. from Europe as a condition of importation should, in addition to the postentry quarantine requirements, be required to be accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration that such article was found by the plant protection service of the country of origin to be free of Rubus stunt virus based on visual examination and indexing of the parent stock. This suggestion has been adopted and is reflected in the final rule in § 319.37–5(f). Under the proposal, articles of *Rubus* spp. would be eligible to be imported subject to the postentry quarantine conditions in § 319.37–7. As noted above, Rubus stunt virus is transmissible by means of an insect vector and such an insect vector occurs in the United States. Also, Rubus stunt virus occurs in Europe. Accordingly, it appears that the importation of articles of *Rubus* spp. from Europe merely subject to postentry quarantine conditions would present an unnecessary risk of introducing Rubus stunt virus. Indexing and visual examination of the parent stock of articles of *Rubus* spp. would indicate the presence of Rubus stunt virus in the offspring because the offspring originate from parts of the parent stock which would be infected with such disease if the parent stock were infected. Since Rubus stunt virus and an insect vector occur in Europe, there is a risk that articles of *Rubus* spp. would become infected with Rubus stunt virus after separation from indexed, uninfected parent stock. Because of this risk, and because Rubus stunt virus would be detectable after a period of time, the postentry quarantine conditions specified in § 319.37–7 have been retained with respect to articles of *Rubus* spp.

It was proposed as a condition of importation that any article (except seeds) of *Rubus* spp. from Ontario, Canada, be required to be grown under postentry quarantine conditions specified in proposed § 319.37–7, unless accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration that such article was found by the plant protection service of Canada to be free of Rubus stunt virus based on visual examination and indexing of the parent stock. It was also proposed as a condition of importation that any article (except seeds) of *Rubus* spp. from Canada, but other than Ontario, Canada, be required to be grown under postentry quarantine conditions specified in proposed § 319.37–7. The reasons given in the Background portion of the proposal for these provisions concerning Canada were based on the assumption that Rubus stunt virus occurs in Canada. However, even though Rubus stunt virus does not occur in Canada, it has been determined that these provisions should be adopted as proposed. Canada imports articles of *Rubus* spp. from Europe (where Rubus stunt virus occurs) under requirements less stringent than those imposed pursuant to this final rule. Therefore, under the final rule, articles (except seeds) of *Rubus* spp. are allowed to be imported from Canada subject to the postentry requirements in § 319.37–7. This is provided as a precautionary measure since the Rubus stunt virus could spread to Canada and subsequently to the United States from

such articles of *Rubus* spp. imported into Canada from Europe. As an alternative precautionary measure to postentry quarantine requirements, such articles of *Rubus* spp. from Ontario, Canada, under the final rule, are allowed to be imported into the United States if the accompanying phytosanitary certificate of inspection contains an accurate additional declaration that such articles were found by the plant protection service of Canada to be free of Rubus stunt virus based on visual examination and indexing of the parent stock. This alternative applies only to articles of *Rubus* spp. from Ontario, Canada, because this certification program is conducted in Canada only in Ontario.

The provisions in proposed § 319.37–8 set forth proposed requirements with respect to the importation of restricted articles in growing media. These provisions have been adopted as set forth in the proposal except as explained below.

One comment asserted that articles imported in growing media in accordance with proposed § 319.37–8 could be the means of introducing disease organisms including bacteria, viruses, and obligate parasites which would be difficult or impossible to detect upon inspection. Other comments asserted that no articles should be allowed to be imported in growing media because of pest risk. These comments did not contain further explanations. No changes are made based on these comments. In general, if a restricted article were to be imported in its growing medium, there would be a substantial risk of introducing any of a large number of injurious plant diseases, injurious insect pests, and other plant pests, which could not be detected by inspection and could not be eliminated without destruction of the restricted article. However, under the final rule, certain articles are allowed to be imported in certain types of growing media because, for the reasons stated in the proposal and for the reasons stated below, it has been determined that under circumstances specified in the final rule this would not create a significant risk of introducing such diseases or pests.

It was suggested at the public hearing that the provisions in the proposal be changed to allow epiphytic plants (including orchid plants) established solely on tree fern slabs, coconut husks, or coconut fiber to be imported established on such media. It has been determined that these articles established on such growing media do not present a significant risk of introduction of injurious plant diseases, injurious insect pests, and other plant pests since the roots of such articles grow on the surface of the growing media and can be readily inspected for such diseases and pests. Therefore, the rule as proposed is changed to allow epiphytic plants to be imported established on such media.

Proposed § 319.37–8 provided that a restricted article growing solely in agar would be allowed to be imported in such growing medium. This was based on the conclusion that diseases or pests could be detected on articles imported in agar as readily as such diseases or pests could be detected if such articles were imported with bare roots, because agar is transparent or translucent. At the public hearing it was suggested that a restricted article be allowed to be imported established in any other transparent or translucent tissue culture media for the same reasons. It has been determined that the presence of diseases or pests could be detected in any transparent or translucent tissue culture media as readily as if the imported article were imported with bare roots. For this reason the suggestion has been adopted and is reflected in the final rule.

Proposed § 319.37–8 provides that, except under certain specified conditions, any restricted article imported into the United States be free of sand, soil, earth, and other growing media. One comment requested that plants from England be exempted from such requirements. However, this suggestion has not been adopted because if restricted articles were to be imported in their growing media, except as otherwise specified in § 319.37–8, there would be a significant risk of introducing any of a large number of injurious plant diseases, injurious insect pests, and other plant pests.

Proposed § 319.37–8(d) (redesignated as § 319.37–8(e) in the final rule) provided that:

"A restricted article which is a herbaceous plant or shrub may be imported in peat, sphagnum moss, or vermiculite growing media, or in synthetic growing media or synthetic horticultural foams, i.e., plastic particles, glass wool, organic and inorganic fibers, polyurethane, polystyrene, polyethylene, phenol formaldehyde, or ureaformaldehyde:

(1) If accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration from the plant protection service of the country in which grown that the article was:

(i) Grown throughout its growing period only in a greenhouse with insect-proof screening on all vents and with automatic closing doors;

(ii) Grown in a greenhouse unit solely used for articles grown under all the criteria specified in this paragraph (d);

(iii) Grown in a greenhouse free of sand, soil, or earth;

(iv) Grown in a greenhouse where strict sanitary procedures are always practiced, i.e., cleaning and disinfection of floors, benches and tools, the application of measures to protect against any injurious plant diseases, injurious insect pests, and other plant pests;

(v) Stored only in areas found by an official of the plant protection service of the country where grown to be free of injurious plant diseases, injurious insect pests, and other plant pests;

(vi) Shipped in containers found by such an official to be free of injurious plant diesases, injurious insect pests, and other plant pests; and

(vii) Inspected and found by such an official to have been grown, stored, packaged, and shipped solely under conditions necessary to assure the absence of injurious plant diseases, injurious insect pests, and other plant pests; and

(2) If the accompanying phytosanitary certificate of inspection is endorsed by a PPQ inspector representing a finding that the conditions listed above are being met.

Two comments asserted that the importation of articles under such criteria should be limited to five categories of articles, *i.e.*, Polypodiophyta (=Filicales) (ferns), *Saintpaulia* spp. (African violet), *Gloxinia* spp. (gloxinia), *Begonia* spp. (begonia), and *Peperomia* spp. (peperomia), because there is not sufficient evidence to establish that other articles could be imported under such conditions without a substantial risk of introducing injurious plant diseases, injurious insect pests, and other plant pests. The criteria were formulated based on an experimental program involving the five categories of articles referred to in the comment. Based on Departmental expertise, it appears that determinations concerning the risk of introduction of diseases and pests with the importation of categories of articles cannot be made without testing of the categories of articles in question. There has not been sufficient testing to establish that other categories of articles could be imported in such growing media without a significant risk of introducing such diseases or pests. Therefore, it has been determined that only those five categories of articles should be allowed to be imported in such growing media. The rule as proposed has been changed accordingly.

Although the Department does not at this time have sufficient information to provide a basis for including additional categories of articles to the list in the final rule, the Department welcomes any additional information that might be presented concerning whether additional categories of articles should be allowed to be imported in such growing media. If it appears, based on information submitted to the Department, that additional articles, under conditions specified in § 319.37–8(e) of the final rule or similar conditions, could be imported in such growing media without presenting a significant risk of introducing injurious plant diseases, injurious insect pests, and other plant pests, consideration would be given concerning whether to amend the final rule in this regard.

It appears that if additional categories of restricted articles should be added to the list of those allowed to be imported in growing media, they should be added to the list based on determinations as a result of individual petitions.

The provisions in § 319.37–8(a) of the final rule provide that at the time of importation or offer for importation into the United States, any restricted article shall be free of sand, soil, earth, and any other growing media, except under certain limited conditions. This restates a long established Departmental policy of requiring freedom from growing medium or a "bare-root" condition as the working principle for protection from the introduction of diseases and pests by providing easy physical and visual access to the total plant. In general, the presence of growing medium conceals a vital portion of the plant from access and view and can also be a source of many diseases and pests. There was discussion at the public hearing in favor of allowing any restricted article to be imported in growing media as specified in § 319.37–8(d) of the proposal. However, exceptions to the bare-root requirement must be made with great care and must be based upon sound biological reasons for departing from the norm. They also, of necessity, must be based upon the capability to assure the absence of diseases and pests.

One of the comments also asserted that the provisions in proposed § 319.37–8(d) should be changed to require that such articles should be grown only on a raised bench supported by legs; watered only with clean rainwater, well water, or potable water; and grown only in unused growing media of the kind specified above. Changes explained below have been included in the final rule based on these suggestions. It has been determined that the provisions should be changed to provide for the growing of such articles on benches supported by legs and raised at least 460 millimeters (approximately 18 inches) off the floor. This would provide a measure of safety for preventing insects or diseases which might gain entrance to the floor of the greenhouse from attacking the growing plants. It has also been determined that the provisions should be changed to allow the plants to be watered only with clean rainwater that has been pasteurized, clean well water, or potable water, and to allow the use only of unused growing media. These changes are necessary in order to assure that the water and growing media would not likely be contaminated with diseases or pests.

As noted above, under the provisions of proposed § 319.37–8(d) the phytosanitary certificate of inspection would have been required to contain a declaration that the article was inspected and found to have been grown, stored, packaged, and shipped solely under conditions necessary to assure the absence of diseases and pests. One comment noted that some of these conditions could be met only after the issuance of the phytosanitary certificate of inspection. Accordingly, the provisions as proposed have been revised to require that the phytosanitary certificate of inspection indicate that appropriate measures have been taken to assure that the article is to be stored, packaged, and shipped free of diseases and pests.

One comment indicated that the provisions set forth in proposed § 319.37–8(d) should require certain written agreements prior to certification of any articles under the provisions therein. In particular, the comment indicated that a written agreement should be required between the Plant Protection and Quarantine Programs and the plant protection service of the country in which the article is grown wherein the plant protection service of the country in which the article is grown agrees to comply with the certification provisions. The comment also indicated that the regulations should require a written agreement between the grower of the article to be imported into the United States and the plant protection service of the country in which grown wherein the grower agrees to comply with such certification provisions, including an agreement to permit an inspector access to the growing facility as necessary to monitor compliance with the certification provisions, and including an agreement to permit representatives of the plant protection service of the country in which the article is grown access to the growing facility as necessary to make determinations concerning compliance with such provisions. These suggestions have been adopted and are reflected in the final rule. They are necessary in order to assure that the country of origin and the grower understand and agree to meet the complex conditions set forth in § 319.37–8(e) of the final rule and that the grower agrees to allow access to the growing facility by the Plant Protection and Quarantine Programs and the plant protection service of the country of origin in order that determinations could be made concerning whether the articles meet the conditions in § 319.37–8(e) of the final rule.

Proposed § 319.37–8(d) also provided that an article would be eligible for importation in accordance with such provisions if the accompanying phytosanitary certificate of inspection is endorsed by a PBQ inspector based on a finding that the conditions in proposed § 319.37–8(d) are being met. Two comments were submitted in connection with these provisions.

One comment indicated that such endorsement provisions should not be interpreted to require endorsements to be made only in the country of origin. It was intended that the endorsement represent that the conditions specified in § 319.37–8(e) of the final rule are being met. This finding would be based on monitoring inspections conducted by inspectors in the country of origin. Under such a monitoring program, an inspector would not always be available in the country of origin to endorse a certificate. In accordance with this program, it was intended that certificates be endorsed based on compliance as determined by monitoring inspections. Therefore, such endorsements could be made in the country of origin or at the time of offer for importation based on information obtained as a result of monitoring inspections, and the final rule has been clarified in these respects.

One comment suggested that withdrawal of permission to import such articles should be accomplished by termination of written agreements. This suggestion has not been adopted. This modification is not necessary since under the final rule an article would be refused entry unless the phytosanitary certificate of inspection contained an endorsement by an inspector of the Plant Protection and Quarantine Programs representing a finding that conditions specified in § 319.37–8(e) of the final rule were being met.

Also, the proposal provides that an article eligible for certification, among other things, must be grown only in a

greenhouse with insect-proof screening on all vents. Based on Departmental expertise, it has been determined that such screening would be insect-proof if the screening were a minimum of 16 mesh per inch. This information is added to the final rule in § 319.37–8(e)(3)(i) for purposes of clarification.

The proposed rule would have amended § 319.37–9 by deleting subsoil from the list of approved packing materials for lily bulbs imported into the United States from areas of Japan other than the Ryukyu Islands, and proposed to retain certain subsoil in the list of approved packing materials for lily bulbs imported into the United States from the Ryukyu Islands in Japan. In a document published in the **Federal Register** on November 30, 1979, subsoil was deleted from the list of approved packing materials for lily bulbs imported into the United States from any part of Japan. This action was taken because lily bulbs packed in subsoil from Japan were found to be contaminated with the potato cyst nematode (*Globodera rostochiensis* (Woll.) Behrens) and the rice cyst nematode (*Heterodera oryzae* Luc and Berden Brizuela). The potato cyst nematode is a plant pest which is not widely distributed within the United States and which attacks and substantially reduces the yield of potatoes, tomatoes, and eggplants. Rice cyst nematode is a plant pest which is not known to occur in the United States and which attacks and substantially reduces the yield of rice. The potato cyst nematode and the rice cyst nematode occur in soil, including subsoil, and it is not known how widespread these plant pests occur in Japan. Therefore, in the final rule, subsoil has been deleted from the list of approved packing materials for lily bulbs imported into the United States from any part of Japan because there does not appear to be any feasible method of inspection or treatment, or other procedures for preventing the possible introduction of potato cyst nematode or rice cyst nematode in such subsoil.

Proposed § 319.37–14 listed certain ports of entry for the importation of restricted articles. As explained in the proposal, ports of entry designated by asterisks are the only ports of entry with special inspection and treatment facilities. The remaining ports of entry listed are those ports of entry where inspectors are stationed and authorized to take action in connection with the importation or offer for importation of restricted articles, but which do not have special inspection and treatment facilities. Three ports of entry without special inspection and treatment facilities were inadvertently omitted from the list of ports of entry without special inspection and treatment facilities. These ports of entry at Agana, Guam; Baton Rouge, Louisiana; and Roosevelt Roads, Puerto Rico, are, therefore, added to the list of ports of entry without special inspection and treatment facilities. Also, addresses for ports of entry at Mobile, Alabama; Nogales, Arizona; San Diego, California; San Francisco, California; Jacksonville, Florida; Miami, Florida; Pensacola, Florida; Cape Canaveral, Florida; Tampa, Florida; West Palm Beach, Florida; Savannah, Georgia; Honolulu, Hawaii; New Orleans, Louisiana; Bangor, Maine; Portland, Maine; Boston, Massachusetts; Detroit, Michigan; St. Paul, Minnesota; Morehead City, North Carolina; Wilmington, North Carolina; San Juan, Puerto Rico; Corpus Christi, Texas; Galveston, Texas; Laredo, Texas; St. Croix, Virgin Islands of the United States; St. Thomas, Virgin Islands of the United States; Norfolk, Virginia; McChord AFB, Tacoma, Washington; Seattle, Washington; and Milwaukee, Wisconsin are incorrect or incomplete as set forth in the proposal and have been changed to state the correct and complete address.

One comment proposed that Chicago should have a plant inspection station, i.e., and inspection station with special inspection and treatment facilities. Currently, there is an approved port of entry in Chicago, but such port of entry does not have special inspection and treatment facilities. Based on the results of a recent survey concerning the probable use of special treatment and inspection facilities in Chicago, it was determined that there was not a sufficient need for such facilities at the port of entry in Chicago to justify establishing such facilities. Accordingly, no change has been made in the final rule based on this comment.

References to "Philippine Islands" in §§ 319.37–2(a) and 319.37–7 are changed to "Philippines" in order to reflect the correct name of the country. Also, the references to "St. Pierre" and "Miquelon" in § 319.37–3(a) are changed to "St. Pierre Island" "Miquelon Island" respectively in order to more fully identify the places intended to be specified.

This document relates to prohibitions and restrictions on the importation of certain articles, i.e., certain classes of nursery stock and certain other classes of plants, roots, bulbs, seeds, and other plant products. In this connection several comments suggested that the proposal be modified to include certain restrictions by the U.S. Department of Agriculture under the Endangered Species Act of 1973 (Public Law 93–205, as amended). These suggestions have not been adopted. The prohibitions and restrictions are based on authority contained in the Plant Quarantine Act and the Federal Plant Pest Act. The Endangered Species Act also contains authority for the U.S. Department of the Interior to promulgate regulations for the purpose of imposing additional prohibitions and restrictions with respect to the importation of certain of these articles. The U.S. Department of the Interior has promulgated regulations pursuant to authority in the Endangered Species Act which are contained in Title 50 of the Code of Federal Regulations. The U.S. Department of Agriculture is required to enforce the requirements of the Endangered Species Act and the regulations of the Department of the Interior with respect to the importation of terrestrial plants.

Some of the comments also requested that reference be made in this final rule to any additional prohibitions and restrictions under the Endangered Species Act in order to inform individuals who import plants that the Plant Protection and Quarantine Programs also enforces regulations under the Endangered Species Act with respect to articles subject to this final rule. An appropriate footnote is included in the final rule to explain that additional prohibitions and restrictions have been implemented under the Endangered Species Act (see subpart heading).

Certain changes with respect to names of diseases, insects, nematodes, or plants listed in the proposal are reflected in the final rule. The scientific names "*Globodera rostochiensis* (Woll) Mulvey and Stone and *G. pallida* (Stone) Mulvey and Stone" in proposed § 319.37–5(a) for potato cyst nematode are changed to "*Globodera rostochiensis* (Woll.) Behrens and *G. pallida* (Stone) Behrens." The scientific name "*Aplanobacter populi* Ride (Canker)" in proposed § 319.37–2(a) for a disease which could be transported with articles of *Populus* spp. (aspen, cottonwood, poplar) is changed to "*Xanthomonas populi* Ride (Canker)." The scientific name "*Phialophora cinerescens* (Wr.) U. Beyma (*Verticillium cinerescens* Wr.)" in proposed § 319.37–5(d) for a disease which could be transported with articles of *Dianthus* spp. (carnation, sweet-william) is changed to "*Phialophora cinerescens* (Wr.) van Beyma (*Verticillium cinerescens* Wr)." The scientific name "*Pectinophora gossypiella*" in proposed § 319.37–6(a)

for an insect which could accompany seeds of *Hibiscus* spp. (hibiscus, rosemallow) and seeds of *Abelmoschus* spp. (okra) is changed to *"Pectinophora gossypiella* (Saunders)." The scientific name *"Verticillium alboatrum"* in proposed § 319.37–6(d) as a disease which could accompany seeds of alfalfa and related plants is changed to *"Verticillium alboatrum* Reinke & Berthold." The name "Bromeliads" in proposed § 319.37–7 is changed to "Bromeliaceae." These changes reflect nomenclature currently accepted by the scientific community. In addition, certain other very minor changes have been made to the names of certain diseases and insects in order that the names be technically correct.

In § 319.37–2(a) the common names "cotton" and "cottontree" are added after the scientific name *"Gossypium* spp." In § 319.37–7 the common name "medlar" is added after the scientific name *"Mespilus germanica"* and the common name "granadilla" is added as a common name after the scientific name *"Passiflora* spp." Also, in §§ 319.37–2(a), 319.37–3(a) (7), 319.37–5(b) (1), and 319.37–7(a) the common names "cherry laurel" and "English laurel" have been added to the list of common names after the scientific name *"Prunus* spp." These common names are added for the purpose of helping to identify the articles represented by the scientific names.

Various editorial changes have also been made for clarity and simplification of the provisions in the regulations.

One comment requested that these regulations not become effective until May 31, 1980. The final rule should become effective as soon as practicable in order to implement requirements necessary to prevent the introduction into the United States of certain injurious plant diseases, injurious insect pests, and other plant pests. However, this final rule is a major revision of the current regulations, and it appears that it will take a period of time in order to provide for the uniform implementation of the new requirements. It appears that this can be accomplished by June 15, 1980, and, accordingly, this document provides that the final rule will become effective on that date.

Alternatives were considered in connection with the final rule. With respect to each category of articles subject to this subpart consideration was given concerning whether to designate the category of articles as prohibited articles, as restricted articles subject to special restrictions, or as restricted articles subject only to the minimum restrictions required by law. Categories of articles are classified as prohibited articles only if there does not appear to be any feasible method for inspection or treatment, or other procedures for preventing a significant risk of introducing into the United States certain diseases or pests. The remaining categories of articles are designated as restricted articles and are subject only to those restrictions found necessary to prevent the introduction of certain diseases or pests.

PART 319—FOREIGN QUARANTINE NOTICES

Under the circumstances referred to above "Subpart—Nursery Stock, Plants, and Seeds" in 7 CFR Part 319 (formerly designated as 7 CFR 319.37—319.37–28a), is revised to read as follows:

Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products

Sec.

319.37 Prohibitions and restrictions on importation; disposal of articles refused importation.
319.37–1 Definitions.
319.37–2 Prohibited Articles.
319.37–3 Permits.
319.37–4 Inspection and phytosanitary certificates of inspection.
319.37–5 Special foreign inspection and certification requirements.
319.37–6 Specific treatment and other requirements.
319.37–7 Postentry quarantine.
319.37–8 Growing media.
319.37–9 Approved packing material.
319.37–10 Marking and identity.
319.37–11 Arrival notification.
319.37–12 Prohibited articles accompanying restricted articles.
319.37–13 Treatment and costs and charges for inspection and treatment.
319.37–14 Ports of entry.

Authority: Section 1, as amended, and sections 3, 5, 7, 9, and 10; 37 Stat 315–318, as amended: 45 Stat. 468 (7 U.S.C. 154, 157, 159, 160, 162,. 164a); 37 Stat. 854 (7 U.S.C. 155); Sections 105–107; 71 Stat. 32–34; (7 U.S.C. 150dd–150ff); 37 FR 28464, 28477 as amended; 38 FR 19141.)

Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products, [1,2]

§ 319.37 Prohibitions and restrictions on importation; disposal of articles refused importation.

(a) Pursuant to section 7 of the Plant Quarantine Act (7 U.S.C. 160) and section 106 of the Federal Plant Pest Act (7 U.S.C. 150ee) the Secretary of Agriculture has determined that, in order to prevent the introduction into the United States from any foreign country or locality of certain tree, plant, and fruit diseases, or injurious insects, new to or not widely prevalent or distributed within and throughout the United States, it is necessary to prohibit the imporatation into the United States of certain articles from foreign countries and localities. Accordingly, no person shall import or offer for entry into the United States any article designated in § 319.37–2 (a) or (b) of this subpart from the designated foreign countries and localities, except as otherwise provided in § 319.37–2(c) of this subpart.

(b) Pursuant to sections 1 and 5 of the Plant Quarantine Act (7 U.S.C. 154, 159) and section 106 of the Federal Plant Pest Act (7 U.S.C. 150ee) the Secretary of Agriculture has determined that, in order to prevent the entry into the United States of certain injurious plant diseases, injurious insect pests, and other plant pests it is necessary to restrict the importation into the United States of certain articles from foreign countries and localities. Accordingly, no person shall import or offer for importation into the United States, any restricted article from any foreign country or locality unless in conformity with all of the applicable restrictions in this subpart.

(c) Any article refused importation for noncompliance with the requirements of this subpart shall be promptly removed from the United States or abandoned by the importer for destruction, and pending such action shall be subject to the immediate application of such safeguards against escape of injurious plant diseases, injurious insect pests and other plant pests as the inspector determines necessary to prevent the introduction into the United States of such diseases or pests. If such article is not promptly safeguarded by the importer, removed from the United States, or abandoned for destruction, it may be seized, destroyed, or otherwise disposed of in accordance with section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

§ 319.37–1 Definitions.

Terms used in the singular form in this subpart shall be construed as the plural, and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

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[1] The Plant Protection and Quarantine Programs also enforces regulations promulgated under the Endangered Species Act of 1973 (Public Law 93–205, as amended) which contain additional prohibitions and restrictions on importation into the United States of articles subject to this subpart (See 50 CFR Parts 17 and 23).

[2] One or more common names of articles are given in parentheses after most scientific names (when common names are known) for the purpose of helping to identify the articles represented by such scientific names; however, unless otherwise specified, a reference to a scientific name includes all articles within the category represented by the scientific name regardless of whether the common name or names are as comprehensive in scope as the scientific name.

Bulbs. The portion of a plant commonly known as a bulb, bulbil, bulblet, corm, cormel, rhizome, tuber, or pip, and including fleshy roots or other underground fleshy growths, a unit of which produces an individual plant.

Deputy Administrator. The Deputy Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture for the Plant Protection and Quarantine Programs, or any other officer or employee of the Department to whom authority to act in his/her stead has been or may hereafter be delegated.

Disease. The term in addition to its common meaning, includes a disease agent which incites a disease.

Earth. The softer matter composing part of the surface of the globe, in distinction from the firm rock, and including the soil and subsoil, as well as finely divided rock and other soil formation materials down to the rock layer.

Europe. The continent of Europe, the British Isles, Iceland, the Azores, and the islands in the Mediterranean Sea.

From. An article is considered to be "from" any country or locality in which it was grown. *Provided,* that an article imported into Canada from another country or locality shall be considered as being solely from Canada if it meets the following conditions:

(a) It is imported into the United States directly from Canada after having been grown for at least 1 year in Canada,

(b) It has never been grown in a country from which it would be a prohibited article or grown in a country other than Canada from which it would be subject to conditions of § 319.37–5 (c), (d), (e), (f), or (g) of this subpart, or subject to conditions of § 319.37–6 of this subpart,

(c) It was not grown in a country or locality from which it would be subject to conditions of § 319.37–7 of this subpart unless it was grown in Canada under postentry growing conditions equivalent to those specified in § 319.37–7[3] of this subpart, and

(d) It was not imported into Canada in growing media.

[3] Currently only *Chaenomoles* spp. (flowering quince), *Cydonia* spp. (quince), *Malus* spp. (apple, crabapple); *Prunus* spp. (almond, apricot, cherry, cherry laurel, English laurel, nectarine, peach, plum, prune) and *Pyrus* spp. (pear) are required under the laws of Canada to be grown in Canada under such equivalent conditions after importation.

Indexing. Transmitting the juices from an article suspected of being infected with a particular disease to another article known to be susceptible to such disease, by grafting or otherwise, in order to determine the presence or absence of the disease in the article suspected of being infected with such disease.

Inspector. Any employee of the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator in accordance with law to enforce the provisions of the regulations in this subpart.

Nursery Stock. All field-grown florist's stock, trees, shrubs, vines, cuttings, grafts, scions, buds, fruit pits, and other seeds of fruit and ornamental trees or shrubs, and other plants and plant products for propagation, except field, vegetable, and flower seeds, bedding plants, and other herbaceous plants, bulbs, and roots.

Oceania. The islands of Micronesia, Melanesia, and Polynesia (except Hawaii, Guam, and the Northern Mariana Islands) in the central and southern Pacific Ocean.

Person. An individual, corporation, company, society, or association.

Phytosanitary certificate of inspection. A document relating to a restricted article, which is issued by a plant protection official of the country in which the restricted article was grown, which is issued not more than 15 days prior to shipment of the restricted article from the country in which grown, which is addressed to the plant protection service of the United States (Plant Protection and Quarantine Programs), which contains a description of the restricted article intended to be imported into the United States, which certifies that the article has been thoroughly inspected, is believed to be free from injurious plant diseases, injurious insect pests, and other plant pests, and is otherwise believed to be eligible for importation pursuant to the current phytosanitary laws and regulations of the United States, and which contains any specific additional declarations required under this subpart.

Plant Pest. The egg, pupal, and larval stages as well as any other living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants.

Plant Protection and Quarantine Programs. The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Quarantine Act, the Federal Plant Pest Act, and related laws, and regulations promulgated thereunder.

Prohibited article. Any class of nursery stock or other class of plant, root, bulb, seed, or other plant product designated in § 319.37–2 (a) or (b) of this subpart.

Restricted article. Any class of nursery stock or other class of plant, root, bulb, seed or other plant product, for or capable of propagation, excluding any articles subject to any restricted entry orders in 7 CFR Part 321 (i.e., potatoes), or to any foreign quarantine notice in other subparts of 7 CFR Part 319, e.g., fruits and vegetables, cut flowers, sugarcane, rice, and excluding any prohibited articles listed in § 319.37–2 (a) or (b) of this subpart.

Secretary. The Secretary of Agriculture, or any other officer or employee of the Department of Agriculture to whom authority to act in his/her stead has been or may hereafter be delegated.

Soil. The loose surface material of the earth in which plants, trees, and shrubs grow, in most cases consisting of disintegrated rock with an admixture of organic material and soluble salts.

Spp. (species). All species, clones, cultivars, strains, varieties, and hybrids, of a genus.

United States. The States, District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

§ 319.37–2 Prohibited Articles.

(a) The following listed articles from the designated countries and localities are prohibited articles and are prohibited from being imported or offered for entry into the United States except as provided in § 319.37–2(c) of this subpart.

Prohibited article (except seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Tree, plant, or fruit disease, or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the prohibited article
Abies spp. (fir)	All except Canada	50 or more species of rusts including *Chrysomyxa abietis* (Wallr.) Ung. (a rust causing a serious needle disease); *Phacidiopycnis pseudotsuga* (M. Wils.) Hahn (Douglas fir canker).
Acacia spp. (acacia)	Australia and Oceania	*Uromycladium tepperianum* (Sacc.) McAlp. (Rust).
Acer spp. (maple)	Japan	*Xanthomonas acernea* (Ogawa) Burk. (leaf disease).
	Bulgaria, Federal Republic of Germany (West), France, German Democratic Republic (East), Great Britain, and Japan.	Maple-variegation virus.
Actinidia spp. (Chinese gooseberry, kiwi)	Japan and Taiwan	*Pucciniastrum actinidiae* Hiratusuka (Rust).
Andonidia spp	All	A diversity of diseases including, but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Aesculus spp. (horsechestnut)	Czechoslovakia, Federal Republic of Germany (West), Great Britain, and German Democratic Republic (East).	Horsechestnut-variegation virus.
Allagoptera arenaria	All	A diversity of diseases including, but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Althaea spp. (althaea, hollyhock)	Africa	Cotton leaf-curl virus.
	India	Hollyhock yellow-vein mosaic virus.
Areca spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Arenga spp. (sugarpalm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Arikuryroba spp. (arikury palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Articles listed in § 319.37-2(b)	All except Canada	A diversity of diseases, insects, and other pests, including but not limited to: *Cactoblastis cactorum* (Berg); *Metamasius* spp.; *Opogona sacchari* (Bojer); *Chrysomyxa himalensis* Barclay (Spruce needle rust); *Aecidium mori* Barclay (Mulberry rust); *Pseudomonas lignicola* Westherd. & Buis. (Bacterial stain); *Pucciniastrum areolatum* (Fr.) Otth. (Cherry-spruce rust).
Berberis spp. (barberry) (plants of all species and horticultural varieties not designated as resistant to black stem rust in accordance with § 301.38-1 of this chapter).	All	*Puccinia graminis* Pers. (Black stem rust).
Berberis spp. (barberry) destined to an eradication State listed in § 301.38-2a of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38-1 of this chapter).	All	*Puccinia graminis* Pers. (Black stem rust).
Berberis spp. (barberry) seed	All	*Puccinia graminis* Pers. (Black stem rust).
Borassus spp. (palmyra palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Caryota spp. (fishtail palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Cedrus spp. (cedar)	Europe	*Phacidiopycnis pseudotsuga* (M. Wils.) Hahn (Douglas fir canker).
		Fusarium fuliginosporum Sibilia (Seedling disease).
Chaenomeles spp. (flowering quince) not meeting the conditions for importation in § 319.37-5(b).	All	A diversity of plant diseases including but not limited to items (i), (xviii), (xix), (xx), (xxi) and (xxiii) listed in § 319.37-5(b)(2).
Chrysalidocarpus spp. (butterfly palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Chrysanthemum spp. (chrysanthemum)	Argentina, Brazil, Europe (except Great Britain), Republic of South Africa, and all countries and localities located in part or entirely between 90° and 180° East longitude.	*Puccinia horiana* P. Henn. (White rust of chrysanthemum).
Cocos nucifera (coconut) (including seeds) (Coconut seed without husks or without milk may be imported into the United States in accordance with § 319.56 of this Part).	All except from Jamaica if meeting the conditions for importation in § 319.37-5(g).	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Cocos spp. (other than *Cocos nucifera*)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Corypha spp.	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Cydonia spp. (quince) not meeting the conditions for importation in § 319.37-5(b).	All	A diversity of diseases including but not limited to items (i), (ii), (xviii), (xix), (xx), (xxi), and (xxiii) listed in § 319.37-5(b)(2).
Datura spp	Colombia	Datura Colombian virus.
	India	Datura distortion or enation mosaic virus.
Dictyosperma spp. (Princesspalm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Elaeis spp. (oil palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Erianthus spp. (plumegrass)	All	*Puccinia melanocephala* H. Syd. & P. Syd. (Sugarcane rust).
Eucalyptus spp	Argentina	Leaf chlorosis virus.
	Europe, Sri Lanka (Ceylon), and Uruguay	*Pestalotia disseminata* Thuem. (Parasitic leaf fungus).
Euonymus spp. (euonymus)	Federal Republic of Germany (West) and German Democratic Republic (East).	Euonymus mosaic virus.
Fragaria spp. (strawberry)	Australia, Austria, Czechoslovakia, France, Great Britain, Italy, Japan, Lebanon, The Netherlands, New Zealand, Northern Ireland, Republic of Ireland, Switzerland, and Union of Soviet Socialist Republics.	*Phytophthora fragariae* Hickman (Red stele disease).
Fraxinus spp. (ash)	Europe	*Pseudomonas savastanoi* var. *fraxini* (Brown) Dowson (Canker and dwarfing disease of ash).
Gaussia spp. (liumepalm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Gladiolus spp. (gladiolus)	Africa	*Puccinia mccleanii* Doidge (Rust); *Uredo gladioli-buettneri* Bub. (Rust); *Uromyces gladioli* P. Henn. (Rust); *U. nyikensis* Syd. (Rust).
	Africa, Italy, Malta, and Portugal	*U. transversalis* (Thuem.) Wint. (Rust).
Gossypium spp. (cotton, cottontree)	All	A diversity of diseases including but not limited to: cotton leaf curl virus; cotton virescence agent; small leaf virus.
Hibiscus spp. (hibiscus, rose mallow)	Africa	Cotton leaf curl virus.
	India	Okra yellow mosaic virus.
	Trinidad and Tobago, and Nigeria	Okra mosaic virus.
Howeia belmoreana (Sentry palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.

Prohibited article (except seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Tree, plant, or fruit disease, or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the prohibited article
Hydragea spp. (hydrangea)	Japan	*Aecidium hydrangeae-paniculatea* Dietel.
Ipomoea spp. (sweetpotato)	All except Canada	A diversity of diseases including but not limited to: sweetpotato witches broom (little leaf); and sweetpotato viruses of eastern Africa.
Jasminum spp. (Jasmine)	Belgium, Federal Republic of Germany (West), German Democratic Republic (East), and Great Britain.	Jasmine-variegation virus.
Juniperus spp. (juniper)	Austria, Finland, and Romania	*Stigmina deflectans* (Karst) Ellis (Needlecast disease).
	Europe	*Phacidiopycnis pseudotsuga* (M. Wils.) Hahn (Douglas fir canker).
Larix spp. (larch)	Europe	*Phacidiopycnis pseudotsuga* (M. Wils.) Hahn (Douglas fir canker).
Latania spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Lens spp. seed (lentil)	South America	*Uromyces viciae-fabae* (Pers.) Schroet. (Rust).
Ligustrum spp. (privet)	Federal Republic of Germany (West) and German Democratic Republic (East).	Ligustrum mosaic virus.
Livistona spp. (fan palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Mahoberberis spp. (plants of all species and horticultural varieties not designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter).	All	*Puccinia graminis* Pers. (Black stem rust).
Mahoberberis spp. destined to an eradication State listed in § 301.38–2(a) of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter).	All	*Puccinia graminis* Pers. (Black stem rust).
Mahoberberis spp. seed	All	*Puccinia graminis* Pers. (Black stem rust).
Mahonia spp. (mahonia) (plants of all species and horticultural varieties not designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter.	All	*Puccinia graminis* Pers. (Black stem rust).
Mahonia spp. (mahonia) destined to an eradication State listed in § 301.38–2(a) of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter).	All	*Puccinia graminis* Pers. (Black stem rust).
Mahonia spp. seed	All	*Puccinia graminis* Pers. (Black stem rust).
Malus spp. (apple, crabapple) not meeting the conditions for importation in § 319.37–5(b).	All	A diversity of diseases including but not limited to items (i), (ii), (iii), (vi), (vii), (viii), and (xxiii) listed in § 319.37–5(b)(2).
	Japan	*Valsa mali* Miyabe and Yamada ex. M. Miura (Branch canker fungus).
Mangifera spp. (mango) seed	All except North and South America	*Cryptorhynchus mangiferae* F. (Mango weevil).
Manihot spp. (cassava)	All except Canada	A diversity of diseases, insects, and other pests including but not limited to: *Mononychellus tanajoa* (Bondar) (cassava mite); *Phenococcus manihotis* Matile-Ferrero (cassava mealybug); *Xanthomonas manihotis* (Arthand-Berthet) Starr (Bacterial blight); Cassava brown streak virus; Cassava latent virus; Cassava African mosaic virus; Cassava common mosaic virus.
Mascarena spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Morus spp. (mulberry)	India, Japan, People's Republic of China, and Union of Soviet Socialist Republics.	A diversity of diseases including but not limited to: Mulberry dwarf agent; Mulberry curly little leaf agent; Mulberry mosiac virus.
Nannorrhops spp. (mazaripalm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Oryza spp. (rice) (seeds are prohibited by § 319.55)	All	A diversity of diseases including but not limited to: Rice dwarf virus; Rice stripe virus; Rice yellow dwarf agent; Rice black-streaked dwarf virus; Rice tungro virus; Rice transitory yellowing virus; Rice orange leaf agent; Rice grassy stunt agent; Rice ragged stunt virus; Rice yellow mottle virus; *Melanomma glumarum* Miy.; *Oospora oryzetorum* Sacc.; *Rhynchosporium oryzae* Hashioka & Yokogi; *Xanthomonas oryzae* (Uyeda & Ishiyama) Dowson.
Persea spp. (avocado) seed	Central and South America, and Mexico	*Heilipus lauri* Boh. (Avocado weevil); *Stenoma catenifer* Wals. (Avocado seed moth); *Conotrachelus* spp.
Philadelphus spp. (mock orange)	Europe	Elm mottle virus.
Phoenix spp. (date)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Picea spp. (spruce)	Europe, Japan, and Siberia	*Chrysomyxa ledi* (Alb. & Schw.) d By var. *rhododendri* (DC) Savile. (Rhododendron-spruce needle rust).
	Europe	*Phacidiopycnis pseudotsuga* (M. Wils.) Hahn (Douglas fir canker).
Pinus spp. (pine) (2- or 3-leaved)	Europe and Japan	Cronartium flaccidium (Alb. & Schw.) Wint. (Rust causing serious stunting of hard pines.)
	Japan	Gall-forming rust.
Populus spp. (aspen, cottonwood, poplar)	Europe	Xanthomonas populi Ride (Canker).
Pritchardia spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Prunus spp. (almond, apricot, cherry, cherry laurel, English laurel, nectarine, peach, plum, prune) not meeting the conditions for importation in § 319.37–5(b).	All	A diversity of diseases including but not limited to items (i), and (ix) through (xvii) listed in § 319.37–5(b)(2).
Pseudotsuga spp. (Douglas fir)	Europe	*Phacidiopycnis pseudotsuga* (M. Wils.) Hahn (Douglas fir canker).
Pyrus spp. (pear) not meeting the conditions for importation in § 319.37–5(b).	All	A diversity of diseases including but not limited to items (i) through (v), (xxi), and (xxiii) listed in § 319.37–5(b)(2).
Quercus spp. (oak)	Japan	*Stereum hiugense* Imazeki (White rot); a gall-forming rust.
Ribes nigrum (black currant)	Australia, Province of British Columbia in Canada, Europe, and New Zealand.	Black currant reversion agent.
Rosa spp. (rose)	Australia, Italy, and New Zealand	Rose wilt virus.
Salix spp. (willow)	Federal Republic of Germany (West), German Democratic Republic (East), Great Britain, and The Netherlands.	*Erwinia salicis* (Day) Chester (Watermark disease).
Seeds of all kinds when in pulp	All except Canada	Fruit flies, or other injurious insects.
Solanum spp. (tuber bearing species only—Section Tuberarium) (potato) (including seeds but excluding potato tubers which are subject to 7 CFR Part 321).	All except Canada	Andean potato latent virus; Andean potato mottle virus; Potato mop top virus; Dulcamara mottle virus; Tomato blackring virus; Tobacco rattle virus; Potato virus Y (tobacco veinal necrosis strain); Potato purple top wilt agent; Potato marginal flavescence agent; Potato purple top roll agent; Potato witches broom agent; Stolbar agent; Parastolbar agent; Potato leaflet stunt agent; Potato spindle tuber viroid.
Sorbus spp. (mountain ash)	Federal Republic of Germany (West) and German Democratic Republic (East).	Mountain ash variegation virus.

Prohibited article (except seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Tree, plant, or fruit disease, or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the prohibited article
	Australia, Japan, New Zealand, Oceania, Philippines, and People's Republic of China.	*Taphrina piri* Kusano (Leaf distortion fungus).
Syringa spp. (lilac)	Europe	Elm mottle virus.
Trachycarpus spp. (windmillpalm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Ulmus spp. (elm) (including seeds)	Europe	Elm mottle virus.
Veitchia spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Vitis spp. (grape)	All except Canada	A diversity of diseases including but not limited to: Arabis mosaic virus; Flavescence-doree agent; Raspberry ringspot virus; Hungarian chrome mosaic virus; Strawberry latent ringspot virus; *Xanthomonas ampelina* Panagopoulos (Bacterial blight); Grapevine fanleaf virus and its strains; Grapevine leaf roll virus and its strains; Tomato black ring virus; Artichoke Italian latent virus; Grapevine vein necrosis virus.
Zizania spp. (wild rice)	All	A diversity of diseases including but not limited to: Rice dwarf virus; Rice stripe virus; Rice yellow dwarf agent; Rice black-streaked dwarf virus; Rice tungro virus; Rice transitory yellowing virus; Rice orange leaf agent; Rice grassy stunt agent; Rice ragged stunt virus; Rice yellow mottle virus; *Melanomma glumarum* Miy.; *Oospora oryzetorum* Sacc.; *Rhynchosporium oryzae* Hashioka & Yokogi; *Xanthomonas oryzae* (Uyeda & Ishiyama) Dowson.

(b) The following listed articles from all foreign countries and localities except Canada are prohibited articles and are prohibited from being imported or offered for entry into the United States except as provided in § 319.37–2(c) of this subpart:

(1) *Rhododendron* spp. (rhododendron and azalea) or other genera or species of similar slow growth habit, other than artificially dwarfed trees or shrubs—

(i) Exceeding 3 years of age if grown from seeds or cuttings; or

(ii) Exceeding 2 years of age after severance from the parent plant if produced by layers; or

(iii) Having more than 3 years' growth from the bud or graft if produced by budding or grafting.

(2) Any naturally dwarf or miniature form of tree or shrub exceeding 305 millimeters (approximately 12 inches) in length from the soil line.

(3) Herbaceous perennials (except epiphytes) imported in the form of root crowns or clumps exceeding 102 millimeters (approximately 4 inches) in diameter.

(4) Stem cuttings without leaves, without roots, without sprouts, and without branches (other than cactus cuttings and cuttings of epiphytes) exceeding 102 millimeters (approximately 4 inches) in diameter or exceeding 1.83 meters (approximately 6 feet) in length; and stem cuttings of epiphytes with or without aerial roots (without leaves, without sprouts, and without branches) exceeding 102 millimeters (approximately 4 inches) in diameter or exceeding 1.83 meters (approximately 6 feet) in length.

(5) Cactus cuttings (without roots or branches) exceeding 153 millimeters (approximately 6 inches) in diameter or exceeding 1.22 meters (approximately 4 feet) in length.

(6) Plants (other than stem cuttings, cactus cuttings, and artificially dwarfed plants) exceeding 460 millimeters (approximately 18 inches) in length from soil line (top of rooting zone for plants produced by air layering) to the farthest terminal growing point and whose growth habits simulate the woody character of trees and shrubs, including but not limited to cacti, cycads, yuccas, and dracaenas.

(7) Any tree or shrub of a type not listed above, other than an artificially dwarf tree or shrub, and—

(i) Exceeding 2 years of age if grown from seeds or cuttings; or

(ii) Exceeding 1 year of age after severance from the parent plant if produced by layers; or

(iii) Having more than 2 years' growth from the bud or graft if produced by budding or grafting.

(c) Any article listed as a prohibited article in paragraphs (a) or (b) of this section may be imported or offered for entry into the United States if:

(1) imported by the United States Department of Agriculture for experimental or scientific purposes;

(2) imported at the Plant Germplasm Quarantine Center, Building 320, Beltsville Agricultural Research Center East, Beltsville, MD 20705 or at a port of entry designated by an asterisk in § 319.37–14(b);

(3) imported pursuant to a Departmental permit issued for such article and kept on file at the port of entry;

(4) Imported under conditions specified on the Departmental permit and found by the Deputy Administrator to be adequate to prevent the introduction into the United States of tree, plant, or fruit diseases, injurious insects, and other plant pests, i.e., conditions of treatment, processing, growing, shipment, disposal; and

(5) Imported with a Departmental tag or label securely attached to the outside of the container containing the article or securely attached to the article itself if not in a container, and with such tag or label bearing a Departmental permit number corresponding to the number of the Departmental permit issued for such article.

§ 319.37–3 Permits.

(a) The restricted articles (other than articles for food, analytical, medicinal, or manufacturing purposes) in any of the following categories may be imported or offered for importation into the United States only after issuance of a written permit by the Plant Protection and Quarantine Programs:

(1) Articles subject to treatment and other requirements of § 319.37–6;

(2) Articles subject to the postentry quarantine conditions of § 319.37–7;

(3) Bulbs of *Allium sativum* (garlic);

(4) Articles of *Cocos nucifera* (coconut); and articles (except seeds) of *Dianthus* spp. (carnation, sweet-william) from any country or locality except Canada;

(5) Lots of 13 or more articles (other than seeds, bulbs, or sterile cultures of orchid plants) from any country or locality except Canada;

(6) Seeds of trees or shrubs from any country or locality except Canada;

(7) Articles (except seeds) of *Malus* spp. (apple, crabapple), *Pyrus* spp. (pear), *Prunus* spp. (almond, apricot, cherry, cherry laurel, English laurel, nectarine, peach, plum, prune), *Cydonia* spp. (quince), *Chaenomeles* spp. (flowering quince), and *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry), from Canada;

(8) Articles (except seeds) of *Castanea* spp. (chestnut) or *Castanopsis*

spp. (chinquapin) destined to California or Oregon;

(9) Articles (except seeds) of *Pinus* spp. (pine), (5-leaved) destined to Wisconsin;

(10) Articles of *Ribes* spp. (currant, gooseberry), (including seeds) destined to Massachusetts, New York, West Virginia, or Wisconsin;

(11) Articles (except seeds) of *Planera* spp. (water elm, planer) or *Zelkova* spp. from Europe, Canada, St. Pierre Island, or Miquelon Island and destined to California, Nevada, or Oregon;

(12) Seeds of *Prunus* spp. (almond, apricot, cherry, cherry laurel, English laurel, nectarine, peach, plum, prune) from Canada and destined to Colorado, Michigan, New York, Washington, or West Virginia;

(13) Articles (except seeds) of *Vitis* spp. (grape) from Canada and destined to California, New York, Ohio, Oregon, and Washington;

(14) Articles (except seeds) of *Corylus* spp. (filbert, hazel, hazelnut, cobnut) from provinces east of Manitoba in Canada and destined to Oregon or Washington;

(15) Articles (except seeds) of *Pinus* spp. (pine) from Canada and destined to California, Idaho, Montana, Oregon, or Utah; and

(16) Articles (except seeds) of *Ulmus* spp. (elm) from Canada and destined to California, Nevada, or Oregon.

(b) An application for a written permit should be submitted to the Plant Protection and Quarantine Programs (Permit Unit, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Hyattsville, MD 20782) at least 30 days prior to arrival of the article at the port of entry. The completed application shall include the following information [4]:

(1) Name, address, and telephone number of the importer;

(2) Approximate quantity and kinds (botanical designations) of articles intended to be imported;

(3) Country(ies) or locality(ies) where grown;

(4) Intended United States port of entry;

(5) Means of transportation, e.g., mail, airmail, express, air express, freight, airfreight, or baggage; and

(6) Expected date of arrival.

(c) After receipt and review of the application by Plant Protection and Quarantine Programs, a written permit indicating the applicable conditions for importation under this subpart shall be issued for the importation of articles described in the application if such articles under the conditions specified in the application appear to be eligible to be imported into the United States. Even though a written permit has been issued for the importation of an article, such article may be imported only if all applicable requirements of this subpart are met and only if an inspector at the port of entry determines that no emergency measures pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150ee) are necessary with respect to such article.[5]

(d) Any permit which has been issued may be withdrawn by an inspector or the Deputy Administrator if he/she determines that the holder thereof has not complied with any condition for the use of the document. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances permit. Any person whose permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the permit was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for the decision as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict.

(e) Any restricted article not designated in paragraph (a) of this section may be imported or offered for importation into the United States only after issuance of an oral permit for importation issued by an inspector at the port of entry.

(f) An oral permit for importation of an article shall be issued at a port of entry by an inspector only if all applicable requirements of this subpart are met, such article is eligible to be imported under an oral permit, and an inspector at the port of entry determines that no emergency measures pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150ee) are necessary with respect to such article.[5]

§ 319.37-4 Inspection and phytosanitary certificates of inspection.

(a) Any restricted article grown in a country maintaining an official system of inspection for the purpose of determining whether such article is free from injurious plant diseases, injurious insect pests, and other plant pests shall be accompanied by a phytosanitary certificate of inspection from the plant protection service of such country at the time of importation or offer for importation into the United States. Such certificate may cover more than one article and more than one container kept together during shipment and offer for importation (except for shipments by mail). Each package containing a restricted article for shipment by mail from a country maintaining such a system of inspection shall be accompanied by an original or a copy of the certificate.

(b) Any restricted article accompanied by a valid phytosanitary certificate of inspection is subject to inspection by an inspector at the time of importation into the United States for the purpose of determining whether such article is free of injurious plant diseases, injurious insect pests, and other plant pests, and whether such article is otherwise eligible to be imported into the United States.

(c) Any restricted article grown in a country not maintaining an official system of inspection for the purpose of determining whether such article is free from injurious plant diseases, injurious insect pests, and other plant pests shall be inspected by an inspector at the time of importation into the United States for the purpose of determining whether such article is free of such diseases and pests and whether such article is otherwise eligible to be imported into the United States.

§ 319.37-5 Special foreign inspection and certification requirements.

(a) Any restricted article (except seeds; unrooted cuttings; articles collected from the wild; and articles solely for food, analytical, or manufacturing purposes) from a country listed below, at the time of importation or offer for importation into the United

[4] Application forms are available without charge from the Permit Unit, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Hyattsville, MD 20782, or local offices which are listed in telephone directories.

[5] Section 105 of the Federal Plant Pest Act (7 U.S.C. 150ee) provides, among other things, that the Secretary of Agriculture may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or dispose of, in such manner as he deems appropriate, subject to provisions in section 105 (b) and (c) of the Act (7 U.S.C. 150ee (b) and (c)), any product or article, including any articles subject to this subpart, which is moving into or through the United States, and which he has reason to believe was infested or infected by or contains any plant pest at the time of such movement. Section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff) also authorize emergency measures against prohibited and restricted articles which are not in compliance with the provisions of this subpart.

States shall be accompanied by a phytosanitary certificate of inspection which shall contain an accurate additional declaration that such article was grown on land which has been sampled and microscopically inspected by the plant protection service of the country in which grown within 12 months preceding issuance of the certificate and found free from potato cyst nematodes, *Globodera rostochiensis* (Woll.) Behrens and *G. pallida* (Stone) Behrens:

Algeria, Argentina, Austria, Azores, Belgium, Bolivia, Canada (only that portion comprising Newfoundland, and the Land District of South Saanich on Vancouver Island in British Columbia), Channel Islands, Chile, Colombia, Czechoslovakia, Denmark (including Faeroe Islands), Ecuador, Federal Republic of Germany (West), Finland, France, German Democratic Republic (East), Great Britain, Greece, Guernsey, Iceland, India, Ireland, Israel, Italy, Japan, Jersey, Lebanon, Luxembourg, Mexico, The Netherlands, New Zealand, Northern Ireland, Norway, Panama, Peru, Poland, Portugal, South Africa, Spain (including Canary Islands), Sweden, Switzerland, Union of Soviet Socialist Republics, Venezuela, and Yugoslavia.

(b)(1) Any restricted article (except seeds) of *Chaenomeles* spp. (flowering quince), *Cydonia* spp. (quince), *Malus* spp. (apple, crabapple), *Prunus* spp. (almond, apricot, cherry, cherry laurel, English laurel, nectarine, peach, plum, prune), and *Pyrus* spp. (pear), at the time of importation or offer for importation into the United States, shall be accompanied by a phytosanitary certificate of inspection which shall contain an accurate additional declaration that such article was grown in a nursery in Belgium, Canada, France, Federal Republic of Germany (West), The Netherlands, or Great Britain, and found by the plant protection service of the country in which grown to be free of injurious plant diseases (i.e., for *Chaenomeles* items (i), (xviii), (xix), (xx), and (xxi) listed in subparagraph (2) of this section; for *Cydonia* items (i), (xviii), (xix), (xx), and (xxi) listed in subparagraph (2) of this section; for *Malus* items (i), (iii), (vi), (vii), (viii), and (xxiii) listed in subparagraph (2) of this section; for *Prunus* items (i), and (ix) through (xvii) listed in subparagraph (2) of this section; for *Pyrus* items (i), (iii), (iv), (v), (xxi), and (xxiii) listed in subparagraph (2) of this section) based on the testing of parent stock by visual examination and indexing, and that such article was grown in a nursery free of any such specified plant diseases; *except that* an accurate declaration on the phytosanitary certificate of inspection that a disease does not occur in a country in which the article was grown may be used in lieu of visual examination and indexing of the parent stock for that disease.[6]

(2) List of diseases.

(i) *Monilinia fructigena* (Aderh. & Ruhl.) Honey (Brown rot of fruit).

(ii) *Guignardia piricola* (Nose) Yamomoto (Leaf, branch, and fruit disease).

(iii) Apple proliferation agent.

(iv) Pear blister canker virus.

(v) Pear bud drop virus.

(vi) *Diaporthe mali* Bres. (Leaf, branch & fruit fungus).

(vii) Apple green crinkle virus.

(viii) Apple chat fruit virus.

(ix) Plum pox (=Sharka) virus.

(x) Cherry leaf roll virus.

(xi) Cherry rusty mottle (European) agent.

(xii) Apricot chlorotic leaf roll agent.

(xiii) Plum bark split virus.

(xiv) Arabis mosaic virus and its strains.

(xv) Raspberry ringspot virus and its strains.

(xvi) Tomato blackring virus and its strains.

(xvii) Strawberry latent ringspot virus and its strains.

(xviii) Quince sooty ringspot agent.

(xix) Quince yellow blotch agent.

(xx) Quince stunt agent.

(xxi) *Gymnosporangium asiaticum* Miyabe ex. Yamada (Rust).

(xxii) *Valsa mali* Miyabe and Yamada ex. Miura (Branch canker fungus).

(xxiii) Apple ringspot virus.

(c) Any restricted article (except seeds) of *Chrysanthemum* spp. (chrysanthemum) from Great Britain or from any other country or locality except Europe (other than Great Britain) Argentina, Brazil, Republic of South Africa, and all countries and localities located in part or entirely between 90° and 180° East longitude shall at the time of importation or offer for importation into the United States be accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration that such articles was grown in a greenhouse nursery and found by the plant protection service of the country in which grown to be free from white rust disease (caused by the rust fungus, *Puccinia horiana* P. Henn.) based on visual examination of the parent stock, of the articles for importation, and of the greenhouse nursery in which the articles for importation and the parent stock are grown, once a month for 4 consecutive months immediately prior to importation.

(d) Any restricted articles (except seeds) of *Dianthus* spp. (carnation, sweet-william from Great Britain shall be grown under postentry quarantine conditions specified in § 319.37–7(c) unless at the time of importation or offer for importation into the United States the phytosanitary certificate of inspection accompanying such article contains an accurate additional declaration that such article was grown in a greenhouse nursery in Great Britain and found by the plant protection service of Great Britain to be free from injurious plant diseases caused by *Phialophora cinerescens* (Wr.) van Beyma (=*Verticillium cinerescens* Wr.), carnation etched ring virus, carnation "streak" virus, and carnation "fleck" virus, based on visual examination of the parent stock, of the articles for importation, and of the greenhouse nursery in which the articles for importation and the parent stock are grown, once a month for 4 consecutive months immediately prior to importation, and based on indexing of the parent stock.

(e) Any restricted article (except seeds) of *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry) from Ontario, Canada, shall be grown under postentry quarantine conditions specified in § 319.37–7 unless at the time of importation or offer for importation into the United States the phytosanitary certificate of inspection accompanying such article contains an accurtate additional declaration that such article was found by the plant protection service of Canada to be free of rubus stunt virus based on visual examination and indexing of the parent stock.[7]

(f) Any restricted article (except seeds) of *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry) from Europe at the time of importation or offer for importation into the United States shall be accompanied by a phytosanitary certificate of inspection which shall contain an accurate additional declaration that such article was found by the plant protection service of the country of origin to be free of rubus stunt virus based on visual examination and indexing of the parent stock.

[6] In all of the listed countries, indexing of parent stock for species of *Prunus* not immune to plum pox (i.e., other than *Prunus avium, P. cerasus, P. mahaleb, P. padus, P. serotina, P. serrula, P. serrulata, P. subhirtella, P. laurocerasus, P. virginiana, P. effusa, P. sargentii, P. yedoensis)* is currently done only at government operated nurseries (research stations). In France, all indexing of parent stock for all *Chaenomeles* spp., *Cydonia* spp., *Malus* spp., *Prunus* spp., and *Pyrus* spp. is currently done only at government operated nurseries (research stations).

[7] Such testing is done under the Raspberry Plant Certification Program of Ontario, Canada.

(g) Any seed of *Cocos nucifera* (coconut) at the time of importation or offer for importation into the United States shall be accompanied by a phytosanitary certificate of inspection which shall contain an accurate additional declaration that such seed was found by the plant protection service of Jamacia to be of Malayan dwarf variety (which is resistant to lethal yellowing disease) based on visual examination of the parent stock.

§ 319.37-6 Specific treatment and other requirements.

(a) Seeds of *Hibiscus* spp. (hibiscus, rose mallow) and seeds of *Abelmoschus* spp. (okra), from any foreign country or locality, at the time of importation into the United States, shall be treated for possible infestation with *Pectinophora gossypiella* (Saunders) (pink bollworm) in accordance with the applicable provisions of the Plant Protection and Quarantine Treatment Manual.[5]

(b) Seeds of *Lathyrus* spp. (sweet pea, peavine); *Lens* spp. (lentil); and *Vicia* spp. (fava bean, vetch) from countries and localities other than those in North America and Central America, at the time of importation into the United States, shall be treated for possible infestation with insects of the family Bruchidae in accordance with the applicable provisions of the Plant Protection and Quarantine Treatment Manual.[6]

(c) Because of possible infestation with *Aleurocanthus woglumi* (Ashby) (citrus blackfly), any restricted article (except seeds) of genera and species listed below from any country or locality (other than Canada, Europe, or any other country or locality bordering on the Mediterranean Sea) shall be (1) defoliated before arrival at a port of entry in the United States; or (2) treated in accordance with the applicable provisions of the Plant Protection and Quarantine Treatment Manual [6], at the time of importation into the United States.

Achras (see Manilkara)
Anacardium (cashew, maranon)
Annoa (cherimoya, soursop, custard apple, sweetsop)
Ardisia
Bouvardia
Bumelia
Bursera
Buxus (boxwood)
Capsicum (pepper)
Cardiospermum (heartseed)
Cedrela
Cestrum
Cnidoscolus (tread-softly)
Coffea (coffee)
Crataegus (hawthorne)
Diospyros (persimmon)
Duranta (skyflower)
Eugenia (malay apple, Surinam cherry)
Fraxinus (ash)
Hibiscus (hibiscus, rosemallow)
Hura (sandbox tree)
Ixora (ixora)
Jatropha (nettlespurge)
Lagerstroemia (crepe myrtle)
Magnolia (magnolia)
Mammea (mamey apple)
Mangifera (mango)
Manilkara (Achras) (sapodilla)
Melia (chinaberry)
Myroxylon (balm tree)
Myrtus (myrtle)
Persea (avocado)
Plumeria (plumeria)
Populus (poplar, cottonwood, aspen)
Pouteria (Calocarpum) (sapote, mamey sapote)
Psidium (guava)
Punica (pomegranate)
Sapindus (soapberry)
Solandra (chalicevine)
Spondias (mombin, jobo plum, hog plum)
Strelitzia (bird of paradise)
Tabebuia (trumpet tree)
Zingiber (ginger)

(d) Seeds of alfalfa and related plants (i.e., *Medicago falcata, M. gaetula, M. glutinosa, M. media, M. sativa*) from Europe, at the time of importation into the United States shall be treated for possible infection with *Verticillium alboatrum* Reinke & Berthold by dusting with Arasan 50 (50 percent Thiram) at a rate of 8 ounces (approximately 226.8 grams) per 100 pounds (approximately 45.36 kilograms) of seeds, or by treating with a slurry of Arasan 50 Red at a rate of 8 ounces (approximately 226.8 grams) per pint (approximately 473.12 cubic centimeters) of water per 100 pounds (approximately 45.36 kilograms) of seeds.

(e) Seeds of *Glycine* spp. (soybean); *Dolichos* spp. (lablab); *Pachyrhizus* spp. (yam bean root, jicama); *Phaseolus* spp. (bean); *Pueraria* spp. (Chinese yam, kudzu bean, kudzu vine); and *Vigna* spp. (cowpea, catjang, asparagus bean, black-eyed pea, moth bean, adzuki bean) from Africa, Australia, Burma, Cambodia, People's Republic of China, Costa Rica, India, Indonesia, Japan, Korea, Laos, Malaysia, Nepal, New Caledonia, Papua New Guinea, Philippines, Sri Lanka (Ceylon), Taiwan, Thailand, Union of Soviet Socialist Republics, Venezuela, Vietnam, or the West Indies, at the time of importation into the United States shall be treated for possible infection with *Phakopsora pachyrhizi* Syd. (soybean rust) by dusting with Patterson's Multipurpose Fungicide (a zineb-captan formulation) at the rate of 1.05 ounces (approximately 29.77 grams) actual zineb per bushel (approximately 35.24 liters) or by treating with a slurry of Patterson's Multipurpose Fungicide at the rate of 0.74 ounces (approximately 20.98 grams) actual zineb per bushel (approximately 35.24 liters) of seeds.

(f) Bulbs of *Allium sativum* (garlic) from Algeria, Austria, Czechoslovakia, Egypt, France, Greece, Hungary, Iran, Israel, Italy, Morocco, Portugal, Republic of South Africa, Spain, Switzerland, Syria, Turkey, Union of Soviet Socialist Republics, Federal Republic of Germany (West), or Yugoslavia at the time of importation into the United States shall be treated for possible infestation with *Brachycerus* spp. and *Dyspessa ulula* (Bkh.) in accordance with the applicable provisions of the Plant Protection and Quarantine Treatment Manual.[6]

§ 319.37-7 Postentry quarantine.

(a) The following restricted articles from the designated countries and localities (1) may be imported or offered for importation into the United States only after a completed postentry quarantine agreement, as provided in paragraph (c) of this section, has been submitted to the Plant Protection and Quarantine Programs, and (2) shall be grown under postentry quarantine conditions specified in paragraph (c) of this section:

Restricted Article (excluding seeds)	*Foreign Country(ies) or Locality(ies) from which imported*
Acacia spp. (acacia)	All except Australia, Canada, and Oceania.
Acer spp. (maple)	All except Bulgaria, Canada, Federal Republic of Germany (West), France, German Democratic Republic (East), Great Britain, and Japan.
Actinidia spp. (Chinese gooseberry, kiwi).	All except Australia, Canada, Japan, New Zealand, and Taiwan.
Aesculus spp. (horsechestnut)	All except Canada, Czechoslovakia, Federal Republic of Germany (West), German Democratic Republic (East), and Great Britain.
Althaea spp. (althaea, hollyhock).	All except Africa, Canada, and India.

[5] The Plant Protection and Quarantine Treatment Manual has been incorporated by reference on June 15, 1978, and is available upon request to the Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, and is on file at the Office of the Federal Register.

[6] The Plant Protection and Quarantine Treatment Manual has been incorporated by reference on June 15, 1978, and is available upon request to the Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, and is on file at the Office of the Federal Register.

[6] The Plant Protection and Quarantine Treatment Manual has been incorporated by reference on June 15, 1978, and is available upon request to the Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, and is on file at the Office of the Federal Register.

Restricted Article (excluding seeds)	Foreign Country(ies) or Locality(ies) from which imported
Berberis spp. (barberry) destined to any State except the eradication States listed in § 301.38–2a of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter).	All.
Bromeliaceae (bromeliads) distined to Hawaii..	All.
Cedrus spp. (cedar)	All except Canada and Europe.
Chaenomeles spp. (flowering quince) meeting the conditions for importation in § 319.37–5(b).	Countries listed in § 319.37–5(b) except Canada.
Chrysanthemum spp. (chrysanthemum).	Great Britain and all other countries and localities except Argentina, Brazil, Europe (other than Great Britain), Republic of South Africa, and all countries and localities located in part or entirely between 90° and 180° East longitude.
Crataegus monogyna Jacq. (hawthorne, thorneapple, red haw).	Europe.
Cydonia spp. (quince) meeting the conditions for importation in § 319.37–5(b).	Countries listed in § 319.37–5(b) except Canada.
Datura spp.	All except Canada, Colombia and India.
Dianthus spp. (carnation, sweet-william).	Great Britain, unless exempted from postentry quarantine conditions pursuant to § 319.37–5(d), and all other countries and localities except Canada.
Eucalyptus spp. (eucalyptus)	All except Argentina, Canada, Europe, Sri Lanka (Ceylon), and Uruguay.
Euonymus spp. (euonymus)	All except Canada, Federal Republic of Germany (West), and German Democratic Republic (East).
Fragaria spp. (strawberry)	All except Australia, Austria, Canada, Czechoslovakia, France, Great Britain, Italy, Japan, Lebanon, The Netherlands, New Zealand, Northern Ireland, Republic of Ireland, Switzerland, and Union of Soviet Socialist Republics.
Fraxinus spp (ash)	All except Canada and Europe.
Fruit and nut articles listed by common name in paragraph (b) of this section.	All except Canada.
Gladiolus spp. (gladiolus) except bulbs.	All except Africa, Canada, Italy, Malta, and Portugal.
Hibiscus spp. (hibiscus, rosemallow).	All except Africa, Canada, India, and Trinidad and Tobago.
Humulus spp. (hops)	All.
Hydrangea spp. (hydrangea)	All except Canada and Japan.
Jasminum spp. (jasmine)	All except Belgium, Canada, Federal Republic of Germany (West), German Democratic Republic (East), and Great Britain.
Juniperus spp. (juniper)	All except Canada and Europe.
Larix spp. (larch)	All except Canada and Europe.
Ligustrum spp. (privet)	All except Canada, Federal Republic of Germany (West), and German Democratic Republic (East).
Mahoberberis spp. destined to any State except the eradication States listed in § 301.38–2a of this chapter (plants of all specise and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter).	All.
Mahonia spp. (mahonia) destined to any State except the eradication States listed in § 301.38–2a of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter).	All.
Malus spp. (apple, crabapple) meeting the conditions for importation in § 319.37–5(b).	Countries listed in § 319.37–5(b) except Canada.
Mespilus germanica (*medlar*)	Countries listed in § 319.37–5(b) except Canada.
Morus spp. (mulberry)	All except Canada, India, Japan, People's Republic of China, and Union of Soviet Socialist Republics.
Nut and fruit articles (see fruit and nut articles).	All except Canada.
Passiflora spp. (passion fruit, granadilla).	All except Canada.
Philadelphus spp. (mock orange).	All except Canada and Europe.
Picea spp. (spruce)	All except Canada, Europe, Japan, and Siberia.
Pinus spp. (pine) (2-or-3 leaved).	All except Canada, Europe, and Japan.
Populus spp. (aspen, cottonwood, poplar).	All except Canada and Europe.
Prunus spp. (almond, apricot, cherry, cherry laurel, English laurel, nectarine, peach, plum, prune) meeting the conditions for importation in § 319.37–5(b).	Countries listed in § 319.37–5(b) except Canada.
Pseudotsuga spp. (Douglas fir).	All except Canada and Europe.
Pyrus spp. (pear) meeting the conditions for importation in § 319.37–5(b).	Countries listed in § 319.37–5(b) except Canada.
Quercus spp. (oak)	All except Canada and Japan.
Ribes nigrum (black currant)	All except Australia, Canada, Europe, and New Zealand.
Rosa spp. (rose)	All except Australia, Canada, Italy, and New Zealand.
Rubus spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry).	All unless exempted from postentry quarantine conditions pursuant to § 319.37–5(e).
Salix spp. (willow)	Europe except Federal Republic of Germany (West), German Democratic Republic (East), Great Britain, and The Netherlands.
Sorbus spp. (mountain ash)	All except Australia, Canada, Federal Republic of Germany (West), German Democratic Republic (East), Japan, New Zealand, People's Republic of China, Philippines, and Oceania.
Syringa spp. (lilac)	All except Canada and Europe.
Ulmus spp. (elm)	All except Canada and Europe.

(b) *Fruit and Nut Articles* (common names are listed after scientific names).

Achras—(Synonym for *Manilkara*)
Annona—custard apple, cherimoya, sweetsop, sugarapple, soursop, bullock's heart, alligator apple, suncoya, ilama, guanabana, pond apple
Anacardium—cashew
Artocarpus—breadfruit, jackfruit
Averrhoa—carambola
Blighia—akee
Bouea—kundangan
Calocarpum—sapote
Carica—papaya, pawpaw
Carissa—natal plum
Carya—hickory, pecan
Castanea—chestnut
Ceratonia—St. Johnsbread
Chrysobalanus—coco plum
Chrysophyllum—starapple
Coccoloba—sea-grape, pigeon plum
Corylus—filbert, hazel, hazelnut, cobnut
Crataegus—hawthorne
Diospyros—persimmon, kaki, mabola
Durio—durian
Eriobotrya—loquat, Japanese medlar, Japanese plum
Euphoria—longan
Eugenia—roseapple, Malayapple, Curacaoapple
Feijoa—feijoa, pineapple guava
Ficus—fig
Garcinia—mangosteen, gourka
Juglans—walnut, butternut, heartnut, regranut, buartnut
Lansium—langsat
Litchi—lychee, leechee
Macadamia—macadamia nut, queensland nut
Malpighia—Barbados cherry
Mammea—mammeapple, mamey
Mangifera—mango
Manilkara—sapodilla
Melicoccus—honeyberry, mamoncilla, spanish lime, genip
Nephelium—rambutan, pulasan
Olea—olive
Persea—avocado, alligator pear
Phoenix—date
Phyllanthus—otaheite-gooseberry
Pistacia—pistachio
Pouteria—lucuma
Psidium—guava, guayala
Punica—pomegranate, granada
Pyronia—quinpear
Rhodomyrtus—hill gooseberry, rose myrtle
Ribes (other than *Ribes nigrum*)—red currant, white currant, gooseberry
Spondias—yellow mombin, red mombin, hog plum
Syzygium—Malayapple, rose apple, java plum
Theobroma—cacao
Vaccinium—blueberry, cranberry
Ziziphus—jujube

(c) Any restricted article required to be grown under postentry quarantine conditions shall be grown under the supervision and control of a person who has signed a postentry quarantine agreement to comply with the following conditons for the period of time specified below:

(1) To grow such article or increase therefrom only on specified premises;

(2) To permit an inspector to have access to the specified premises for inspection of such article during regular business hours;

(3) To keep the article and any increase therefrom identified with a label showing the name of the article,

port accession number, and date of importation;

(4) To keep the article separated from any domestic plant or plant product of the same genus by no less than 3 meters (approximately 10 feet); and from any other imported plant or plant product by the same distance;

(5) To allow or apply remedial measures (including destruction) determined by an inspector to be necessary to prevent the spread of an injurious plant disease, injurious insect pest, or other plant pest;

(6) To notify Plant Protection and Quarantine Programs if any abnormality of the article is found or if the article dies;

(7) To grow the article or increase therefrom, if an article of *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry) from Europe, only in a screenhouse with screening of a minimum of 16 mesh per inch;

(8) To grow the article or increase therefrom, if an article of *Chrysanthemum* spp. (chrysanthemum) or *Dianthus* spp. (carnation, sweet-william), only in a greenhouse or other enclosed building; and

(9) To comply with the above conditions for a period of 6 months after importation for an article of *Chrysanthemum* spp. (chrysanthemum), for a period of 1 year after importation for an article of *Dianthus* spp. (carnation, sweet-william), and for a period of 2 years after importation for any other such articles.

(d) A completed postentry quarantine agreement shall accompany the application for a written permit for an article required to be grown under postentry quarantine conditions.[9]

§ 319.37-8 Growing media.

(a) Any restricted article at the time of importation or offer for importation into the United States shall be free of sand, soil, earth, and other growing media, except as provided in paragraphs (b), (c), (d) or (e) of this section.

(b) A restricted article from Canada other than from Newfoundland or from the Land District of South Saanich on Vancouver Island in British Columbia may be imported established in any growing medium.

(c) A restricted article growing solely in agar or in other transparent or translucent tissue culture medium may be imported established in such growing media.

(d) Epiphytic plants (including orchid plants) established solely on tree fern slabs, coconut husks, or coconut fiber may be imported on such growing media.

(e) A restricted article of Polypodiophyta (=Filicales) (ferns), *Saintpaulia* spp. (African violet), *Gloxinia* spp. (gloxinia), *Begonia* spp. (begonia), and *Peperomia* spp. (peperomia) may be imported established in unused peat, sphagnum moss, or vermiculite growing media, or in synthetic growing media or synthetic horticultural foams, i.e., plastic particles, glass wool, organic and inorganic fibers, polyurethane, polystyrene, polyethylene, phenol formaldehyde, or ureaformaldehyde:

(1) If there is a written agreement between the Plant Protection and Quarantine Programs and the plant protection service of the country where the article is grown in which the plant protection service of the country where the article is grown agrees to implement a program in compliance with the provisions of this section;

(2) If there is a written agreement between the grower of the article and the plant protection service of the country in which the article is grown wherein the grower agrees to comply with the provisions of this section, wherein the grower agrees to allow an inspector access to the growing facility as necessary to monitor compliance with the provisions of this section, and wherein the grower agrees to allow representatives of the plant protection service of the country in which the article is grown access to the growing facility as necessary to make determinations concerning compliance with the provisions of this section;

(3) If:

(i) Grown throughout its growing period only in a greenhouse with insect-proof screening (a minimum of 16 mesh per inch) on all vents and with all entryways equipped with automatic closing doors;

(ii) Grown only in a greenhouse unit solely used for articles grown under all the criteria specified in this paragraph (e);

(iii) Grown only on a raised bench supported by legs and raised at least 460 millimeters (approximately 18 inches) off the floor;

(iv) Grown only in unused peat, sphagnum moss, or vermiculite growing media; or grown only in synthetic growing media or synthetic horticultural foams, i.e., plastic particles, glass wool, organic and inorganic fibers, polyurethane, polystyrene, polyethylene, phenol formaldehyde, ureaformaldehyde;

(v) Watered only with clean rainwater that has been pasteurized, with clean well water, or with potable water;

(vi) Grown in a greenhouse free of sand, soil, or earth;

(vii) Grown only in a greenhouse where strict sanitary procedures are always practiced, i.e., cleaning and disinfection of floors, benches and tools, the application of measures to protect against any injurious plant diseases, injurious insect pests, and other plant pests; and

(viii) Stored only in areas found free of sand, soil, earth, injurious plant diseases, injurious insect pests, and other plant pests.

(4) If appropriate measures have been taken to assure that the article is to be stored, packaged, and shipped free of injurious plant diseases, injurious insect pests, and other plant pests;

(5) If accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration from the plant protection service of the country in which grown that the article meets conditions of growing, storing, and shipping in compliance with 7 CFR 319.37-8(e); and

(6) If the accompanying phytosanitary certificate of inspection is endorsed by a Plant Protection and Quarantine Programs inspector in the country of origin or at the time of offer for importation, representing a finding based on monitoring inspections that the conditions listed above are being met.

§ 319.37-9 Approved packing material.

Any restricted article at the time of importation or offer for importation into the United States shall not be packed in a packing material unless such packing material is free from sand, soil, or earth (except for sand designated below); has not been used previously as packing material or otherwise; is not intermixed with other approved packing material; and is listed below:

Buckwheat hulls.
Coral sand from Bermuda, if the article packed in such sand is accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration from the plant protection service of Bermuda that such sand was free from soil.
Excelsior.
Exfoliated vermiculite.
Ground cork.
Ground peat.
Ground rubber.
Paper.
Polymer stabilized cellulose.
Quarry gravel.
Sawdust.
Shavings—wood or cork.
Sphagnum moss.

[9] Postentry quarantine agreement forms are available without charge from the Permit Unit, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782, or local offices of the Plant Protection and Quarantine Programs which are listed in telephone directories.

Vegetable fiber when free of pulp, including coconut fiber and Osmunda fiber, but excluding sugarcane fiber and cotton fiber.

§ 319.37-10 Marking and identity.

(a) Any restricted article for importation other than by mail, at the time of importation or offer for importation into the United States shall plainly and correctly bear on the outer container (if in a container) or the restricted article (if not in a container) the following information:

(1) General nature and quantity of the contents,

(2) Country and locality where grown,

(3) Name and address of shipper, owner, or person shipping or forwarding the article,

(4) Name and address of consignee,

(5) Identifying shipper's mark and number, and

(6) Number of written permit authorizing the importation if one was issued.

(b) Any restricted article for importation by mail shall be plainly and correctly addressed and mailed to the Plant Protection and Quarantine Programs at a port of entry listed in § 319.37-14, shall be accompanied by a separate sheet of paper within the package plainly and correctly bearing the name, address, and telephone number of the intended recipient, and shall plainly and correctly bear on the outer container the following information:

(1) General nature and quantity of the contents,

(2) Country and locality where grown,

(3) Name and address of shipper, owner, or person shipping or forwarding the article, and

(4) Number of written permit authorizing the importation, if one was issued.

(c) Any restricted article for importation (by mail or otherwise), at the time of importation or offer for importation into the United States shall be accompanied by an invoice or packing list indicating the contents of the shipment.

§ 319.37-11 Arrival notification.

Promptly upon arrival of any restricted article at a port of entry, the importer shall notify the Plant Protection and Quarantine Programs of the arrival by such means as a manifest, Customs entry document, commercial invoice, waybill, a broker's document, or a notice form provided for that purpose.

§ 319.37-12 Prohibited articles accompanying restricted articles.

A restricted article for importation into the United States shall not be packed in the same container as an article prohibited importation into the United States by this part or Part 321.

§ 319.37-13 Treatment and costs and charges for inspection and treatment.

(a) The services of the inspector during regularly assigned hours of duty and at the usual places of duty shall be furnished without cost to the importer.[10] No charge will be made to the importer for Government owned or controlled special inspection facilities and equipment used in treatment, but the inspector may require the importer to furnish any special labor, chemicals, packing materials, or other supplies required in handling an importation under the regulations in this subpart. The Plant Protection and Quarantine Programs will not be responsible for any costs or charges, other than those indicated in this section.

(b) Any treatment performed in the United States on a restricted article shall be performed by an inspector or under an inspector's supervision at a government-operated special inspection facility, except that an importer may have such treatment performed at a nongovernmental facility if the treatment is performed at nongovernment expense under the supervision of an inspector and in accordance with any applicable treatment requirements of this subpart and in accordance with any treatment required by an inspector as an emergency measure in order to prevent the dissemination of any injurious plant disease, injurious insect pest, or other plant pest, new to or not theretofore known to be widely prevalent or distributed within and throughout the United States. However, treatment may be performed at a nongovernmental facility only in cases of unavailability of government facilities and only if, in the judgment of an inspector, such article can be transported to such nongovernmental facility without the risk of introduction into the United States of injurious plant diseases, injurious insect pests, or other plant pests.

§ 319.37-14 Ports of entry.

(a) Any restricted article required to be imported under a written permit pursuant to subparagraphs (1) through (6) of paragraph (a) in § 319.37-3 of this subpart, shall be imported or offered for importation only at a port of entry designated by an asterisk in paragraph (b) of this section; any other restricted article shall be imported or offered for importation at any port of entry listed in paragraph (b) of this section.

(b) Any restricted article from Canada not required to be imported under a written permit pursuant to subparagraphs (1) through (6) of paragraph (a) in § 319.37-3 of this subpart may be imported at any port of entry listed in this paragraph, or at any Customs designated port of entry on the United States-Canada border (Customs designated ports of entry are listed in 19 CFR Part 101).

LIST OF PORTS OF ENTRY

Ports with special inspection and treatment facilities (plant inspection stations) are indicated by an asterisk (*).

ALABAMA

Mobile

Federal Building, Room 147, 113 St. Joseph Street, P.O. Box 1413, Mobile, AL 36601.

ALASKA

Anchorage

Annex P.O. Box 6191, International Airport, Anchorage, AK 99502.

ARIZONA

**Nogales*

Federal Inspection Station, Nogales, AZ 85621.

Phoenix

Sky Harbor Airport, 3300 Sky Harbor Boulevard, Phoenix, AZ 85034.

San Luis

U.S. Border Station, P.O. Box 37, San Luis, AZ 85349.

Tucson

Tucson International Airport, Tucson, AZ 85706.

CALIFORNIA

Calexico

Federal Inspection Building, Room 223, 200 First Street, P.O. Box 686, Calexico, CA 92231.

**Los Angeles*

9650 LaCienega Boulevard, Building D North, Inglewood, CA 90301.

(Airport)

World Way Center Post Office, International Arrivals Area, Satellite 2, P.O. Box 90429, Los Angeles International Airport, Los Angeles, CA 90009.

**San Diego*

U.S. Border Station, P.O. Box 43L, San Ysidro, CA 92073.

**San Francisco*

Plant Inspection Station, San Francisco International Airport, San Francisco, CA 94128.

San Francisco International Airport, P.O. Box 8026, Airport Station, San Francisco, CA 94128.

[10] Provisions relating to costs for other services of an inspector are contained in Part 354.

101 Agriculture Building, Embarcadero at Mission Street, P.O. Box 7673, San Francisco, CA 94120.

*San Pedro

(See Los Angeles)

Travis AFB

P.O. Box 1448, Travis Air Force Base, Fairfield, CA 94535.

COLORADO

Denver

Suite 102, 7100 West 44th Avenue, Wheat Ridge, CO 80033.

CONNECTICUT

Wallingford

Federal Building, Room 205, P.O. Box 631, Wallingford, CT 06492.

DELAWARE

Dover AFB

Building 500 (USDA), Dover Air Force Base, DE 19901.

Wilmington

Federal Building, Room 1218A, 844 King Street, Box 03, Wilmington, DE 19801.

DISTRICT OF COLUMBIA

Dulles International Airport

(See Virginia)

FLORIDA

Jacksonville

Federal Building, Room 521, 400 West Bay Street, P.O. Box 35003, Jacksonville, FL 32202.

Key West

Federal Building, Room 226, 301 Simonton Street, P.O. Box 1486, Key West, FL 33040.

*Miami

Miami Inspection Station, 3500 NW. 62nd Avenue, P.O. Box 59–2136, Miami, FL 33159.
FAA & NWS Building, Box 59–2647 AMF, Miami, FL 33159.

Pensacola

Federal Building, Room 105, 100 North Palafax Street, P.O. Box 12561, Pensacola, FL 32523.

Cape Canaveral

120 George King Boulevard, P.O. Box 158, Cape Canaveral, FL 32920.

Port Everglades

Amman Building, Room 305, 611 Eisenhower Boulevard, P.O. Box 13033, Fort Lauderdale, FL 33316.

Tampa

700 Twiggs Street, Room 504, P.O. Box 266, Tampa, FL 33601.

West Palm Beach

158 Port Road, P.O. Box 10611, Riviera Beach, FL 33404.

(Airport)

Palm Beach International Airport, Port of Entry Building, West Palm Beach, FL 33406.

GEORGIA

Atlanta

Hapeville Branch Post Office, Basement, 650 Central Avenue, P.O. Box 82369, Hapeville, GA 30354.

Savannah

U.S. Court House & Federal Building, Room B–9, 125–126 Bull Street, P.O. Box 9268, Savannah, GA 31402.

GUAM

Agana

P.O. Box 2950, Agana, GU 96910.

HAWAII

Hilo

General Lyman Field, Hilo, HI 96720.

*Honolulu (Airport)

Honolulu International Airport, International Arrivals Building, Ewa end, Ground Level, P.O. Box 29757, Honolulu, HI 96820.

Wailuku, Maui

Federal Post Office Building, Room 211, Wailuku, HI 96793.

ILLINOIS

Chicago

U.S. Custom House, Room 800, 610 South Canal Street, Chicago, IL 60607.

(Airport)

O'Hare International Arrivals Building, P.O. Box 66192, Chicago, IL 60666.

LOUISIANA

Baton Rouge

750 Florida Boulevard, Room 321, Federal Building, P.O. Box 2447, Baton Rouge, LA 70821.

*New Orleans

New Orleans International Airport, P.O. Box 20037, Airport Mailing Facility, New Orleans, LA 70140.
F. Edward Hébert Building, P.O. Box 2220, New Orleans, LA 70176.

MAINE

Bangor (Airport)

International Arrivals Building, Bangor International Airport, Bangor, ME 04401.

Portland

U.S. Courthouse, 156 Federal Street, Room 309, Portland, ME 04101.

MARYLAND

Baltimore

Appraisers Stores Building, Room 506, 103 South Gay Street, Baltimore, MD 21202.

(Airport)

Foreign Arrivals Building, Baltimore Washington International Airport, Baltimore, MD 21240.

Beltsville

Plant Germplasm Quarantine Center (for USDA shipments only), Building 320, Beltsville, Agricultural Research Center East, Beltsville, MD 20705.

MASSACHUSETTS

Boston

Room 4, U.S. Custom House, Boston, MA 02109.

(Airport)

Logan International Airport, East Boston, MA 02128.

MICHIGAN

Detroit

International Terminal, Room 228, Metropolitan Airport, Detroit, MI 48242.

MINNESOTA

Duluth

Board of Trade Building, Room 420, 301 West First Street, Duluth, MN 55802.

St. Paul

Minneapolis-St. Paul International Airport, International Charter Terminal, P.O. Box 1690, St. Paul, MN 55111.

MISSOURI

Kansas City (Airport)

Kansas City International Airport, P.O. Box 20085, Kansas City, MO 64195.

St. Louis International Airport

P.O. Box 858, St. Charles, MO 63301.

NEW JERSEY

*Hoboken

209 River Street, Hoboken, NJ 07030.

McGuire AFB

Building 1706, Passenger Terminal, Customs Area, P.O. Box 16073, McGuire Air Force Base, NJ 08641.

NEW YORK

Albany

80 Wolf Road, Suite 503, Albany, NY 12205.

Buffalo

Federal Building, Room 1113, 111 West Huron Street, Buffalo, NY 14202.

New York

26 Federal Plaza, Room 1747, New York, NY 10007.

*Jamaica

John F. Kennedy International Airport, Plant Inspection Station, Cargo Building 80, Jamaica, NY 11430.
International Arrivals Building, Room 2315, John F. Kennedy International Airport.

Rouses Point

St. John's Highway Border Station, Room 118, Route 9B, P.O. Box 278, Rouses Point, NY 12979.

NORTH CAROLINA

Morehead City

Room 216, 113 Arendell, P.O. Box 272, Morehead City, NC 28557.

Wilmington

Rural Route 6, Box 53D, Wilmington, NC 28405.

OHIO

Cleveland

Federal Building, Room 1749, 1240 East 9th Street, Cleveland, OH 44199.

OREGON

Astoria

Port Docks, P.O. Box 354, Astoria, OR 97103.

Coos Bay

U.S. Postal Services Building, 235 West Anderson Street, P.O. Box 454, Coos Bay, OR 97420.

Portland

Federal Building, Room 657, 511 NW. Broadway, Portland, OR 97209.

PENNSYLVANIA

Philadelphia

Custom House, Room 1004, 2nd and Chestnut Streets, Philadelphia, PA 19106.

PUERTO RICO

Mayaguez

P.O. Box 3269, Marina Station, Mayaguez, PR 00708.

Ponce

P.O. Box 68, Ponce Playa Station, Ponce, PR 00731.

Hato Rey

Federal Office Building & U.S. Court House, Room 206, Hato Rey, PR 00918.

Roosevelt Roads

Roosevelt Roads Naval Station, P.O. Box 3008, Air Operations, FPO Miami, FL 34051.

**San Juan*

Isla Verde International Airport, Foreign Arrivals Wing, San Juan, PR 00904.

RHODE ISLAND

Warwick

48 Quaker Lane, West Warwick, RI 02893.

SOUTH CAROLINA

Charleston

Room 513 Federal Building, P.O. Box 941, Charleston, SC 29402.

TENNESSEE

Memphis

Room 801 Mid Memphis Tower, 1407 Union Avenue, Memphis, TN 38104.

TEXAS

**Brownsville*

Border Services Building, Room 224 (Gateway Bridge), East Elizabeth and International Boulevard, P.O. Box 306, Brownsville, TX 78520.

Corpus Christi

807 Petroleum Tower, 811 Carancahua Street, P.O. Box 245, Corpus Christi, TX 78403.

Dallas-Fort Worth (Airport)

Dallas-Fort Worth Airport, P.O. Box 61063, Dallas-Ft. Worth Airport, TX 75261.

Del Rio

U.S. Border Inspection Station, Room 135, International Bridge, P.O. Box 1227, Del Rio, TX 78840.

Eagle Pass

U.S. Border Station, 160 Garrison Street, P.O. Box P, Eagle Pass, TX 78852.

**El Paso*

Cordova Border Station, Room 172–A, 3600 East Paisano, El Paso, TX 79905.

Galveston

Room 402, U.S. Post Office Building, 601 Rosenberg Street, P.O. Box 266, Galveston, TX 77553.

Hidalgo

U.S. Border Station, Bridge Street, P.O. Drawer R, Hidalgo, TX 78557.

Houston

U.S. Appraisers Stores Building, Room 210 7300 Wingate Street, Houston, TX 77011.

**Laredo*

La Posada Motel, Rooms L8–13, 1000 Zaragoza Street, P.O. Box 277, Laredo, TX 78040.

Juarez-Lincoln International Bridge, 101 Santa Ursela, Laredo, TX 78040.

U.S. International Bridge No. 1, 100 Convent Avenue, Laredo, TX 78040.

Port Arthur

Federal Building, Room 201, Fifth Street & Austin Avenue, P.O. Box 1227, Port Arthur, TX 77640.

Presidio

U.S. Border Station, International Bridge, P.O. Box 1001, Presidio, TX 79845.

Progreso

Custom House Building, Progreso International Bridge, Progreso, TX 78579.

Roma

International Bridge, P.O. Box 185, Roma, TX 78584.

San Antonio

International Satellite, Room 15–S, 9700 Airport Boulevard, San Antonio, TX 78216.

VIRGIN ISLANDS OF THE UNITED STATES

St. Thomas

Room 227, Federal Building, P.O. Box 8119, St. Thomas, Virgin Islands of the U.S. 00801.

(Airport)

Harry S. Truman Airport, Main Terminal Building, St. Thomas, Virgin Islands of the U.S. 00801.

St. Croix

Drawer 1548, Kingshill, St. Croix, Virgin Islands of the U.S. 00850.

VIRGINIA

Chantilly (Airport)

Dulles International Airport, International Arrivals Area, P.O. Box 17134, Washington, DC 20041.

Newport News

P.O. Box 942, Newport News, VA 23607.

Norfolk

Federal Building, Room 311, 200 Granby Mall, Norfolk, VA 23510.

WASHINGTON

Blaine

Custom House, Room 216, P.O. Drawer C, Blaine, WA 98230.

McChord AFB

MAC Terminal, P.O. Box 4116, McChord Air Force Base, Tacoma, WA 98438.

**Seattle*

Federal Office Building, Room 9014, 909 First Avenue, Seattle, WA 98174.

(Airport)

Seattle-Tacoma International Airport, Seattle, WA 98158.

WISCONSIN

Milwaukee

International Arrivals Terminal, General Mitchell Field, 5300 South Howell Avenue, Milwaukee, WI 53207.

The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Done at Washington, D.C., on 6th day of May 1980.

Thomas G. Darling,

Associate Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

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federal register

Tuesday
May 13, 1980

Part III

Advisory Council on Historic Preservation

Progress Report on Agency Implementing Procedures Under the National Historic Preservation Act and 36 CFR Part 800

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Progress Report on Agency Implementing Procedures Under the National Historic Preservation Act and 36 CFR Part 800

AGENCY: Advisory Council on Historic Preservation.

ACTION: Information Only: Publication of Progress Report on Agency Implementing Procedures Under the National Historic Preservation Act and 36 CFR Part 800.

SUMMARY: In response to President Carter's memorandum of July 12, 1978, titled "Environmental Quality and Water Resources Management," the Advisory Council on Historic Preservation (Council) issued regulations implementing the procedural provisions of the National Historic Preservation Act (Act) (16 U.S.C. Sec. 470 et seq.). The regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), were published in the **Federal Register** January 30, 1979, (44 FR 6068) and became effective March 1, 1979.

The President's memorandum requires each agency of the Federal government with consultative responsibilities under Section 106 of the Act to develop and publish procedures implementing the Council's regulations within three months of the March 1, 1979, effective date. Section 800.10 of the regulations addresses this Presidential directive and requires affected agencies to develop such procedures in consultation with the Council. Additionally, prior to agency adoption of final procedures, the procedures must be reviewed for consistency with the Act and the regulations, and approved by the Chairman of the Council. The purpose of this progress report is to provide information to interested persons concerning the present status of agencies in complying with this Presidential directive. The progress report also attempts to establish generally when publication of proposed rules can be expected for public review and comment.

FOR FURTHER INFORMATION CONTACT: Peter H. Smith, Chief, Division of Federal Program Review at 202–254–3886; Al Clark, Senior Water Resources Specialist at 202–254–3886.

Progress Report on Agency Implementing Procedures Under the National Historic Preservation Act and 36 CFR Part 800.

At the direction of President Carter (memorandum titled "Environmental Quality and Water Resources Management" on July 12, 1978), the Council promulgated regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. Sec. 470 et seq.). These regulations were published in the **Federal Register** on January 30, 1979, and subsequently, in Volume 36 of the Code of Federal Regulations, Part 800. The regulations codified at 36 CFR Part 800 became effective March 1, 1979.

The President directed Federal agencies with consultative responsibilities under the Act to publish procedures implementing the Council's regulations. Section 800.10 of the regulations address the requirements of the Presidential directive. Each agency must develop procedures to implement the regulations in consultation with the Council's staff and publish the proposed procedures in the **Federal Register** for public review and comment. The Council will review the public record and the revised procedures to insure that the procedures are consistent with the Act and the regulations. Once the agency and the Council staff agree on the final draft of the procedures, the procedures will be referred to the Chairman for approval. The Chairman will have 60 days in which to approve or disapprove the procedures. Once approved by the Chairman, the agency must then formally adopt and publish the final procedures in the **Federal Register.**

The Council has prepared guidance to assist agencies in meeting their responsibilities under the Presidential directive and the Council's regulations. The *Guidelines for Implementing 36 CFR Part 800, "Protection of Historic and Cultural Properties"* provide general guidance for agencies in developing such procedures. Agencies must provide, in their procedures more detailed and specific direction to its personnel in implementing the provisions of the Act and the regulations. Agency procedures should be tailored to its individual authorities and decisionmaking processes.

The Council has written affected agencies twice in the past year. The first letter, dated June 7, 1979, informed agencies of their responsibility to develop procedures and asked each agency to name a lead individual responsible for the development of the required procedures. The Council at that time also provided the agencies with copies of its *Guidelines*. Another formal request was sent to the agencies on December 10, 1979, to ascertain the agencies' progress in meeting the President's directive. This progress report is based upon responses from the agencies, both formal and informal, and on information made available to the Council staff through its consultation role. The Council intends to publish similar reports quarterly until all affected agencies have adopted final procedures.

No agency met the Presidentially established deadline and now, one year after the Council's regulations became effective, only one agency has final rules which have been approved by the Chairman, adopted by the agency and published in the **Federal Register.** The Council wishes to emphasize that its regulations are in effect and bind all agencies of the Federal government whether or not an agency has addressed the requirements of the President's Memorandum and Section 800.10 of the Council's regulations.

The Council encourages the concerned public to review and comment on agency procedures as they are published in the **Federal Register.** The public plays a significant role in ensuring that the reforms required by President Carter are implemented fully. The agencies preparing implementing procedures are listed under the following categories:

Category Number 1: Final Procedures Approved, Adopted and Published

This category includes agencies whose final procedures have been approved by the Chairman of the Advisory Council on Historic Preservation, adopted by the agency and published in the **Federal Register.**

Department of Agriculture, 44 FR 66179 (November 19, 1979), CFR Part 3100.

Category Number 2: Proposed Procedures Published

This cateogry includes agencies whose proposed procedures have been published in the **Federal Register.** Publication of final procedures is anticipated during the summer of 1980.

Agriculture subagencies: Forest Service, 44 FR 54268 (September 18, 1979).

Defense subagencies: Army Corps of Engineers Regulatory Program, 45 FR 22112 (April 3, 1980).

Department of the Interior, 44 FR 45417 (August 2, 1979).

Interior subagencies: Fish and Wildlife Service, 44 FR 61231 (October 24, 1979).

Category Number 3: Consultation in Progress

This category includes agencies which are making good progress in developing proposed procedures and who are actively involved in consultation with the Council. Publication of proposed procedures is anticipated during the spring of 1980.

Agriculture subagencies: Rural Electrificiation Administration, Soil Conservation Service.
Department of Housing and Urban Development.
Interior subagencies: Bureau of Indian Affairs, Water and Power Research Service (WAPRS),[1] Heritage Conservation and Recreation Service.[2]
International Boundary and Water Commission.
Department of Justice.
Department of the Treasury.[1]
Water Resources Council.

Category Number 4: Limited Progress

This category includes those agencies that are making limited progress in developing implementing procedures and who have consulted the Council. Procedures are generally in the early developmental stages. Publication of proposed procedures is expected to be delayed beyond the summer of 1980.

Agriculture subagencies: Farmers Home Administration.
Department of Commerce.
Defense subagencies: Army Corps of Engineers Civil Works Program, Air Force.
Department of Energy.
Environmental Protection Agency (EPA).
Federal Emergency Management Agency (FEMA) subagencies: Federal Insurance Administration.
Federal Energy Regulatory Commission.
General Services Administration.
Interior subagencies: Geological Survey, National Park Service, Bureau of Land Management.
Transportation subagencies: Federal Aviation Administration.
Tennessee Valley Authority.

Category Number 5: No Demonstrable Progress

This category includes those agencies that have not indicated any progress in developing the required procedures.

Agriculture subagencies: Agricultural Stabilization and Conservation Service, Animal and Plant Health Inspection Service, Science and Education Administration.
Commerce subagencies: Economic Development Administration, Maritime Administration, National Oceanic and Atmospheric Administration.
Department of Defense.
Defense subagencies: Army (Military Construction), Navy, Defense Logistics Agency.
Department of Education.[3]
EPA subagencies: Office of Drinking Water, Office of Enforcement, Office of Environmental Review, Office of Solid Waste Management, Office of Water Planning and Standards, Office of Water Programs Operations.
Federal Emergency Management Agency (FEMA).
FEMA subagencies: Office of Disaster Response and Recovery, Office of Plans and Preparedness.
Department of Health and Human Services.[4]
Interior subagencies; Bureau of Mines, Office of Surface Mining.
Nuclear Regulatory Commission.
Small Business Administration.
Department of Transportation.
Transportation subagencies: Federal Highway Administration, Saint Lawrence Seaway Development Corporation, U.S. Coast Guard, Federal Railroad Administration, Urban Mass Transit Administration.
Veterans Administration.

Category Number 6: Other Regulations Contain Adequate Procedures

This category includes those agencies that have incorporated the necessary procedures within other regulations. Agencies in this category generally have very limited involvement in activities which have the potential to affect properties listed or eligible for listing in the National Register of Historic Places. The following prodedures have been determined by the Chairman to adequately meet the requirements set forth by Section 800.10 of the Council's regulations.

National Aeronautics and Space Administration, 44 FR 44485 (July 30, 1979), 14 CFR Part 1216.

Category Number 7: No Responsibility

The Chairman has reviewed the authorities and information supplied by the following agencies and concurs that the listed agencies have no consultative responsibilities under the Act within the contextual meaning of the President's memorandum. Therefore, Agencies in this category have no responsibility to issue procedures as required by Section 800.10 of the Council's regulations.

Export-Import Bank of the United States.
Interior subagencies: Office of Water Research and Technology.
Marine Mammal Commission.

Dated: May 8, 1980.

John M. Fowler,

Acting Executive Director.

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BILLING CODE 4310-10-M

[1] Both the WAPRS (43 FR 46538; October 10, 1978) and the Treasury Department (Directives Manual, Chapter TD 75) issued procedures to implement the Council's 1974 "Procedures" just prior to the Council's issuance of its new regulations last March. Both sets of procedures meet many of the requirements established by the President's memorandum. Both sets of procedures, however, require updating to fully meet the requirements established by the Presidential Memorandum and to reflect the changes adopted by the Council in its new regulations.

[2] HCRS issued internal guidance implementing the Council's regulations for the Land and Water Conservation Fund on February 16, 1980.

[3] The Department of Education has only just come into existence. The Council had some contact with the old Department of Health, Education, and Welfare prior to the reorganization, but no progress was made toward implementing these requirements.

[4] The Department of Health and Human Services has only just come into existence. The Council had some contact with the old Department of Health, Education, and Welfare prior to the reorganization, but no progress was made toward implementing these requirements.

federal register

Tuesday
May 13, 1980

Part IV

Department of Energy

Conservation and Solar Energy Office

Urban Wastes Demonstration Facilities Guarantee Program

DEPARTMENT OF ENERGY

Office of Conservation and Solar Energy

10 CFR Part 798

Urban Wastes Demonstration Facilities Guarantee Program

AGENCY: Conservation and Solar Energy, DOE.

ACTION: Final rule.

SUMMARY: On July 18, 1979, the Department of Energy (DOE) issued a notice of proposed rulemaking and public hearings (44 FR 42094) in which DOE gave notice of a proposal to establish regulations providing for the implementation of the Urban Wastes Demonstration Facilities Guarantee Program. Section 207(b) of the Department of Energy Act of 1978—Civilian Applications (Pub. L. 95–238), which adds Section 19 to the Federal Nonnuclear Energy Research and Development Act of 1974 (Pub. L. 93–577), establishes the authority of the Secretary of Energy to implement a loan guarantee program to assist in the financing of facilities demonstrating the conversion of urban (municipal) wastes into synthetic fuels, and the generation of desirable forms of energy including synthetic fuels, from urban wastes, in an environmentally acceptable manner. These regulations establish the procedures and requirements for filing applications for loan guarantees to support urban waste facilities, and specify the procedures for evaluating and selecting applicants to receive loan guarantee support. These regulations also detail necessary terms and conditions of guarantee agreements.

EFFECTIVE DATE: June 12, 1980.

FOR FURTHER INFORMATION CONTACT:

Donald K. Walter, Chief, Community Technology Systems Branch, Community Systems Division, Office of Buildings and Community Systems, Assistant Secretary for Conservation and Solar Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252–9397.

Lawrence R. Oliver, Office of the General Counsel, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252–9397.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Comments and Responses on the Proposed Regulations.
A. Suggestions Accepted.
B. Suggestions Not Accepted.
III. Changes Initiated by DOE.
IV. Additional Information.

I. Background

Title II, Section 207(b) of the Department of Energy Act of 1978—Civilian Applications (Pub. L. 95–238) amended the Federal Nonnuclear Energy Research and Development Act of 1974 (Pub. L. 93–577) by adding Section 19. This Section establishes the authority of the Secretary of Energy to implement a demonstration program to produce alternative fuels from coal, oil shale, biomass, municipal and industrial wastes, and other domestic resources, and to provide financial assistance in the form of loan guarantees for the financing of demonstration facilities. On July 18, 1979, proposed regulations were published in the **Federal Register** (44 FR 42094) to implement the authority granted to DOE under subsection 19(y) of the Act to issue loan guarantees for demonstration facilities producing desirable forms of energy, including synthetic fuels, from municipal (urban) waste.

When DOE's proposed regulations were announced, public hearings were scheduled to be held in New Orleans, Louisiana, on August 9, 1979, in San Francisco, California, on August 14, 1979, and in Washington, D.C., on August 21, 1979. Interested parties desiring to speak at those meetings were requested to inform DOE at least 10 days before a given hearing. DOE received only four requests to speak at these meetings, and because of limited public interest, the New Orleans public hearing was cancelled. The four parties that expressed an interest in speaking at the public hearings presented testimony in Washington, D.C.

In addition, DOE received written comments from 22 interested parties representing Federal and local government, and private sector interests. The next section contains summaries of the substantive comments received, both oral and written, to response to these comments, when appropriate, and an indication of changes made to the proposed rule as a result of those comments.

II. Comments and Responses on the Proposed Regulations

A. Suggestions Accepted

DOE made several changes to the regulations initially proposed as a result of comments received. They are presented here according to the order in which they appear in the regulations.

One party suggested that the regulations specify that the Secretary, in evaluating applications, will consider the fact that one of the purposes of a demonstration facility is the generation of data necessary for evaluation of environmental impacts, energy efficiencies, the net amount of fossil fuels displaced, the technical probability of success and advances in the state of the art, and other factors affecting both the economic viability of the technology, its economic desirability (by displacement of fossil fuels), and its environmental desirability considering both the advantages of generating a clean burning fuel, and the elimination of potential contaminants. This suggestion was accepted and the Objectives (§ 798.2) changed accordingly.

Other parties recommended specifying steam as a desirable form of energy, and distinguishing source separated recyclables from materials recovered from mixed waste or the combusted residue of an energy recovery system. DOE incorporated these suggestions and revised the definition of desirable forms of energy (§ 798.4(h)).

Several parties questioned either the definition of construction and startup costs, or total costs, or cited the potential for confusion in allocating project costs to these cost categories. Several changes have resulted from these comments. Total costs is now defined (§ 798.4(x)) as the sum of construction and startup costs, and related costs. Both of these terms are defined on a point in time basis. Construction and startup costs will include costs from the start of final engineering design to the point at which the equipment is ready to process the first load of wastes. Related costs is a new term that includes the preliminary planning phase at the front of a project, and introduces the concept of a trial period at the end of a project (§ 798.4(s)). The trial period will commence when the equipment is ready to process wastes, and may extend for a period of up to two years, depending upon an agreement between the borrower and DOE. In addition, project costs (§ 798.20) have been grouped by probable cost category. Estimated and actual project costs will be allocated to the appropriate cost category (i.e. construction and startup costs, or related costs) according to the point in time at which they are incurred, and the purpose for which they are incurred.

Another party suggested that every effort be made to issue solicitations for applications through the information vehicles of public interest groups representing local governments since, in many cases, local governments simply

do not have access or do not have sufficient time to monitor the Commerce Business Daily or the Federal Register. A change has been included in these regulations (§ 798.40) to indicate that a summary of the solicitations would be published in these two publications. In addition, DOE will directly announce the solicitation to interested individuals, associations, and other private and public entities to the extent feasible. One party recommended that all potential applicants be notified of any presubmission conferences. Accordingly, a change has been made in the same Section to indicate that, in addition to other published notices, DOE will give direct notice to all parties requesting a copy of the solicitation.

Several comments were received regarding the criteria by which applications will be evaluated. In one case, a question was raised as to whether the list was to be construed as a reflection of priorities. DOE emphasizes that no priority ranking is intended, and a statement to clarify this has been added (§ 798.41). In addition, all future solicitations for applications will include further detail of the evaluation criteria, a provision that was not previously required by the regulations. One party suggested greater consideration be given for commercialization of recycling (source operation) facilities, which conserve energy. A change was made to one of the criteria to acknowledge and highlight the net energy benefits that might be derived from recycling waste materials. A change was also made to indicate that all applications for municipal (urban) waste loan guarantees received pursuant to a specific solicitation would be reviewed by the same review panel, to the extent possible, regardless of dollar amount (§ 798.42).

Several parties suggested that the proposed regulations required unrealistic and costly detail at the initial stage, and that specification of a technology at such an early stage is inadvisable. DOE emphasizes that the purpose of these information requirements is not to burden the applicant with undue work and expense. Although the regulations do not specify a point in the project at which the application should be made, it is hoped that a project will be well along in the planning and budget estimate stages at the time of application. While projects in earlier stages of development would be eligible for consideration, the rudimentary nature of information available at an early stage may hinder evaluation and selection of a project since complete project and risk analysis would be difficult. Due to the fact that the projects will be unfamiliar, and the risks probably higher than the financial community will accept, DOE will need extensive information in order to determine whether the project will be within its acceptable risk range. As there is only a limited guarantee authorization, DOE will be looking to support only those projects that are considered to be feasible. DOE is expecting to request the same types of information that any prudent lender would need or want in order to fully evaluate the project. Changes were made in § 798.43 to indicate that applications would be accepted regardless of the stage of project planning. In addition, certain information may now be required after the initial evaluation stage (§ 798.45). Changes have also been made to indicate that applications can be submitted even if all requested supporting information is not available at the time of submission.

In order to further assist the applicant in preparing information, and expediting submission of an application, DOE is contemplating preparing an application handbook for this program. This handbook will provide greater detail on the exact types and extent of information that is desired, as well as further describe the program, guarantee requirements and conditions, and sources of information regarding compliance with other laws, statutes, and regulations.

Of particular concern to one party was that the proposed regulations required special disclosure of syndicated private placements concerning the lender. The party recommended deleting the special disclosure requirements for private placements. DOE emphasizes that the intent is not to make public the names of actual investors. DOE recognizes that these types of information requirements will vary on a case by case basis. Accordingly § 798.45 has been revised to reflect that the Secretary will make the request with regard to individual applications where such information has been determined to be relevant to evaluation of the application.

It was also noted that the applicant was required to submit a plan for small business participation, but that the regulations did not describe in sufficient detail what an acceptable plan would be. DOE believes that general guidelines for "acceptable" small business or disadvantaged business participation, applicable to any and all projects, would be difficult to develop, given the expected diversity in size, cost, technology, location, etc., among proposed projects. Use of the language "to the optimum extent feasible" allows the Secretary and the applicant flexibility in working out a mutually acceptable plan for small business concerns and disadvantaged business concerns to participate.

Several comments were received requesting mandatory review of applications by local governments. These comments were subsumed by a request from the Office of Management and Budget (OMB) that provisions of OMB Circular A-95, Revised, be included. DOE included the OMB requested provisions in § 798.26.

Finally, a comment was received suggesting a provision providing for a reduction in the amount guaranteed as a part of the obligation is paid off. (For example, on a project with a $100 million guarantee, the guarantee only needs to be for $25 million once $75 million of the guaranteed obligation has been repaid). Accordingly, a change was made in § 798.2 to emphasize that the guarantee is to pay the principal *balance* of, and accrued interest on the loan. Any payment made on the loan will reduce the amount outstanding, and, therefore, the guaranteed amount.

B. Suggestions Not Accepted

DOE received suggestions for a number of changes in the regulations which after evaluation were determined not to clarify or improve the regulations and, therefore, were not incorporated in this final rule. These suggestions, and reasons for not incorporating them, include the following.

It was suggested that DOE support projects by providing the guarantee of low interest payments during the first several years of a project. The legislative authority for this program does not provide a mechanism to guarantee low interest payments to subsidize the technology. The authority is to guarantee the principal and interest of obligations for financing new or commercially unproven, but technically and economically feasible projects.

Another party commented that, given the commercial nature of waste-to-energy projects, the responsibility for developing projects lies within the private sector. The party's concern was that, where private initiatives to organize such projects on a commercially viable basis are already underway, the existance of loan guarantees will, in fact, impede private investment. It is not the intent of DOE to in any manner impede private development of, or investment in waste-to-energy projects; rather, the desire is

to encourage development and investment without Federal assistance. The purpose of this program is to encourage demonstration of new technology, which is technically feasible but not demonstrated at this scale. Such innovative technology may not always be pioneered by a well-financed company or one which can secure financing for high-risk projects solely on the basis of its own credit-worthiness. The loan guarantee program will provide a mechanism whereby the viability of various new technologies and processes can be demonstrated by a project which would not have been privately financed under reasonable terms and conditions without the security of the guarantee.

One party, citing that past experience has shown that resource recovery is a risky undertaking regardless of the technology used, recommends that "demonstration" be redefined in the regulations to cover all resource recovery technologies, including proven technologies. DOE believes that the intent of Congress in authorizing aid for "demonstration" facilities was to provide a mechanism for the financing of new or unproven technologies or processes, or new uses of these. However, it could be possible to obtain this assistance for a currently known and proven technology if it is being used for the first time (new use) in urban wastes reprocessing.

Several comments were received regarding changes to the definition of municipal waste (§ 798.4(o)). One suggestion was to note separately, recyclable materials in order to distinguish these materials from trash and garbage. The change would not define urban wastes more precisely. In fact, by making the change, a distinction might be made so as to remove recyclable materials from being even a subset or component of trash, garbage, or other wastes.

A party suggested that these regulations give municipal waste the same basic definition as "solid wastes" in the Resource Conservation and Recovery Act of 1976 (RCRA), and then add any needed conditions or exclusions. The Act authorizing this program mandates the inclusion of "* * * municipal or industrial waste, sewage, sludge, or other municipal organic waste" (Sec. 19(y)(1)), some of which is not included in the RCRA definition of solid waste.

One party, while supporting the establishment of procedures for deviation from these regulations, requested that the regulations more clearly describe in § 798.7 those conditions under which deviations will be made. The deviation procedures permit the Secretary to exercise some discretion on a case-by-case basis with respect to certain requirements and conditions of the loan guarantee or the demonstration which may be established by the regulations, rather than by law. To set forth all the conditions under which deviations might be made from stated requirements would be an impossible task and would, as a result, withhold from the Secretary needed flexibility in administering this program which the nature of its goals and objectives warrant and require.

One party suggested that a prudent provision in a guarantee agreement would be that a maximum initial loan of not more than $5,000,000 be authorized for any demonstration facility until the supported technology can conclusively prove energy gain and economic viability. The suggested change is not acceptable. Construction and startup costs will be incurred prior to the time at which an energy productivity balance could be established. Such costs may exceed $5 million for any project of a commercially viable size.

Another party suggested the regulations state that applications be consistent with any State or regional solid waste management plan approved pursuant to RCRA, since in some areas there are a number of conflicting regional plans. This change is not necessary because applications must be reviewed by EPA, and State and local governments to insure compliance, and acceptability of plans.

One party commented that many of the requirements regarding § 798.50 are outside even the most expansive interpretation of the role of the permanent investor in the area of project finance; the representations required are extremely subjective in nature and would require close familiarity with operating situations of which the lender may have no knowledge. Some of the requirements, while appropriate and necessary, would be best met by an appointed professional trustee.

While it is the servicer, not the lender, that is responsible for these provisions, as these regulations are written, it seems unlikely that a lender would not be involved in, or require, some type of monitoring process on a project of this sort in order to protect its own interest. DOE will require the same type of project progress monitoring that any prudent lender, or other party with a vested interest, would require in order to protect its interests. DOE believes that the servicing provisions are essential, and are not onerous. It is possible that a separate servicer, not the lender, may be involved during the construction and startup phase of the project. Then, when normal operation ensues, another servicer, such as the lender's agent or the bondholders' trustee, will manage the servicing requirements. The point is that the lender and the servicer may not necessarily be the same party.

A party also questioned the requirements of approval from the Secretary prior to any (each) loan disbursement as a cumbersome and time consuming procedure which could produce major and unwarranted delays in project progress and accomplishment. The comment is not acceptable. It is not unusual for a lender, or other party sharing the risk of a project, to have some measure of control in the disbursement of funds. This is to assure that certain milestones and schedules are met. The approval by the Secretary of a disbursement can be accomplished in a timely manner, and is not considered to be overly burdersome. It is anticipated that the Secretary will assign the responsibility to an appropriate DOE official who is closely involved with the specific project requesting disbursement.

DOE received a number of comments relating to patent provisions and proprietary rights. Representative comments received include: "Patent provisions * * * should permit greater flexibility in drafting guarantee agreements"; and "The provision is overly broad".

The provisions regarding patents were included in the regulation because of the requirements of subsections 19(g)(4) and 19(r) of the Act. In subsection 19(r) of the Act, Congress mandated that inventions made or conceived in the course of, or under a guarantee authorized by, this Section of the Act shall be subject to the title and waiver provisions and conditions of Section 9 of the Act. DOE has implemented both the title and waiver provisions expressed in the statute. Adverse public comment focused only on the title requirement. The Secretary is empowered by Section 9 of the Act to waive the Government's rights with respect to patents (see 41 CFR 9–9.109–6). It is DOE's intention to utilize the waiver requirement when appropriate to the situation. DOE prefers to deal with such issues on a case-by-case manner, and not in a generic manner suggested by the comments. Applicants are urged to identify situations where waivers for patents and technical data are requested. The occasions for such identification to be made would be at the time an application for a loan guarantee is filed,

and when negotiating a guarantee agreement between DOE and an applicant. It is DOE's position that flexibility on these issues, within statutory limitations, exists in the regulation.

In subsection 19(g) of the Act, which discusses default situations, Congress mandated that patents, including any inventions for which a waiver is made, will be treated as a project asset, and that all patents, technology, and other proprietary rights which are necessary for project completion and operation be available to DOE if a default occurs. These provisions were included in the regulation as a guarantee requirement. The protection of interest of DOE, the borrower, and other involved parties with regard to patents, technology, and inventions will be detailed in the terms and conditions of the guarantee agreement.

Another question addressed the issue of termination of the guarantee by the Secretary as addressed in § 798.22(n) of the proposed rule. This provision has been taken from Section 19(c)(9) of the Act and does not provide, in actuality, for the unilateral termination of the guarantee. Instead it establishes an option on the part of the Secretary to request that the project be refinanced without a guarantee if the Secretary determines certain objectives have been met after a 10 year period. In the event that the Secretary makes such a request, but the project is not refinanced, the guarantee is not terminated, but the Secretary can increase the guarantee fee by one percent per annum. This subsection of the regulation was slightly changed for further clarification.

Another party questioned the necessity of obtaining DOE approval before undertaking work in connection with the project for another Federal agency. DOE believes that responsible administrative oversight mandates constant monitoring of the participants' project involvement to ensure that there is no duplicative and wasteful overlap with programs funded and administered by other agencies. It is also necessary to ensure that the proposed effort does not interfere with the information being obtained from the demonstration.

Other suggestions were received that could not be included because of specific mandates of the authorizing Act, or other law. These are not presented here.

III. Changes Initiated by DOE

DOE has introduced minor changes to these regulations to assure consistency with overall DOE financial policy, and to clarify and simplify understanding of other provisions. None of these changes are considered to be significant or pertinent, and therefore do not warrant discussion here.

IV. Additional Information

In accordance with the DOE Order 2030.1 (44 FR 1040, January 3, 1979), which implemented Executive Order 12044, "Improving Government Regulations," the Assistant Secretary for Conservation and Solar Energy (ASCS) has determined that these regulations are significant since their purpose is related to the President's goal of encouraging the production and use of alternative fuels. Demonstration facilities would divert urban wastes from landfills and could reduce the volume for ultimate disposal by up to 95%, thus reducing ground, water, and air pollution. DOE has determined that these regulations will not require the preparation of an economic regulatory analysis, pursuant to DOE Order 2030.1, since implementation of this program is not likely to result in major economic impacts as this term is defined in the DOE Order.

DOE is also carrying out obligations pursuant to the requirements of the National Environmental Policy Act of 1969, as amended, (NEPA) (42 U.S.C. 4321 et seq.). In September 1977, the Energy Research and Development Administration (ERDA) issued a final Environmental Impact Statement (EIS) entitled: "Alternative Fuels Demonstration Program." Public notice of the availability of that document was published in the **Federal Register** on January 11, 1978 (43 FR 1637). (Copies are available from National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161, or for public review at the DOE Library, 20 Massachusetts Ave. NW., Washington, D.C.) that EIS concluded that all environmental impacts are not currently known for various processes associated with demonstration of synthetic fuels production from urban waste, developed a strategy to assess and develop controls for potential impacts, and recommended appropriate environmental analyses for specific projects.

Subsequent to the publication of that Final EIS, Congress enacted Pub. L. 95–238 which provided for loan guarantees for alternative fuel demonstration facilities. In order to ensure that potential enviromental impacts specifically related to urban waste were considered, and to detemine if a supplement to the programmatic EIS was needed for the urban waste program, a subsequent programmatic Environmental Assessment (EA) was prepared, and notice of the negative determination regarding the necessity for an EIS, was published in the **Federal Register** on July 18, 1979 (44 FR 42110). The notice solicited comments on the EA and DOE's negative determination. No material comments were received during the public comment period (or to date). Accordingly, the negative determination was finalized. Moreover, the program regulations require that an appropriate environmental evaluation must be made of each project to ensure compliance with applicable environmental laws.

On November 27, 1979, Pub. L. 96–126, entitled "Department of the Interior and Related Agencies Appropriations for Fiscal Year 1980," was enacted. Title II of that law provides funds for DOE to cover loan guarantees for the construction of alternative fuels production facilities. In addition, Title II contained language which eliminated the need for certain procedures required by the basic enabling legislation. That Act is deemed to satisfy the requirements for Congressional action pursuant to Sections 7(c) and 19 of the Act with respect to any loan guarantee for which funds appropriated by that Act are utilized or obligated. Thus, based upon Congressional action, DOE deems it appropriate to create new language in the regulations to reconcile the requirements of Pub. L. 95–238 and Pub. L. 96–126. DOE has inserted a new provision at § 798.8 for this purpose.

Issued in Washington, D.C., on May 2, 1980.

Maxine Savitz,

Deputy Assistant Secretary for Conservation, Conservation and Solar Energy.

Title 10 is amended by adding part 798 to read as follows:

PART 798—URBAN WASTES DEMONSTRATION FACILITIES GUARANTEE PROGRAM

Subpart A—General Provisions

Sec.

798.1 Purpose.
798.2 Objectives.
798.3 Full faith and credit.
798.4 Definitions.
798.5 Program management.
798.6 Citizenship requirements.
798.7 Deviations.
798.8 FY 1980 appropriation modification.
798.9 Nondiscrimination in projects receiving Federal assistance.
798.10 [Reserved]

Subpart B—Demonstration Project Provisions

798.20 Project costs.
798.21 Demonstration facility requirements and conditions.
798.22 Guarantee requirements and conditions.

Sec.

798.23 Tax status of guaranteed obligations.
798.24 Guarantee fees.
798.25 Cost overruns.
798.26 Information for Governors and others.
798.27 Principal and interest assistance.
798.28 Federal Financing Bank.
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Authority: Sec. 19 of the Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93–577, (42 U.S.C. 5918, 5919); as amended by Pub. L. 95–238, (92 Stat. 61); and sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

Subpart A—General Provisions

§ 798.1 Purpose.

The purpose of these regulations is to set forth policies and procedures under which the Department of Energy (DOE) will issue loan guarantees backed by the full faith and credit of the United States, for financing the construction, startup, and related costs for facilities demonstrating the conversion of urban wastes into synthetic fuels, and the generation of desirable forms of energy, including synthetic fuels, from urban wastes in an environmentally acceptable manner.

§ 798.2 Objectives.

The objectives of the Urban Wastes Demonstration Facilities Guarantee Program are:

(a) To assure Federal support to foster a demonstration program to generate desirable forms of energy, including synthetic fuels, from urban wastes;

(b) To guarantee the payment of the outstanding principal balance of, and accrued interest on, financial obligations made for demonstrating the conversion of municipal waste into synthetic fuels, and for the generation of desirable forms of energy from urban wastes, in an environmentally acceptable manner;

(c) To generate data necessary for evaluation of environmental impacts, energy efficiencies, technical advances in the state of the art, social costs and other factors affecting the economic viability of the technology, its economic desirability by displacement of fossil fuels, and its environmental desirability considering both the advantages of generating a clean burning fuel, and the elimination of potential contaminants; and

(d) To demonstrate the commercial viability of the technology, which will insure that financing will be available in the future for urban wastes conversion facilities without the need for Federal guarantees.

§ 798.3 Full faith and credit.

The full faith and credit of the United States is pledged to the payment of all guarantees issued under these regulations with respect to principal and interest. The guarantee agreement will be conclusive evidence that the guarantee, and the underlying loan, comply with the provisions of the Act and these regulations. A guarantee will be valid and incontestable by the government, except for fraud or material misrepresentation by the holder.

§ 798.4 Definitions.

(a) "Act" means the Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93–577, as amended by Title II, Section 207 of Pub. L. 95–238.

(b) "Applicant" means any individual, firm, corporation, company, partnership, association, society, trust, joint venture, joint stock company, municipality, or other non-Federal entity that has the authority to enter into a loan agreement for which a guarantee under these regulations is being sought.

(c) "Borrower" means any applicant who has had an application approved by the Secretary, and who receives the proceeds from a loan that is guaranteed in accordance with these regulations.

(d) "Commitment to guarantee" means a document issued by the Secretary that sets forth, specifically or by reference, the terms and conditions (e.g., securing other funds, completing environmental studies, obtaining permits) under which the Secretary will subsequently issue a loan guarantee.

(e) "Construction and startup costs" means all reasonable project costs, computed in accordance with generally accepted accounting principles and practices, consistently applied, or that system required by law, that would be incurred from the start of final engineering design to the point of initial production.

(f) "Default" means the failure of a borrower to make payments of principal and interest on a loan guaranteed under these regulations by the Federal government within the time period specified in a guarantee agreement, or the failure of the borrower to comply with other material terms or conditions specified as default conditions in a guarantee agreement.

(g) "Demonstration" means the establishment of a facility to exhibit the technical, economic, or environmental feasibility, normally under commercial conditions, of a new technology, device, technique, process or practice, or a significantly new combination or use of technologies, processes or institutional practices to convert urban wastes to synthetic fuels or other desirable forms of energy.

(h)"Desirable forms of energy" means recovered energy forms including, but not limited to:

(1) Synthetic fuels, direct heat, steam, electricity, low-grade heat and ammonia; and

(2) Recycled materials, whether source separated or otherwise recovered, originally produced be methods which consumed significant amounts of energy.

(i) "Fund" means the separate fund established in the Treasury of the United States, as provided for in Section 19(n) of the Act.

(j) "Guarantee agreement" means a written agreement by which DOE guarantees payment of the principal balance of and accured interest on speeific financial obligations of a borrower.

(k) "Holder" means an individual or any legal entity that has lawfully acquired all or part of the rights, title, and interest in the guaranteed portion of the loan.

(l) "Indian tribe" means any tribe, band, or community having a governing body recognized by the Secretary of Interior.

(m) "Lender" means any individual, partnership, corporation, Federal entity, or other legal entity formed for the purpose of, or engaged in the business of lending money. Examples of lenders may include, but are not limited to, commercial banks, savings and loan

institutions, insurance companies, factoring companies, investment banking organizations, institutional investors, venture capital investment companies, trusts, Federal entities, or other entities designated as trustees or agents acting on behalf of bondholders or other lenders.

(n) "Loan" means any financial obligation, including, but not limited to, bonds, debentures, notes, or other financial debt instruments.

(o) "Municipal waste" means wastes, including, but not limited to, trash, garbage, sewage sludge, and industrial nonprocess wastes, that are generated in an urban environment and collected by the municipal system. Municipal waste does not include: industrial process wastes; agricultural wastes produced in an agricultural environment that remain within the confines of that environment; or forestry wastes generated on large wooden tracts not in an urban environment.

(p) "Municipality" means a city, town, township, borough, county, parish, district, or Indian tribe, or other public body created by or pursuant to State law.

(q) "Point of initial production" means that time when placement, startup, and testing of equipment is complete, and productive operation can begin, but where no waste has yet been processed.

(r) "Project"means a group of interrelated tasks undertaken, or intended, which, when completed, will result in a facility for the conversion of urban wastes into synthetic fuels, or for the generation of desirable forms of energy from urban wastes, or both.

(s) "Related costs" means those project costs, computed in accordance with generally accepted accounting principles and practices, consistently applied, or that system required by law, that would be incurred from the inception of planning to the start of engineering design, and from the point of initial production through the end of a trial period. The length of the trial period, not to exceed two years, will be proposed by the applicant, approved by the Secretary on a case-by-case basis, and included in the guarantee agreement.

(t) "Secretary" means the Secretary of Energy, or the Secretary's designee.

(u) "Servicer" means any individual, partnership, corporation, Federal entity, or other legal entity, including a lender or the lender's designated trustee or agent, engaged in the business of, or being capable of servicing financial debt instruments in accordance with the provisions of these regulations, and the guarantee agreement.

(v) "State" means any State of the United States and the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, or any territory or possession of the United States.

(w) "Synthetic fuels" means any liquid, gaseous, or solid fuel which can be used as a substitute for supplies of petroleum, coal, natural gas or other fossil fuel.

(x) "Total costs" means the sum of construction and startup costs, and related costs.

(y) "United States" means the several States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(z) "Urban wastes" is synonymous with municipal waste.

§ 485.5 Program management.

(a) Program management responsibility is vested in the Chief, Community Technology Systems Branch, Community Systems Division, Office of Buildings and Community Systems, DOE. These responsibilities include all normal actions necessary to plan, organize, direct, and control an endeavor that is a group of projects. Specific questions regarding these regulations or urban wastes conversion technology pertinent to guarantees should be directed to this branch.

(b) The administration of any project entered into pursuant to these regulations for any commercial demonstration facility for the conversion of solid waste will be adminstered in accordance with the May 7, 1976, Interagency Agreement, the subsequently executed memorandum of understanding (MOU), and all applicable future agreements between the Environmental Protection Agency (EPA) and DOE on the "Development of Energy From Solid Wastes." The interagency agreement and MOU provide that:

(1) EPA will provide support to municipalities for feasibility studies and procurement planning for energy and resource recovery systems under the President's Urban Policy;

(2) DOE will provide support for engineering, design, construction and operation of facilities within its available authorities; and

(3) DOE will not provide funds for feasibility study and procurement planning for demonstration facilities except in those instances where DOE desires to demonstrate a specific technique and EPA supported studies have not led to the selection of that technique, and other special circumstances mutually agreeable to DOE and EPA.

(c) DOE will consider applications for support under the provisions of these regulations equally, whether or not a feasibility study has been supported by the Federal Government, except that any Federal support of the feasibility study will be considered within the 75% limitation on Federal support of the project.

(d) EPA will retain responsibility for the environmental, economic, and institutional aspects of solid waste projects and for assurance that these projects are consistent with any applicable suggested guidelines pursuant to Section 1008 of the Resource Conservation and Recovery Act of 1976, Pub. L. 94–580, as amended, and any applicable State or regional solid waste management plan.

§ 798.6 Citizenship requirements.

An applicant for financial assistance under these regulations must be a citizen or a national of the United States. An individual, firm, corporation, company, partnership, association, society, trust, joint venture, joint stock company, or other non-Federal entity may not be deemed to be a citizen or national of the United States unless the Secretary determines that such applicant satisfactorily meets all the requirements of Section 2 of the Shipping Act of 1916 (46 U.S.C. 802) for determining such citizenship, except that the provisions in such Section 2(a) concerning (a) the citizenship of officers or directors of a corporation, and (b) the equity required to be owned in the case of a corporation, association, partnership, or firm operating a vessel in the coastwise trade shall not be applicable. The Secretary, in consultation with the Secretary of State, may waive such requirements in the case of a corporation, association, partnership, or firm in which controlling interest is owned by citizens of countries that are signatories to the International Energy Agreement.

§ 798.7 Deviations.

To the extent that such requirements are not specified by the Act or other applicable statutes, the Secretary may authorize deviations on an individual basis from the requirements of these regulations, upon a finding that such deviation is essential to program objectives, and the special circumstances presented make such deviation clearly in the best interest of the Government. Recommendation for any deviation will be submitted in writing by the program office of the Secretary. Such recommendations will include a supporting statement, which indicates briefly the nature of the

deviation requested and the reasons therefore. This deviation authority may be delegated. With respect to environmental matters, deviation authority may be the Assistant Secretary for Environment.

§ 798.8 Fiscal year 1980 appropriation modification.

(a) Except to the extent obviated or deemed satisfied by legislation, the procedures established by these regulations will be applicable.

(b) Pub. L. 96–126 provides appropriations for a reserve for defaults, and authority to the Secretary to make loan guarantees for alternative fuel production facilities and further deems that certain requirements for Congressional action pursuant to guarantees made under that appropriation were satisfied. By virtue of this language, the requirements for Congressional action specified in § 798.22(c) and § 798.46(b) (3) and (4) are deemed satisfied and therefore do not apply to guarantees made under the appropriations of Pub. L. 96–126.

§ 798.9 Nondiscrimination in projects receiving Federal assistance.

All applicants receiving Federal assistance under this regulation will agree:

(a) Not to discriminate against any person on the grounds of race, color, national origin, sex, handicap, or age in the carrying out or completion of any project where Federal assistance is issued under this regulation, and to comply with the DOE "Nondiscrimination in Federally Assisted Programs" regulations implementing the Civil Rights Requirements of Title VI of the Civil Rights Act of 1964; Section 16 of the Federal Energy Administration Act of 1974; Section 401 of the Energy Reorganization Act of 1974; Title IX of the Higher Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; and the Civil Rights Requirements administered pursuant to the DOE Organization Act;

(b) To incorporate or cause to be incorporated into all construction contracts related to the project the provisions prescribed by 41 CFR Part 60 pursuant to the provisions prescribed for Government contracts by Secton 202 of Executive Order 11246, September 28, 1965, 30 FR 12319 (regarding nondiscrimination in employment by Government contractors and subcontractors); and

(c) To take positive efforts to maximize the utilization of small and disadvantaged business concerns in connection with the assistance received.

§ 798.10 [Reserved]

Subpart B—Demonstration Project Provisions.

§ 798.20 Project costs.

(a) The cost elements set forth in this Section are for the purpose of illustrating the manner by which allowable construction, and startup costs, and related costs of the project may be determined. The types of costs listed in this Section may be incurred throughout the planning phase, the construction and startup phase, or trial period phase of the project. The Category (i.e., construction and startup cost, or related cost) to which any allowable costs incurred will be included will depend both upon the point in time at which it is incurred, and the purpose for which it is incurred. These two cost categories must be separately treated in order to determine the allowable guarantee amount. Cost elements for any group of interrelated tasks must be separately identified for each of those tasks to the extent feasible.

(b) Those reasonable and customary costs that are paid, expected to be paid, and directly related to the construction and startup phase of the project will be used to estimate the construction and startup costs for a demonstration facility, except as set forth in paragraph (d) of this section. These costs may include, but are not limited to the following types:

(1) Materials, labor, utility services, travel, and transportation;

(2) Employees' salaries, wages, consultant's fees, and materials, and other operating expenses;

(3) Professional services and fees necessary to obtain licenses, permits, and to prepare environmental reports and data. These will generally relate to changes required after engineering design begins;

(4) Financial and legal services costs;

(5) Engineering, architectural, and legal fees paid in connection with the demonstration facility;

(6) Costs of acquisition or rental of real property, including engineering fees, surveys, title insurance, recording fees, and legal fees incurred in connection with land acquisition or rental, site improvements, site restoration, and abandonment costs, access roads, fencing, bridges, and other general site conditions;

(7) Equipment purchase, placement and testing costs;

(8) Costs to provide safety and environmental protection equipment, facilities, and services;

(9) Where applicable, fees for royalties and licenses that relate to the project;

(10) Interest costs and other normal costs charged by lenders;

(11) Bond financing costs and trustee's fees and commissions;

(12) Necessary and appropriate insurance and bonds of all types (e.g., bid and construction bonds, etc.);

(13) Purchase of flood insurance, if required;

(14) Taxes to be paid to Federal, State, and local government agencies, and other taxing authorities;

(15) Cost of any current assets directly related to the project, including cash reserves, and other forms of working capital;

(16) A reasonable contingency reserve to cover the possibility of cost increases;

(17) Guarantee fees payable by the borrower, if that is included in the terms and conditions of the debt instrument and the guarantee agreement; and

(18) Other necessary and reasonable costs, as approved by the Secretary.

(c) Reasonable and customary costs that are paid, or expected to be paid, and directly related to preliminary planning or trial period phases of the project will be used to estimate the related costs, except as set forth in paragraph (d) of this section. These costs may include, but are not limited to the following types:

(1) All costs of the type included in paragraph (b) of this section that are not incurred, or directly related to the construction and startup phase of the project;

(2) Costs incurred by the applicant before the approval of the guarantee agreement (e.g., preliminary planning, design, development, etc.);

(3) Costs of data gathering (technical, environmental, economic, and socio-economic impacts) and preservation required by the guarantee agreement; and

(4) Working capital, reserves, and other costs associated with the operations of the facility during the trial period.

(d) Costs that are not considered as allowable project costs include, but are not limited to, the following:

(1) Fees and commissions charged to the borrower, including finder fees, for obtaining Federal funds;

(2) Parent corporation general and administrative expenses, and other parent corporation assessments, including company organizational expenses;

(3) Goodwill, franchise, trade, or brand name costs;

(4) Dividends and profit sharing to stockholders, employees, and officers;

(5) Expenses not paid or incurred by the applicant;

(6) Costs that are excessive or are not directly required to carry out the project, as determined by the Secretary; and

(7) Operating expenses incurred after the end of the trial period.

(e) The Secretary may audit any or all cost elements included in the estimated project cost, and reserves the right to exclude or reduce the amount of any cost which the Secretary determines to be unnecessary or excessive. The borrower will make available records and other data necessary to permit the Secretary to carry out such an audit. In carrying out this responsibility, the Secretary may utilize employees of other Federal agencies or may direct the borrower to submit to a review performed by an independent public accountant or other competent authority.

§ 798.21 Demonstration facility requirements and conditions.

A guarantee or a commitment to guarantee a loan may be made only if the following demonstration facility requirements and conditions are met as determined by the Secretary:

(a) The project will, at minimum, comply with applicable Federal, State, and local environmental laws and regulations and the terms and conditions of the guarantee regarding environmental protection. The issuance of a Federal guarantee under these regulations is subject to, among others, the provisions of the National Environmental Policy Act of 1969 (NEPA), as amended, (42 U.S.C. Section 4321 et seq.; Pub. L. 91–190), applicable DOE regulations, and guidelines implementing NEPA, Executive Order (E.O.) 11988—Floodplain Management, and E.O. 11990—Protection of Wetlands. DOE is responsible for conducting a preliminary environmental analysis, and, if necessary, preparing an Environmental Assessment (EA) of Environmental Impact Statement (EIS). In addition to generally applicable criteria used to determine the proper scope of environmental review to be accorded individual applications, DOE may review and consider the environmental impacts associated with the commercial operation of the project throughout its useful life, even where the guarantee may be limited to only a small or preliminary segment of the entire commercial project. In considering environmental impacts, particularly environmental impacts associated with commercial operation, due consideration will be given to the fact that one of the purposes of the demonstration facility is to generate data necessary for a complete evaluation. The DOE will utilize such analyses in the decision-making process regarding the design and minimization of the enironmental impacts for a proposed project;

(b) The project is considered to be technically and economically feasible and environmentally acceptable, and major milestone events are readily identifiable;

(c) There is sufficient evidence that the applicant will initiate and complete the project in a timely, efficient, and acceptable manner;

(d) The project will be performed in the United States;

(e) The project is not for the manufacture of component parts for demonstration facilities eligible for assistance under these regulations; and

(f) The project is consistent with the objectives set forth in § 798.2.

§ 798.22 Guarantee requirements and conditions.

A guarantee of a loan for a demonstration facility may be issued only if the following requirements and conditions are met as determined by the Secretary:

(a) The financial assistance applied for is necessary to encourage financial participation;

(b) The loan to be guaranteed may not exceed 75% of the estimated total costs, or 90% of the estimated construction and startup costs of the project, whichever is less:

(1) The guarantee may be for the full amount of the loan, or may provide for only a partial guarantee where other lenders are participating in the loan;

(2) Where only a partial guarantee is made by the Secretary, the guarantee agreement and underlying loan agreement will include adequate provisions regarding the rights, interests, and responsibilities of the parties in the event of a default, and disposition of any receipts obtained after liquidation;

(c) Where the estimated cost of a demonstration facility to be assisted with a loan guarantee exceeds $50 million, the following provisions will be complied with, unless otherwise authorized by an Appropriations Act:

(1) The making of the guarantee, or commitment to guarantee, is specifically authorized by legislation enacted by Congress; or

(2) Both Houses of Congress pass a resolution stating, in substance, that they favor issuing the guarantee;

(d) Full repayment of a guaranteed loan is to be made over a period not to exceed 30 years, or a period equal to 90 percent of the expected average useful economic life of the project's major physical assets, whichever is less. In calculating such period, generally accepted accounting principles and practices will be utilized by the Secretary;

(e) The amount of the loan to be guaranteed, when combined with other funds available to the applicant, will be sufficient to carry out the project;

(f) There is a reasonable assurance of repayment of principal and interest of the loan by the borrower;

(g) The project assets, and other collateral security or surety, to the extent determined by the Secretary to be necessary, are pledged for the repayment of the loan;

(h) The applicant agrees to the following provisions with respect to patents, technology, and other proprietary rights:

(1) Detailed terms and conditions that the Secretary considers appropriate to protect the interests of the United States in the case of default will be included in the guarantee agreement;

(2) Guarantees or commitments to guarantee entered into under these regulations will incorporate, to the extent appropriate, the patent provisions contained in DOE's regulations on "Patents, Data and Copyrights" (41 CFR Part 9–9) and appropriate data and copyright provisions;

(3) Title to inventions conceived or first actually reduced to practice in the course of or under any guarantee or commitment to guarantee authorized by these regulations will vest in the Government, except to the extent that the Secretary waives these rights in accordance with Section 9 of the Act.

(4) Patents, including any inventions for which a waiver was made by the Secretary under Section 9 of the Act, and technology resulting from the demonstration facility, will be treated as project assets of the facility in the event of default. However, inventions, title to which is vested in the United States, may not be treated as project assets for disposal purposes unless the Secretary determines in writing that it is in the best interests of the United States to treat then as project assets; and

(5) All patents, technology, and other proprietary rights which are necessary, will be available, on equitable terms, including due consideration of the amount of default payments made by the United States, to any person selected including, but not limited to the Secretary, to complete and operate a defaulted project;

(i) The guaranteed loan bears a reasonable interest rate as determined by the Secretary, in consultation with the Secretary of Treasury, after taking into account the range of interest rates prevailing in the private sector for similar government guaranteed obligations of comparable risk;

(j) Adequate provisions for servicing the loan and monitoring the project are provided for;

(k) The lender agrees not to accelerate payment of the borrower's indebtedness, except as may be permitted in the guarantee agreement;

(l) The applicant is willing, competent, and capable of performing the terms and conditions of the guarantee agreement, including the conditions that:

(1) No change of project ownership or financing arrangement will occur without prior written consent of the Secretary;

(2) The Flood Disaster Protection Act of 1973 (Pub. L. 92–234) must be complied with;

(3) The wages and rates paid to laborers and merchants employed by contractors or subcontractors in the performance of construction work must not be less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S. 276a–5); and

(4) A plan acceptable to DOE for small and disadvantaged business concerns to participate in the project to the optimum extent feasible, consistent with the size and nature of each project, will be carried out;

(m) Any loan for the project which is not part of the guaranteed loan is subordinate to the guaranteed loan, and the guaranteed loan is in a first lien position regarding all assets of the project and all collateral security and surety pledged. However, if any of the assets offered by the borrower as collateral security and surety pledged. However, if any of the assets offered by the borrower as collateral security or surety for the guarantee are subject to prior financing liens by other creditors, DOE will require that such prior liens be removed, or an acceptable legal arrangement be made with such prior lien creditors where DOE will be protected in the event of default. An arrangement of this nature must be in the form of written agreement between DOE and the prior lien creditors and provide the following conditions:

(1) Ample notice of default, and collateral security or surety sale;

(2) A plan of liquidation offering mutual protection to DOE and other creditors; and

(3) An option on the part of DOE, which would be assignable to a third party, to have the first lien debt payable according to the original installment terms (even after default) if the project operation is undertaken by or on behalf of DOE or an acceptable third party;

(n) After a period of not lesss than 10 years from the closing date of the agreement, the Secretary may determine the feasibility and advisability of teminating the Federal participation in the demonstration facility. The Secretary will take into consideration whether the Government's need for information to be derived from the project have been substantially met, and whether the project is capable of commercial operation. In the event that a decision for temination is made, the borrower, upon notification by the Secretary, has not less than two nor more than three years to arrange for alternative financing. At the expiration of the designated period of time, if the borrower has been unable to secure alternative financing, the Secretary may charge the borrower an additional fee not to exceed one percent per year on the remaining principal to which the Federal guarantee applies, and the guarantee will remain in full force and effect;

(o) The Secretary may approve modifications to terms and conditions in existing guarantee agreements and collateral documents pertaining to the project only upon determining that such modifications will not: (1) Substantially change the project's scope, cost, and purpose; (2) Deviate from provisions in these regulations; or (3) Compromise the schedule for loan repayment. When the program office finds that a substantive modification to existing terms and conditions is desirable or necessary, or a substantive modification is requested in writing by the borrower, or servicer, a written recommendation will be forwarded for approval to the Secretary.

§ 798.23 Tax status of guaranteed obligations.

In accordance with the Act, a loan may be guaranteed only if the interest paid on the obligation and received by the holder is to be included in gross income for the purpose of Chapter 1 of the Internal Revenue Code of 1954, as amended. Where the borrower would normally issue a nontaxable obligation, the issuance of a loan guarantee will make such debt taxable, and the Secretary will pay the borrower that differential portion of the interest on the obligation, that is determined by the Secretary of the Treasury to be appropriate after taking into account current market yields on other obligations of the borrower, if any, or on other obligations with similar terms and conditions paying interest which is not ordinarily included in gross income for Federal income tax purposes.

§ 798.24. Guarantee fees.

A guarantee fee will be paid by the lender or service on the guaranteed portion of the loan, and will be computed at a rate specified in the guarantee ageeement of up to one percent per year on the estimated principal balance for the coming year. Payment of the first annual guaranteed fee will be made at the time of closing of the guarantee, and annually thereafter, or at other intervals as set forth in the guarantee agreement. This fee may be passed to the borrower, and in such case, may be included as a cost of the project. If principal and interest assistance is in effect and the fee is being passed to the borrower, payments of this fee may be deferred by the Secretary for the term of the principal and interest assistance contract. When the Federal Financing Bank is the lender, the borrower will pay the guarantee fee directly to the Secretary

§ 798.25 Cost overruns.

(a) At the discretion of the Secretary, a guarantee agreement may be amended to increase the amount of the loan guaranteed in the event that the actual total costs to be incurred exceed the original estimates. In no event may the guarantee be increased to cover more than 60 percent of the expected overrun costs. All the following conditions must be met by the borrower before the Secretary may determine whether to amend the guarantee agreement to cover such cost overruns:

(1) The Secretary must be notified as soon as an overrun is anticipated, along with the reasons for the expected cost overrun; and

(2) The borrower will provide, when requesting a guarantee increase to cover overrun costs:

(i) The revised expected completion date and costs for the project;

(ii) An acceptable plan indicating how the cost overruns will be funded;

(iii) A list of the additional collateral security or surety, if any, to be pledged for the guarantee increase; and

(iv) Updated information on the project's economics to indicate that a reasonable assurance of repayment of the guaranteed loan (including the cost overrun) by the borrower still exists.

(b) Based on the information submitted by the borrower and other information known to the Secretary may, at the Secretary's discretion, provide for the guarantee of additional

funds for the expected cost overruns upon making the following findings:

(1) The continuation of the project is worthwhile to meet program objectives, and is in the public interest; and

(2) The probable net cost to the Government in increasing the guarantee to reflect the increase will be less than that which would result in the event of default.

§ 485.26 Information for Governors and others.

(a) As soon as the Secretary receives an application for a project which might receive a guarantee, the Secretary will inform the Governor of the State, in which the facility will be located, or directly having an interest in the geographic area, or in the facility. If, within 60 days of notification, the Governor of the State in which the facility is to be located recommends that the guarantee not be issued, the application will be rejected, unless the Secretary decides that the application should be further considered. In such a case, the Secretary will notify the Governor of the reasons, in writing, and provide 30 days for response.

(b) Office of Management and Budget (OMB) Circular No. A-95 Revised. "Evaluation, Review, and Coordination of Federal and Federally Assisted Programs and Projects," requires that any agency of a State or local government or any organization or individual applying for a guarantee under this program notify the State and areawide planning and development clearinghouses in the jurisdiction of which the project is to be located. Applicants are encouraged to contact State and areawide clearinghouses at an early stage for possible assistance in developing applications.

(c) The applicant is required to provide DOE with information in the application about the financial status of its organization, about specific individuals who will be involved in the management of the project, and/or other proprietary information. Proprietary information received by DOE may be released only in accordance with § 798.40 (d) and (e).

(d) The Advisory Council on Historic Preservation may review and comment upon applications for guarantees for any project which would affect property listed or eligible for listing in the National Register of Historic Places or which may meet the criteria for listing in the National Register, pursuant to 36 CFR Part 800. All comments received from the Council will be considered by the Secretary when evaluating applications.

§ 798.27 Principal and interest assistance.

(a) With respect to any loan guaranteed under these regulations, the Secretary may enter into a principal and interest assistance contract with the borrower to pay the lender, on behalf of the borrower, the principal and interest charges that become due and payable on the unpaid balance of the loan, if the Secretary finds that:

(1) The borrower is unable to meet principal or interest payments;

(2) It is in the public interest to permit the borrower to continue to pursue the project;

(3) Such principal or interest assistance increases the probability that the loan will be repaid;

(4) The probable net cost to the Federal Government in paying such principal or interest will be less than that which would result in the event of a default for the nonpayment of principal or interest;

(5) The amount of principal or interest payment which may be made under this Section will be no greater than the amount of principal or interest that the borrower is obligated to pay under the guaranteed portion of the loan agreement; and

(6) The borrower agrees to reimburse the Secretary for such payment (including interest) on such terms and conditions which are satisfactory to the Secretary, and executes all necessary documents as the Secretary may require.

(b) If the Secretary determines that principal and interest assistance is not warranted, the Secretary will notify the borrower, and other parties, as appropriate.

§ 798.28 Federal Financing Bank.

(a) The Federal Financing Bank (FFB) is an agency operating under the United States Treasury Department which has authority to purchase Federally guaranteed debt. Loans guaranteed under these regulations may be funded through private lenders or the FFB. Funding by private lenders will have preference except in the following cases:

(1) Whenever the Secretary may be required to make an interest differential payment as provided for in 798.23; or

(2) Whenever the Secretary determines, after consultation with the Secretary of the Treasury, and negotiation with the private lender, if any, or other private lenders, that the interest rate, maturity, lending fees, or other terms and conditions applicable to the borrower do not reflect the value of a guarantee backed by the full faith and credit of the United States.

(b) Whenever a loan is funded through the FFB, the loan will be serviced, in accordance with the loan servicing requirements, as described in § 798.50, "Loan servicing," by parties acceptable to the Secretary. In addition to the guarantee fee, the cost of servicing, which is normally borne by the lender and borrower, will be paid by the borrower to the Secretary, and may be included as project cost.

§ 798.29 Applicability of other laws.

Nothing in these regulations may be construed as affecting the obligations of any party to comply with Federal, State, and local environmental, land use, and health and safety laws and regulations, or to obtain applicable Federal, State, and local permits licenses and certificates.

§ 798.30 [Reserved]

Subpart C—Solicitation, Evaluation, and Selection of Applications

§ 798.40 General information.

(a) The application process for loan guarantees will consist of these phases:

(1) Solicitation of applications;

(2) Initial application screening and evaluation;

(3) Review by other Federal agencies;

(4) Selection of applications for further consideration;

(3) Review by other Federal agencies;

(4) Selection of application for further consideration;

(5) Issuance of conditional commitment and report to Congress; and

(6) Issuance of loan guarantee upon satisfaction of conditions in commitment.

(b) A Solicitation Announcement may be issued periodically by DOE. The announcement will be synopsized in the *Commerce Business Daily* and **Federal Register**. In addition, the announcement will be circulated directly to interested individuals, private and public entities (excluding Federal agencies), and associations thereof, to the maximum extent feasible. The Solicitation Announcement may include the following items:

(1) A brief description of the type of projects for which applications are solicited;

(2) The time period during which responses to the solicitation may be filed;

(3) The name and address of the DOE representative to whom any questions may be directed; and

(4) Other information and requirements as determined by DOE to be relevant to the Solicitation Announcement.

(c) Presubmission conferences open to all parties may be conducted by DOE personnel. All parties requesting copies

of the solicitation will be notified of all conferences scheduled.

(d) Subject to the requirements of applicable law and regulations, information such as trade secrets, commercial and financial information, and other information or data concerning the demonstration project which the applicant or lender submit to DOE in an application, or at other times throughout the duration of the project, on a privileged or confidential basis, may not, in accordance with the DOE regulations concerning public disclosure of information, Section 19(t) of the Act, and paragraph (e) of this section, be disclosed by DOE without prior notification to the submitter. Any submitter asserting that the information is privileged or confidential will appropriately identify and mark such information.

(e) Technical, financial, environmental, marketing, and management information maintained by the Secretary under this program will be made available to the public, subject to the provisions of 5 U.S.C. 552, and 18 U.S.C. 1905, and to other Government agencies in manner that will facilitate its dissemination, provided that:

(1) Upon a determination by the Secretary that any information, or portion thereof, obtained under this program directly or indirectly from any person would, if made public, divulge trade secrets or other proprietary information which is protected by 18 U.S.C. 1905, the Secretary may not publicly disclose such information; and

(2) The Secretary may, upon request, provide information to any delegate of the Secretary for the purpose of carrying out this Act, and the Attorney General, the Secretary of Agriculture, the Secretary of the Interior, the Federal Trade Commission, the Environmental Protection Agency, the General Accounting Office, other Federal agencies, or heads of other Federal agencies, when necessary to carry out their duties and responsibilities under these regulations and other laws, but such agencies and agency heads may not publicly disclose such information. This Section is not authority to withhold information from Congress, or from any committee of Congress upon request of the Chairman.

(f) No guarantee or commitment to guarantee will be entered into unless authority is provided for the such guarantees by appropriations law.

§ 798.41 Evaluation criteria.

Unless solicitations issued under § 798.40(b) specify otherwise, the following criteria will be used as the basis for competitive evaluation of applications (The order of listing is no indication or reflection of priorities):

(a) The arrangements for and extent to which risk will be shared by the parties to the project other than the United States. This includes the percentage of the total cost of the project to be guaranteed, stages of inclusion of funds not guaranteed, equity invested, extent to which the equity reflects sunk costs, and types of collateral security and surety that would be pledged.

(b) The net energy that can be recovered or conserved by the project. this includes relative energy efficiencies, including savings resulting from recycling of source separated and otherwise recovered materials, the utility of the energy form to the area, and the net amount and type of fossil fuels displaced.

(c) Potential applicability of the project to other parties or other geographic areas. This includes the extent to which the technology is adaptable to or repeatable in, other locations, or the extent to which the project demonstrates how institutional barriers can be overcome.

(d) Adequacy of the management plan for the project, and qualifications and experience of key personnel with all aspects of similar operations.

(e) Technical probability of success and advances in the state-of-the-art.

(f) Potential environmental, and health and safety impacts, as well as socioeconomic and competitive impacts. This includes the regional labor market impact, the marketability of all the desirable forms of energy produced or conserved, the degree of need that a proposed project would have in relation to the present system in use, the level of support of the community, and the degree to which the project assists in attaining the goals of other Federal programs in the area.

(g) Commercial viability of the project.

§ 798.42 Evaluation and selection panel.

Applications submitted in response to a Solicitation Announcement will be evaluated by a panel which will be appointed by the Secretary, the Deputy Secretary, or the Under Secretary, as may be appropriate. When any individual proposal, together with later phases of the same project, is estimated to meet the Source Evaluation Board (SEB) Handbook (Procurement Regulation Handbook No. 1, 44 FR 6038, January 30, 1979) dollar threshold, comprehensive evaluation will be conducted by a specially constituted board which will follow the procedures and documentation requirements of SEB Handbook modified as appropriate to conform to the solicitation process set forth in these regulations or in the solicitation. When no individual proposal is expected to meet the SEB dollar theshold, proposal submitted in response to a solicitation will be evaluated by a panel which will be appointed by the cognizant program office. The panel will utilize any of the procedures and documentation requirements of the SEB Handbook modified as appropriate to conform to the solicitation process whenever necessary to insure the impartial, equitable and thorough evaluation of each proposal.

§ 798.43 Applications.

(a) The applicant will be asked to provide information in support of the application in the form and with the content prescribed in the Solicitation Announcement. The type of information requested will generally be similar to that required by an investment banking, or other financial, institution which might consider the project for debt financing. The application must contain the most current data available, and be adequate for DOE to properly evaluate the project. The following items are an example of the type of information that may be requested by the Solicitation Announcement. This information, as available, should be submitted in a brief but precise manner:

(1) A description of the scope, nature, extent, and location of the proposed project, including specification of the technology;

(2) A preliminary or conceptual design of the demonstration facility;

(3) A description of prior operating experience with the technology;

(4) Mass and energy balances for the proposed plant, to include energy data on the projected inputs and outputs from the plant;

(5) Estimates of project costs, and operating and maintenance costs;

(6) An analysis of the market for the product(s) to be produced, and the relevant economics justifying the analysis;

(7) Construction and operation schedules, including major milestones;

(8) An analysis of the project's technical and economic feasibility, including the feasibility and effect of source separation techniques, if applicable;

(9) A description of the applicant's management concept and plan of operation to be employed in carrying out the project;

(10) Amount of loan and guarantee requested, including preliminary cash flow projections;

(11) Proposed risk allocation among project participates;

(12) A written affirmation from the applicant supporting the need for a Federal loan guarantee;

(13) Other data, such as social, employment, and economic factors;

(14) A description of the potential environmental impacts of the demonstration including mitigation measures; and

(15) Any other information requested by the Secretary.

(b) The following items illustrate the range, but not necessarily the full breadth, of additional information that may also be required for proper evaluation of a project, dependent upon the type, complexity and cost of the project, the stage of project development, and the type of applicant (e.g., municipality, private firm, etc.):

(1) A description of the applicant's organization and, when applicable, a copy of the business certificate, partnership agreement or coporate charter, bylaws, and appropriate authorizing resolutions;

(2) A description of the management experience of each officer or key person in the applicant's organization who is to be associated with the project;

(3) The past financial history of the firm, including financial statements and projections as to the firm's future financial status;

(4) Business and financial interests of principal organizations (e.g., parent and/or subsidiary of the applicant);

(5) Such additional environmental information on potential environmental impacts, including mitigation measures;

(6) Evidence of a credit rating, if any (e.g., Dun and Bradstreet, Standard & Poor's, Moody's, etc.);

(7) A copy of the lender's conditional loan commitment document issued to the applicant, if applicable; and

(8) When appropriate to the project, evidence of the lender's exerience in surveying the financial aspects of complex technological projects.

§ 798.44 Initial evaluation of applications.

(a) Upon receipt of applications and all required supporting material, the Secretary will screen each application to determine if the proposed project described in the application is within the authorization and appropriations currently available to DOE, and to determine of the application is in compliance with applicable statutory and regulatory provisions and the requirements of the Solicitation Announcement, if any. Applications which exceed the Department's authorization or appropriation, or are not in compliance with applicable statutory or regulatory provisions, or the requirements of the Solicitation Announcement, if any, will be rejected, and the applicant will be notified by the Secretary together with the basis for this determination.

(b) Governors and others will be notified in accordance with the provisions of § 798.26, of applications for projects which are accepted for further processing in accordance with the requirements of paragraph (a) of this section.

(c) The Secretary will, with due regard for the need for competitive evaluation:

(1) Evaluate all remaining applications under the evaluation criteria set forth in § 798.41 or the Solicitation Announcement, as applicable;

(2) Determine whether or not to proceed with the application for consideration for a conditional commitment; and

(3) Notify the applicants not selected for further evaluation.

(d) While the applications selected for further consideration are being evaluated by other Federal agencies, as outlined below, any additional information needed by DOE for further evaluation of the applications will be requested; however, the decision to continue with further evaluation of an application and request for further data does not insure that a guarantee will be issued.

(e) Pursuant to the requirements of the Act, the Secretary will forward applications under evaluation to the following other Federal authorities for appropriate action:

(1) To the U.S. Attorney General and the Chairman of the Federal Trade Commission requesting their written views, comments and recommendations concerning the impact of a specific loan guarantee on competition and concentration in the production of energy;

(2) To the Administrator of the Environmental Protection Agency for certification that the proposed project is consistent with guidelines published pursuant to section 1008(a) of the Resource Conservation and Recovery Act; and

(3) To the Secretary of the Treasury for concurrence as to the terms, rates, and fees of the proposed financing, and to insure that the timing, interest rate, and substantial terms and conditions of such guarantee will have the minimum possible impact on the capital markets of the United States.

(f) The Secretary will give due consideration to the views and comments received from the agencies described in paragraph (e) of this section. In the event that the Attorney General and/or the Chairman of the Federal Trade Commission make a negative recommendation concerning any proposed transaction, the Secretary may not proceed to issue a guarantee unless the President of the United States determines in writing that such guarantee is in the national interest. Upon receipt of appropriate recommendations for approval from the above agencies, or from the President in the event of a negative recommendation from the Attorney General or Chairman of the Federal Trade Commission, the Secretary may proceed to take such action as is determined to be warranted in accordance with the provisions of these regulations for further consideration, and/or approval or disapproval of the proposed loan guarantee.

§ 798.45 Additional information requirements.

The Secretary may determine that additional project specific information may be required with regard to the review, evaluation, and selection of applications received in response to Solicitation Announcements. Such additional information requirements will be communicated in writing by the Secretary directly to applicants, or, in some cases, their respective lenders or servicers.

§ 798.46 Issuance of commitments to guarantee.

(a) Upon receipt of any required additional information and all necessary supporting material, the Secretary will complete evaluation of the financial, economic, environmental, engineering, managerial, other regulatory, and social aspects of the project.

(b) After completion of this final evaluation, the Secretary will, for each project still being considered for a guarantee:

(1) Obtain the final certification of the Administrator of EPA and any appropriate State and areawide solid waste management agency, that the application is consistent with any applicable suggested guidelines published pursuant to Section 1008(a) of the Resource Conservation and Recovery Act and any applicable State or regional solid waste management plan;

(2) Obtain the final concurrence of the Secretary of the Treasury with respect to the timing, interest rate, and substantial terms of the loan guarantee. The Secretary of Treasury will ensure to the maximim extent feasible that the timing, interest rate, and substantial terms and conditions of such guarantee will have the minimum possible impact

on the capital markets of the United States, taking into account other Federal direct and indirect securities activities;

(3) Forward to the Chairman of the Committee on Science and Technology of the House of Representatives and to the Chairman of the Committee on Energy and Natural Resources of the Senate a full and complete report on the proposed demonstration facility of the applicant seeking the guarantee, as required; and

(4) Not finalize the loan guarantee or commitment to guarantee prior to expiration of 90 calendar days (not including any day on which either House of Congress is not in session because of an adjournment if the adjournment is for more than three calendar days to a day certain) from the date on which such report on the proposed demonstration facility is received by such committeees.

(c) Upon, or, in some cases, subject to, the satisfactory completion of the requirements contained in subsection (b) of this section, the Secretary may issue a conditional commitment to provide a guarantee to the tranaction proposed by the application. The conditional commitment will identify the terms and conditions under which the guarantee would be issued, and any additional requirements to be placed upon the applicant as a condition for the guarantee.

(d) Prior to issuing a loan guarantee all appropriate site specific environmental analyses required by relevant laws or regulations will be completed in accordance in accordance with § 798.21(a). However, if an Environmental Impact Statement (EIS) is required, a guarantee may be entered into on the condition that disbursements under such guarantee will be made, prior to the completion of the EIS, only for the purpose of assisting the borrower in providing information to DOE to aid in completion or review of the EIS, or for other purposes, only with the express written approval of the Offices of the Assistant Secretary for Environment and the General Counsel.

§ 798.47 Closing.

When an application for a guarantee agreement has been approved by the Secretary, the Secretary will notify the applicant, and other parties, if appropriate, and issue a commitment to guarantee. To the extent necessary, meetings will be arranged to discuss the terms and conditions contained in the commitment, the guarantee agreement, and other instruments relevant to the transaction. Upon agreement as to the terms and conditions of the guarantee agreement and other relevant instruments, a closing date agreeable to the parties will be set.

Subpart D—Guarantee and Project Administration

§ 798.50 Loan servicing.

(a) The guarantee agreement will provide that a party, hereafter called the servicer, that is acceptable to the Secretary, service the guarantee in accordance with the applicable provisions of these regulations, and the guarentee agreement. In addition, where the Federal Financing Bank is used, the servicing arrangements will be jointly developed by DOE and the borrower. Where such course of action is considered by the Secretary to be appropriate, a separate servicer may be appointed for the construction, startup and trial period of the project.

(b) The servicer will exercise such care and diligence in the disbursement, servicing, and collection of the loan as would be exercised by a reasonable and prudent party in dealing with a loan without a guarantee.

(c) The servicer will notify the Secretary in writing without delay:

(1) That the first disbursement is ready to be made, together with evidence from the borrower that the project has begun or is about to begin;

(2) Of the date and amount of disbursement for each subsequent disbursement under the guaranteed loan;

(3) Of any known failure by an intended source of capital to honor its commitment;

(4) Of any nonreceipt of payment within fifteen (15) days after the date specified for payment, together with evidence of appropriate notifications made by the servicer to the borrower;

(5) Of any known failure by the borrower to comply with terms and conditions as set forth in the loan agreement or guarantee agreement;

(6) If the servicer has information that the borrower may not be able to meet any future scheduled payment of principal or interest;

(7) If the servicer has information that the borrower may not meet any of the material terms and conditions of the guarantee agreement; or

(8) Of any significant changes from the original cash flow projections as evidenced from information and reports received from the borrower.

(d) The servicer will be required to submit to the Secretary periodic reports on the status and condition of each project guaranteed under this regulation. The Secretary will prescribe the frequency, format, and content of these reports. However, a report on the status of the guarantee will, at a minimum, be submitted by the servicer to the Secretary annually on the anniversary date of closing. Reporting will be in accordance with requirements established by DOE and specified in the guarantee agreement, and servicing agreement, if applicable. Reports will be furnished to the Secretary until that time when the guaranteed portion of the instrument is repaid.

(e) The servicer will take those actions necessary to perfect and maintain liens on assets which are set forth in the loan or guarantee agreement as collateral security or surety for the guaranteed portion of the loan.

§ 798.51 Loan disbursements.

(a) Unless otherwise provided in the guarantee agreement, the borrower may not be provided with any funds under the guarantee until the servicer has:

(1) Received written notice from the Secretary that the disbursement is approved; and

(2) Received from the borrower satisfactory documentary evidence that loan disbursements requested will be used to pay allowable project costs incurred or to be incurred by the borrower. The servicer or Secretary may require the borrower to provide documentation setting forth the purposes for which the drawdown is requested and an attestation that the disbursements will be used only for such purposes. Signature on the requesting document will be made by a person authorized to order the expenditure of the borrower's funds.

(b) The servicer may not release to the borrower drawdowns from any disbursement until the disbursement is approved by the Secretary; and

(c) The servicer may not, without the written approval of the Secretary, withhold from the borrower authorized disbursements, except as included in the provisions of the guarantee agreement.

§ 798.52 Financial assistance fund.

(a) As provided for in Section 19(n) of the Act, there is established in the Treasury of the United States a separate fund, hereafter referred to as the Fund, to carry out the provisions of these regulations.

(b) The following will be deposited in the Fund:

(1) Appropriations to the Fund that are made available by legislation;

(2) Repayments made by borrowers in accordance with the terms and conditions in principal and interest assistance contracts;

(3) Guarantee fees; and

(4) Any other moneys, property, or assets derived from operations of this

guarantee program, including foreclosure, repossession, or sale of collateral securities.

(c) Balances in the Fund will be used for:

(1) Payment to debtholders, in the event of default, of the principal balance and accrued interest on loan guarantee agreements;

(2) Payments under terms of a principal and interest contract;

(3) Payment to compensate for increased interest expenses associated with securities as provided for in § 798.23; and

(4) Any necessary administrative expenses incurred by the DOE, or other Federal agencies acting pursuant to the direction of the DOE in carrying out the provisions of this regulation.

(d) If, at any time, the moneys available in the Fund are insufficient to pay principal and accrued interest in the event of default, or principal and interest assistance payments, the Secretary may issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury in order to borrow sufficient funds for such purposes. This borrowing authority will be effective only to such extent or in such amounts as are specified in appropriation acts. Such authority will be without fiscal year limitation. Redemption of such notes or obligations will be made by the Secretary from appropriations or other moneys available under this regulation. Such notes or other obligations will bear interest at a rate determined by the Secretary of the Treasury, which may not be less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations will be treated as public debt transactions of the United States.

(e) The amounts in the Fund will be without fiscal year limitations and remain available until expended, with the exception that, if at any time, the Secretary determines that moneys in the Fund exceed the present and foreseeable requirements of the Fund, such amounts in the Fund that are not required to secure outstanding financial assistance obligations will be paid into the General Fund of the Treasury.

§ 798.53 Reduction or withdrawal of guarantee.

(a) The Secretary may reduce or withdraw the guarantee, as to amounts not yet disbursed or drawndown by the borrower, by written notice to the lender and to the borrower if the Secretary determines that:

(1) Initiation of activity on the project has not occurred within the period of time set forth in the guarantee agreement. Within 60 days after the guarantee is withdrawn under this circumstance, the Secretary will reimburse to the lender the full amount of the guarantee fee paid by the lender if the fee has not been passed to the borrower;

(2) The borrower has failed to acquire the required capital from intended or alternate sources of such capital, or has failed to comply with material terms and conditions set forth in the guarantee agreement. The Secretary will notify the borrower, the holder, and the servicer, as appropriate, if the guarantee is to be reduced. Drawdowns permitted to be made by the servicer after such notification is received may not be covered by a guarantee;

(3) The lender or servicer has failed to comply with any material term or condition as set forth in the guarantee agreement, and the Secretary has determined that such breach will increase the financial exposure of the Government. The Secretary will give notice of his finding that the lender or servicer has not complied with a material term to the borrower, the servicer, the lender, and the holder, as appropriate. Following notification of the Secretary's determination, the lender, or servicer, as appropriate, will be allowed reasonable time to correct the failure to comply. Actions to be taken, if the failure is not removed in a reasonable time, will be detailed in the guarantee agreement; or

(4) In the event that the Secretary determines that the project's economic success cannot be achieved in accordance with the requirements specified in the guarantee agreement, the guarantee may be reduced to amounts which have been provided by the lender as of the date of notice.

(b) A guarantee will be incontestable in the hands of the holder of the guaranteed obligation, except for fraud or material misrepresentation on the holder's part.

§ 798.54 Assignment.

(a) Except as may be otherwise by law, a holder may assign, to another, the guaranteed loan or portion thereof. Such assignment will be in accordance with the provisions of the guarantee agreement which may include a requirement for DOE approval of any assignment.

(b) The lender, except to the extent that specific limitations provided by law or in the guarantee agreement do not permit, may provide other lenders with participating shares in the loan without the prior consent of the Secretary. The guarantee agreement will specify to what extent and in what manner the loan may be divided into shares. The lender will give advance written notice to the Secretary when participating shares are so provided. The notice will be in accordance with the manner and format prescribed in the guarantee agreement and provide the participant's business name, address, telephone number, and name of official to contact.

(c) The original servicer will continue to be responsible for and perform the servicing provisions of the guarantee agreement unless the Secretary approves or assigns a substitute servicer in accordance with provisions of the guarantee agreement.

§ 798.55 Treatment of loan repayments.

When a lender holds a guaranteed and a nonguaranteed portion of a loan, payments of principal or interest made by the borrower, in accordance with the loan agreement, will be applied by the servicer to reduce the guaranteed and nonguaranteed portions of the loan on a basis that reflects the porportions that the guaranteed and nonguaranteed portions bear to the total loan.

§ 798.56 Project monitoring

(a) The guarantee agreement or related documents will provide that appropriate DOE and other Federal representatives have access to the project site at all reasonable times in order to monitor the performance of the project. The servicer, to the extent lawful and within its control, and the borrower will assure availability of information related to the demonstration facility as is necessary to permit the Secretary to determine technical progress, soundness of financial condition, management stability, compliance with environmental protection requirements, and other matters pertinent to the guarantee. The guarantee agreement or related documents will identify those items, or types, of information which the Secretary may not make available for public dissemination.

(b) The guarantee agreement, or related documents, will provide that the servicer and the borrower keep such records concerning the project as is necessary to facilitate an effective audit and performance evaluation of the

project, and that the Secretary and the Comptroller General, or their duly authorized representatives, will have access, for the purpose of audit and examination, to any pertinent books, documents, papers, and records of the borrower and the lender. Such inspection may be made during the regular office hours of the borrower or the servicer, or at any other time mutually convenient. The Comptroller General, at six month intervals, make an audit of recipients of financial assistance under this program pursuant to applicable General Accounting Office regulations.

§ 798.57 Survival of loan guarantee agreement.

Except in accordance with § 798.53, "Reduction or withdrawal of guarantee," guarantee agreements issued under these regulations will be binding upon the lender, the borrower, the Secretary, and other parties to the agreement, and upon their successors and assignees. No delay or failure of the Secretary in the exercise of any right or remedy, or partial exercise of any such right or remedy, will preclude any exercise of futher rights or remedies, and no action taken or omitted by the Secretary will be considered a waiver of any such further right or remedy.

§ 798.58 Other Federal assistance.

Nothing in these regulations may be interpreted to deny or limit the borrower's right to seek and obtain other Federal financial assistance (e.g., grants, price supports, or cooperative agreements) for a demonstration facility provided the prior written approval of the Secretary in obtained. The total amount of Federal financial assistance obtained for any facility under these regulations or any other Federal program may not exceed 75 percent of the total costs. For purposes of these regulations, other Federal financial assistance does not include revenue sharing funds or any tax benefits.

§ 798.59 Appeals.

The guarantee agreement will include a provision which specifies that any dispute concerning a question of fact arising after the guarantee agreement is executed will be decided in writing by the Secretary. The borrower or lender may request the Secretary to reconsider any such decision. If not satisfied with the Secretary's final decision, the borrower or lender, upon receipt of such written decision, may appeal the decision within 30 days, in writing, to the Chairman, Energy Board of Contract Appeals (EBCA), Department of Energy, Washington, D.C. 20585. EBCA, when functioning to resolve such a dispute under a loan guarantee, will proceed in the same general manner as when it presides over appeals involving contract disputes. The decision of EBCA with respect to such appeals shall be the final decision of the Secretary.

§ 798.60 [Reserved]

Subpart E—Default

§ 798.70 Default, demand, payment, and collateral security and surety liquidation.

(a) In the event that the borrower has defaulted in the making of required payments of principal or interest on any portion of a loan guaranteed in accordance with these regulations, and such default has not been cured within the period of grace provided in the guarantee agreement, or other collateral security or surety agreement, the holder of the debt, or other nominee or trustee empowered to act for the holder, including the servicer, may make written demand upon the Secretary for payment pursuant to the provisions of the guarantee agreement.

(b) In the event that the borrower is in default as a result of a breach of one or more of the terms and conditions of the guarantee agreement, note, loan agreement, or other contractural obligation related to the guaranteed debt transaction, other than the borrower's obligation to pay principal or interest, as provided in paragraph (a) of this section, the holder will not be entitled to make demand for payment pursuant to the guarantee, unless the guarantee agreement provides that such default is a material breach entitling the holder to make demand, or unless the Secretary agrees in writing that such default has materially affected the rights of the parties, and finds that the holder should be entitled to receive payment pursuant to the guarantee agreement.

(c) No provision of these regulations may be construed to preclude forbearance by the holder with the consent of the Secretary for the benefit of the borrower.

(d) Upon the making of demand for payment as provided in paragraph (a) or (b) of this section, the holder will provide, in conjunction with such demand or immediately thereafter, at the request of the Secretary, supporting documentation as may be reasonably required to justify the demand.

(e) Payment as required by the guarantee will be made within sixty (60) days after receipt by the Secretary of written demand for payment: Provided, the demand is in compliance with the terms and conditions of the guarantee agreement, applicable law, and these regulations. Interest will accrue to the holder, in accordance with provisions stated in the guarantee agreement, until the guaranteed portion of the loan has been fully paid by the Secretary.

(f) In the event of default and payment by the Secretary to the holder, the holder will transfer and assign to the Secretary all rights held by the holder in the guaranteed loan. Such assignment will include all related liens on collateral security and surety rights. Upon such payments, the Secretary will be subrogated to the rights of the recipient of the payment and will have superior rights in and to the property acquired from the recipient of the payment. Where there is a partial guarantee of the loan, the guarantee agreement will specify the terms and conditions for the handling of the collateral and the disposition of the proceeds of recovery after default has occurred.

(g) Where the guarantee agreement so provides, the holder and the Secretary may jointly agree to a plan of liquidation of the collateral security pledged to the guaranteed loan.

(h) Where the guarantee agreement does not provide for a liquidation plan involving the holder, and payment of the guaranteed loan has been made, the Secretary, in accordance with the rights received through subrogation and acting through the U.S. Attorney General, will foreclose on the collateral security and take such other legal action as necessary for the protection of the Government.

(i) If the Secretary is awarded title and rights to collateral security pursuant to foreclosure proceedings, the Secretary may take action to complete, maintain, operate, or lease the project facilities, or take any other necessary action which the Secretary deems appropriate in order that the original goals and objectives of the project will, to the extent possible, be realized.

(j) In addition to foreclosure and sale of collateral security the U.S. Attorney General will take appropriate action in accordance with rights contained in the guarantee agreement to recover losses and expenses incurred by the Government as a result of the default. Any recovery so received by the U.S. Attorney General on behalf of the Government will be applied in the following manner: First, to the expenses incurred by the U.S. Attorney General and DOE in effecting such recovery; second, to reimbursement of any amounts paid by DOE as a result of the loan guarantee; third, to any amounts owed to DOE under related principal and interest assistance contracts; and fourth, to any other lawful claims held

by the Government on such proceeds. Any sums remaining after full payment of the above will be available for the benefit of other parties lawfully entitled to claim them.

(k) If a partial guarantee is involved, funds received by the lender as a result of liquidation actions will be applied as follows:

(1) First, to the payment of reasonable and customary fees and expenses incurred in the liquidation process, and as set forth in the liquidation plan; and

(2) Second, distributed among the legal owners of interests in the loan; pro-rated in accordance with their relative percentage ownership of the loan.

(l) No action taken in the liquidation of any collateral security pledged by the borrower will affect the rights of any party, including the Secretary, having an interest in the loan to pursue, jointly or severally, to the extent provided in the loan agreement or the guarantee agreement, legal action against the borrower, or other liable parties, for any deficiencies owing on the debt after application of the proceeds received upon liquidation.

(m) In the event that the Secretary considers it necessary or desirable to protect or further the interest of the United States in connection with the liquidation of collateral security or recovery of deficiencies due under the loan, the Secretary will take such action as may be appropriate under the circumstances.

(n) Nothing in this Section may preclude the Secretary from purchasing the holder's interest in the project upon liquidation or any portion of any nonguaranteed loan which might be partially secured by the assets of the project.

§ 798.71 Preservation of collateral security.

(a) Upon default by the borrower, the holder of pledged collateral security will take those actions that the Secretary may reasonably require to provide for the care, preservation, protection, and maintenance of the collateral security so as to enable the United States to achieve maximum recovery upon default of the loan. The Secretary may reimburse the holder of collateral security for reasonable and appropriate expenses incurred in taking actions required by the Secretary.

(b) Except as provided in § 798.70, no party may waive or relinquish, without the consent of the Secretary, right to any collateral security for the loan to which the United States would be subrogated upon payments under the guarantee agreement.

(c) In the event of a default, the Secretary may enter into contracts as required to preserve the collateral security for the loan.

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Part V

Department of Energy

Federal Energy Regulatory Commission

Rule Required Under Section 202 of the Natural Gas Policy Act; Incremental Pricing

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM80-10]

Rule Required Under Section 202 of the Natural Gas Policy Act; Incremental Pricing

May 6, 1980.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule, subject to Congressional review.

SUMMARY: The Federal Energy Regulatory Commission hereby adopts regulations in accord with the directive of section 202 of the Natural Gas Policy Act of 1978 (NGPA). The rule is subject to Congressional review and will not become effective if disapproved by either House of Congress. If not disapproved, the rule will expand the scope of the incremental pricing program to all industrial end-users not exempt under the NGPA, and provide that those users of natural gas other than as boiler fuel be permanently subject to incremental pricing surcharges up to the price of high-sulfur No. 6 fuel oil.

EFFECTIVE DATE: Such date as represents the ninetieth day following expiration of 30-day Congressional review period, if not disapproved by either House.

FOR FURTHER INFORMATION CONTACT: Alice Fernandez, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (202) 357-9095.

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I. Introduction

Title II of the Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95-621) requires that the Federal Energy Regulatory Commission (the Commission) promulgate regulations to channel a specified portion of the increasing cost of natural gas to industrial users. The "incremental costs" of natural gas are to be passed through from interstate pipelines to industrial end users by means of a surcharge pricing mechanism.

Under Title II of the NGPA, the incremental pricing program is to be implemented in two phases. The first phase was implemented by regulations issued by the Commission on September 28, 1979 (44 FR 57726, October 5, 1979).[1] Under those regulations, only large industrial facilities that use natural gas as a boiler fuel are subject to incremental pricing.

Section 202 of Title II requires the Commission to promulgate a second phase (Phase II) rule by May 9, 1980, that amends the scope of the incremental pricing program to include other industrial users. Specifically, subsection (b) of section 202 provides that the second phase rule:

> Shall apply with respect to the industrial use of natural gas (as defined by the Commission in such rule), including boiler fuel use of natural gas . . . by—
>
> (1) Any industrial boiler fuel facility . . . and
>
> (2) Any industrial facility which is within a category defined by the Commission in such amendment as subject thereunder to the requirements of such rule which is not exempt under section 206.

Section 202 also directs the Commission to submit Phase II rule to Congress, which has reserved the right to review and disapprove this rule if it decides against extending the scope of the incremental pricing program.

On November 15, 1979, the Commission issued a Notice of Proposed Rulemaking providing for a broad Phase II expansion of the incremental pricing program.[2] This proposal derived from the Commission's review of the Congress' dual objectives in enacting the incremental pricing provisions. One objective is to prepare the natural gas market for deregulation in 1985. The second objective is to provide a measure of shelter to residential and other high priority customers from rising gas prices. The Commission then gave its preliminary view that "the Congressional purposes underlying incremental pricing would be most fully met if all industrial users, other than those specificallly excluded by statute, are brought within the scope of Title II." (mimeo, p. 5)

In the Phase II Notice, the Commission also proposed to apply the "three-tier" system for determining the alternative fuel ceiling, which was developed for Phase I, to Phase II as well. In addition, the surcharge or flow-through mechanism developed for Phase I was proposed for Phase II. The Commission sought to comment on these basic features as well as on several subsidiary aspects of its Phase II proposal.

Public hearings were held on the Phase II proposal in San Francisco, Salt Lake City, Chicago, Louisville and Washington, D.C. during the month of January; nearly 400 written comments were received.[3] Many fundamental questions were raised regarding both the specific features of the Commission's Phase II proposal and the ability of the overall incremental pricing program to fulfill its objectives. Those comments have played a major role in helping the Commission shape its Phase II submission to Congress. The final rule prescribed below responds in various ways to data, views, comments and criticisms of the rule proposed in the Commission's November 1979 Notice.

At the outset, the Commission wishes to point out that many comments suggested that it not develop any expansion of the program beyond what is already required by section 201 (Phase I). It was argued that the Congressional purposes underlying incremental pricing are misguided or that market conditions have so changed as to render the program inappropriate. The Commission does not accept this suggestion. The Commission believes that it was neither requested nor authorized to second-guess the social and economic judgments that the Congress made in enacting Title II. The role of the Commission under Section 202 is more limited. Instead, the Commission is instructed to bring its technical expertise to bear on the design of a workable Phase II rule that can best advance the purposes set by the Congress. It is up to the Congress to decide whether this Phase II submittal meets adequately the social and economic goals of the incremental pricing program or, indeed, whether those goals are still appropriate.

By virtue of the very review procedures built into section 202, it

[1] The regulations issued on September 28 were contained in two dockets, Docket Nos. RM79-14 and RM79-21.

[2] Docket No. RM80-10; 44 FR 67170 (November 23, 1979).

[3] A full list of commenters is contained at Appendix A.

seems clear that the Congress sought to have this Commission develop a meaningful Phase II rule. The Congress would not have a meaningful choice if the Commission were to offer no rule, or a very narrow rule, for its review. The Congress has reserved to itself the fundamental judgment as to whether an expansion of incremental pricing is consistent with current national priorities.

The Commission believes that this Phase II rule presents a meaningful choice to the Congress. It proposes to broaden the scope of the incremental pricing program. On the other hand, it responds to the substantial body of comments that have urged the Commission to take a careful approach to Phase II and its attendant economic impacts.

II. Summary of the Phase II Submittal

The Phase II rule approved by the Commission and submitted to the Congress would extend the incremental pricing program to all industrial users except those exempted specifically by the statute and would apply to all industrial gas consumption exceeding 300 Mcf per day. It also sets a uniform price ceiling for natural gas sold to industrial users at the price of No. 6 high-sulfur residual fuel oil.

An essential feature of the Phase II rule is that non-boiler fuel industrial users will be subject to incremental pricing only with respect to levels of consumption exceeding 300 Mcf per day. Thus, a facility using 400 Mcf per day of Phase II (non-boiler) uses would have 100 Mcf per day subject to incremental surcharges. For an industrial facility using 380 Mcf per day of natural gas as boiler fuel (a Phase I user), the entire 380 Mcf per day is surcharged, pursuant to the statutory provisions for incremental pricing of boiler fuel.

Another feature of the Phase II rule is that it would give States discretion to limit the impact of Phase II on individual users in order to ease any serious transitional burden. If, during the first year, Phase II would result in a surcharge of more than 75 cents per Mcf to any user, the State regulating consumption of that gas may allocate that portion of the surcharge exceeding 75 cents to other incrementally priced gas users within the State.

Technically, the Phase II submission would apply to all industrial "uses" other than those specifically exempted by statute. Gas straddle plants, which extract liquids from the gas stream, would be covered only with respect to net "use", or consumption, of gas as a fuel.

The Commission also recommends to Congress that the three-tier alternative fuel price ceiling approach under Phase I be postponed another year, until November 1, 1981. This specific action is submitted to the Congress for review pursuant to the general exemption authority of section 206(d). If the Congress agrees to this one-year exemption from higher prices for Phase I users, all users under both Phases I and II will have the same No. 6 high sulfur fuel oil ceiling through October 1981.

By the end of 1983, the Commission will review the impact of the incremental pricing program and evaluate what, if any, further changes would best advance the purposes of the program. The results of this review will be reported to Congress.

The final Phase II rule promulgated here will be submitted to the Congress by May 9. Either House has the statutory authority to veto the submission during the subsequent 30-day review period. If not disapproved, the Phase II expansion of the incremental pricing program will take effect 90 days after the Congressional review period has ended.

III. Background of the Incremental Pricing Program

The NGPA was enacted in 1978 to reform regulation of the natural gas industry and provide for phased deregulation of new natural gas. Title I of the NGPA establishes incentive price schedules for variously defined categories of gas. Title I replaced a system of cost-based rates under the Natural Gas Act of 1938, which reached only to sales of gas in interstate commerce. The wellhead price of natural gas produced and consumed in the same state (so-called intrastate gas) was not subject to the Natural Gas Act. The NGPA changed the system dramatically by setting higher wellhead prices than has previously been allowed, and by also extending Federal price controls to previously unregulated intrastate sales. The maximum lawful prices set by Congress were substantially in excess of then-prevailing cost-based nationwide rates that had been set by the Federal Power Commission as regulated price ceilings.

Under Title I, the price of "new" natural gas will be deregulated on January 1, 1985. New natural gas is defined as production from wells spudded (drilling commenced) on or after February 19, 1977, which are more than 2½ miles from or 1000 feet deeper than the nearest old well. In addition, production from new development wells will be deregulated by 1987. Finally, NGPA price controls on most flowing intrastate gas will expire on January 1, 1985.

A. *Objectives of Title II Incremental Pricing.* Title II of the NGPA, the incremental pricing provisions, were included by the Congress for two reasons. First, incremental pricing is designed to mitigate any disruption of the natural gas market that might occur upon deregulation in 1985. Many members of Congress, particularly those opposing sudden deregulation, feared serious disruption if deregulation were to occur during a period of supply and demand imbalance. The relatively low price of gas remaining under controls after 1984 was seen as providing an effective "subsidy" to pipelines willing to pay higher than long-run market clearing prices for deregulated supplies. Congress sought to eliminate this possible incentive for interstate pipelines to bid excessively high prices by initially increasing the price of gas delivered to large, price sensitive industrial customers to a level equal to the cost of their alternative fuel. Under this regime, Congress anticipated that pipelines, whose revenues depend upon volumetric throughput, would seek to minimize further increases in the cost of gas that might occur upon deregulation, for fear that industrial demand for natural gas (and therefore throughput revenues) would decline.

A second purpose of the incremental pricing provisions of the NGPA is to shield high priority gas users, such as residential users, from some of the scheduled wellhead price increases allowed by Title I of the Act. This shielding effect is accomplished by channeling to industrial customers a greater than pro rata share of rising prices paid by pipelines. The increased recovery of costs from industrial users results in an offsetting reduction in gas costs recovered from high priority users.

B. *Mechanics of Title II Incremental Pricing.* The incremental pricing program consists of two sets of accounting rules. One set of rules relates to accumulation, at the pipeline level, of "incremental gas acquisition costs." The other set of rules allocates these incremental costs among industrial end users according to their "maximum surcharge absorption capability."

For each unit of gas purchased by an interstate pipeline, the incremental gas acquisition cost is defined as the price paid by the pipeline minus a statutorily prescribed "threshold price" applicable to that gas. If a pipeline buys one MMBtu (million Btu's, or roughly one thousand cubic feet at standard temperature and pressure) of NGPA section 102 (new) gas at the present May 1980 ceiling price of $2.45/MMBtu, it

then subtracts the May 1980 incremental pricing threshold of $1.78/MMBtu, which leaves $.67/MMBtu to be placed into the incremental gas acquisition cost account. The $1.78/MMBtu of cost at or below the incremental pricing threshold is placed into the pipeline's purchased gas account and is borne equally by all users. But the $.67/MMBtu in the incremental gas acquisition account is specifically channelled to users subject to the incremental pricing program. The more high-priced gas a pipeline buys, the larger will be its incremental gas acquisition account.

At the same time that pipelines are computing monthly incremental gas acquisition costs, end users are computing their monthly maximum surcharge absorption capability (MSAC). A user's MSAC is defined as the estimated monthly consumption subject to incremental pricing multiplied by the difference between the applicable alternative fuel ceiling and its "base rate". The base rate is determined by the state or local agency having ratemaking responsibility for sales to industrial end users, and does not include the incremental pricing surcharge.

The overall incremental pricing program for a specific interstate pipeline then operates by comparing total incremental gas acquisition costs against aggregate MSACs. If aggregate MSAC's exceed the pipeline's total incremental gas acquisition cost, then the entire amount of those costs is recovered solely from incrementally priced customers. During the initial stage of incremental pricing, all pipeline gas acquisition costs at prices above the incremental pricing threshold are "loaded" onto industrial customers. It is as if industrial customer end-use rates reflect one wellhead price while rates to residential and other high priority customers reflect a lower wellhead price.

But it is unlikely that aggregate MSACs will permanently exceed incremental gas acquisition costs on any pipeline system. This is because the size of the incremental gas acquisition cost account tends to grow exponentially as both the amount of incrementally priced gas and the incremental costs associated with that gas will increase over time.

Eventually, the size of the incremental gas acquisition cost account will equal aggregate MSACs. At this point all incrementally priced users will be, by definition, at their alternative fuel price ceiling. Further increases in the incremental gas acquisition cost account would, if channeled to incrementally priced users, take them above their alternative fuel cost.

To avoid forcing these industrial customers above their alternative fuel cost and potentially driving them from the pipeline's natural gas system, both Title II and the Commission's regulations provide for "spillover" of incremental gas acquisition costs to all customers once incrementally priced users have all reached their alternative fuel ceilings. During this spillover stage, that portion of a pipeline's total incremental gas acquisition costs that exceeds its aggregate MSAC is placed into the system's purchased gas account and is recovered evenly from all customers.

These increases in pipeline purchased gas accounts due to spillover will normally be passed on to all users regardless of whether they are subject to incremental pricing. But when these general cost increases reach incrementally priced users, they increase those users' base rates and thereby reduce their incremental pricing surcharges by reducing the difference between their alternative fuel price ceiling and their base rate.

Accordingly, once spillover begins, further increases in a pipeline's purchased gas costs are effectively borne completely by its exempt (non-incrementally priced) users. This subsequent loading onto exempt users occurs because the incremental pricing program does not force industrial users above their alternative fuel ceilings. What happens during the spillover period is that each industrial user's MSAC and, therefore, its incremental pricing surcharge tend to erode due to increasing base rates. As far as incrementally priced users are concerned, further increases in pipeline gas acquisition costs reduce incremental pricing surcharges and MSAC's but do not increase the overall delivered price.

When viewed from the perspective of residential and other exempt users, spillover signals the start of a temporary period during which they must bear 100 percent of further increases in pipeline gas acquisition costs, even though they may represent only 75 or 80 percent of the pipeline's customers. After spillover begins, the system effectively "loads" purchased gas cost increases onto exempt users until aggregate MSACs of incrementally priced users reach zero. This is referred to as the "catch up" stage.

Finally, the third stage of Title II incremental pricing begins when aggregate MSACs diminish to zero. At that point the incremental pricing system ceases to have any direct effect on user prices. The price of gas to industrial users may rise above the alternative fuel ceiling, but only because the base rate has done so. With incremental pricing surcharges equal to zero, incremental pricing has fulfilled the purpose of easing into higher gas costs, and the historical system of rolled-in pricing to all users resumes.

C. *The Phase I Incremental Pricing Program.* Section 201 of Title II creates a mandatory incremental pricing program applicable to industrial boiler fuel users. The Commission's Phase I rules became effective on January 1, 1980.

The most difficult issue encountered by the Commission in developing its Phase I rules was deciding how to set the alternative fuel ceiling. The Commission recognized that too high an alternative fuel ceiling price could lead to inadvertent loss of industrial load. On the other hand, too low a ceiling price would render the program ineffective in shielding residential and other high priority customers from rising gas costs. These considerations led the Commission to adopt a three-tier alternative fuel ceiling approach.

Under the three-tier system, an industrial boiler fuel user's alternative fuel ceiling price may be based on the price of No. 2 distillate fuel oil, No. 6 low sulfur residual fuel oil, or No. 6 high sulfur residual fuel oil. These three grades of fuel oil represent a wide range of prices, with No. 2 fuel oil significantly more expensive than No. 6 low sulfur fuel oil, which, in turn, is more expensive than No. 6 high sulfur fuel oil. Each facility subject to Phase I would be permitted to use as its alternative fuel ceiling the lowest priced fuel oil that it has the physical capability and legal authority to burn.[4] However, in order to give the Commission time to put the program into operation and to avoid excessive impacts on any facility, the Commission proposed, and the Congress acquiesced in, a one-year moratorium on the upper two tiers until November 1, 1980.

A majority of States have taken action in reponse to the Phase I incremental pricing program that may bear on the Phase II program as well. Specifically, States have altered their end use rate schedules to set the price of natural gas to non-exempt (incrementally priced) users at the alternative fuel cost as referenced in the Commission's regulations and published each month by the Energy Information Administration of the Department of Energy.

Any State taking this action would "zero out" the entire maximum

[4] Legal authority, in this case, refers primarily to applicable environmental restrictions.

surcharge absorption capability of non-exempt users in the State and thereby eliminate all incremental pricing surcharges to these users. The effect of this action on the part of any State is to cause the entirety of increased revenues collected from non-exempt users to remain within that State. This result is different from what would occur under the Commission's rules, which operate at the interstate level. Under federal incremental pricing, incremental surcharges paid by non-exempt users in one State would contribute to a reduction in the amount of purchased gas costs to be recovered from exempt users in all States served by the pipeline. So it is in the self-interest of a State which contains significant non-exempt industrial load to capture the increased revenues derived from those users for the sole benefit of exempt users within the State.

In a Notice of Proposed Rulemaking on Statewide exemptions from incremental pricing issued on December 21, 1979, the Commission responded to a number of inquiries as to the fairness and legality of this State action.

> In sum, the Commission believes that the Congress has already addressed and affirmed the substitution of State-level incremental pricing (through increased rates to non-exempt users) for incremental pricing at the interstate pipeline level. These considerations lead the Commission to a preliminary view that it should not, and legally cannot, prevent States from raising rates of nonexempt industrial users at or above the federally-prescribed and published alternative fuel cost.[5]

The Commission has yet to take final action on this and other issues in the Statewide exemption proceeding.

D. *Relationship of the Phase II Proposal to Phase I.* The fundamental question that the Commission has addressed in its Phase II proceeding is whether the purposes of the incremental pricing program would be better advanced by a broader scope than is embodied in Phase I. The Commission's decision to propose a broad Phase II rule in its November 1979 Notice of Proposed Rulemaking originated from its view that an expansion would be consistent with both the market ordering and price shielding objectives of the program.

Phase I of incremental pricing covers approximately .8 to .9 Tcf, or 7 to 8 percent, of annual interstate volumes. One argument originally offered by the Commission for expanding the program is that Phase I by itself might prove incapable of providing sufficient demand restraint to achieve market ordering in 1985.

> Phase I users are among the lowest priority users of natural gas; if heavily curtailed, Phase I users would no longer be in a position to affect their pipelines' bidding decisions. Under such circumstances, demand restraint could be achieved only through measures applicable to users of higher priority than industrial boilers. (mimeo, p. 9)

With respect to the objective of price shielding, the Commission in its November Phase II Notice anticipated correctly that under Phase I the maximum surcharge absorption capability of industrial boiler fuel users would be less than the amount of purchased gas costs subject to incremental pricing as soon as the rule took effect. Because all industrial boiler fuel users subject to Phase I are now at No. 6 high sulfur alternative fuel ceiling prices, high priority users are currently receiving the full amount of price shielding to be derived from Phase I with its single alternative fuel price ceiling. With Phase I users paying surcharges that have averaged about $.25 per MMBtu over the past few months, the benefit to high priority users has been about 2.5 cents per Mcf. For a typical gas-heating household using 130 Mcf per year, the benefit is approximately $3.00 per year. The Commission believed that the Congress intended a greater measure of price shielding, and so proposed a broad expansion.

Against this background of the purposes and operation of the incremental pricing program, the following section describes both the major themes expressed in the comments received on the Commission's proposed Phase II rule as well as the Commission's reaction to those comments.

IV. Public Comments and Commission Findings on the Proposed Phase II Rule

The Commission's Phase II Notice of Proposed Rulemaking has attracted considerable attention. The following discussion attempts to summarize the dominant themes contained in comments filed in this proceeding. The major themes deal with:

A. The timing of the Phase II Rule.
B. The scope of the Phase II Rule.
C. The alternative fuel price ceiling.
D. Market ordering.
E. Residential and other high priority price shielding.

A final section of this preamble, addressing economic impacts, also deals with a number of comments received on that issue.

Because of the number of comments, no attempt has been made to list in the text all those who commented on each theme. Instead, two or three comments representative of the many others will be cited. All comments and the major issues addressed by each are listed in Appendix A.

A. *The Timing of the Phase II Rule.* The Commission received many comments suggesting that it delay promulgation of its Phase II rule. The American Gas Association and Northern Petrochemical Company as well as others asserted as a threshold matter, that the Commission has the discretion to delay its Phase II rule. They noted that the Phase II rule under section 202 is, by its nature, merely an amendment to the Phase I rule under section 201. They also noted that section 201(a) provides for amendments to the section 201 rule "from time to time". They concluded that the section 202 rule is such an amendment and thus may be made from "time to time" and need not be issued by May 9, 1980.[6]

Many comments also suggested that the Commission should take a cautious approach, or, indeed, not implement Phase II at all. They suggested that Phase II is premature at this juncture and that further experience with Phase I as well as in-depth economic analyses are required for the Commission to make a reasoned decision on Phase II. Commenters such as Natural Gas Pipeline Company of America submitted that the Commission lacks sufficient data to make a decision now. They noted that 1985 estimated alternative fuel prices, market supply and demand, and other crucial factors are highly speculative at this time. Colorado Interstate Gas Company and others agreed and added their belief that there are so many other crucial incremental pricing rules pending, including small user, statewide, and agriculture exemptions, that the effects of Phase II are currently indeterminable.

Commenters' suggested schedules for implementing Phase II varied widely. Many simply suggested an indefinite delay. Mississippi Public Service Commission and Mississippi Valley Gas Company recommended indefinite delay and added that the Commission should rely on state regulation in the interim period. Others, including Congressman Tom Corcoran of Illinois, sought a delay until more information and experience is gained and all exemption rules are finalized. UGI Corporation urged a delay until the Department of Energy sends to Congress its PURPA section 306 report

[5] Docket No. RM79-47, 45 FR 1081 (January 4, 1980).

[6] Ascard Inc., suggests that the constitutionality of section 202 is in doubt. Other forums are more appropriate for resolution of that question; the Commission's task is to carry out Congress' mandate.

relating to end-use rate design for natural gas. Others were more specific and suggested delays from one up to ten years. Southern Nevada Industrial Customers suggested that the Commission promulgate the Phase II rule now but establish a much later effective date. Colorado Interstate Gas Company suggested that the Commission ask Congress for more time.

Other comments suggested various phased-in approaches. Ford Motor Company submitted that a phased-in approach with annual reviews will provide flexibility and avoid subjecting more companies to incremental pricing until large volumes of incrementally priced gas hit the market. Cast Metals Foundation suggested a gradual phasing-in at 20 percent of the affected industrials per year until all 100 percent are included in the program.

Few comments expressed favor towards an immediate rule expanding coverage. However, Congressman Dingell of Michigan and Boston Gas Company favored such an approach. Congressman Dingell stated five reasons why a Phase II rule is needed now: (1) Industrials who wanted more gas supplies and are getting them now should pay their fair share for those supplies now; (2) industrials must be encouraged to conserve; (3) market disorders during the transition period before 1985 must be avoided; (4) businesses should be given time to plan for decontrol; and (5) the Commission should have the opportunity to fine-tune its program before 1985. Boston Gas made the point that the Commission may lack statutory authority to expand the program later on.

The Commission is sympathetic to suggestions that it defer Phase II. It would be desirable to have more knowledge and experience with incremental pricing before issuing a Phase II rule. But section 202, in the Commission's judgment, requires a rule to expand the program to industrial non-boiler fuel uses, and leaves no room for delay. It states:

> Not later than 18 months after the date of the enactment of this Act, the Commission *shall*, by rule, prescribe an amendment to the rule required under section 201 * * * (Emphasis added.)

Any expansion of incremental pricing to industrial uses other than boiler fuel requires that a rule be issued on or before May 9, 1980. If disapproved by Congress, provision is made for submitting other Phase II rules. However, a failure to act now may legally foreclose the possibility of a later expansion of the program's scope, should it be decided that such would be in order.

The Commission is not persuaded by the comments of the American Gas Association, Northern Petrochemical Company and others that there is discretion in the NGPA to delay and expand the scope by later rulemaking. To interpret section 202 in relation to section 201(a) in the manner suggested would obviate section 202. The Commission concludes that the language of section 201(a) authorizing amendments does not apply to amendments that seek to broaden the scope of the program, which are the sole consideration of section 202.

The section 202 rule is an amendment to the section 201 rule; but it is not the type of amendment contemplated by section 201(a). According to the Statement of Managers (page 96) section 201 "applies to industrial boiler fuel facilities only." Consequently, any amendment referred to in section 201(a) must relate to industrial boiler fuel use. In contrast, section 202 specifically relates to matters *not* covered by section 201. It calls for a single amendment to the section 201 rule and then only to add coverage to the rule. And section 206(d), which does permit certain amendments to the section 202 rule, only provides for exemptions to that which is already included.

Stated simply, the legislative scheme of Title II is that the Phase II rule delineates the maximum scope of the incremental pricing program. The Commission is of the opinion that once the Phase II rule is adopted, the scope of the incremental pricing program may be contracted but may not be expanded. It follows that in order to give Congress a meaningful Phase II option, the Commission must issue a Phase II rule by May 9, 1980, premised on the understanding that no statutory provision is made for a later expansion of that rule by the Commission.

The Commission must, therefore, act now, even in the face of acknowledged uncertainty, in order to carry out the Congressional intent that it be given a meaningful expansion of incremental pricing from boiler fuel to other industrial uses. A broad Phase II rule can always be followed by section 206(d) exemptions.

The Commission is also sympathetic to and has tried to respond to requests that all other statutorily required exemptions be finalized prior to making the Phase II rule effective. Final rules implementing the mandatory small boiler and agricultural use exemptions are being issued simultaneously with this Phase II rule. But with respect to discretionary exemptions under section 206(d), the Commission is not yet in a position to commit to any broad exemption plan. The Commission is concerned that generic exemptions could become so numerous as to reduce the Phase II rule to a hollow shell. The only prudent course is to provide for the broadest possible program at this time. By doing so, in addition to preserving the scope of the program, the Commission will retain the opportunity to revise and adjust the program as knowledge and experience develop further. Furthermore, during the transition period before 1985, industry as a whole will be able to acclimate itself to scheduled deregulation. Thus, with this approach, a functioning incremental pricing program will be in place when deregulation occurs.

Accordingly, this Phase II rule applies to all industrial gas users. Because the Commission recognizes that industry must have an opportunity to gain an understanding of the Phase II rule and plan for its implementation, the effective date of the Phase II amendment shall be delayed to the maximum extent permitted by the Statute, which is 90 days after the Congressional review period has ended.

B. *Scope of the Phase II Rule.* The Commission's Notice of Proposed Rulemaking proposed to bring all industrial users, other than those specifically excluded by statute and except for those users who consume small amounts of gas, within the scope of the incremental pricing rule. A majority of commenters urged the Commission not to expand the scope of incremental pricing beyond the existing Phase I rule. Most asserted that the proposed broad Phase II rule utilizing a three-tier alternative fuel price ceiling would have disastrous effects on the economy and on their particular industries. These commenters forecast increased inflation and unemployment, fuel switching leading to increased dependence on foreign oil, plant closings, and other effects harmful to industry in particular and the national economy in general. On the other hand, some commenters argued that these forecasts of economic doom were exaggerated and that a broad Phase II rule would best implement Congressional purposes.

Many of the commenters urged the Commission to adopt a liberal approach to granting exemptions from any final rule of broad applicability. Pacific Gas and Electric Company, GTE Products Corporation, and Johns-Manville Corporation, among many others, urged the Commission to exempt uses of natural gas for which no reasonably

feasible alternative fuel oil capability exists. Some industrial processes require controlled temperatures or clean flame characteristics which, it is suggested, can be achieved only with natural gas. Many feedstock uses require the particular chemical characteristics of natural gas. Many commenters argued that because of an absence of alternative fuel capability, they are "captive" users unable to switch fuels regardless of price and unable to conserve significantly without reducing production. These users argued that application of incremental pricing to their operations would create economic hardship that would more than offset any direct benefit to exempt, high-priority users. Furthermore, some pointed out that most process and feedstock uses of natural gas are in fact defined as high-priority uses under Commission and state curtailment plans.

For similar reasons, several commenters, including Northern Illinois Gas Company, the American Iron Ore Association and Korf Industries, recommended that natural gas used for plant protection be exempt from incremental pricing. Ideal Basic Industries, Inc. urged the Commission to exempt gas use which is necessary for environmental or industrial safety reasons. Avery International suggested that gas used for mandated emission control devices should be exempt. Phelps Dodge Corporation argued that natural gas used as ignition fuel or for flame stabilization should be exempt. Milwaukee Solvay Coke Company urged the Commission to exempt gas used in mixtures of coke-oven gas.

Other commenters asserted that the national interest and economic considerations require that certain industries or classes of industries be excempt from incremental pricing. For example, Potters Industries, Inc. urged the Commission to exempt gas used to manufacture products which are particularly sensitive to competition from foreign imports. A joint comment from North Carolina concerns suggested that the Commission exempt all gas used to manufacture necessities such as food, clothing and shelter. Certain Teed Corporation urged an exemption for the insulation industry, the Cast Metals Foundation urged an exemption for the foundry industry, Sikes Corporation urged an exemption for the ceramic tile industry, the National Clay Pipe Institute urged the same for the clay pipe industry, Schenley Distillers, Inc. recommended an exemption for gas used in the production of anhydrous alcohol for gasohol, and Cabot Corporation urged an exemption for gas used to manufacture corrosion resistant alloys, high temperature alloys, and stainless steels. Other commenters made similar requests citing the national importance of their particular gas uses and the inability of their industries to pass on such cost increases as would occur should the Phase II rule be promulgated as proposed.

From the number and quality of the comments received in this proceeding, it is obvious that the asserted equities involved in determining the scope of Phase II are exceedingly complex. If the Commission were to exempt firms or industries without alternative fuel capability or on some other basis such as social need, national defense, or potential economic disadvantage, the exemptions would soon swallow the rule. To grant some of the requested exemptions and deny the rest could produce highly inequitable results. In order to provide Congress with a proposed rule that would significantly expand Phase I coverage, the Phase II rule must be broad in its application. The record indicates that any significant attempt by the Commission to fashion generic exemptions would be complex and inequitable and could eventually result in a hollow Phase II rule that adds relatively little expansion to the program.

The Commission is continuing to develop a meaningful yet equitable approach for the treatment of generic exemptions from the incremental pricing program. It is the Commission's belief that section 206(d) provides the primary statutory vehicle for granting relief in the form of full or partial exemptions. Any exemption granted pursuant to section 206(d) must undergo Congressional review prior to taking effect, and the Commission believes the Congress, by inclusion of the section 206(d) mechanism in the NGPA, expressed a preference for reviewing exemptions from the program. Thus, the Commission intends to restrict its use of its adjustment authority under section 502(c) of the NGPA. Section 502(c) adjustments will be granted only in those cases where the most special of special hardship can be demonstrated or where a unique set of circumstances unequivocably warrants relief from incremental pricing.

The Straddle Plant Group and several individual natural gas liquid separation facilities argued that the natural gas they purchase should not be subject to incremental pricing. They argued that Title II should not apply because they do not "use" or "consume" all the gas that they purchase. Of the total volume of natural gas which enters a separation plant, most leaves in the form of natural gas, some leaves in the form of natural gas liquids, and the rest is consumed in the process. For example, 100 MMBtu's of gas may enter a particular separation plant. After processing, the gas stream that exits the plant will typically contain 80 MMBtu's of gas. Fifteen MMBtu's may be extracted in the form of natural gas liquids. Only the 5 MMBtu's of natural gas which is consumed in the process is incrementally priced under the Phase II rule below. This is not the result of a partial exemption. In the above example, 80 MMBtu's were returned from the plant in the form of natural gas supplies. Fifteen MMBtu's were separated from the gas stream but remained as useful energy supplies in the form of propane, butane and other natural gas liquids. Because the separation plant actually *uses* only 5 MMBtu's of gas, only the 5 MMBtu's would be subject to incremental pricing under Title II.

Most commenters strongly urged the Commission to continue the exemption for small users of both boiler and non-boiler fuel. The permanent exemption for small boiler users required by section 206(a)(2) of the NGPA will be promulgated in Docket No. RM80–24.[7] Also, a rule applicable to new, small boiler users will be adopted in Docket No. RM79–48.[8]

In the Notice of Proposed Rulemaking issued in this docket, the Commission proposed to exempt from incremental pricing those small users that did not consume more than an average of 300 Mcf per day (or the permanent threshold established in accordance with section 206(a)(2) of the NGPA, if lower) for non-boiler fuel use during any month commencing with May, 1980. Although the comments strongly supported this exemption, several commenters suggested modifications. Mississippi Valley Gas Company, Municipalities for Small Industrial Consumers, and Kyle Associates, among others, recommended that the threshold for the small non-boiler use exemption be set at 300 Mcf per day even if the threshold for the small boiler fuel use exemption is lower as a result of the 5 percent rule required by section 206(a)(2). Northern Natural Gas Company suggested that the small industrial's gas use be examined once a year to establish eligibility for the exemption on an annual basis. Under such a procedure, a small user would not lose its exemption if gas use for one month exceeded 300 Mcf per day

[7] *See* Notice of Proposed Rulemaking, Docket No. RM80–24 (March 6, 1980).

[8] *See* Notice of Proposed Rulemaking, Docket No. RM 79–48 (September 28, 1979).

because of seasonal variations or unanticipated peak requirements. Northern Illinois Gas Company noted that the small non-boiler use exemption as proposed drew a harsh line. An industrial that uses more than 300 Mcf of gas per day has all of its gas subject to incremental pricing surcharges whether it uses 301 or 100,000 Mcf of gas per day. However, an industrial facility that uses 299 Mcf of gas per day is totally exempt. To relieve this harsh effect, Northern Illinois Gas Company and Koppers Company, Inc. urged the Commission to adopt a rule which would exempt the first 300 Mcf per day of non-boiler use for all industrial facilities. The Commission finds considerable merit in this approach and has made it a part of the Phase II rule.

Under the rule adopted by this order, a facility whose Phase II non-boiler uses average 300 Mcf per day or less during any month is totally exempt from incremental pricing (with respect to Phase II use) for that month. If a facility's Phase II uses average more than 300 Mcf per day during a month, only those volumes consumed in excess of 300 Mcf per day are incrementally priced. Thus, a facility averaging 380 Mcf per day of nonboiler fuel use during a month would have 80 Mcf per day subject to incremental pricing surcharges.

The Commission believes that exempting the first 300 Mcf per day of monthly average use is a simple and equitable approach to the small non-boiler use exemption. Problems associated with establishing eligibility for the small user exemption as originally proposed are removed. A facility whose requirements fluctuate from month to month around the 300 Mcf per day level will face lower and more stable gas costs than would have been the case under the originally proposed small non-boiler use exemption. With the approach adopted herein, the impact of incremental pricing will, to a greater extent, be within the control of the small marginal user. For most facilities the increased costs should not be so high as to induce non-productive capital expenditures to install alternative fuel capability. Nevetheless, the increased cost of gas over the 300 Mcf per day average should provide an incentive for such a facility to conserve. The Commission believes that all of a user's natural gas consumption need not be incrementally priced to induce appropriate conservation efforts. Sufficient incentive exists if the marginal use is so priced.

In addition, the Phase II rule places a proportionally greater impact on large users. A facility that averages 2,000 Mcf per day of non-boiler use will have 85 percent of this gas incrementally priced; a facility that averages 600 Mcf per day of such use will have only 50 percent of the gas incrementally priced. Accordingly, the incentive to make conservation or conversion investments is greater for the large users who are more likely to find the absorption of such investments economically feasible.

Small user exemptions for boiler fuel use and non-boiler fuel use will be treated separately under an additive approach. Thus, a facility that in 1977 used an average of 250 Mcf per day as boiler fuel (Phase I use) and which uses an average of 400 Mcf per day in non-boiler (Phase II) applications would qualify for both small user exemptions. Only 100 Mcf per day of the Phase II non-boiler fuel use would be subject to incremental pricing surcharges.

The only industrial non-boiler use of natural gas falling within the potential scope of Phase II that is excluded, specifically excluded from this Phase II rule, is pipeline compressor fuel. The cost of natural gas used as compressor fuel is treated as a general pipeline expense, to be recovered evenly from all customers. Because pipelines would be allowed to pass along the full increased cost of compression if such fuel were incrementally priced, there is no likelihood that the market ordering objective of incremental pricing would be advanced by bringing pipeline compressor fuel within the scope of Phase II.

Concurrently, incrementally pricing pipeline compressor fuel will not contribute to residential and high priority price sheltering, because all customers would pay for the increased cost of compression. The purposes of Title II have, throughout the course of this proceeding, served as the Commission's guide. In the case of pipeline compressor fuel, this guide has led the Commission to the conclusion that incremental pricing should not be imposed.

The rules exempting agricultural uses from incremental pricing are being considered in separate dockets.[9] Exempt agricultural use will not be considered in determining the 300 Mcf per day non-boiler use exemption established by this order. Thus, if a facility uses an average of 900 Mcf per day in non-boiler applications, with 200 Mcf of this eligible for an agricultural exemption, the facility would pay surcharges on 400 Mcf per day. The exempt 500 Mcf per day would be comprised of the first 300 Mcf per day plus the 200 Mcf per day agricultural exemption.

C. *The Alternative Fuel Price Ceiling.* In the Phase II Notice of Proposed Rulemaking the Commission proposed that the alternative fuel price ceiling to be applied to non-exempt industrial facilities subject to Phase II should be the same three-tier system of price ceilings that was adopted in Phase I of the incremental pricing program. However, as explained below, the Commission has determined that a three-tier alternative fuel price ceiling should not be adopted for Phase II. Instead, the Commission has adopted a single-tier alternative price ceiling based on the price of No. 6 high sulfur fuel oil.

Section 204(e) of the Natural Gas Policy Act requires that for both Phase I and Phase II, the Commission is to establish an alternative fuel price ceiling for incrementally priced industrial facilities. That ceiling is to be the price of No. 2 fuel oil unless the Commission determines that the ceiling price is to be an amount not lower than the price for No. 6 fuel oil. Generally speaking, the Commission may reduce the alternative fuel price ceiling below the level of the price for No. 2 fuel oil if such action is necessary to prevent industrial load loss that results in rate increases to high-priority customers. The Commission's specific authorization to reduce the alternative fuel price ceiling is set forth in section 204(e)(2):

> (2) Reduction of appropriate alternative fuel cost allowed.—The Commission may, by rule or order, reduce the appropriate alternative fuel cost—
>
> (A) for any category of incrementally priced industrial facilities, subject to the rule required under section 201 (including any amendment under section 202 to such rule) located within any region and served by the same interstate pipeline; or
>
> (B) for any specific incrementally priced industrial facility which is subject to such requirements and which is located in any region;
>
> to an amount not lower than the price, per million Btu's, for Number 6 fuel oil determined by the Commission to be paid in such region by industrial users of such fuel, if and to the extent the Commission determines, after an opportunity for written and oral presentation of views, data, and arguments, that such reduction is necessary to prevent increases in the rates and charges to residental, small commercial, and other high-priority users of natural gas which would result from a reallocation of costs caused by the conversion of such industrial facility or facilities form natural gas to other fuels, which conversion is likely to occur if the level of the appropriate fuel cost were not so reduced.

In Phase I of the incremental pricing program, the Commission adopted a

[9] *See* Notice of Proposed Rulemakings, Docket Nos. RM80-28 and RM80-29 (45 FR 15563, March 11, 1980).

three-tier system of price ceilings as a means of balancing the objectives of maximizing the passthrough of "high price" gas costs to boiler fuel users and, on the other hand, preventing load shifting that would increase rates and charges to high-priority users.[10] Under this system, regional prices for No. 2 fuel oil, low-sulfur No. 6 fuel oil, and high-sulfur No. 6 fuel oil are designated as ceilings on the price of gas for industrial boiler fuel users. The ceiling for a particular user is to be equal to the price of the least expensive fuel oil that the customer has the installed capability and legal authority to burn.

At the same time that the Commission adopted the rule for a three-tier system of price ceilings, it also adopted an exemption to that rule. Pursuant to its authority under section 206(d) of the NGPA, the Commission determined that until November 1, 1980, a single price ceiling set at the high-sulfur No. 6 price level should be used.[11] The Commission reasoned that a delay in implementing the three-tier system was necessary to permit industry an opportunity to adjust to the incremental pricing program. Also, it was determined that the delay would permit the Energy Information Administration, the organization with responsibility for gathering price data and computing price ceilings, to gain experience in meeting the incremental pricing data needs.

As required by section 206(d)(2) the exemptive rule was submitted to Congress for its review and possible one-House disapproval. Neither House disapproved the delay of the three-tier ceiling and the rule became effective December 1, 1979. In an order that is being issued concurrently with this Phase II rule, the Commission is submitting for Congressional review another rule under section 206(d) that would delay implementation of the three-tier ceiling for Phase I for an additional year.

For Phase II the Commission's Notice of Proposed Rulemaking provided that the three-tier ceiling approach adopted in Phase I be applied to an expanded incremental pricing program. In the Notice, the Commission explained that a three-tier system of price ceilings would maximize the recovery of incremental costs from a non-exempt facility but would also minimize the possibility that a facility will switch to an alternative fuel. In the Notice, the Commission also suggested that a price ceiling identical to that adopted in Phase I would impose the least administrative burden upon incrementally priced facilities.

[10] Order No. 50, issued September 28, 1979.

[11] Order No. 51, issued September 28, 1979.

Written comments and hearing statements submitted in response to the proposal to extend the three-tier system of price ceilings largely opposed its adoption. These comments argued that if incremental pricing is to be expanded to non-boiler fuel uses the price ceiling for facilities subject to Phase II should be no higher than the price for high-sulfur No. 6 fuel oil.

Two major themes supporting a single-tier No. 6 ceiling have emerged. First, many commenters, including AGA, INGAA, the National Association of Manufacturers and several state utility commissions, argued that a three-tier ceiling would cause economic dislocations among those users subject to a Phase II rule. Assuming the ceiling system were to include prices as high as No. 2 fuel oil as an alternative price ceiling, commenters argued, industrial load loss would occur on interstate systems as a consequence of the relocation of facilities using interstate gas that is subject to incremental pricing to intrastate markets where gas is not subject to incremental pricing. Also, many of those submitting comments, such as Herman Energy Services and Sun Pac Foods, argued that if the incremental pricing program is expanded, a three-tier ceiling will exacerbate the competitive disadvantage of domestic industry relative to foreign industry. Other commenters forecasted that a three-tier system of price ceilings could cause some industrial facilities to burn imported fuel oil. And, finally, those who foresaw unfavorable economic impacts resulting from a three-tier system alleged that industrial facilities that currently lack the capability to burn No. 6 fuel oil will make unproductive investments by installing unneeded No. 6 fuel oil burning equipment solely for the purpose of qualifying for a lower alternative fuel price.

The second major theme argued by those opposed to the adoption of a three-tier ceiling is that such a system will produce inequitable results. Those commenters asserting this view noted that oil prices have increased dramatically since enactment of the NGPA and current prices for No. 6 fuel oil are now at the level that Congress expected for No. 2 fuel oil. Because of these circumstances, the comments argued that at a single-tier No. 6 ceiling, residential and other high-priority gas customers will benefit from price shielding at a level comparable to that envisioned by Congress in 1978. Any additional price shielding resulting from adoption of a three-tier approach will, according to these comments, mask the price of gas to high-priority customers and erode incentives to conserve gas. Moreover, these commenters argued that price shielding of high-priority gas consumers is inequitable to homeowners and others that do not have the capability to burn gas. Commenters advocating this point of view asserted that oil consumers who would otherwise qualify as high-priority users if they had the capability to use gas as their energy source, will be excluded from any price shielding following rapid cost increases. And, it is further alleged, all consumers will subsidize high-priority gas users because higher prices must be paid for those goods that are manufactured using incrementally priced gas. To temper these adverse consequences, these commenters urged the Commission to adopt a single-tier ceiling.

Not all those submitting comments, however, supported adoption of a single-tier, high-sulfur No. 6 ceiling. The Consumer Energy Council of America, the New York State Consumer Protection Board and other commenters urged the Commission to adopt and implement immediately the three-tier approach set forth in the Notice of Proposed Rulemaking. Others, such as the California and Wisconsin public utility commissions, urged the Commission to phase-in the three-tier approach over time or apply different ceiling prices to different gas users, such as a No. 2 ceiling for customers subject to a firm rate schedule and a No. 6 ceiling for the interruptible customers. Finally, other commenters, such as Mississippi Valley Gas and the North Carolina Utilities Commission, *et al.*, urged the Commission to adopt a fourth tier to recognize that there are gas users that cannot convert to fuel oil but must rely upon propane as an alternative fuel.

1. *Single-Tier High Sulfur No. 6 Fuel Oil Ceiling for Phase II.*

The Commission believes that many of the comments opposing a three-tier ceiling provide compelling reasons for adopting a single-tier high-sulfur No. 6 ceiling. Although the Congress made the fundamental determination that high-priority users should be shielded from the near-term adverse transitional effects of deregulation, it left it to this Commission to determine the level of the price ceiling. The only limitation is that the basis for the alternative fuel ceiling prescribed by the Commission must, pursuant to section 204(e)(2), be the prevention of load loss that will cause higher rates and charges to be levied upon high priority and other exempt users. The potential for this effect, as expressed by many commenters, has contributed to the

Commission's choice of an alternative fuel price ceiling.

As indicated, many commenters representing a cross section of industrial gas users have stated that a three-tier ceiling presents the potential for severe industrial load loss. Assuming interstate pipelines were to experience such load loss, increased rates and charges to high-priority gas users could be accelerated as a result of the reallocation of fixed costs. This would not be a result intended by the Congress.

But, at the same time that the Commission acts to minimize industrial load loss, it must also advance another objective inherent in the NGPA. The Commission believes that Title II reflects a Congressional determination that non-exempt industrial users should be charged prices that more closely reflect the commodity value of gas. By charging industrial gas users a price closer to that of fuel oil—the benchmark for determining the commodity value of gas—the incremental pricing program recognizes that Federal natural gas regulatory policies have resulted in underpricing gas in relation to its commodity value. Current policy, as articulated by the NGPA, is designed to increase production and to discourage any excessive use of this premium energy source. The economic efficiency arguments made by industrial commenters who caution against artificially low prices to exempt users would seem to suggest that, at the very least, the price of gas to industrial users themselves be raised to the level contained in this Phase II rule.

While the NGPA compels some increase in industrial gas prices, the Commission's choice of an alternative fuel price ceiling should be based on a balancing of several policy objectives which include price shielding and the need to minimize industrial load loss. The Commission judges that such a balance is best struck with a single-tier high-sulfur No. 6 fuel oil ceiling. In adopting this single-tier ceiling, the Commission notes the many comments emphasizing that the price of No. 2 oil has risen to such levels that, should the price of natural gas be forced to that level, the economic impact on industry would be so severe that in many instances it could not be absorbed and rates would be increased to exempt users. It is noteworthy that these same commenters anticipate the cost of gas could reach price equivalence with No. 2 fuel oil upon deregulation in 1985. It is the premature establishment of such prices by regulation rather than by the marketplace that appears most objectionable to industry.

The Commission also notes the substantial rise in oil prices since the NGPA was passed in 1978 and the particularly large increase in distillate fuel oil prices Many commenters, including Stauffer Chemical, argued that these price movements will cause the effect of a No. 6 high-sulfur ceiling to be as substantial as the Congress intended when it passed the NGPA.[12]

The adoption of a minimum commodity/value gas price for industry should also minimize, if not eliminate, the type of servere regional or international competitive disruption that was predicted in many industrial comments. For example, there is considerable doubt as to whether incremental pricing even at higher alternative fuel ceilings as were in the Commission's November Phase II proposal would lead to industrial relocation to intrastate markets. Industrial users may well confront higher delivered prices in intrastate markets after deregulation in 1985 because a greater fraction of intrastate gas will be deregulated at that time. So, an industial user would experience at most a four-year gas cost advantage from such a move. A transitory benefit of this nature would be unlikely to induce significant industrial relocation.

In this order the Commission had determined that the scope of Phase II should be applied broadly to include all industrial gas users except those statutorily exempt. A study undertaken by DOE for purposes of commenting upon this rule suggests that a single-tier ceiling No. 6 fuel oil, applied broadly, will provide residential and commercial gas consumers a high degree of price shielding falling just short of maximum protection in 1984. Accordingly, a reasoned response to those comments that foresee industrial load loss is to adopt a high-sulfur No. 6 ceiling that can be expected to provide a significant degree of price shielding.

Furthermore, the Commission believes that for Phase II, the No. 6 ceiling is more equitable than a three-tier system of ceiling prices. A No. 6 ceiling responds to those comments that argued that it is inequitable for high-priority gas consumers to enjoy price shielding not available to those who must purchase oil to operate their homes and businesses. For residential and other exempt users of gas, it was the decision of Congress to provide a price shielding mechanism that is not available to those energy consumers that purchase and use oil.

A No. 6 alternative fuel ceiling also responds to the commenters that argued that it is inequitable for the general public to pay for those consumer goods which will allegedly bear higher prices caused when manufacturers pass on their incremental gas costs. The comments of the American Gas Association typified this argument. AGA argued that prices for many consumer goods would be increased by the incremental pricing program and that the effect of such price increases would be an accelerated rate of inflation. In a later section of this order, the Commission has more fully considered this argument and concluded that most, if not all, of the increased inflation foreseen by the AGA will not occur. In contrast to AGA's projections, commenters such as DOE and the Council on Wage and Price Stability suggest that competitive considerations would likely preclude the flow-through of a significant measure of increased gas costs. Also, AGA's analysis is premised on an econometric model that contemplates application of a three-tier ceiling. However, when considered together with the adoption of an exemption from incremental pricing for the first 300 Mcf of gas for all incrementally priced industrial facilities, the Commission's adoption of a single-tier ceiling should negate significant price increases for consumer goods.

The No. 6 ceiling adopted here also resolves two other concerns. Several commenters argued that many industrial facilities cannot use oil as an alternative fuel but must rely instead on propane as the atlernative energy source. As indicated in the Notice of Proposed Rulemaking, such facilities would be priced at the level of No. 2 fuel oil, even though the price for propane is often closer to the price of residual fuel oil. By the action taken here, the Commission responds to these comments by adopting a single-tier high-sulfur No. 6 ceiling. Also, a high-sulfur No. 6 ceiling responds to the alleged inequity created as a result of pricing a facility at a No. 2 ceiling unless the facility has the capability to burn No. 6 fuel oil. All

[12] The prices of fuel oil have risen significantly since November 1978, when the NGPA was enacted. The following table summarizes changes that have occurred in delivered industrial prices. Figures are expressed in terms of price per million Btu's.

	November, 1978	Current*
No. 6 high sulfur	$1.73	$3.34
No. 6 low sulfur	2.10	3.97
No. 2	3.10	**5.13
Natural gas	1.75	2.60

*Source: Monthly Energy Review, March 1980.
**Wholesale heating oil.

facilities subject to a Phase II rule will be priced at a high-sulfur No. 6 ceiling and, consequently, industrial facilities will not be constrained to buy and install equipment with the capacity to burn No. 6 fuel oil.

Finally, in applying the high-sulfur No. 6 ceiling, the Commission has determined that other aspects related to this ceiling approach should correspond to the previous Commission order that adopted a three-tier ceiling in Phase I. Thus, the Commission will request EIA to use the same method for computing the ceiling for Phase II as is used for computing the monthly ceilings for Phase I. Also, the Phase II ceiling will be applied to the 48 contiguous states and 31 metropolitan regions. However, until October 31, 1981, the regions will be limited to the 48 contiguous states.

2. *State Authority to Limit First-Year Impacts.*

The Commission has also determined to provide a mechanism to limit the first-year impacts of the Phase II incremental pricing program. The effect of the Commission's determination could serve to lower the effective alternative fuel price ceiling for some facilities.

Under this mechanism, each state will be given the discretion during the first year of the Phase II incremental pricing program to allocate to other incrementally priced gas users within the state that portion of a non-exempt user's surcharge which exceeds an average of 75 cents per Mcf. In determining whether the surcharge to an industrial user exceeded an average of 75 cents, costs related to gas used for exempt purposes would be included in that determination.

In choosing the 75 cent threshold, the Commission is guided by the likely average cost increases to non-exempt users for the first year and, also, the Commission's judgment about when greater-than-expected incremental cost increases should be ameliorated. The Commission's best estimate is that the average first-year cost increase to Phase II users will average approximately 50 cents per Mcf. However, should oil prices rise significantly faster than anticipated, the first-year cost increases would be greater than expected. If the average cost increases were to increase to 75 cents per Mcf, or 50 percent more than currently anticipated, the Commission believes there would exist a sufficient basis upon which to take mitigating actions.

The mechanism provided here allows a state to assess independently the impact of incremental pricing upon individual industrial users within the state and determine whether a surcharge in excess of 75 cents presents too severe a burden upon that user.

During an informal conference held at the Commission on April 15, 1980, representatives from a number of state regulatory commissions expressed doubt that the authority to limit first-year impacts would be exercised. The representatives cited possible constraints in state laws against such adjustments. They also cited practical and policy considerations which might lead a state commission to decline to make use of any such adjustment authority. Nonetheless, the Commission believes that individual and unforeseeable circumstances may warrant mitigating action and that state commissions are the proper governmental bodies to assess the economic and equity issues involved.

The Commission believes it is desirable to make such authority available for those states which can or wish to make use of such authority. Some states indicated by written comments and oral argument that they may be legally precluded from making such adjustments. Since Congressional review of this rule implies quasi-legislative status, states may have sufficient authority to prevail against a challenge to this mitigating action as violative of state non-discriminatory laws.

D. *Market Ordering.*

1. *The threat of price instability upon deregulation.* The ceiling price of new natural gas will be $2.90 per Mcf, or the energy equivalent of $18.00 per barrel oil (in constant 1980 dollars), at year-end 1984. One day later, price controls on that gas will cease to apply.

The exact price to which new natural gas will rise upon deregulation will depend upon market factors that cannot be fully anticipated at this time. On balance, the record developed in this proceeding indicates that the wellhead price of deregulated gas purchased by interstate pipelines in 1985 is likely to rise significantly as a result of two influences. One influence is the overall condition of natural gas markets; if demand exceeds supply there will be upward pressure on prices. The other influence on new gas prices will be the continued regulation of "old" natural gas at prices below its commodity value. This gas provides an opportunity for pipeline and distribution companies to "roll-in" or average this low-cost gas with high-cost gas and still have a marketable product. The result could be considerable market instability.

Most comments that addressed the pricing issue predicted that after deregulation the average delivered price of gas will move, over time, toward a price equivalent to the delivered price of fuel oil. If so, the dramatic run up in fuel oil prices that has occurred since the NGPA was enacted in 1978 could cause the wellhead price of new natural gas to jump significantly when deregulated on January 1, 1985. Some observers base their assessment of where the wellhead price of new gas will go in 1985 by assuming that it will simply track the price of "high cost" gas that is already deregulated. Some of this "high cost" gas is being purchased today at prices equal to or greater than the equivalent price of No. 2 distillate oil.

The current delivered price of No. 2 fuel oil is about $32.00 per barrel, or $5.50 per MMBtu. Assuming 2 percent per year real growth in the price of No. 2 fuel oil between now and 1985, the price would be in the $6.00 per MMBtu range. If high cost gas prices remain tied to No. 2 fuel oil prices and set the market price for all deregulated gas, then the price of new natural gas will double upon deregulation. Pipelines may be able to pay prices equivalent to No. 2 oil for deregulated new gas in 1985 and yet maintain overall marketability due to their ability to blend this relatively high priced block of gas with lower priced "old" gas.

Natural gas markets can currently support prices in the $6.00 per MMBtu range for limited amounts of "high cost" deregulated gas, but there is reason to question whether such prices can be maintained over the long run. One strong conclusion emerging from the Commission's work on Phases I and II of incremental pricing is that there is a substantial block of demand in the industrial and electric utility sectors that has dual firing (natural gas and fuel oil) capability. Most industrial and electric utility boiler fuel use, and a considerable portion of industrial process use, will switch from gas to oil if relative prices favor such switching. Twenty to twenty-five percent of interstate demand is encompassed by users with dual firing capability. Most of these users have the current or technical capability to burn residual fuel oil, and would presumably switch away from gas well before delivered gas prices approach equivalence with No. 2 fuel oil prices.

Confronted with the prospect of losing so significant a portion of their market, interstate pipelines will attempt to keep the average delivered cost of gas competitive with residual fuel oil prices. As volumes of old gas decline, and therefore the amount of subsidization of new gas by old gas diminishes, the wellhead price of deregulated gas will eventually be below the level of

equivalent distillate oil prices. If gas supplies are ample and if fuel oil prices remain as depressed as they are at present, it is possible that any "spike" or surge in deregulated wellhead gas prices in excess of long-run equilibrium levels will be both small and short-lived. Currently, industrial delivered gas prices are in the general range of delivered residual oil prices in most regions of the country.

Important gauges of gas market conditions as 1985 approaches are (1) whether the price of deregulated "high cost" gas is falling in relation to delivered fuel oil prices, and (2) whether other categories of gas, particularly new gas, are selling below the applicable maximum lawful ceilings set by Title I. If high cost gas prices remain at or above No. 2 fuel oil price levels in 1984, and if Title I ceiling prices are acting as binding constraints on wellhead prices, then these indicators would suggest that some significant price jump can be expected to occur January 1, 1985.

The pace at which prices might rise in 1985 is also important. The issue turns in large measure on whether producers of gas to be deregulated in 1985 will have contractual authority to immediately collect market prices, or whether instead the pricing terms of contracts covering deregulated gas will hold the price of that gas to some lower level.

In response to questions posed by the Commission on this issue, various interstate pipelines, including the United Gas Pipe Line Company, indicated that all of the contracts now written for gas that will be subject to deregulation in 1985 contain so-called "most favored nation" clauses that are designed to go into effect on January 1, 1985, or whenever gas covered by the contract is deregulated. These clauses permit a producer (seller) to instantaneously adjust the price of its deregulated gas up to the highest prices being received by any producer in the same field or area in which the production subject to the contract is located. Should this type of clause be the rule rather thn the exception with respect to gas subject to deregulation, then the upward surge of wellhead prices in 1985 could be very swift.

The Commission was unable to determine with certainty that the use of most favored producer clauses is the sole or predominant practice with respect to gas subject to deregulation. This question was directed to the Interstate Natural Gas Association of America (INGAA), which subsequently asked this question of its member pipelines. However, INGAA was unable to provide a generalized statement on pipeline contracting practices.[13]

2. *Volumes subject to deregulation in 1985.* The amount of gas that will be subject to deregulation in 1985, and therefore, the resulting overall impact of deregulation on delivered gas prices, is uncertain. Some comments, nevertheless, attempted to estimate the volume of gas subject to deregulation in 1985. The Department of Energy estimated that between 55 and 65 percent of flowing gas in 1985 will be deregulated. The American Gas Association estimated a somewhat smaller fraction—40 percent of flowing gas in 1985—being subject to deregulation. The Commission believes that these estimates are reasonable and provide a useful range for purposes of examining the effects on consumers of deregulation in 1985.

If 40 percent of the flowing gas stream in 1985 is deregulated and moves up in price by roughly $3.00 from $2.90 per MMBtu to $6.00, then the average price impact on all flowing gas would be approximately $1.20 per Mcf in 1980 dollars. If more than 60 percent of all flowing gas in 1985 is deregulated and moves up by the same $3.00 increment, the average impact on all flowing gas would be closer to $2.00 per Mcf in 1980 dollars. Such changes would represent a 30 percent increase over anticipated residential rates that should be approximately $5.00 per Mcf (constant 1980 dollars) and a 40 percent real increase over industrial rates that will be in the $4.00 per Mcf range at year end 1984.[14]

The Department of Energy expressed strong concern that the impact of a price "spike" at the time of deregulation in 1985 might be even more pronounced on intrastate consumers than upon interstate customers. This larger impact may result because, although gas in the intrastate markets will be regulated at roughly the same level as prices in the interstate market through 1984, the amount of intrastate gas subject to deregulation in 1985 will be far greater. As much as 85 to 90 percent of all flowing gas in the intrastate market may be deregulated under the terms of Title I in 1985. The impact of deregulation on average delivered prices of natural gas in the intrastate market could therefore amount to $2.50 or more per Mcf.

The DOE comment, in noting the larger economic impact of the price "spike" upon intrastate pipeliners and their consumers, went on to explain that intrastate pipelines will be placed at a competitive disadvantage *vis-a-vis* interstate pipelines with respect to bidding for supplies of deregulated gas. The competitive disadvantage to intrastate bidders arises from their smaller endowment of lower-priced gas subject to continuing regulation. The larger endowment of lower priced gas enjoyed by interstate pipelines will permit them to more heavily subsidize purchases of new gas out of their old gas "discounts".

Whether there will be a price spike upon deregulation, and whether the spike will have a significant impact on the distribution of gas between the inter- and intrastate markets will depend to a considerable degree on whether demand and supply for natural gas are in balance in 1985. If demand for natural gas considerably exceeds supply, there is a greater incentive for interstate pipelines to bid the price of deregulated gas to levels above long run market clearing levels. The ability of interstate pipelines to bid higher than long run marginal prices for deregulated gas and yet maintain overall marketability of the gas stream by averaging its cost could result in higher prices being bid by interstate pipelines than intrastate consumers would be willing or able to pay. Should deregulated prices rise in the short run above intrastate market clearing levels, there is the potential for sudden redistribution of gas supplies between inter- and intrastate markets upon deregulation in 1985.

The Commission made a substantial attempt to assess the outlook for natural gas supply and demand in 1985 as a part of its deliberations in this proceeding. On the basis of comments received, the Commission must first emphasize the extreme uncertainty inherent in this inquiry. Natural gas markets have changed dramatically in recent years, and may well experience further change. Nonetheless, the body of comments suggests that the potential for market imbalance in 1985 is very real. Numerous gas supply experts pointed out that the current rate of natural gas production significantly exceeds current rates of reserve additions. Studies submitted for the record in this proceeding, including those by Edward

[13] I regret that we are not in a position to provide you with sufficient information which would warrant the formulation of a generalized statement as to the contracting practices of the interstate gas transmission industry as a whole with respect to this subject. We did undertake to obtain such information. However, the responses received do not provide a representative base, nor do they contain sufficient content to permit a meaningful comparison. In that regard, we found that certain members were very general in their response, and others declined to respond. (Letter from Lawrence V. Robertson, Jr., Vice President, General Counsel and Secretary of INGAA, to Commissioner George Hall, dated February 8, 1980).

[14] Based on 1984 retail rate estimates contained in comments submitted by DOE (Table III-5).

Erickson and James T. Jensen, point to declining availability of conventional gas supplies over the mid- and long-term. The consensus appears to be that conventional lower 48 production may decline from a 1978 level of 19 Tcf to 16–17 Tcf in 1985, and will continue to decline to 12–14 Tcf in 1990.

A decline in production is forecast despite the current and likely continuing upsurge in drilling activity in the United States. According to Erickson's analysis, the rate of drilling activity will have to increase by 15 percent per year in each year between now and 1985 to sustain current production rates of natural gas. The Commission observes that there were record levels of drilling and gas well completions this past year in response to the incentive prices for natural gas allowed under the NGPA. Approximately 12 percent more rotary rigs were active in 1979 than in 1978. A sustained 15 percent per year increase through 1985 may be achievable, but not without a production commitment of unprecedented magnitude and duration.

Further, the scheduled decontrol of crude oil by year-end 1981 has created a roughly $5.00 to $6.00 per MMBtu incentive for new crude oil exploration and production. The wellhead natural gas price schedules under the NGPA provide incentives roughly half of that level. The Commission therefore perceives a potential producer bias toward crude oil and away from natural gas during the next few years despite the positive incentives created by the Natural Gas Policy Act. These factors may make it increasingly difficult to maintain natural gas production levels over the next four to five years.

While the record in this proceeding suggests a decline in natural gas production over the next decade, the comments of many end users, as well as by the American Gas Association, whose members include a number of distribution companies, reflect a growing demand for natural gas. According to the American Gas Association, the "economic demand" for natural gas in 1985 will be 26 Tcf. Current consumption is about 19 Tcf. In light of the current and expected price differential between natural gas and oil products, demand for natural gas may well be increasing.

In summary, most commenters appear to be in agreement that natural gas markets may experience a substantial and potentially abrupt increase in delivered natural gas prices in 1985. The ability of our economic and political systems to withstand a sudden energy price "shock" of the dimension that might occur in 1985 will no doubt be a subject of further debate. James T. Jensen, in his comments, expressed the view that the transition is inevitable and that policies such as incremental pricing which are designed to moderate transitional difficulties may create more problems than they cure. The Commission views this as an issue that, in the instant proceeding, must be resolved by the Congress. But the record does tend to underscore and support the concern that the Congress had in 1978 over the possibility of a disorderly transition to deregulation in 1985.

3. *The Inability of Title II to Achieve Market Ordering.* Despite the need to achieve an orderly transition from regulated to deregulated gas markets, the incremental pricing program as specified by Title II of the NGPA does not appear to generate the type of demand restraint that Congress sought. This conclusion stems from two sets of considerations. The first set derives from the institutions and structure of the natural gas industry. The second set of considerations stems primarily from limitations within the statute itself.

a. *Institutional Considerations.* With respect to institutional factors limiting the ability of incremental pricing to restrain pipeline bidding for deregulated gas, the Commission accepts the view expressed in many comments stating that industrial end users who have little or no capability to switch to alternative fuels (*e.g.*, most feedstock and many process users) are in a relatively weak position to affect the prices that pipelines will pay for natural gas. Only by reducing substantially their takes, through curtailment of operations or plant closings, can they hope to have any significant influence on pipeline bidding operations. Some conservation may be achievable by users without fuel switching capability, but the record before the Commission suggests that the results of such conservation efforts are likely to be too gradual, indirect, and difficult to measure for these effects to have significant short term influence on pipeline gas purchasing decisions. In short, incremental pricing is designed to exploit the demand responsiveness of price-sensitive marginal industrial consumers of natural gas. Where an industrial customer does not have alternative fuel capability, his short-term price responsiveness will be inadequate to produce significant demand restraint.

A majority of comments filed in this proceeding suggest that many process uses of natural gas proposed to be made subject to the scope of the Phase II rule are not capable of using alternative fuels in the short run. The Commission is uncertain as to what portion of the volumes of use subject to the Phase II amendment do in fact have a present or near term capability to use an alternate fuel. The Commission believes that many process users of natural gas currently without alternative fuel capability will add such capability, particularly in the form of electricity, if such natural gas uses are made subject to incremental pricing. For example, comments by the Process Gas Consumers indicate that many natural gas process applications can and will be economically converted to electricity when the delivered cost of gas is more than one third the delivered cost of electricity, because end use efficiencies are greater in electric applications and the continued availability of electricity is more assured. As stated, however, the extent of present or projected alternative fuel capability for uses within the scope of the Phase II amendment is not discernible at this time.

A second institutional consideration perceived as limiting the ability of incremental pricing to accomplish pipeline bidding restraint lies in the attitudes of pipelines toward their customer markets. Several comments explained that pipelines take a relatively long term outlook when it comes to supply acquisition decisions. Pipelines are seldon deterred from acquiring high priced sources solely on the threat that such gas prices might presently make the gas unmarketable to industrial customers on a stand alone basis. Pipelines perceive that declining old gas volumes compel acquisition of additional supplies in order to maintain service to high priority markets and are unwilling to view the short-run threat of unmarketability to the most price sensitive customer as a deterrent to that acquisition. Stated alternatively, pipelines view industrial customers as marginal customers in the short run but view residential and high priority customers, whose demand for gas is far less price sensitive, as the marginal customers over the long run. It is unclear whether end use pricing policy that targets price increases onto the short run marginal customer can be expected to significantly affect pipeline purchasing practices that are dominated by long run supply maintenance considerations.

Still another institutional consideration reflected in the Commission's record in this proceeding is that many industrial users find it hard to believe that they can have any significant influence on the gas purchasing decisions of their interstate pipeline supplier. Many industrial users

told the Commission they never talk directly to their interstate pipeline supplier. Instead, they direct any gas supply or price problems to their local distribution company supplier. These commenters do not expect to communicate directly with their interstate pipeline even in the face of rising prices upon deregulation. The comments of interstate pipelines, however, lead the Commission to believe that interstate pipelines are much more sensitive to and concerned about the status of their industrial customers, even industrial customers served indirectly through local distribution company suppliers, than is commonly recognized by the industrial customer.

A final institutional consideration raised in the comments received that may limit the ability of incremental pricing to achieve its market ordering objective is the role of the states in the overall program. As noted previously, a majority of states have raised the rates charged by local distribution companies to industrial customers up to or above the Federally determined alternative fuel price ceiling. This action is taken in order to capture the maximum price shielding benefit for high-priority customers within each state. However, a side effect of state level incremental pricing is that industrial users may perceive the state, rather than the interstate pipeline purchaser, as the cause (and cure) of high delivered gas prices. In effect, state level incremental pricing may remove any perceived reason for industrial customers to appeal to their pipeline to keep the price of gas within reasonable limits. Instead, industrial users may incorrectly perceive that their efforts would be more usefully directed at state ratemaking policy.

b. *Statutory Considerations.* Even if the first set of considerations relating to the possible institutional limitations on the efficacy of Phase II can be overcome, there is a second set of considerations that leads the Commission to question the ability of Title II to achieve its market ordering purposes. These considerations stem from limitations and inconsistencies in the structure of Title II itself. It appears that Congress intended that the threat of industrial load loss create an incentive on pipelines to moderate their purchased gas costs. This threat is present, however, only if incremental pricing can take the delivered price of industrial gas sufficiently near or even above the price of fuel oil to induce fuel switching. But Title II and its legislative history also evidence a Congressional intent that incremental pricing not be responsible for any significant amount of industrial load loss.

Specifically, section 204 of the NGPA instructs that each user's incremental pricing surcharge is to be calculated in such a way as to bring each user's delivered natural gas price up to, *but no higher than,* the alternative fuel ceiling as determined by the Commission. Hence if the Commission sets an intentionally low price in order to avoid unintended fuel switching, the industrial user is also effectively held below its true alternative fuel cost.

Because the alternative fuel ceilings in section 204 operate as *ceilings* rather than *floors* on the price of delivered industrial natural gas, industrial users who reach their ceilings become indifferent to subsequent increases in wellhead prices of gas because the full increase is borne by exempt rather than incrementally priced users. By making the marginal industrial customer indifferent to further increases in the price of deregulated gas, the net consequence of the price ceilings imposed by the incremental pricing program in Title II may be to increase the likelihood of a price spike and disorderly natural gas markets after deregulation rather than facilitate an orderly transition. Pipelines would be left to make their bidding decisions solely on the basis of the ability of less-price sensitive high priority customers to bear the higher costs of deregulated gas.

Whether the foregoing "cap problem" imposed by Title II will cause deregulated markets to be more unstable than without incremental pricing depends primarily upon when industrial customers subject to incremental pricing reach their alternative fuel ceilings and whether the catch up stage [15] has been completed by 1985.

During the catch up period, as industrial user MSAC's are declining to zero, increases in the average wellhead price of gas are borne totally by exempt users. When the catch up period is over, incrementally priced user surcharges vanish and the system reverts to rolled-in pricing. This means that if the system has completed the catch up period before 1985, then industrial users will not be actively capped by their alternative fuel ceilings and will therefore bear at least the rolled-in portion of deregulated gas prices.

Only during the catch up stage can the alternative Title II fuel price ceiling mechanism actually exacerbate market instability by temporarily insulating industrial users from wellhead prices. Rising wellhead prices during the catch up period are spilled over, and have the effect of raising base rates to incrementally priced users. But under section 204, these higher base rates are merely offset by reduced surcharges, so that the delivered price, inclusive of surcharge, is unaffected by changes in pipeline gas costs until the catch up period has been completed. Once the catch up stage is over, industrial rates are no longer held at the alternative fuel price ceiling.

The problem associated with the ceiling price aspects of the incremental pricing provisions of Title II appears to be particularly serious under state level incremental pricing. States may set their rates to incrementally priced industrial users at the Federally prescribed alternative fuel price ceiling. The problem that arises is that states will not have sufficient information to know when the "catch up" stage is over and rolled in pricing should be resumed. The net consequence is that states may keep industrial rates *below* the level that would prevail under rolled-in pricing.

Under incremental pricing administered at the interstate pipeline level, distributors will know when the catch-up period has ended and will know when they or their state regulatory agency should begin to set the price of gas to incrementally priced users at levels higher than the Federally determined alternative fuel price. But when states supersede the interstate pipeline incremental pricing program, they eliminate the process of displacing surcharges through increased base rates, so that the "signal" to revert to rolled-in pricing becomes garbled. It should be clear, therefore, that the cap, when imposed by state level incremental pricing, may constrain industrial prices to an even greater degree than under the Federal incremental pricing system or under rolled-in pricing. This protracted cap on industrial rates could have the effect of exacerbating the volatility of pipeline bids for deregulated gas while also magnifying the potentially disruptive impact of deregulation upon exempt users.

On the other hand, states may be able to reduce or eliminate the seriousness of the cap problem in Title II if they set the price of gas to industrial users at higher than Federally prescribed alternative fuel ceiling levels. Section 205 of the Act prevents states from setting industrial rates *lower* than the alternative fuel price ceiling but reserves the right of states to impose higher rates to incrementally priced users.

Another possible approach that the states may adopt in an effort to impose

[15] See discussion of the three stages of incremental pricing in section III–B of this Order.

market discipline and stability during deregulation would be to deny local distribution companies full pass through of any natural gas costs that the state determines to be a consequence of interstate pipeline purchases at excessively high prices. During its hearings on the Phase II incremental pricing rules, the Commission was told that states in most instances have the legal authority to deny full pass through by their jurisdictional distribution companies of gas acquisition costs considered to be excessively high. It is far from clear, however, that the states would exercise such authority in even the most extreme circumstances following decontrol in 1985. The Commission further points out that it is in no way able, nor does it seek the authority, to compel states to take such action in 1985.

The Title II alternative fuel ceiling on incremental pricing surcharges is determined by the price of alternative fuel oil. The concern with market disorder, however, is directed to the possibility that the price of deregulated natural gas at the wellhead might rise to a level higher than oil-equivalent prices. By placing a ceiling on incremental pricing surcharges such that the industrial incrementally priced user's price cannot go above its alternative fuel oil price, the statute effectively deflects any excessively high portion of deregulated wellhead prices away from incrementally priced industrial users and onto exempt higher priority users. The motivation for this limitation is apparently the Congressional desire to avoid industrial load loss. The consequence, however, appears to conflict directly with the objective of demand restraint and market ordering insofar as incrementally priced users are shielded from the very disorder they are supposed to help cure.

Some form of end-use pricing system based not on oil prices but based instead on measures indigenous to the natural gas system would seem preferable to the oil-based ceiling in order to achieve the Congressional market ordering objective that, in part, led to enactment of Title II. At present, the Commission does not believe that its discretion to set appropriate alternative fuel ceiling prices is a sufficiently broad grant of authority to permit incrementally priced user surcharges to be based upon the performance of the gas market rather than upon prices of alternative fuel oil. The Commission will, however continue to explore this question as well as the related question of whether other discretionary aspects of Title II can be interpreted in a manner that would support achievement of Congress' market ordering objectives.

4. *Further Study and Recommendations to the Congress.* The Commission believes that the appropriate course of action at this time, considering the uncertainty that exists as to the appropriate amount of market ordering that will need to be brought to bear in 1985, is to commit to further study of future market conditions. The Commission acknowledges and accepts the view of those who argue that incremental pricing is a complex program. The Commission in its efforts to bring order to a deregulated natural gas market might well produce greater disorder through improperly designed incremental pricing regulations. Even if the Commission were directed by the Congress to exercise broader discretion in its administration of Title II, it does not appear feasible or advisable to attempt to craft a program in 1980 that tries to produce optimal performance in 1985. For these reasons the Commission will continue to examine anticipated 1985 market conditions, and by year end 1983 will deliver to the Congress a report that delineates the overall condition of the gas market and any recommended administrative measures then perceived to be available to the Commission that could be directed toward achieving the appropriate amount of market ordering.

On such measure already under Commission consideration is a proposal to link incremental pricing alternative fuel price ceilings with industrial user curtailment priority. Under this approach each user, rather than this Commission, would determine its own alternative fuel price ceiling. To avoid what would otherwise be a strong incentive of a facility to understate its alternative fuel ceiling and thereby minimize or even avoid its incremental pricing surcharge, the approach would tie the industrial user's curtailment priority to its self-selected alternative fuel price ceiling. Simply stated, those users who nominate higher alternative fuel price ceilings would enjoy higher curtailment priority. The Commission has been interested in this concept and last summer issued a Notice of Inquiry and held an informal conference to receive comments. The Commission's continued strong interest in the approach stems from a desire to substitute market forces for regulatory programs governing both curtailment policy and incremental pricing administration that are of considerable administrative complexity and burden.

In addition to exploring administrative options that might help to cure the cap problem perceived to exist under Title II, the Commission will in its 1983 review also make appropriate legislation recommendations to the Congress to assure that the incremental pricing program does not conflict with its Congressionally stated purpose of easing the transition of natural gas markets to deregulation in 1985 and thereafter.

One specific area of inquiry relevant to Congress' market ordering goals arises from Section 306 of the Public Utility Regulatory Policies Act of 1978 (PURPA), which calls for a study of gas utility rate design proposals. The study is being conducted by the Department of Energy in consultation with this Commission. The Commission, largely on the basis of its work on the incremental pricing program, has come to believe that appropriate wholesale and end use rate design concepts could serve as instruments in preparing natural gas markets for deregulation. However, the Commission also notes, on the basis of the many years in which public attention has been actively directed to electric rate design initiatives, as well as the inherent complexity of gas-rate design, that there is relatively little prospect of a major change in gas retail rate policy and procedures before 1985. Nonetheless, gas retail rate design is the proper focus of increasing public scrutiny.

Traditionally, the fundamental issue in natural gas rate design has involved allocation of pipeline fixed costs to each of the various customer classes being served. This set of issues was the appropriate focus of inquiry during an era in which transportation and distribution costs amounted to 75 percent or more of the delivered price of gas, and the expansion of an efficient natural gas delivery system was of greatest priority. But in recent years the commodity (purchased gas) component of gas rates has risen to the point where it represents more than half the delivered cost of gas.[16] In the future, the commodity component is expected to dominate delivered costs to an even greater extent.

The gas rate design study conducted as directed by PURPA as well as follow-on studies will, it is hoped, lead to substantial examination of the role that gas rate design can play in encouraging stable, orderly and efficient natural gas markets.

[16] In 1960 the average wellhead price of gas was 14 cents per Mcf, while the average delivered price to end users was 60 cents. At year-end 1979, the figures were $1.35 per Mcf at the wellhead versus $2.52 per Mcf delivered.

E. *Residential and Other High Priority Price Shielding.* The second principal objective intended by the Congress to be achieved through incremental pricing is the partial shielding of residential and other high priority users from the increasing wellhead prices for natural gas allowed by Title I of the NGPA.

Incremental pricing will achieve a measure of price shielding of exempt users by channelling a portion of increased wellhead gas prices to industrial (non-exempt) users of natural gas. To the extent that incrementally priced users absorb higher gas prices, the amount of total costs remaining to be recovered from exempt users will be reduced. Thus, the costs of gas to residential and other exempt gas users will be somewhat lower than if no incremental pricing program were in effect.

As noted previously, the Commission believes that the objective of price shielding can be best advanced by a Phase II rule covering as broad a class of non-exempt users as possible. The Commission also believes, however, that the measure and speed by which price shielding occurs must be tempered by economic and equity considerations. Specifically, the alternative fuel price ceiling should not be set so high as to drive industrial users off of natural gas, thereby creating disarray in both the natural gas market and the economy as a whole. To do so would be inimical to the price shielding objective, because large losses of industrial load would reduce the total amount of incremental gas acquisition costs absorbed by the class of incrementally priced users.

In summary, the Commission concludes that a Phase II rule of broad scope, combined with a moderate alternative fuel price ceiling, is the central feature of a realistic Phase II rule capable of achieving the type of price shielding anticipated by the Congress. According to the Commission's projections in the following section addressing economic impacts, the Phase II rule proposed here is structured with the objective of avoiding economic disruption in the industrial sector and loss of large volumes of non-exempt uses, while benefiting exempt users approximately $.14 per Mcf. For Phase I and Phase II combined, this potential benefit translates for the average household using natural gas for heating and cooking purposes to about $18 per year, assuming a 60 cents per Mcf surcharge.

The Commission perceives this measure of potential savings to exempt users as the present optimum level of price shielding under an administratively workable and economically reasonable Phase II rule, balancing the need to provide some increase in incremental cost absorption by non-boiler fuel industrial users and the need to avoid industrial disruption.

The Commission would submit that this single tier Phase II rule will provide as much price shielding as the Congress originally expected to achieve by Title II because prices of petroleum products have increased dramatically since the NGPA was enacted. The price of No. 6 residual oil at year-end 1980 is likely to be higher than the price of distillate oil in 1978. Because the amount of price shielding is a direct function of the alternative fuel price, whatever benefits accrue to high priority customers from the Commission's decision to use the single No. 6 fuel oil tier for Phase II should be comparable in magnitude to what the Congress had in mind when the NGPA was passed in 1978. The Commission is mindful that the Congress, by means of the statutory review it provided for itself, reserved for Congressional judgment the decision as to whether thus amount of price shielding warrants implementation of an expanded incremental pricing program.

In concluding that a Phase II expansion of the incremental pricing program can advance the price shielding objective, the Commission is cognizant of and has studied carefully the substantial body of comments filed in this proceeding that argued against the achievability of this objective. The most frequently raised objection to the Commission's attempting to implement the Congressional directive to provide enhanced price shielding is the argument that a Phase II rule would ultimately harm exempt users rather than help them. These comments contended that a Phase II rule, especially a broad rule, will actually *increase* the price of gas to exempt users. It was argued that the Phase II rule will result in sufficient load loss among non-exempt users such that a far greater share of fixed transmission and distribution costs will have to be borne be exempt users. These increased costs would include expenses for additional peak shaving and storage facilities that would be necessary if a supplier's interruptible industrial loads were lost. Higher delivered gas prices would also result from increased costs of financing due to service instability confronting pipelines and distributors.

The Columbia Gas Distribution Company, Natural Gas Pipeline Company of America and the AGA, among others, making comments embodying this theme asserted that *any* load loss is incompatible with the Commission's mandate under Title II of the NGPA.

The Commission does not accept the view that *any* load loss would be incompatible with either the letter or the intent of Title II. Under section 204(e), the Commission is granted the authority, but is not required, to lower the alternative fuel price ceiling below the price of No. 2 fuel oil. The first important point, therefore, is that Congress recognized that too high an alternative fuel price ceiling could have an adverse impact on exempt customers, which led it to provide a mechanism allowing the Commission to reduce the ceiling price. But the Congress clearly did not compel the Commission to reduce alternative fuel price ceiling levels in every instance in order to avoid adverse impacts on high priority users.

The Commission seeks to exercise its discretion to set the alternative fuel price ceiling low enough to avoid increased rates to residential, small commercial and other high priority users. But this does not, in the commission's view, mean that there must be absolutely no industrial load loss. In fact, some degree of load loss may be consistent with the objective of maximizing incremental pricing benefits to high priority users. As the Department of Energy explained in its comments, the Commission's approach to determining an appropriate alternative fuel price ceiling should weigh the amount of absorption capability (MSAC's) of remaining non-exempt users against the reduction in fixed charge recovery from users who switch from gas to alternative fuel. Only if the Commission sets an alternative fuel price ceiling so high that the loss in fixed charge recovery exceeds total remaining MSAC's would high priority customers be disadvantaged by incremental pricing.

Furthermore, as discussed more fully in the previous section dealing with market ordering, the Commission believes that the Congress must have intended at least some load loss to result from Title II. Absent a real threat of industrial load loss attributable to incremental pricing, the program cannot be expected to motivate pipelines to restrain their wellhead bidding decisions. Given the program's market ordering purpose, some industrial load loss would be compatible with Title II if the resulting reduction in deregulated gas acquisition costs more than offsets the increased allocation of fixed costs to high priority customers. Such a result would occur if the reduction in industrial demand for gas so reduces bidding pressures on deregulated gas that the average unit cost of gas (at the

wellhead) decreases by more than the amount by which the average unit cost of transmission and distribution is increased. In short, the logic of Title II is that some load loss could, and under appropriate circumstances would, actually benefit high-priority customers. Therefore, the argument that the Commission must assure against any load loss is not persuasive.

Even if some load loss is permissible under incremental pricing, Phase II, if adopted, should not cause any significant load loss because the alternative fuel price ceiling will be set at the No. 6 high sulphur oil price level. The comment of E. I. DuPont de Nemours & Company (DuPont) also pointed out that any increase in the price of gas to exempt users that could conceivably occur as a result of industrial load loss would be modest.

Another major theme expressed by TRW, Incorporated, the Procter and Gamble Company and many other industrial users commenting in this proceeding is that incremental pricing will result in "artificially" low delivered gas prices to residential and other exempt users, thereby eroding their incentive to conserve. These commenters argued that distorting energy price signals cannot be justified, and that no Phase II expansion should be put into effect because it would only magnify those distortions. Industrial users such as the Republic Steel Corporation considered this result particularly unfair, because they contended that they have already achieved greater conservation than residential or other high priority users. If the remaining conservation potential is greater among these latter users, then industrial users believed that the nation's energy goals would be ill served by shielding them from the true cost of the energy. Further, DuPont expressed the fear that without more conservation among exempt users, high priority demand will increase to the extent of bringing earlier curtailment of low priority users.

The Commission accepts the need to provide proper price signals to gas users. However, the Commission notes that as long as gas prices are cost-based and reflect average ("rolled-in") historical costs of old contracts with low prices, the prices yielded by such a regulatory practice will not reflect the commodity value of the gas and, therefore, the price signals will not reflect the "true" value of the gas to society. More particularly, the Congress has explicitly made the fundamental social policy decision to redesign the system by which gas costs, in the past, have been allocated among user classes. The Commission regards the explicit reallocation system embodied in Title II as reflecting a Congressional determination going in the other direction—that rolled-in pricing produces unacceptable price shielding of industrial customers.

Furthermore, the Commission believes that the amount of price shielding afforded to high priority users by this Phase II rule will not be of such a magnitude as to mislead them into thinking that their natural gas costs will not rise significantly and steadily over the coming years. Even if the disputable claim that industrial users have less remaining conservation potential than high priority users is correct, the Commission does not accept the argument that price distortions of the magnitude associated with adoption of this Phase II rule would create any significant disincentive to overall conservation of natural gas.

It is also significant that even though Phase II will raise industrial gas prices and reduce the amount of increases borne by residential and high-priority users, the delivered price of gas to incrementally priced users is projected to remain *less than* the price to residential customers in every state.

The average delivered cost of gas to residential customers served by interstate pipelines is approximately $3.70 per MMBtu. The average industrial rate (exclusive of any incremental pricing surcharge) is about $2.65 per MMBtu. Based on current high sulfur No. 6 oil prices, incremental pricing surcharges are about 25 cents, so the average cost of gas to incrementally priced users is $2.90 per MMBtu. The cost of gas to Phase II users will, therefore, be below the price to residential users. Arguments that incremental pricing in general and Phase II in parcticular will dramatically distort price signals to various customer classes might be valid if No. 2 fuel oil had been used as an alternative fuel ceiling. But in light of the Commission's decision to use the single tier high sulfur No. 6 fuel oil ceiling, these arguments take on diminished significance.

The Commission also calls attention to several comments that correctly characterized incremental pricing under Title II as a purely transitional device. The program initially "loads" gas costs onto industrial users and thereby "shields" other users. But the loading stops when industrial users reach their alternative fuel price ceilings. Subsequent increases in gas costs "spill over" onto high priority and exempt users until they eventually catch up to the price path they would have been on without incremental pricing. While the Commission believes that the amount of price distortion arising from Phase II is not sufficient to conflict with national conservation goals, it also attaches additional significance to the fact that any such distortion will be only temporary. It is interesting to note that while some commenters argued that incremental pricing will cause such dramatic distortions in the energy marketplace that it should not be expanded, other commenters argued that the program is so transitory that its administrative burden is unwarranted.

The Commission concludes that at least on the basis of current conditions, there is no basis for a judgment that Title II in general or Phase II in particular will so seriously distort natural gas price signals as to frustrate progress toward more efficient nationwide use of energy resources. The fact that some, but not all, consumers may be paying prices for gas that reflect its true commodity cost, and thereby receive the proper signals, is at least an improvement over the present situation even if it does not go as far as might be required to effect an overall pricing strategy to promote conservation.

A great many comments called attention to potential inequities seen as resulting from successful price shielding of high priority gas users. These comments suggested that the ultimate cost of subsidizing exempt gas users will be borne by non-gas homeowners who instead use more expensive fuel oil, electricity, propane, or other sources. The Process Gas Consumers argued, for example, that "incremental pricing affords these latter homeowners no subsidy on their energy bills; yet, incremental gas pricing will force them to pay higher prices for virtually all consumer goods in order to widen the gap between their own energy bills and those of gas consuming residences."

The Mobay Chemical Corporation suggested that it is inequitable to exempt high priority users who have significant potential to conserve and not exempt some industrial users (*e.g.*, feedstock gas users) who, by definition, have no capacity to conserve. It troubled the Petrochemical Energy Group and the Goodyear Tire and Rubber Company, among others, for some high priority industrial uses (*e.g.*, feedstock and other non-boiler uses) to subsidize certain low priority exempt uses (*e.g.*, cogeneration facilities and electric generation).

Title II will, by design, produce results that are more favorable to some classes of users. But the Congress apparently weighed these inequities against the advantages of an incentive wellhead pricing system in Title I of the NGPA,

and, on balance, concluded that one was necessary to accommodate the other. It thus falls upon the Commission to exercise appropriately its discretion in crafting a Phase II program that will advance the objectives of the NGPA while avoiding unacceptable and non-mandated inequities arising from the program.

The Commission believes that it has properly responded to the equity concerns raised in comments. The choice of a single No. 6 fuel oil tier rather than the originally proposed three-tier alternative fuel price ceiling system and the first 300 Mcf per day exemption of Phase II uses will greatly reduce the amount of income redistribution resulting from Phase II. Phases I and II together are expected to reallocate no more than about $1.3 billion per year between non-exempt and exempt users.

Comments by the American Gas Association and Process Gas Consumers asserting that Phase II will induce significant economic disruption and increased overall inflation are premised on dollar flows at least six or seven times greater than will result from the Commission's single tier approach. As noted in the following section on the economic effects of Phase II, the President's Council on Wage and Price Stability is persuaded that even the Commission's original Phase II proposal "is unlikely to increase inflation significantly."

The Commission's decision to adopt both the single tier approach and an exemption for the first 300 Mcf per day of Phase II uses stems from recognized need to mitigate any economic or equity disruptions that might have resulted from the Phase II rule as originally proposed.

One specific inequity, identified by Goodyear and others, is that under a three tier system, Phase II users without No. 6 fuel oil capability would pay gas prices equivalent to No. 2 distillate oil prices. Because of the large difference between the prices of No. 2 and No. 6 fuel oil, high priority industrial users without No. 6 capability would contribute far more to the price shielding of exempt users than would lower priority boiler and other industrial users who in general have, or can relatively easily install, No. 6 capability. In short, a disproportionate share of the subsidy to exempt high priority users would be coming from high priority industrial users if Phase II were to use the three-tier ceiling price system originally proposed. This inequitable result will now be avoided because the Commission will set the alternative fuel price ceiling applicable to Phase I uses at the lowest of the three tiers applicable to Phase II uses.

The Commission believes that the Phase II system contained in this rule for submission to Congress, represents the best balancing of the price shielding objective and the need to avoid disruptive and inequitable impacts which ultimately would work against the best interests of the high priority consumers whom Title II was intended to serve. However, as pointed out in several comments, incremental pricing under Title II is a "blunt instrument" for achieving the socio-economic goals Congress sought to accomplish via price shielding.

Title II provides some price sheltering to all exempt users, regardless of their economic need for this or any other type of subsidy. Phases I and II combined will cause about 25 percent of interstate gas to be incrementally priced. Fully 75 percent of all interstate consumption will share the benefits of surcharges paid by industrial users. Thus, a $.60 per MMBtu surcharge paid by incrementally priced users translates into only a $.20 per MMBtu benefit to exempt users. More significant relief to those unable to pay rising gas costs would be better achieved through other mechanisms such as a targeted incremental pricing program or direct energy cost assistance. However, such mechanisms are beyond the scope of Title II, and therefore not a proper subject of this Commission's actions. The Commission nonetheles notes these views and calls them to the attention of the Congress.

V. Economic Effects of Phase II.

Of major concern to the Commission and a majority of commenters is the need for the Phase II rule to be crafted in a manner that avoids imposing excessive economic stress on individual firms or on the overall economy. The Commission believes that the Phase II rule described herein is adequately responsive to those concerns.

The following discussion assesses the direct cost impact of the Phase II rule on those industries that are significant users of natural gas subject to the rule. Using state-by-state industrial gas consumption profiles, the potential impact on each State is also evaluated. Following the section on direct cost impacts is a discussion of the macroeconomic impacts of the Phase II rule.

A. *Direct Cost Impact.* Many commenters stated that the proposed three-tier program would result in extremely large increases in energy costs. Industrial users without alternative fuel capability predicted that their gas prices would increase on the order of 200 to 300 percent. The impact of such a price increase was depicted as severe. Many firms affected by Phase II compete with other firms not subject to incremental pricing—either intrastate gas users or foreign companies. Faced with such competition, a company would be constrained in the passthrough of increased costs to the consumer. Unable to fully recover increased costs, industries would be forced to absorb the costs through reduced profits. A number of commenters stated that plant shutdowns might result from the proposed three-tier incremental pricing program.

In the final Phase II rule, the Commission has adopted two major changes from its proposed Phase II rule that will significantly mitigate any economic damage arising from the program.

The first change is the decision to use a single tier alternative fuel ceiling approach. With the originally proposed No. 2 fuel oil ceiling price, non-exempt gas users would be faced with surcharges of as much as $3.00 per MMBtu. The Commission's decision to apply a single ceiling price based upon high sulfur No. 6 oil will lead to a much lower average surcharge. At present, depressed market conditions for residual oil imply little or no surcharge. Residual oil prices are below average industrial gas rates in some regions, and are only about 25 cents above gas rates in most localities. Residual oil prices are not expected to remain depressed indefinitely, however. Towards the end of 1980, residual oil prices are expected to recover to a level of about $0.60 per MMBtu above the average industrial gas rate. So the Commission's single tier decision has cut the surcharge impacts on many Phase II users by a factor of five.

Furthermore, due to the second major change adopted by the Commission, this much lower surcharge of 60 cents will be paid only on volumes purchased in excess of 300 Mcf per day. This approach to the small use exemption will give every facility an exemption for a fraction of its total gas use, which will effectively lower the average price increase to Phase II users. The analysis contained in Appendix B estimates the effect of this exemption. The results of that analysis suggest that while the impact of the small use exemption on any particular non-exempt user will depend on the user's size, and aggregate of about 20 percent of the gas that would otherwise be subject to surcharge will be exempted by the small use exemption approach taken by the Commission. As a rule of thumb, an average user's first-

year surcharge will be reduced from 60 cents to slightly less than 50 cents per Mcf. The effects of the agricultural use exemption are also addressed in Appendix B.

When all the various categories of manufacturing are summed, the total estimated interstate gas subject to incremental pricing under Phase II is as follows:

SIC	Industry	Non-Exempt Gas, Mcf
28	Chemicals	118,817,803
29	Petroleum	155,511,318
32	Stone, Clay & Glass	250,966,173
33	Primary Metals	314,283,660
22	Textiles	13,050,650
26	Pulp & Paper	2,221,332
—	Other Manufacturing	308,314,412
	Total	1,163,165,348

Assumming that all gas subject to Phase II were surcharged at $0.60 per Mcf, the nationwide aggregate surcharge would amount to $698 million per year. This figure represents a high value, not likely to be soon attained due to presently depressed residual oil prices. This aggregate cost estimate might be considered reflective of calendar year 1981, assuming that residual oil prices rise by year-end 1980 to levels experienced in recent months. Table 3 summarizes by industry and by State the effect of an assumed $0.60 per Mcf surcharge on Phase II uses. The volume of exempt gas over which the surcharge dollars will be spread to achieve a price reduction will, of course, differ substantially among pipelines and among States. Ignoring such variations, a rough measure of aggregate Phase II impact can be gained by noting that the aggregate surcharge would be spread over approximately 9 Tcf of interstate gas consumption for exempt uses. The result is a price reduction of 7.75 cents per Mcf for these exempt volumes. Thus, a residential customer consuming 130 Mcf per year might save about $10 per year as a result of Phase II. This is in addition to an approximately $8.00 per year savings under the Phase I program if average surcharges equal $0.60 per Mcf.

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$0.60/Mcf

Table 3

AGGREGATE PHASE II SURCHARGES (thousands of $)
Includes Agricultural and Small Use Exemptions

	SIC-28 Chemicals	SIC-29 Petroleum	SIC-32 Stone, Clay & Glass	SIC-33 Primary Metals	All Other Manufacturing	SIC-22 & 26 Textiles and Pulp & Paper Non-Exempt	TOTAL
Alabama	1,646	730	3,854	8,709	4,516	819	20,274
Arizona	125	---	900	6,513	583	1	8,122
Arkansas	2,049	1,372	3,886	7,930	1,626	253	17,116
California	2,185	23,902	15,328	4,016	7,353	380	53,164
Colorado	35	397	1,882	2,258	2,012	2	6,586
Connecticut	---	---	---	135	731	---	866
Delaware	61	75	---	86	241	---	463
Florida	1,833	1,337	5,319	14	1,295	681	10,479
Georgia	1,691	176	9,810	93	2,407	2,569	16,746
Idaho	700	---	27	---	---	38	765
Illinois	3,552	2,940	10,550	18,607	16,150	133	51,932
Indiana	698	640	5,220	25,467	7,495	8	39,528
Iowa	2,795	---	2,965	1,309	3,069	8	10,146
Kansas	2,734	18,382	7,639	10	2,769	6	31,540
Kentucky	167	968	1,217	2,808	2,261	366	7,787
Louisiana	35,449	26,593	2,941	4,582	8,319	112	77,996
Maryland	250	---	1,544	2,573	1,155	3	5,525
Massachusetts	10	2	666	---	1,570	71	2,319
Michigan	1,504	1,031	4,069	9,302	38,314	147	54,367
Minnesota	18	260	618	6,909	750	26	8,581
Mississippi	721	624	2,252	16	2,615	123	6,351
Missouri	833	519	3,618	209	5,225	3	10,407
Montana	17	551	970	1,714	256	22	3,530
Nebraska	1,648	---	934	36	417	---	3,035
Nevada	142	---	951	34	41	---	1,168
New Hampshire	---	---	---	---	---	19	19
New Jersey	214	10	5,741	344	1,623	75	8,007
New York	483	---	3,455	3,501	7,195	95	14,729
North Carolina	391	---	1,930	83	430	711	3,545
North Dakota	---	37	7	---	---	---	44

(continued on next page)

Table 3

$0.60/Mcf
Unit Surcharge

AGGREGATE PHASE II SURCHARGES (thousands of $)
Includes Agricultural and Small Use Exemptions

	SIC-28 Chemicals	SIC-29 Petroleum	SIC-32 Stone, Clay & Glass	SIC-33 Primary Metals	All Other Manufacturing	SIC-22 & 26 Textiles and Pulp & Paper Non-Exempt	TOTAL*
Ohio	2,574	1,790	15,988	29,110	14,174	141	63,777
Oregon	303	181	461	901	2,561	71	4,478
Pennsylvania	53	7,305	13,717	32,621	14,537	101	68,334
Rhode Island	---	---	515	22	---	25	562
South Carolina	105	---	6,492	1,591	2,732	1,423	12,343
South Dakota	---	---	619	---	40	---	659
Tennessee	2,722	106	4,610	1,169	3,010	229	11,846
Utah	316	863	1,004	4,384	347	---	6,914
Vermont	---	---	---	---	160	4	164
Virginia	709	---	860	176	983	308	3,036
Washington	400	1,683	40	1,928	254	69	4,374
West Virginia	1,372	135	6,665	2,388	523	---	11,083
Wisconsin	39	35	1,094	999	7,301	120	9,588
Wyoming	748	664	224	---	---	1	1,637
TOTAL	71,292	93,308	150,582	182,547	167,040	9,163	674,726

* Total reflects elimination of several large industrial facilities identified as using intrastate gas.

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B. *Macroeconomic Effects of Phase II.* A large number of commenters have alleged that incremental pricing in general, and Phase II in particular, will be inflationary. The basis for this allegation is that incrementally priced industrial customers will simply raise the prices of their products to offset their increased energy costs. As cost increases are passed through the economy, it is argued that the aggregate impact is amplified through operation of a multiplier effect. The consumer, it is argued, will pay in the long run for such cost increases associated with incremental pricing.

At the forefront of the inflation debate has been a study performed for the AGA by Wharton Econometric Forecasting Associates. The Wharton econometric model has been run a number of times under different assumptions concerning Phase II. The initial run compared the effects of Phase II to a base case of Phase I only. In this analysis, Phase II was expected to bring 90 percent of all interstate industrial natural gas under incremental pricing. The Wharton analysis also assumed a ceiling price based on No. 2 oil, with no downward adjustments, for all Phase II users. Finally, the model incorporated a modified passthrough mechanism that allocated spillover from the surcharge account to all users, thus pushing non-exempt users above their alternative fuel price ceiling and frequently off the gas system. Given such a set of assumptions, it is not surprising that the AGA/Wharton study finds serious adverse impacts attributable to Phase II. Inflation and unemployment rates were predicted to worsen significantly. But this study cannot be considered a useful assessment of the probable effects of the final rule. The model was rerun with a three-tier price ceiling scenario as part of AGA's final submission in this docket. Even this revised assumption considerably overstates the direct cost impact of Phase II because the Commission's final rule sets a uniform ceiling based on residual oil prices for Phase II users.

Notwithstanding the accuracy of these specific input assumptions, other commenters have voiced concerns with the applicability of large scale macroeconomic models for analysis of the effects of a program such as incremental pricing. The Office of Policy and Evaluation of the Department of Energy filed comments which disputed many of the AGA assertions. The DOE analysis maintains that many industrial firms are constrained by competitive pressures and cannot fully pass along increased costs. Moreover, other inputs to industrial production such as exempt gas volumes and electricity generated from gas will benefit from incremental pricing. The commercial sector, a major component of the nation's economy, benefits directly from incremental pricing. DOE projected that if relatively little load loss occurs the net inflationary effect of incremental pricing will be small and possibly negative. However, the DOE submission also indicates that some inflationary impact could result if substantial load loss occurs.

Perhaps more important for purposes of assessing aggregate inflationary pressures arising from Phase II is the total impact in industrial fuel use patterns and pipeline load factors as a result of Phase II. The DOE comments maintain that loss of an individual gas customer to oil is not inflationary per se, and may have little or no inflationary impact if the gas is used by other customers. As long as some users are being curtailed, no aggregate load loss, and therefore no increase in gas delivery costs, will result from Phase II.

As a further step in their submission, DOE performed a macroeconomic analysis of Phase II similar to that performed by AGA. Stressing their contention that macroeconomic models are ill-suited for analyzing the impact of price changes of a single commodity, DOE ran a different model, Data Resources, Inc. (DRI), with the same set of input assumptions as AGA. The results of the two models are strikingly different. The DRI model projects a rate of inflation only slightly higher than under rolled-in pricing until 1985, at which point there would be a slight reduction in the rate of inflation.[17] By 1990, the model actually predicts somewhat less inflation overall as compared to a rolled-in pricing base case. Another run was made to reflect a scenario without significant load loss; the result was essentially the same.

DOE concludes their comments with a critical look at the AGA/Wharton analysis. The direct costs to industry, assuming AGA's estimate of load loss, would amount to $29 billion in 1990. Costs to other sectors of the economy, such as residential and commercial, decline by $16 billion in the same year when compared to rolled-in pricing. The net effect is a $13 billion price increase, in 1990 dollars. This direct price increase is compared by DOE to the tremendous $431 billion increase in inflation projected by the Wharton macroeconomic model. The DOE analysts express doubt that the implicit multiplier of 33, reflecting the assumption that $1 of direct cost increase to industry results in $33 of increased cost to final consumers, could possibly be correct.

The Council on Wage and Price Stability also filed comments in this docket. The Council's submission contains a detailed record of meetings with AGA and DOE technical staff. The record reveals a rejoinder to the DOE analysis submitted to the Council by Wharton. Yet another document submitted by DOE critically examines this rejoinder and questions the validity of its conclusions. This DOE submission provides further comment on the validity of using large-scale macroeconomic forecasting models to analyze the impacts of Phase II. In short, DOE analysts do not believe that any such model currently available is sufficiently detailed and appropriately structured for the task.

The Council notes the sharp disagreement concerning the inflation issue, but nevertheless indicates a belief that the short-term effects of Phase II should be either negligible or anti-inflationary. The Council is skeptical of the extreme inflationary impacts alleged by AGA/Wharton. Finally, the Council echoes DOE's contention that macroeconomic models are poorly suited to such uses as predicting the impact of price changes in a sub-sector of the economy.

In conclusion, the case for a large inflationary impact must be regarded as speculative, even assuming large surcharges to non-exempt users and significant load loss. The Commission notes that the surcharges in the 60 cent per Mcf range which result from the No. 6 oil price ceiling are far less than the $3.00 surcharges which might have resulted from use of a No. 2 oil based ceiling. The small use exemption will lower the effective average surcharge to about 50 cents per Mcf. Finally, the structure of the small use exemption will work to encourage conservation and ultimately may reduce inflation by pricing marginal use of gas closer to its replacement cost.

(Natural Gas Policy Act of 1978, Pub. L. 95–621, 92 Stat. 3350, 15 U.S.C. 3301, *et seq.*)

In consideration of the foregoing, if neither House of Congress passes a Resolution of Disapproval of the regulations transmitted to them in this Order within 30 days of Congressional review, as determined in accordance with section 507(b) of the NGPA, Part 282 of Subchapter I, Chapter I, Title 18, Code of Federal Regulations, is

[17] Inflation as measured by the GNP implicit price deflator. Measured by the Consumer Price Index (CPI), inflation is lower throughout the period in the incremental pricing case.

amended as set forth below, effective 90 days following the expiration of the 30-day review period, provided that §§ 282.215, 282.601, and 282.602 shall be effective July 1, 1980.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. The table of sections for Part 282 is amended to add a new § 282.208 entitled *"Exemptions under section 502(c)"* and a new § 282.215 entitled *"Exemption affidavits."*

2. Section 282.101 is amended to read as follows:

§ 282.101 Purpose.

The purpose of this part is to set forth incremental pricing rules in accordance with Title II of the Natural Gas Policy Act of 1978. The rules require that certain costs of acquiring natural gas be passed through as surcharges on sales of natural gas used as specified in the rules.

3. Section 282.102 is amended by revising paragraph (a) to read as follows:

§ 282.102 Applicability and effective date.

(a) *Uses.* (1) Natural gas used as boiler fuel in industrial boiler fuel facilities on and after January 1, 1980, shall be subject to incremental pricing under this part.

(2)(i) On and after [90 days following expiration of 30-day Congressional review period], natural gas consumed in uses other than as boiler fuel in industrial facilities shall be subject to incremental pricing under this part.

(ii) Shrinkage volumes removed as natural gas liquids or natural gas liquid products from a natural gas stream shall not be subject to incremental pricing under this part.

4. Section 282.103 is amended by revising paragraph (e) and adding a new paragraph (l) to read as follows:

§ 282.103 Definitions.

For purposes of this part:

* * * * *

(e) "Non-exempt industrial facility" means any industrial facility other than one which has been exempted from the provisions of this part in accordance with Subpart B.

* * * * *

(l) "Meter reading period" means the period of time extending from the 20th day of any month up to and including the 19th day of the following month.

5. Section 282.201 is revised to read as follows:

§ 282.201 General rule.

(a) *Statutory exemptions.* Natural gas used for purposes described in § 282.203(a) shall be exempt from incremental pricing as provided in section 206 of the NGPA. Exemptions for such gas may be obtained in the manner prescribed in § 282.215. Adjustments under authority of section 502(c) of the NGPA as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens may be obtained as provided in § 1.41.

(b) *Discretionary exemptions.* Petitions for an exemption under authority of section 206(d) of the NGPA may be filed in the manner prescribed in § 282.206.

6. The text of § 282.203, which currently consists of an introductory paragraph and paragraphs (a), (a) (1) and (2), (b) through (e), is amended as follows:

a. Paragraphs (a), (a) (1) and (2), and (b) through (e) are redesignated as paragraphs (a)(1), (a)(1) (i) and (ii), and (a)(2) through (a)(5) respectively.

b. The introductory paragraph is redesignated as the introductory text of paragraph (a) and revised to read as set forth below.

c. A new paragraph (b) is added to read as set forth below.

For the convenience of the user, the text of the redesignated paragraphs (a), (a)(1), (a)(1)(i), and (a)(3) through (a)(5) is also set forth below.

§ 282.203 Exempt end-uses.

(a) *Statutory exemptions.* In accordance with the provisions of section 206 of the NGPA, natural gas used for the following purposes shall be exempt from incremental pricing under this part:

(1) All gas used for boiler fuel by an industrial boiler fuel facility which was:

(i) In existence on November 9, 1978; and

(ii) * * *

(2) * * *

(3) All gas used in a school, hospital, or similar institution;

(4) All gas used for the generation of electricity by an electric utility; and

(5) All gas used in a qualifying cogeneration facility.

(b) *Partial exemption for non-boiler fuel use.* That volume of natural gas consumed in uses other than as boiler fuel by an industrial facility which is not exempt from incremental pricing pursuant to paragraphs (a)(2) through (a)(5) of this section and which is equal to or less than an average of 300 Mcf per day during any month shall be exempt from incremental pricing under this part.

§ 282.204 [Deleted]

7. Section 282.204 is deleted in its entirety.

§ 282.206 [Amended]

8. Section 282.206 is amended in paragraph (a) by deleting the words "boiler fuel" from the term "industrial boiler fuel facility."

§ 282.207 [Amended]

9. Section 282.207 is amended in paragraph (a) by deleting the words "boiler fuel" from the term "industrial boiler fuel facility."

10. Part 282 is amended to add a new § 282.208 to read as follows:

§ 282.208 Exemptions under section 502(c).

(a) *General rule.* The Commission may, under authority of section 502(c) of the NGPA, exempt any non-exempt industrial facility (or category thereof), in whole or in part, from any provision of this part.

(b) *Procedures.* The procedures set forth in § 1.41 shall apply to an application for an exemption in the nature of an adjustment as described in paragraph (a) of this section.

11. Part 282 is amended to add a new § 282.215 to read as follows:

§ 282.215 Exemption affidavits.

(a) *General.* This section establishes procedures by which owners or operators of industrial facilities may obtain an exemption for natural gas used for the purposes described in § 282.203.

(b) *Obtaining an exemption.* (1) In order to obtain a partial or total exemption from incremental pricing, an owner or operator of an industrial facility shall file an exemption affidavit, as described in paragraph (b)(3), signed and dated by a responsible official associated with the facility, under oath, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and send a copy of the executed affidavit to the natural gas supplier serving the industrial facility.

(2) *Commission to provide exemption affidavits.* The Commission will provide exemption affidavits as described in paragraph (b)(3) of this section to natural gas suppliers and to any other interested person upon request. Requests should be directed to the Division of Public Information, Federal Energy Regulatory Commission, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

(3) *Contents of exemption affidavits.* (i) The exemption affidavit will provide the owner or operator of an industrial

facility with the opportunity to respond to a series of questions so that the owner or operator may establish, if appropriate, the basis for one or more of the exemptions set forth in § 282.203.

(ii) The exemption affidavit will indicate the record retention obligation which may be incurred by the customer under paragraph (b)(7) of this section.

(4) *Effect of filing an exemption affidavit.* If the owner or operator of an industrial facility files an executed affidavit in accordance with paragraph (b)(1) of this section, that volume of natural gas which is consumed in the facility for exempt uses shall be exempt from incremental pricing under this part, if determined in accordance with § 282.504(c)(2)(ii).

(5) *Availability from natural gas suppliers*—(i) *Initial service.* Not later than July 1, 1980, each natural gas supplier shall mail or otherwise supply an exemption affidavit, as described in paragraph (b)(3) of this section, to the owner or operator of each industrial facility on such natural gas supplier's system.

(ii) *Response date.* Natural gas suppliers which supply exemption affidavits under paragraph (b)(5)(i) of this section shall request that executed affidavits be filed on or before August 1, 1980, in accordance with paragraph (b)(1) of this section.

(iii) *Ongoing availability.* After July 1, 1980, natural gas suppliers shall make exemption affidavits available at their principal place of business on an ongoing basis during regular business hours.

(6) *Effective date of exemption.* (i) If the owner or operator of an industrial facility files an exemption affidavit with the Commission and sends a copy to the facility's natural gas supplier in accordance with paragraph (b)(1) of this section on or before (one day prior to day 90 days following expiration of 30-day Congressional review period), the facility shall be exempt from incremental pricing in accordance with this part as of (90 days following expiration of 30-day Congressional review period).

(ii) If the owner or operator of an industrial facility files an exemption affidavit with the Commission and sends a copy to the facility's natural gas supplier in accordance with paragraph (b)(1) of this section on or after (same date as in paragraph (b)(6)(i) of this section), the facility shall be exempt from incremental pricing under this part as of the beginning of the first full month following the date the exemption affidavit is filed with the Commission and received by the facility's natural gas supplier.

(7) *Record retention.* If the owner or operator of an industrial facility obtains an exemption by filing an affidavit, in accordance with paragraph (b)(1), the owner or operator shall, for a period of at least three years from the date of filing the exemption affidavit, retain all records, documents or data which formed the bases of the responses on the affidavit.

(c) *Public availability of exemption information.* (1) *Executed exemption affidavits.* Copies of executed exemption affidavits which are filed with the Commission shall be available for public inspection through the Division of Public information, Federal Energy Regulatory Commission, Room 1000, 825 North Capitol Street, NE, Washington, D.C. 20426.

(2) *Lists of non-exempt facilities.* (i) On or before November 1, 1980, each natural gas supplier shall file with the Secretary, Federal Energy Reulatory Commision, 825 North Capitol Street, NE., Washington, D.C. 20426, and with each state or local regulatory authority having appropriate jurisdiction over the supplier, a list of all industrial facilities served directly by the supplier which did not qualify for an exemption for their total use of natural gas as of [one day prior to day 90 days following expiration of 30-day Congressional review period].

(ii) On or before November 1 of each year after 1980, each natural gas supplier shall file with the agencies specified in paragraph (c)(2)(i) of this section a revised list of all non-exempt industrial facilities served directly by the supplier. A revised list shall indicate all additions or revisions to or deletions from the prior year's list.

(iii) Lists of non-exempt industrial facilities filed in accordance with paragraphs (c)(2) (i) or (ii) of this section shall indicate the alternative fuel capability of each facility thereon, as established in accord with the provisions of § 282.403.

(iv) Lists of non-exempt facilities filed in accordance with paragraphs (c)(2) (i) or (ii) of this section shall be available for public inspection through the Division of Public Information, Federal Energy Regulatory Commission, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426.

(d) *Protests.* (1) Any interested person may protest the exemption of an industrial facility from incremental pricing.

(2) The procedures set forth in § 1.10 shall govern the filing of such a protest, except that any person filing such a protest shall serve a copy of the protest on the affiant of the exemption affidavit.

(3) The affiant may file an answer to any protest. Such answer must be filed within 30 days of the service date of a protest. The affiant shall serve a copy of the answer on the party filing the protest.

§ 282.401 [Amended]

12. Section 282.401 is amended by deleting the words "boiler fuel" and §§ 282.402 through 282.405 are amended by deleting the words "boiler fuel" wherever they appear in the phrase "industrial boiler fuel facility(ies)."

13. Section 282.501 is amended by deleting the words "boiler fuel" wherever they appear in the phrase "industrial boiler fuel facility(ies)" in paragraphs (c) and (c)(2) and by revising paragraphs (c)(3) and (d) to read as follows:

§ 282.501 General rule.

* * * * *

(c) * * *

(3) the maximum surcharge absorption capability of a non-exempt industrial facility for any calendar month shall be determined by utilizing the alternative fuel price ceiling(s) applicable to that calendar month and the meter reading(s) made during the meter reading period beginning on the 20th day of such month. If more than one meter reading is made in a meter reading period, a cumulative total of all meter readings made in such period shall be determined.

(d) Each month, in the case of interstate pipelines, the amount accumulated in the pipeline's unrecovered incremental gas costs account which cannot be recovered by way of incremental pricing surcharges shall be cleared from that account to account 805.2, Incremental Gas Cost Adjustments, in accordance with § 282.502.

14. Section 282.503 is amended by deleting the words "boiler fuel" from the term "industrial boiler fuel facilities" in paragraphs (a)(2)(ii) and (c) and by revising paragraph (b) to read as follows:

§ 282.503 PGA reduction.

* * * * *

(b) *Projected MSAC of a non-exempt industrial facility.* (1) The projected MSAC of a non-exempt industrial facility for a coming PGA period shall be calculated by a natural gas supplier in accordance with the following formula, in which the symbol " ^ " indicates a projection:

$$\hat{M} = \frac{[(\hat{AB}_1 - \hat{RB}_1)\hat{VB}_1 + (\hat{AS}_1 - \hat{RS}_1)\hat{VS}_1]}{1 + \hat{T}_1} +$$

$$\frac{[(\hat{AB}_2 - \hat{RB}_2)\hat{VB}_2 + (\hat{AS}_2 - \hat{RS}_2)\hat{VS}_2]}{1 + \hat{T}_2} + \ldots +$$

$$\frac{[\hat{AB}_n - \hat{RB}_n)\hat{VB}_n + (\hat{AS}_n - \hat{RS}_n)\hat{VS}_n]}{1 + \hat{T}_n}$$

where:

$\hat{M}$=Projected MSAC of the non-exempt industrial facility.

$\hat{AB}$=Projected alternative fuel price ceiling, plus taxes, for the boiler fuel consumed in a non-exempt use by the industrial facility, as determined in accordance with paragraph (b)(2)(i) of this section.

$\hat{RB}$=Projected rate per million Btu's (excluding any incremental pricing surcharge), plus taxes, at which the industrial facility will purchase natural gas for non-exempt boiler fuel use, as determined in accordance with paragraph (b)(3)(i) of this section.

$\hat{VB}$=Projected volume of natural gas (at 1,000 Btu's per cubic foot) that the industrial facility will purchase from the natural gas supplier and use for non-exempt boiler fuel, as estimated for each of the months "1" (one) through "n" of the PGA period.

$\hat{AS}$=Projected alternative fuel price ceiling, plus taxes, for all natural gas consumed in a non-exempt use other than as boiler fuel by an industrial facility, as determined in accordance with paragraph (b)(2)(ii) of this section.

$\hat{RS}$=Projected rate per million Btu's (excluding an incremental pricing surcharge), plus taxes, at which the industrial facility will purchase natural gas for consumption in a non-exempt use other than as boiler fuel, as determined in accordance with paragraph (b)(3)(ii) of this section.

$\hat{VS}$=Projected volume of natural gas (at 1,000 Btu's per cubic foot) that the industrial facility will purchase from the natural gas supplier in excess of otherwise exempt volumes and an average of 300 Mcf per day and consume in a use other than as boiler fuel, as estimated for each of the months "1" (one) through "n" of the PGA period.

$\hat{T}$=Projected total percentage tax rate reflecting any state and local taxes applicable to an incremental pricing surcharge.

n=Last month of the PGA period.

(2) *Projected alternative fuel price ceilings*—(i) *Non-exempt boiler fuel use.* As a value for "$\hat{AB}$" for each of the months "1" (one) through "n" of the coming PGA period, a natural gas supplier shall use the most recently established alternative fuel price ceiling applicable to the facility's non-exempt boiler fuel use, plus taxes, unless the supplier elects to estimate the applicable alternative fuel price ceilings for each month. In that case, the estimated ceilings, plus taxes, may be used as values for "$\hat{AB}$".

(ii) *Non-exempt use other than boiler fuel.* As a value for "$\hat{AS}$" for each of the months "1" (one) through "n" of the coming PGA period, a natural gas supplier shall use the most recently established alternative fuel price ceiling applicable to the non-exempt use of gas other than as boiler fuel in the facility, plus taxes, unless the supplier elects to estimate the applicable alternative fuel price ceilings for each month. In that case, the estimated ceilings, plus taxes, may be used as values for "$\hat{AS}$".

(iii) *Assistance for local distribution companies.* If a local distribution company desires assistance in estimating applicable alternative fuel price ceilings for each of the months of the coming PGA period, the interstate pipeline which supplies the local distribution company shall provide such assistance.

(3) *Projected rates*—(i) *Local distribution company.* (A) *Non-exempt boiler fuel use.* As a value for "$\hat{RB}$" for each of the months "1" (one) through "n" of the coming PGA period, a local distribution company shall use its effective boiler fuel industrial gas sales rate per million Btu's at the time of projection, plus taxes, but exclusive of any incremental pricing surcharges, 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. If the local distribution company elects to adjust the rate, the values used for "$\hat{RB}$" may reflect the adjustments for the months of the PGA period for which the adjustments are appropriate.

(B) *Non-exempt use other than boiler fuel.* As a value for "$\hat{RS}$" for each of the months "1" (one through "n" of the coming PGA period, a local distribution company shall use its effective non-boiler fuel industrial gas sales rate per million Btu's at the time of projection, plus taxes, exclusive of any incremental pricing surcharges, 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. If the local distribution company elects to adjust the rate, the values used for "R̂S" may reflect the adjustments for the months of the PGA period for which the adjustments are appropriate.

(ii) *Interstate pipeline*—(A) *Non-exempt boiler fuel use.* As a value for "R̂B" for each of the months "1" (one through "n" of the coming PGA period, an interstate pipeline shall use its effective boiler fuel industrial gas sales contract rate per million Btu's at the time of the projection, plus taxes, but exclusive of any incremental pricing surcharges, unless the pipeline elects to adjust such rate to reflect rate changes which it is known will occur during the PGA period.

(B) *Non-exempt use other than boiler fuel.* As a value for "R̂S" for each of the months "1" (one) through "n" of the coming PGA period, an interstate pipeline shall use its effective non-boiler fuel industrial gas sales contract rate per million Btu's at the time of the projection, plus taxes, but exclusive of any incremental pricing surcharges, unless the pipeline elects to adjust such rate to reflect rate changes which it is known will occur during the coming PGA period.

* * * * *

15. Section 282.504 is amended by deleting the words "boiler fuel" from the term "industrial boiler fuel facility(ies)" in paragraphs (a), (c)(1), (c)(3), (c)(4), (d)(2) and (d)(3)(ii), and by adding paragraph (c)(1)(iii) and revising paragraph (c)(2) to read as follows:

§ 282.504 Incremental pricing surcharge.

* * * * *

(c) *Surcharges on non-exempt industrial facilities.* (1) * * *

(i) * * *

(ii) * * *

(iii) For the period November 1, 1980, through October 31, 1981, a state may elect to allocate that portion of an industrial facility's surcharge as determined in accord with subdivisions (i) or (ii) of this subparagraph which is applicable to non-boiler fuel use of natural gas and which exceeds 75 cents per Mcf to other non-exempt industrial facilities within the state.

(2) *MSAC of a non-exempt industrial facility.* (i) The MSAC of a non-exempt industrial facility for any calendar month shall be determined in accordance with the following formula:

$$M = \frac{[(AB-RB)(VB) + (AS-RS)(VS)]}{1 + T}$$

where:

M = MSAC of the non-exempt industrial facility.

AB = Alternative fuel price ceiling, plus taxes, applicable to the boiler fuel consumed in a non-exempt use by the industrial facility during the subject calendar month.

RB = Rate per million Btu's (excluding any incremental pricing surcharge), plus taxes, at which the industrial facility purchased gas for consumption as boiler fuel in a non-exempt use from the natural gas supplier during the month.

VB = Volume of natural gas (at 1,000 Btu's per cubic foot) suplied by the natural gas supplier to the industrial facility for consumption as boiler fuel in a non-exempt use during the month, as determined in accordance with paragraph (c)(2)(ii) of this section.

AS = Alternative fuel price ceiling, plus taxes, applicable to consumption of gas in a non-exempt use other than as boiler fuel by the industrial facility during the subject calendar month.

RS = Rate per million Btu's (excluding any incremental pricing surcharge), plus taxes, at which the industrial facility purchased gas for consumption in a non-exempt use other than as boiler fuel during the month.

VS = Volume of natural gas (at 1,000 Btu's per cubic foot) supplied by the natural gas supplier and consumed in a use other than as boiler fuel by the industrial facility that is not otherwise exempt and that exceeds an average of 300 Mcf/day during the month, as determined in accordance with paragraph (c)(2)(ii).

T = Total percentage tax rate reflecting any state and local taxes applicable to an incremental pricing surcharge.

(ii)(A) For the period January 1, 1980, through October 31, 1981, the volume of natural gas supplied to a non-exempt industrial facility during a month may be determined in accordance with § 282.207.

(B)(*1*) Subject to clause (*2*), on and after November 1, 1981, the non-exempt volume of natural gas supplied by a natural gas supplier to a non-exempt industrial facility during a month shall be deemed to be the total volume of natural gas supplied to the facility during the month, unless the natural gas supplier serving the facility distinguishes the volumes used for non-exempt uses from the volumes consumed in exempt uses on the basis of submeter readings. If volumes consumed in non-exempt uses are so identified, such volumes shall be the basis for determining the MSAC of the industrial facility in accordance with subdivision (i) of this subparagraph.

(*2*) Certified monthly estimates determined in accordance with § 282.207 may be utilized to determine the volume of natural gas consumed in the facility for non-exempt uses for a period following November 1, 1981: *Provided,* That the owner or operator of the facility has obtained a purchase order for all submeters which will be needed in the facility by November 1, 1981, and such submeters will be installed within a reasonable period of time.

* * * * *

16. Section 282.506 is revised to read as follows:

§ 282.506 Refunds.

(a) *Non-exempt boiler fuel use.* The jurisdictional portion of any refund (including interest applicable thereto) which is attributable to that portion of service provided to and consumed as boiler fuel for a non-exempt use by industrial facilities prior to January 1, 1980, which had not been flowed through to such users as of December 31, 1979, shall be flowed through as a lump sum payment in appropriate amounts to each appropriate natural gas supplier for the benefit of such users. Such refunds shall be calculated on the basis of sales to such users during the period when the rates which gives rise to the refund were in effect.

(b) *Non-exempt use other than boiler fuel.* The jurisdictional portion of any refund (including interest applicable thereto) which is attributable to that portion of service provided to and consumed in a non-exempt use other than as boiler fuel by non-exempt industrial facilities prior to (90 days following expiration of 30-day Congressional review period) which has not been flowed through to such users as of (day prior to day 90 days following expiration of 30-day Congressional review period) shall be flowed through as a lump sum payment in appropriate

amounts to each appropriate natural gas supplier for the benefit of such users. Such refunds shall be calculated on the basis of sales to such users during the period when the rates which give rise to the refund were in effect.

17. Section 282.601 is amended by revising paragraph (c) to read as follows:

§ 282.601 FERC gas tariff provisions.

* * * * *

(c) *Filing dates.* The incremental pricing surcharge provision and revised PGA provision shall be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 and served on all parties by July 1, 1980. The provisions shall become effective on August 1, 1980, unless disapproved in whole or in part by the Commission.

18. Section 282.602 is amended by revising paragraph (a) to read as follows:

§ 282.602 Tariff sheets.

(a) *General rule.* (1) On or before August 1, 1980, for the period (90 days following expiration of 30-day Congressional review period), to the effective date of the pipeline's next normally scheduled PGA filing, each interstate pipeline shall file concurrently:

(i) A tariff sheet reflecting a reduced PGA rate as determined in accordance with § 282.503; and

(ii) A tariff sheet reflecting the projected incremental pricing surcharges for each month, as determined on the basis of data used in deriving the reduced PGA rates referenced in subdivision (i) of this subparagraph, for each of the direct sale non-exempt industrial facilities and the aggregate amount applicable to each sale-for-resale customer on the pipeline's system.

* * * * *

19. Section 282.603 is amended by revising paragraph (a) to read as follows:

§ 282.603 Informational filings.

(a) *General rule.* For informational purposes, each month commencing with September 1980, each interstate pipeline company shall file with the Commission a statement setting forth the incremental pricing surcharge actually billed to each non-exempt industrial facility and sale-for-resale customer on its system in the preceding month.

* * * * *

Appendix A—Summary of Comments on Phase II Rulemaking

[Note.—This Appendix A will not appear in the Code of Federal Regulations.]

The attached chart is a summary of the oral comments made in the hearings and the written comments submitted in response to the Notice of Proposed Rulemaking in Docket No. RM80–10. The comments have been organized according to interest group.[1]

A total of 522 comments were received on the Phase II proposal. This total includes 347 comments on behalf of industrial end-users; eleven comments from Chambers of Commerce; seven comments on behalf of consumer organizations or individual consumers; thirteen comments on behalf of natural gas liquids extraction plants; and sixteen comments on behalf of pipeline companies. Local distribution companies filed a total of sixty-four comments; sixteen state regulatory Commissions participated in the proceedings; and three Federal agencies submitted comments. Finally, forty-five Congressmen submitted views or formal comments.

Commenters addressed numerous issues inherent in the Phase II proposal. For purposes of this summary, the issues have been grouped into ten major categories. An "X" placed in a column indicates that the commenter discussed at least one issue within that particular category. The ten categories include the following issues:

Timing: includes comments requesting the Commission to delay implementing a Phase II rulemaking because of lack of information on the impact of incremental pricing and/or lack of experience with implementing the Phase I program.

Scope: includes comments requesting the Commission to expand or limit the class of gas users, or the type of gas use covered by incremental pricing.

No. 2 or No. 6: includes comments that recommended a ceiling price to be adopted by the Commission. All except a few of these comments recommended adopting a single tier high sulfur No. 6 ceiling price.

Market Ordering: includes comments that expressed the view that the incremental pricing program will not be able to meet its market ordering objectives because it will not be able to restrain pipeline bidding for new supplies of gas.

Price Sheltering: includes comments that express the view that the incremental pricing program will not achieve its objective of shielding high priority users. The arguments in support of this position included views that high priority users will not receive a benefit because load loss will result on many systems, causing an increase in rates to the high priority users, and that the increased gas prices paid by incrementally priced industrials will be passed on to the high priority users in the form of higher prices for consumer products.

Adverse Economic Impact: includes comments indicating that incremental pricing will have any of the following economic impacts: increase inflation, increase unemployment, decrease rate of growth, increase balance of payment deficit, cause plant shutdowns and create competitive disadvantages in the foreign and/or domestic markets.

Increase Oil Use: includes comments stating that the incremental pricing program will cause fuel switching from gas to oil because the price of gas will be equal to or exceed the price of oil. Thus, U.S. dependence on oil imports will be increased.

Load Loss: includes comments that alleged that the incremental pricing program will cause fuel switching from gas to alternative fuels for many industries, which will increase the fixed costs the remaining customers on the gas system will have to bear.

Conservation: includes comments alleging that incremental pricing hides the true cost of gas to high priority users, thus creating a disincentive to conserve.

Keep Estimation Procedure: includes comments opposing a submetering requirement and recommending permanent adoption of an estimation approach. The majority of these comments endorsed the disclosed estimation methodology approach adopted by the Commission in Docket No. RM80–16.

Attachment.

[1] Several individuals submitted comments over their own names, arguing an industrial point of view. These comments are included within the "industrial end-user" group.

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APPENDIX A
SUMMARY OF COMMENTS ON PHASE II RULEMAKING

Industrial End-Users

	TIMING	SCOPE	NO. 2 NO. 6	MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
Acme Brick		x	x			x				
Active Products Corp.		x				x	x			
Adams Packing Assoc. Inc.					x	x				
Advance Products Corp.					x		x	x		
AF Enterprises		x								
AFG Indust. Inc.						x		x		
Air Products & Chemicals		x				x				
Airco Speer Carbon-Graphite		x	x		x	x	x			
Akrosil			x			x				
Alberto-Culver Co.					x	x	x	x		
Alcoa Aluminum										
Alflex Corporation						x			x	
Allis Chalmers						x	x	x		
Allshouse, Thomas W.						x				
Allsun Juices, Inc.						x				
Aluminum Recycling Association		x								
American Aluminum Extrusions, Inc.		x	x			x	x			
American Bakers Assoc.		x				x				
American Die Casting Institute		x	x	x		x	x	x	x	x
American Hot Dip Galvanizing		x				x	x		x	
American Institute of Plant Engineers		x	x			x				
American Iron Ore Association		x	x	x		x	x			

Industrial End-Users	TIMING	SCOPE	NO. 2 NO. 6	MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
American Meat Institute and Armour & Co.		x	x		x	x	x			
American Paper Institute, Inc.		x	x			x			x	
American Standards Inc.		x	x	x	x	x		x		
American Textile Manufacturers Institute, Inc.		x	x	x	x	x	x		x	
Ames Company					x	x	x			
Amron Corporation		x								
Anaconda Copper Co.		x	x	x		x	x		x	
Anaheim Citrus Products Co.		x				x				
Anchor Hocking Corp.		x				x	x	x	x	
Armco Incorp.		x	x			x		x	x	
Armstrong		x		x	x	x	x	x	x	
Armstrong Cork		x	x							
Asarco Inc., Deere & Co., Kennecott Copper Corp.		x	x	x	x	x			x	
Asset Management Consultant Serv. Inc.		x				x				
Associated Industries of Alabama		x	x		x	x		x	x	
Associated Industries of Kentucky		x			x			x		
Atkinson Brick Co.	x	x				x				
Atlantic Richfield Co.		x	x			x	x	x	x	
Atlas Powder Company		x				x		x		
Austin White Lime Co.		x								
Avery International Az Products Co.		x	x			x	x	x		

Industrial End-Users

	TIMING	SCOPE	NO. 2 NO. 6	MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
Baker Canning Co., Inc.					x	x			x	
Ball Corporation		x	x			x	x	x	x	
Bethlehem Steel Co.						x				
Bickerstaff Clay Products, Inc.		x	x			x				
Bordo Citrus Products Coop.			x			x	x	x		
Boren Clay Products						x				
Borg Warner Chemicals			x			x			x	
Brian, Allen E.						x				
Brick Institute of America			x		x	x	x			
Briggs		x				x				
Briggs and Stratton Corp.			x			x	x	x		
Broce Construction Co., Inc.					x	x				
Brookside Corp.		x				x				
Brunswick Corp.					x	x				
Bud Darden Mobile Homes		x								
Burgess Pigment Co.		x	x		x	x				
Burrell Implement Co.						x				
Burlington Industries		x	x	x	x	x	x			
Butcher Boy Food Prod., Inc.		x				x				
Cabot Corporation		x	x			x				
California Asphalt Pavement Assoc.			x		x	x				
California Carpet Finishing Co.		x								
California Gas Producers Assoc.		x				x				

Industrial End-Users	TIMING	SCOPE	NO. 2 NO. 6	MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
California Manufacturers Assoc.		x				x		x		
Can Tex		x	x			x				
Cardinal American Corp.						x				
Carlton Forge Works						x				
Cast Metals Federation	x	x	x			x				
Caterpillar Tractor Co.	x	x	x	x		x		x		
Celanese Fibers Co.		x			x		x			
Cello Bag Co., Inc.										
Celotex Corporation			x		x	x	x	x		
Central Illinois Industrial Ass.		x	x			x		x		
Central Nebraska Packing, Inc.						x				
Certain Associations & Industrial Users of Natural Gas	x	x	x	x		x		x		
CertainTeed Corp.	x	x	x						x	
CF&I Steel Corporation		x			x	x				
Champion Spark Plug Co.		x								
Chattanooga Glass Co.						x	x			
Chemical Manufacturers Assoc.	x	x		x				x	x	
Chicago Bridge & Iron Co.		x	x				x			
Chicago Extruded Metals Co.		x								
Chi-Vit Corporation						x	x			
Cleveland-Cliffs Iron Co.		x			x	x				
Colonial Rubber Co.		x				x			x	
Columbia Moulding Co.					x	x		x		

Industrial End-Users

	TIMING	SCOPE	NO. 2 NO. 6	MASKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
Consolidated Papers, Inc.			x					x		x
Construction Industry Mfgrs. Association			x		x			x		
Copperweld Tubing Group						x		x		
Corn Refiners Assoc., Inc.										
Cortland Container Corp.		x								
Crompton Company, Inc.			x							
Crown Cork and Seal Company, Inc.			x			x	x	x		
Dana Corporation		x			x				x	
Delta Brick & Tile Co., Inc.		x	x		x	x				
Dickey Company			x		x		x	x	x	
Dixie Galvanizing & Tank Co.						x	x	x		
Dixie Industries Inc.		x			x	x				
D.M. Steward Mfgr. Co.						x				
Dow Chemical U.S.A.		x		x					x	
Dubuque Packing Co.		x				x				
Dundee Citrus Growers Assoc.		x		x	x	x	x			
Du-wel Products, Inc.		x	x			x				
E. I. DuPont de Nemours & Co.	x	x	x	x		x		x	x	
Eastern Energy User's Coalition	x	x		x		x				
ECK Industries, Inc.						x				
Electrodelta Inc.		x				x				
Eli Lilly and Co.		x				x				x

Industrial End-Users

	TIMING	SCOPE	NO. 2 NO. 6	MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
Eljer Plumbingware					x	x		x		
Elkay Manufacturing Co.					x			x		
Ellwood City Forge Corp.		x				x				
Elyria Foundry Division		x								
Emerson Electric Co.		x	x			x				
Enamel Products & Plating Co.										
Endicott Forging & Manufacturing Co., Inc.						x		x		
Endicott Clay Products Co.										
Entex, Inc.					x	x	x	x		
Erie Mining Co.		x		x		x	x	x		
Evans Cooperage Co.						x			x	
Expert Witness Services, Inc.					x	x	x	x		
Famous Fabric Shop		x								
Fenton Art Glass Co.										
Ferro Corporation		x			x	x	x			
Fertilizer Institute	x	x				x				
Firestone Tire & Rubber Co.		x	x			x				
Flambeau Paper Corp.						x				
Flamingo Tile Corp.						x				
Flexible Packaging						x		x		
Florida Distillers Co.			x				x	x		
Florida Steel Corp.		x				x				
Florida Wire & Cable Co.						x	x			
Flowerwood		x				x				

Industrial End-Users	TIMING	SCOPE	NO. 2 NO. 6	MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
Ford Motor Co.	x	x	x	x					x	
Forging Industry Assoc.						x	x			
Frederick J. Dando Co.						x				
GAF Corporation						x				
Gamble Brothers, Div. of Celotex Corp.										
Gatke Corp.										
General Foods Corp.						x	x			
General Tire & Rubber Co.		x	x			x				
Georgia Pacific Corp.		x	x						x	x
Georgia Marble Co.					x	x				
Giant Portland & Masonry Cement Co.	x	x		x		x		x		
Gladding, McBean and Co.						x		x		
Glass Containers Corp.	x	x	x	x		x				
Glass Packaging Institute	x	x	x	x		x				
Glen-Gery Corp.							x			
Gohman Asphalt & Construction, Inc.				x		x	x			
Goodyear Tire & Rubber Company		x	x						x	
Gopher Smelting & Refining Co.					x	x				
Grain Processing Corp.						x	x		x	
Grede Foundries Assoc.						x	x			

Industrial End-Users

	TIMING	SCOPE	NO. 2 NO. 6	MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
Greenlee Tool Co.						x	x			
Grocery Manufacturers of America, Inc.										
GTE Products Corp.		x	x	x	x					
Gulf & Western Industries, Inc.						x	x	x		
Gypsum Assoc.										
Haines City Citrus Growers Assoc.						x	x	x		
Halltown Paperboard Co.										
Hamilton Die Cast, Inc.						x				
Hanley Brick, Inc.		x				x				
Hanna Mining Co.		x	x	x	x	x		x		
H. C. Spinks		x	x			x	x			
Harsco Corp.	x					x	x			
Herbert Materials, Inc.		x				x	x		x	
Hercules, Inc.		x				x	x	x		x
Homer Laughlin China Co.						x				
Hormel & Co.						x	x	x		
Hoover Radiator		x								
Howmet Turbine Components Corp.						x				
Huntington Almoys	x	x				x	x	x	x	
Huron Lime Co.			x							
Husky Oil Co.		x				x				
Hussey Metals Div. Copper Range Co.		x	x			x				

Industrial End-Users	TIMING	SCOPE	NO. 2 NO. 6	MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
Ideal Basic Indust. Inc.		x	x			x				
Illinois Road Builders Assoc.						x				
Imperial Glass Corp.		x				x	x	x		
Indiana Farm Bureau Cooperative Assoc., Inc.										
Inland Container Corp.		x	x			x	x	x		
Inland Steel Container					x	x				
International Harvester		x	x			x				
International Minerals & Chemical Corp.						x				
Interstate Brick & Ceramic Tile						x				
Janquin Florida Distilling Co.			x		x	x				
Jessop Steel Co.						x				
Jim Walter Corp.		x	x				x			
Johns-Manville, Inc. et al.		x	x	x		x		x	x	
John Morrell & Co. (Esterville plant)		x				x				
Kaiser Aluminum		x	x			x	x			
Kennecott Copper Corp.				x	x	x	x			
Kenosha Beef										
Kent Castings Corp.										
Kimberly-Clark Corp.	X		X			X	X	X		x
Knauf Fiberglass		X	X		X					

Industrial End-Users

	TIMING	SCOPE	NO. 2 NO. 6	MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
Knudsen Corp.					X	X			x	
Koppers Co.	X	X				X				
Korf Industries, Inc.		X				X	X	X		x
Kropp Forge Co., Div. of Anadite, Inc.		X				X				
Ladish Company			X			X	X			
Lake Wales Citrus Growers Assoc.					X		X	X		
Larsen Company	X	X		X	X	X		X	X	
LaSalle Steel Co.		X	X	X		X				
Lenox, Inc.			X		X	X	X	X		
Libbey-Owens-Ford Co.		X	X			X			X	
Logan Clay Products Co.		X				X				
L&M Paving and Construction		X			X	X	X			
Lyon Metal Products Inc.						X				
Man Made Fiber Producers Assoc.		X				X				
Mansfield Products Co.		X								
Manufacturers Assoc.						X				
Mars, Inc.	X			X		X	X	X		
Maytag Co.	X	X	X		X	X	X	X		X
Mayville Metal Products Co.						X	X		X	
McDanel Refractory Co.						X				
Merrick Foods								X		
Michigan Brick						X				
Midland Forge, Inc.						X	X	X		
Milwaukee Solvay Coke Co.	X	X				X	X	X		

Industrial End-Users	TIMING	SCOPE	NO. 2 NO. 6	MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
Minnesota Mining & Manufacturing		x	x			x				
Miracle Recreation Equipment Co.						x				
Mississippi Valley Mill Producers Assoc. Inc.						x		x		
Mobay Chemical Corp.		x				x			x	
Mobley, Green, Harrison & Gardner		x								
Monarch Ranges and Heaters						x				
Morbeck, Charles T.						x	x			
Motorola, Inc.		x								
Musser, N. C.					x	x	x			
National Assoc. of Manufacturers		x	x				x	x	x	
National Asphalt Pavement Assoc.							x			
National Clay Pipe Institute		x				x			x	
National Council of Farmer Cooperatives	x	x	x			x		x		
National Grain and Feed Assoc.										
National Gypsum Co. and American Olean Tile Co., Inc.	x	x	x			x			x	
National Renderers Assoc.										
Nevada Industrial Customers										

Industrial End-Users	TIMING	SCOPE	NO. 2 NO. 6	MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
Northern Petrochemical Co.		x	x			x	x			
N-Ren Corporation						x				
Nucor Steel		x								
O. Hommel Company										
Olin Corporation		x		x	x	x				
Orange Plating, Inc.		x	x		x	x	x			
Orange-Co of Florida, Inc.						x		x		
Oscar Meyer & Co., Inc.	x									
Ottawa Silica Co.						x				
Overhead Door Corp.						x				
Overmyer Corp.										
Owensboro Brick & Tile Co.						x			x	
Owens-Corning Fiber-Glass Corp.		x	x	x	x					
Owens-Illinois					x	x		x		
Parker Hannifin Corp.										
Paul Krone Diecasting, Inc.										
Peat Manufacturing Co.						x			x	
Perstorp, Inc.			x			x	x			
Petrochemical Energy Group	x	x	x	x						
Pfaltzgraff Co.						x	x		x	
Pharr Yarns Corp.		x				x	x			
Phelps Dodge Corp.		x	x							
Pickard Inc.		x				x				
Plantmix Asphalt		x								
Porcelain Enamel Inst., Inc.		x	x			x	x	x		

Industrial End-Users

	TIMING	SCOPE	NO. 2 NO. 6	MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
Port Costa Products Co.						x				
Potters Industries, Inc.		x				x				
PPG Industries, Inc.						x				
Process Gas Consumers Group et al.	x	x	x	x	x	x	x	x	x	x
Proctor & Gamble	x	x		x		x		x	x	
Productol Chemical Div.						x		x		
Quaker Oats Co.		x	x							
Rachelle Laboratories						x			x	
Reedsburg Foods Corp.					x	x	x	x		
Reeves Southeastern Corp.		x	x		x	x	x			
Refractories Institute					x	x	x			
Reichold Chemicals, Inc.					x	x				
Reliance Clay Products					x	x	x			
Remington Arms Co. Inc.		x								
Renninger, Richard D.	x						x			
Republic Steel Corp.		x				x			x	x
Reserve Mining Co.		x	x			x				
Rex of Florida, Inc.		x	x			x	x			
Reynolds Aluminum	x	x					x			
RMI Titanium Company		x				x	x	x	x	

Industrial End-Users	TIMING	SCOPE	NO. 2 NO. 6	MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
Roberts Brothers, Inc.						x	x			
Rockwood Industries		x				x		x	x	
R.R. Donnelley & Sons Co.				x		x			x	
St. Joe Paper Company		x		x	x	x	x			
SBS		x				x				
Schenley Distillers, Inc.		x	x			x	x	x		
SCM Organic Chemicals					x	x	x			
Scrap-All, Inc.		x	x		x	x	x			
Service Master of Fox Cities, Inc.		x				x			x	
Signode Corporation					x	x				
Sikes Corp.		x				x	x	x		
Sioux City Brick and Tile Co.		x			x					
Sioux City Stock Yards						x				
Sipple Brick, Inc.		x	x			x		x		
SJC Corp.						x	x		x	
Sno-White Laundry and Dry Cleaners		x								
Society of Plastic, Ind. Inc.		x	x		x	x		x		
Somerset Ceramics										
South Dakota Press Assoc.		x								
Southeastern Bolt & Screw										
Southeastern Steel Container Co.		x			x	x				

Industrial End-Users

	TIMING	SCOPE	NO. 2 NO. 6 MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
Southern Nevada Industrial Customers	x	x	x		x				
Southwest Steel Casting Co.		x							
Spencer Foods, Inc.		x		x	x				
Standard Oil Co. (Indiana)		x			x				
Stauffer Chemical Co.					x				
Stitt, Jack & Linda		x			x				
Structural Stone-ware, Inc.					x				
Sundstrand Heat Transfer Inc.		x			x	x	x		
Sunpac Foods Inc.		x		x	x	x			
San Valle Tile Kilns		x	x	x	x				
Swank Refractories Co.									
Swenson Spreader									
Sybron Corp.									
Sylvania		x		x	x	x			
Tempel Steel Co.									
Tennessee Eastman Co.		x	x	x	x				
Terra Chemicals			x		x				
Timken Company		x	x	x	x		x	x	
TRW		x							
United Brick & Clay Workers of America		x							
U.S. Brewers Assoc., Inc.	x	x			x				x

Industrial End-Users	TIMING	SCOPE	NO. 2 NO. 6	MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
U.S. Pipe & Foundry Co.	x					x	x			
United States Tile Co.	x					x				
U.S. Steel Corp.		x				x	x	x		
United Technologies Corp.						x	x			
Utah Mining & Mfgr. Assoc.	x	x								
Valmont Industries, Inc.						x		x		
Vertac Chemical Corp.						x				
Viking Glass Company						x				
Vitreous Steel Products Co.	x					x				
Wallace Murray Fiberglass Products					x	x				
Waverly Growers Cooperative					x	x				
Welch Foods, Inc.					x	x				
Western Lime & Cement Co.		x		x		x				
Western States Clay Products Assoc.	x					x				
Whirlpool Corp.		x	x	x	x	x				
White Pine Copper Division of Copper Range Co.		x	x			x				x
Wilson Concrete						x				

Industrial End-Users	TIMING	SCOPE	NO. 2 NO. 6	MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
Wine Institute										
Wonderling, Craig M.		x				x				
Worthington Industries						x				
Young Galvanizing, Inc.					x	x	x			
Chambers of Commerce										
California Chamber of Commerce	x	x	x							
Cleveland Bradley Chamber of Commerce		x			x	x				
Council Bluffs Chamber of Commerce		x			x	x		x		
Duluth Chamber of Commerce		x			x					
Illinois State Chamber of Commerce		x	x			x	x	x		
Kentucky State Chamber of Commerce		x			x	x	x		x	
Lincoln Chamber of Commerce						x				
Louisville Chamber of Commerce		x			x	x	x			
Springfield Chamber of Commerce		x				x				
St. Paul Area Chamber of Commerce			x		x	x		x		
U.S. Chamber of Commerce										

	TIMING	SCOPE	NO. 2 NO. 6	MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
Consumer Groups										
Consumer Energy Council of										
Fernandez, N. R.		x				x				
Halt Rip-off Committee						x				
Hasselbach, John		x				x				
Herman Energy Services		x				x				
National Consumer Law Center, Inc.		x	x		x			x		
Shirley, Donald T.						x				
NGL Extraction Plants										
Chemplex Col										
Cities Service Co.		x	x			x				
Gas Processors Assoc.		x		x		x				
Gulf Oil Corp.		x			x	x				x
Mapco Inc.		x		x		x			x	
Mitchell Energy Corp.		x				x				
National Distillers and Chemical Corporation		x	x	x	x	x				
National Helium Corp.		x		x	x	x				
National LP Gas Assoc.		x		x	x	x				
Northern Gas Products Co.		x								
Straddle Plant Group		x		x		x	x			
Sun Oil		x		x		x	x			
Union Oil Co. of California		x								

Pipeline Companies	TIMING	SCOPE	NO. 2 NO. 6	MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
Cities Service Gas Co.		x	x	x	x	x	x	x		
Colorado Interstate Gas Co.	x	x		x	x	x	x		x	
Columbia Gas Transmission Corp.			x	x	x			x		
Commonwealth Gas Pipeline Corp.	x	x		x		x		x		
Consolidated Gas Supply Corp.		x	x			x	x	x	x	
East Tennessee Natural Gas Co.	x	x	x			x	x	x		
Florida Gas Transmission Co.		x		y		x	x	x		
Interstate Natural Gas Association of America		x	x	x	x	x		x		
Mississippi River Transmission Corp.	x	x	x			x	x	x	x	
Natural Gas Pipeline Co. of America	x		x	x		x	x	x		x
Northern Natural Gas Co.		x	x	x		x	x	x		x
Northwest Pipeline Corp.	x	x	x	y		x	x	x	x	
Southern Natural Gas Co.			x					x		
Southwest Gas Corp.										
Texas Gas Transmission Corp.										
United Gas Pipeline Co.		x	x	x		x		x	x	

Public Utilities - Cities

	TIMING	SCOPE	NO. 2 NO. 6	MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
Alabama Gas Corp.		x	x					x	x	
American Gas Assoc.	x	x	x	x	x	x	x	x		x
Boonville Natural Gas Co.		x						x		
Boston Gas Co., Providence Gas Company and Brooklyn Union Gas Co.		x		x	x					
Brownsville Utility Dept.		x				x		x		
Carrollton Utilities		x					x	x		
Central Florida Gas Corp.		x	x			x	x			
Columbia Gas Distribution Cos.	x	x	x	x	x	x	x	x	x	
Connecticut Natural Gas Co.	x	x	x			x		x		
Covington, Tennessee		x						x		
Crockette Public Utility District										
Duke Power Co.										
Elizabethtown, KY		x								
Elizabethtown Natural Gas										
Florida Public Utilities Co.		x	x			x				
Gas Light Co. of Columbus, GA						x				
Gas Utilities Co.		x						x		
Gibson County Utility District		x	x					x		
Great River Gas Co.		x								
Grey, Robert P., Consultant		x								

Public Utilities - Cities

	TIMING	SCOPE	NO. 2 NO. 6	MASKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
Hamilton, Ohio		x						x		
Humboldt Utilities		x								
Illinois Gas Co.		x					x	x		
Indiana Gas Co.		x	x		x	x	x	x		x
Indiantown Gas Co.		x				x				
Iowa-Illinois Gas and Electric Co.	x	x			x	x	x			
Iowa Public Service Co.		x			x	x	x	x		
Jackson Utility Division		x			x	x		x		
Kyle Associates, Inc.		x	x				x			x
City of Louisville		x	x			x	x	x	x	
Louisville Gas & Electric	x	x								
Louisiana Gas Service		x	x		x		x			
Memphis Light, Gas & Water Division										
Midwest Natural Gas Corp.		x								
Missouri Power & Light Co. and Missouri Edison Co.						x	x	x		
Mississippi Valley Gas Co.	x	x								
Montana-Dakota Utilities Co.		x	x	x	x					
Mountain Fuel Supply Co.		x	x	x		x		x		x
Municipalities for Small Industrial Consumers										
Murray Natural Gas System		x						x		

Public Utilities - Cities

	TIMING	SCOPE	NO. 2 NO. 6	MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
National Gas and Oil Corp.	x	x	x			x			x	
New Jersey Natural Gas Co.	x	x	x	x			x	x		
Northern Illinois Gas Co.	x	x	x					x		x
Northern Indiana Public Service Co.		x	x	x		x	x	x		x
Northern States Power Co.		x	x	y		x	x			x
Pacific Gas & Electric Co.		x	x	x				x		x
Peoples Gas System		x	x		x	x	x	x		
Piedmont Natural Gas Co., Inc.					x		x			
Public Serv. Co. of Colorado	x			x				x		
Public Service Electric & Gas Co. (N.J.)			x			x				
Roanoke Gas Co.					x	x	x	x	x	
San Diego Gas & Electric Co.	x		x		x	x		x		x
South Carolina Electric & Gas Co.		x				x	x	x		
Southern California Gas Co.		x	x			x		x		x
Southern Connecticut Gas Co.			x			x	x	x		
Southern Union Co.		x								
Sun Gas Co.										
Terre Haute Gas Corp.		x				x	x			
UGI Corp.	x	x	x	x						

Public Utilities - Cities

	TIMING	SCOPE	NO. 2 NO. 6	MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
United Cities Gas Co.					x	x	x	x		
United Distribution Cos.	x	x	x	x	x	x	x	x	x	x
Western Kentucky Gas Co.		x	x		x	x		x	x	
Wisconsin Public Serv. Corp.	x		x							x

State Regulatory Agencies	TIMING	SCOPE	NO. 2 NO. 6	MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
Connecticut Public Utilities Control Authority et al.			x		x			x		
Kentucky Dept. of Commerce					x	x	x			
Michigan Dept. of Commerce										
Michigan Public Service Commission		x	x	x		x		x		
Minnesota Public Service Commission	x	x	x	x		x	x	x	x	
Mississippi Public Service Commission	x		x							
NARUC	x	x						x		
New York State Consumer Protection Board		x	x							
North Carolina Utilities Comm. et al.	x	x	x	x	x	x	x	x		
Public Service Commission of the State of Nevada										
Public Utilities Comm. of Calif.	x		x							
Public Utilities Commission of Ohio		x	x	x						
State of Wisconsin Dept. of Administration		x	x			x	x			

State Regulatory Agencies	TIMING	SCOPE	NO. 2 NO. 6	MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
Utah Committee of Consumer Services										
Wisconsin Public Service Commission			x							x
Wyoming Public Service Commission			x		x			x		
Federal Agencies										
Council on Wage & Price Stability						x				
Department of Energy	x	x	x	x	x	x	x	x	xx	
Economic Regulatory Adm., DOE		x		x		x				

U.S. Congressmen	TIMING	SCOPE	NO. 2 NO. 6	MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
Anderson, John	x					x				
Archer, Bill	x	x	x		x	x		x		
Ashley, Ludlow						x				
Aspen, Les						x	x	x		
Bailey, Don	x	x	x		x	x		x		
Baldus, Alvin		x								
Beard, Robin						x		x		
Benjamin, Adam	x	x	x		x	x		x		
Bowen, David R.	x	x	x		x	x		x		
Broyhill, James T.	x	x	x		x	x		x		
Buchanen, Joho	x	x	x		x	x		x		
Butler, M. Caldwell	x	x	x		x	x		x		
Chiles, Lawton						x	x			
Collins, James M.	x	x	x		x	x		x		
Corcoran, Tom	x	x	x		x	x		x		
Dannemeyer, William E.	x	x	x		x	x		x		
Derrick, Butler	x	x	x		x	x		x		
Dickenson, William L.	x	x	x		x	x		x		
Dingell, John	x	x	x	x						
Eckhardt, Bob	x	x	x	x						
Erlenborn, John N.	x	x	x		x	x		x		
Fountain, L. H.	x	x	x		x	x		x		
Gibbons, Sam	x	x	x		x	x		x		
Gramm, Phil	x	x	x		x	x		x		
Gudger, Lamar	x	x	x		x	x		x		
Guyer, Tennyson	x	x	x		x	x		x		
Hinson, Jon	x	x	x		x	x		x		
Hyde, Henry J.	x	x	x		x	x		x		
Ireland, Andy	x	x	x		x	x		x		
Kemp, Jack F.	x	x	x		x	x		x		
Kindness, Thomas N.	x	x	x		x	x		x		
Livingston, Bob	x	x	x		x	x		x		
Long, Gillis W.	x	x	x		x	x		x		
Lott, Trent	x	x	x		x	x		x		
Luken, Thomas A.		x								

U.S. Congressmen

	TIMING	SCOPE	NO. 2 NO. 6	MARKET ORDER.	PRICE SHELT'G	ADVERSE ECONOMIC IMPACT	INCRS. OIL USE	LOAD LOSS	CONSER-VATION	KEEP ESTIMATION PROCEDURE
O'Brien, George N.	x	x	x		x	x		x		
Preyer, Richardson	x	x	x		x	x		x		
Quillen, James H.	x	x	x		x	x		x		
Stockman, Dave	x	x	x		x	x		x		
Stone, Richard						x	x			
Treen, David		x		x		x	x	x	x	
Walker, Robert S.	x	x	x		x	x		x		
Weaver, Jim			x							
Whitehurst, G. William	x	x	x		x	x		x		
Wilson, Charles	x	x	x		x	x	x			

BILLING CODE 6450-85-C

Appendix B—Estimate of Volumes Subject to the Phase II Rule

[Note.—This Appendix B will not appear in the Code of Federal Regulations.]

In order to estimate the direct industrial cost impact of the final rule, data from the EIA–50 reporting form have been analyzed. Four industries were considered in detail; chemicals; petroleum; stone, clay and glass; and primary metals (SIC codes 28, 29, 32, and 33 respectively). In the Environmental Assessment accompanying this rule it was determined that these four industries account for nearly 80% of total non-boiler gas use in manufacturing.[1] Table A–1 reproduces the relevant table from the Environmental Assessment.

Table A-1.—*1976 Manufacturing Sector Natural Gas Consumption by Industry and End Use* [1]

SIC code and industry	Natural gas use (10^{12} Btu)					Percent of nonboiler gas use [4]
	Boiler [2]	Process heat	Feed stock	Other [3]	Total	
20 Food	358	119	.....	1	478	3
22 Textiles	44	40	.....	.....	84	1
26 Paper	293	72	.....	1	366	2
28 Chemicals	1,062	450	474	198	2,184	25
29 Petroleum	251	713	.....	16	[5]980	19
32 Stone, clay and glass	30	593	.....	.....	623	16
33 Primary metals	348	661	.....	40	[5]1,049	18
Other manufacturing	270	588	.....	6	864	16
All manufacturing	2,656	3,236	474	262	6,628	100
Functional use as percent of total manufacturing.	40	49	7	4	.....	100

[1] Included intrastate consumption.
[2] Boiler use includes space heating, electric generation, and process steam.
[3] Other includes machine drive, lighting, space cooling, and miscellaneous uses not explicitly specified in this table.
[4] Nonboiler includes process heat and feedstocks.
[5] Only purchased natural gas is shown for the petroleum and steel industries. Refinery gas accounts for roughly one quad of gaseous fuel use in SIC 29, and coke oven gas contributes approximately 0.3 quads of gaseous fuel use in steel.

Source: EEA, "Energy Consumption Data Base, 1976" (interim results), December 1979.

Because the EIA–50 data does not distinguish between boiler and non-boiler use of gas, an estimate of non-boiler use had to be developed independently. Again relying upon information developed in the Environmental Assessment, the fraction of gas used for purposes other than boiler fuel in the four industries studied was estimated on a national basis as follows:

SIC code	Industry description	Percent used in non-boiler applications
20	Chemicals	51.37
29	Petroleum	74.39
32	Stone, Clay, Glass	95.18
33	Primary Metals	66.83

These percentages were used to adjust the EIA–50 data for each gas consuming facility, in order to derive an approximation of the volumes subject to Phase II. The most recent annual set of data from EIA–50 was used, running from April of 1978 to March of 1979. The data from Texas, Oklahoma, New Mexico, Alaska, and Hawaii were excluded in order to reflect only interstate gas consumption.

After adjustment to reflect non-boiler use, the analysis proceeded by subtracting from the monthly gas use reported by each facility a quantity equal to 300 Mcf multiplied by the number of days in the subject month. This yields an estimate of the small use exemption. If, in any month, less gas was consumed than the allowable exempt volume, incrementally priced consumption for that month was set equal to zero. For each facility, a ratio was developed comparing the total annual volume subject to Phase II with the total annual estimated non-boiler use. This "coverage ratio" reflects the proportion of a facility's annual consumption that is subject to Phase II of incremental pricing. A value of zero indicates that no gas is surcharged. A value close to unity (1.0) indicates that almost all gas is subject to incremental pricing. Because the first 300 Mcf per day of gas is exempt for all facilities, the ratio must always be less than unity.

The coverage ratio is then used to derive the effective average surcharge applicable to non-boiler Phase II uses. For example, if the ratio for a given facility is 0.5, half the gas consumed on an annual basis is incrementally priced. So if the surcharge is estimated to be 60 cents per Mcf and half of the facility's consumption will be surcharged, the average price increase resulting from Phase II would be 30 cents per Mcf. If the coverage ratio of another facility is 0.4, the average price increase works out to 24 cents per Mcf. Obviously, if the coverage ratio is zero, all gas is exempted, and the average price increase is also zero.

In this analysis of economic impact, industry coverages were computed and grouped by deciles. On a state-by-state basis, and for each of the four SIC codes analyzed, the facilities are categorized into those having coverage ratios greater than or equal to zero but less than 0.1, greater than or equal to 0.1 but less than 0.2, and so forth. Data is also summed across all states to provide a national picture of the extent of incremental pricing under Phase II. Along with the coverage ratio data, volumes subject to Phase II and estimated non-boiler volumes are listed by SIC code, by state and nationally. From these basic data, estimates of the aggregate direct cost impact of Phase II on industrial users may be derived by multiplying non-exempt volumes by the applicable surcharge.

Results

The national summary indicates the following potential direct cost impact of Phase II, based on volumes as reflected in the most current 12 months of EIA–50 data: [2]

SIC code	Estimated non-boiler use (Mcf)	Estimated volume subject to phase II (Mcf)	Percent of non-boiler use subject to phase II (percent)
28	246,309,699	198,020,672	80.40
29	176,199,695	155,511,318	88.26
32	380,361,341	297,001,388	78.08
33	374,157,181	314,283,660	81.97
Total	1,177,027,916	964,826,038	81.97

The aggregate impact of Phase II is generally consistent across the industries studied. The higher percentage of gas subject to incremental pricing in the petroleum industry (SIC 29) probably results from the large facility sizes typical in the industry. On the other hand, the smaller facility sizes

[1] *Environmental Assessment of Incremental Pricing—Phase II*, Docket No. RM80–10, Federal Energy Regulatory Commission, Office of Pipeline and Producer Regulation, April 1980, page 12.

[2] These figures do not reflect any other exemptions such as agriculture or cogeneration.

typical in the stone, clay and glass industries (SIC 32) give rise to an aggregate exposure to incremental pricing somewhat lower than the four industry average.

Examination of the coverage ratio data provides further insight on expected impacts (see Table 1). In the Chemical industry (SIC 28), 382 facilities out of a total of 706 fell into the lowest decile. These 382 facilities would be subject to incremental pricing for less than 10 percent of their gas consumption. The average impact on each such facility would range from zero to six cents per Mcf. Thus, over half of the facilities in the chemical industry would experience little or no direct cost impact from Phase II. The spread among higher deciles is relatively uniform. The highest decile contains 55 facilities, or about 8 percent of the total, but consumes approximately 65 percent of total non-boiler use in the chemical industry. These larger facilities would receive an average price increase ranging between 54 cents and 60 cents per Mcf.

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TABLE 1

COVERAGE RATIO DATA; BY SELECTED INDUSTRY GROUPS

Decile Number:	1	2	3	4	5	6	7	8	9	10	TOTAL
Percent of Gas Subject to Incremental Pricing: At Least:	0%	10	20	30	40	50	60	70	80	90	
But Less Than:	10%	20	30	40	50	60	70	80	90	100	
SIC 28 Chemicals											
No. of facilities	382	27	26	36	35	30	39	35	41	55	706
(Percent of total)	(54.1)	(3.8)	(3.7)	(5.1)	(5.0)	(4.2)	(5.5)	(5.0)	(5.8)	(7.8)	(100)
SIC 29 Petroleum											
No. of facilities	59	17	21	15	12	14	18	22	20	37	235
(Percent of total)	(25.1)	(7.2)	(8.9)	(6.4)	(5.1)	(6.0)	(7.7)	(9.4)	(8.5)	(15.7)	(100)
SIC 32 Stone, Clay & Glass											
No. of facilities	131	56	60	59	58	92	85	115	132	83	871
(Percent of total)	(15.0)	(6.4)	(6.9)	(6.8)	(6.7)	(10.6)	(9.8)	(13.2)	(15.2)	(9.5)	(100)
SIC 33 Primary Metals											
No. of facilities	297	47	36	42	34	38	32	43	51	85	705
(Percent of total)	(42.1)	(6.7)	(5.1)	(6.0)	(4.8)	(5.4)	(4.5)	(6.1)	(7.2)	(12.1)	(100)
TOTAL	869	147	143	152	139	174	174	215	244	260	2,517
	(34.5)	(5.8)	(5.7)	(6.0)	(5.5)	(6.9)	(6.9)	(8.5)	(9.7)	(10.3)	(100)

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The petroleum industry has a lower percentage of small facilities; only 59 out of 235, or 25 percent, fall into the lowest decile. The remaining facilities are spread rather uniformly among the higher deciles.

The stone, clay, and glass industries display a different, more bell-shaped, size distribution. Only about 15 percent fall into the lowest decile. The highest decile contains less than 10 percent of the total. A large number of facilities fall into the seventh and eighth deciles; about 28 percent of all facilities are subject to average surcharges of between 42 cents and 54 cents per Mcf.

The data on the primary metals industry reveals a more uniform pattern. The lowest decile contains 42 percent of the total. The highest contains 12 percent.

In an effort to more fully assess the impact of the small use exemption, EIA–50 data was also used to estimate average daily gas consumption on a year-round basis. Facilities were then grouped into categories consuming less than 100 Mcf per day, between 100 and 200, and so forth (see Table 2). The grouping is of course only approximate, since a more accurate computation would require detailed seasonal use profiles, which are not available.

This simplified estimate of average daily consumption reveals an apparently large number of relatively small facilities—particularly in the chemical industry. Over 60 percent of the facilities in the chemical industry use less than 100 Mcf per day average use on a year-around basis. Another seven percent used between 100 Mcf per day and 200 Mcf per day. Ignoring the effect of seasonal variations, these small facilities would not be exposed to incremental pricing under either the small use exemption or through operation of an exemption similar to that applicable to small boiler use. Considering all of the four major SIC codes, fully 1,483 facilities, or 59 percent of the 2,517 studied, used less than an average of 300 Mcf per day and would be exempt from incremental pricing.

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TABLE 2

AVERAGE GAS CONSUMPTION; BY SELECTED INDUSTRY GROUPS

Category Number:	1	2	3	4	5	6	7	8	9	10	TOTAL
Average Daily Gas Use (Mcf)											
At Least:	0	100	200	300	600	1200	2400	3600	7200	10,000+	
But Less Than:	100	200	300	600	1200	2400	3600	7200	10,000		
SIC 28 Chemicals											
No. of facilities	439	50	28	54	45	35	17	19	7	12	706
(Percent of total)	(62.2)	(7.1)	(4.0)	(7.6)	(6.4)	(5.0)	(2.4)	(2.7)	(1.0)	(1.7)	(100)
SIC 29 Petroleum											
No. of facilities	93	25	9	26	28	18	9	14	6	7	235
(Percent of total)	(39.6)	(10.6)	(3.8)	(11.1)	(11.9)	(7.7)	(3.8)	(6.0)	(2.6)	(3.0)	(100)
SIC 32 Stone, Clay & Glass											
No. of facilities	232	97	51	141	141	118	44	39	6	2	871
(Percent of total)	(26.6)	(11.1)	(5.9)	(16.2)	(16.2)	(13.5)	(5.1)	(4.5)	(0.7)	(0.2)	(100)
SIC 33 Primary Metals											
No. of facilities	370	56	33	68	46	42	26	29	16	19	705
(Percent of total)	(52.5)	(7.9)	(4.7)	(9.6)	(6.5)	(6.0)	(3.7)	(4.1)	(2.3)	(2.7)	(100)
TOTAL	1134	228	121	289	260	213	96	101	35	40	2,517
	(45.1)	(9.1)	(4.8)	(11.5)	(10.3)	(8.5)	(3.8)	(4.0)	(1.4)	(1.6)	(100)

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A review of the coverage ratio data gives rise to a very different interpretation, however. Although 1,483 facilities fell into the lowest three average use categories (less than 300 Mcf per day), only 869 facilities fell into the lowest coverage ratio (less than 0.1). Clearly, a facility using no more than 300 Mcf on any day would have no exposure to incremental pricing and thus would have a coverage ratio of zero. The fact that many facilities using less than 300 Mcf per day on an *annual average* basis have coverage ratios in excess of 0.1 indicates the considerable degree of seasonality in gas use patterns.

If a small use exemption similar to that applicable to boiler use were adopted in lieu of the "first 300 Mcf per day" rule, many facilities whose annual average use is below 300 Mcf per day would be caught by the program due to high seasonal use. It is likely that many of these small facilities would switch to alternative fuels when their average use in any month threatened to trigger the general application of incremental pricing. For non-boiler use, the alternative fuels most likely to be used in many industries are distillate oil and propane. In some situations, an alternative fuel may not be available or practicable, and temporary shutdown may represent a less expensive alternative than subjecting all gas use to incremental pricing. Temporary shutdowns and the use of scarce and expensive alternative fuels are both economic "waste" which will be avoided by exempting the first 300 Mcf per day of average use for all users subject to Phase II.

About one quarter of all facilities studied (614 facilities) have annual average use below 300 Mcf per day, but would be subject to incremental pricing under the originally-proposed "all or nothing" small user rule due to seasonality considerations. Significantly, at least 90 percent of the gas used by these facilities will be exempt under the small use exemption adopted by the Commission. Another 260 facilities (10.3 percent of the total studied) had annual average use of between 300 and 600 Mcf per day. Many such facilities would also find supplemental use of expensive alternative fuels economically advantageous under an "all or nothing" rule, but will not be penalized for using more attractive natural gas under the treatment adopted.

Having isolated the general effects of the small user exemption, the other potentially significant influence on Phase II coverage is the statutory exemption for agricultural uses. The analysis of the small use exemption and the agricultural exemption may then be incorporated into a broader study of the entire Phase II program. An estimate of the total quantity of gas subject to surcharge, total surcharge dollars, and the resulting rate decrease for exempt users may be developed. For the four SIC codes considered above, the magnitude of the agricultural exemption must be estimated.

The petroleum and primary metals industries are generally unaffected by the agricultural exemption, and all non-boiler gas in excess of the small use exemption can be assumed subject to Phase II. About 40 percent of the non-boiler gas consumed in the chemical industry is estimated to be eligible for exemption as agricultural. This exempt gas includes nearly all of the feedstock consumption in the chemical industry since agricultural ammonia is the principal product. In the stone, clay, and glass industries (SIC–32), 15.5 percent of all gas consumption is in the production of sanitary food containers—glass jars and bottles. Since 95 percent of gas use in SIC 32 is non-boiler, the 15.5 percent agricultural exemption can be applied to non-boiler use directly with little loss of accuracy. After all appropriate adjustments for boiler use, small use exemptions, and agricultural exemptions, 839,578,954 Mcf, were estimated to be subject to Phase II in SIC's 28, 29, 32 and 33, on the basis of the most recent EIA–50 data.

In manufacturing industries other than the four considered above, a total of 573,320,854 Mcf was reported consumed. Of this quantity, 68.75 percent, or 394,158,087 Mcf is estimated to be non-boiler use. Agricultural use in SIC's 2141 (tobacco), 3411 and 3497 (fabricated metal food containers) reduce the total somewhat more. Finally, the small use exemption profile developed for the four industry groups is estimated to be equally applicable to other non-boiler uses, so that 80 percent of the remaining gas will be subject to surcharges. The total quantity estimated to be subject to Phase II in other manufacturing industries is 308,314,412 Mcf.

One more step remains before the total impact of Phase II can be assessed. Some gas consumption in SIC codes 22 (textiles) and 26 (pulp and paper) will be subject to Phase II. Most, but not all, gas used in these industries will qualify for the agricultural exemption. Estimates of the fraction of gas use which is not so exempt were derived from data developed for the Environmental Assessment. The effect of the small use exemption was assumed to be 20 percent, consistent with other manufacturing industries. The baseline consumption data was taken from the most recent EIA–50 reports, adjusted to remove intrastate gas use. In summary, 15,271,982 Mcf of gas subject to Phase II was found in SIC codes 22 and 26. All gas consumed in SIC code 20 (food) was considered to be exempt.

No attempt has been made to explicitly estimate the volume of gas that may be exempted from incremental pricing by reason of cogeneration. This is because the cogeneration exemption is expected to have a negligible effect on the scope of the Phase II program. The great majority of both existing and proposed cogeneration facilities are steam turbine topping-cycles. Such steam-raising facilities would be subject to incremental pricing under Phase I, if not exempted. Only bottoming-cycle cogeneration facilities and unusual topping-cycle facilities in which high temperature combustion turbine or engine exhaust is used directly for process heat would be potentially subject to Phase II. Widespread application of such facilities is not expected in the near future.

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federal register

Tuesday
May 13, 1980

Part VI

Department of Energy

Economic Regulatory Administration

Alaska North Slope Crude Oil Entitlements

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 211

[Docket No. ERA-R-80-09]

Alaska North Slope Crude Oil Entitlements

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) proposes alternative amendments to the Mandatory Petroleum Allocation Regulations modifying the treatment of Alaska North Slope (ANS) crude oil under the entitlements program, 10 CFR 211.67. ERA is proposing to modify the entitlements treatment accorded ANS upper tier crude oil in order to allocate the benefits of price-controlled ANS upper tier crude oil on an equitable basis. Under the first alternative proposal, ANS upper tier crude oil would be treated as a separate category of oil for purposes of the entitlements program and would incur entitlements obligations calculated on the basis of refiners' reported weighted average acquisition costs for ANS upper tier crude oil. Pursuant to the second alternative proposal, refiners of ANS upper tier crude oil would incur entitlements obligations calculated by reducing regular upper tier entitlements obligations by a transportation differential established by DOE. Under either option, current differentials in refiners' crude oil acquisition costs and product prices would be reduced, but neither option would result in significant changes in average crude oil costs or product prices.

Because the current treatment of ANS upper tier crude oil under the entitlements program has resulted in serious distortions in the refining industry and retail gasoline market, the Deputy Secretary has granted a waiver of the 60-day public comment period and has authorized the notice and comment period to be shortened to 30 days with respect to this rulemaking. ERA proposes to make the amendments which may be adopted applicable to transactions required to be consummated pursuant to the first Entitlement Notice issued after the effective date of the final rule.

DATES: Written comments by June 13, 1980, 4:30 p.m.

Hearing dates: Seattle, Washington, June 3, 1980; Washington, D.C., June 5, 1980.

Requests to speak by 4:30 p.m.: May 27, 1980, for the Seattle hearing; May 29, 1980 for the Washington, D.C. hearing.

ADDRESSES: All comments and requests to speak at the Washington, D.C., hearing should be submitted to the Economic Regulatory Administration, Office of Public Hearing Management, Docket No. ERA-R-80-09, Department of Energy, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461.

Requests to speak at other hearings: Seattle hearing—U.S. Department of Energy, Region X, Attn: Janet Marcan, Room 1992, 915 Second Avenue, Seattle, Washington 98174.

HEARING LOCATIONS: Seattle hearing: New Federal Building, 4th Floor, South Auditorium, 915 Second Avenue, Seattle, Washington 98174; Washington, D.C. hearing: Room 2105, 2000 M Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B-110, 2000 M Street, N.W., Washington, D.C. 20461 (202) 653-4055.

Robert Gillette (Hearing Procedures), Economic Regulatory Administration, Room 2214-B, 2000 M Street, N.W., Washington, D.C. 20461 (202) 653-3757.

David A. Welsh (Office of Petroleum Operations), Economic Regulatory Administration, Room 6216-A, 2000 M Street, N.W., Washington, D.C. 20461 (202) 653-3475.

Daniel J. Thomas (Petroleum Pricing Regulations), Economic Regulatory Administration, Room 7302, 2000 M Street, N.W., Washington, D.C. 20461 (202) 653-3202.

William Funk or Christopher M. Was (Office of General Counsel), Department of Energy, Room 6A-127, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 252-6736 or 252-6744.

SUPPLEMENTARY INFORMATION:

I. Background.
A. The Prior Rulemaking According Import Tier Entitlements Treatment to Alaska North Slope Crude Oil.
B. The Current Situation.
II. Objectives of This Rulemaking.
III. Alternative Proposed Amendments.
A. First Alternative Proposal.
B. Second Alternative Proposal.
C. Other Issues On Which Comments Are Requested.
IV. Proposed Effective Date of a Final Rule.
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VI. Written Comments and Public Hearings Procedures.

I. Background

A. The Prior Rulemaking According Import Tier Entitlements Treatment to Alaska North Slope Crude Oil

Effective June 1, 1977, the Mandatory Petroleum Allocation Regulations were amended to permit Alaska North Slope (ANS) crude oil to be treated as imported crude oil for purposes of the Entitlements Program. *See* 10 CFR 211.67(b)(2) and the definition of "Alaska North Slope (ANS) crude oil" in § 211.62; 42 FR 41565 (August 17, 1977). That same rulemaking confirmed that first sales of ANS crude oil were subject to the upper tier ceiling price rule.

The special entitlements treatment for ANS crude oil was based on the high cost of transportation of that oil to domestic refiners. Due to the Trans-Alaska Pipeline tariffs and shipping costs, extraordinary costs are associated with the Transportation of ANS crude oil from the North Slope to domestic refiners as compared with other upper tier domestic crude production. An analysis undertaken as part of the 1977 rulemaking concluded that the cost of transporting ANS crude oil to the continental United States was approximately $7-9 per barrel.

At the time of the 1977 rulemaking, the wellhead price of ANS crude oil was projected to be significantly lower than that of upper tier crude oil in the rest of the United States as a consequence of the higher transportation costs. The wellhead price of ANS crude oil in effect was established by subtracting the transportation costs associated with ANS crude oil from refiners' acquisition costs for comparable grades of imported oil. At that time comparable grades of imported oil sold for about $14 per barrel delivered to the refinery. After deduction of transportation costs of $7-9 per barrel, a wellhead price of about $5-7 per barrel was established. This was well below the upper tier ceiling price at that time of about $12 per barrel.

In the 1977 rulemaking, we determined that the imposition of an upper tier entitlements obligation on the refining of ANS crude oil would have depressed wellhead prices to unacceptable levels. If ANS crude oil had been required to incur upper tier entitlement obligations, refiners generally would not have been willing to pay a price higher than the

delivered cost of other, non-ANS upper tier crude oil, at that time about $12 per barrel. After subtracting transportation costs, the resulting wellhead price for ANS crude oil would have been approximately $3–5 per barrel. This wellhead price level would have reduced incentives to transport ANS crude oil to Gulf Coast refiners as well as incentives for the production and development of crude oil reserves on the North Slope.

The rulemaking cited the need to provide "the maximum monetary and psychological incentives for these and other producers to explore aggressively elsewhere in the Arctic and in other frontier regions" as a basis for the decision to accord import oil entitlement treatment to ANS oil. 42 FR 41567 (August 17, 1977). However, the preamble to the 1977 rulemaking also noted:

> The amendment adopted today simply recognizes that at the current level of world market prices, no entitlement obligation is appropriate with respect to the refining of ANS crude oil because a refiner that incurs the transportation cost for such crude oil plus a wellhead price that is subject to the upper tier ceiling price rule does not thereby have access to a price benefit, as compared with imported crude oil or with uncontrolled domestic crude oil.

After adoption of the amendments in the 1977 rulemaking and throughout 1978, the price of comparable uncontrolled oil less the transportation costs associated with ANS production was lower than the upper tier ceiling price. As a result, ANS wellhead prices were maintained below the upper tier ceiling price. In 1977 the ANS wellhead price averaged $6.36 per barrel, and in 1978 it average $5.22 per barrel. These price levels support the desirability of special entitlements consideration. Otherwise the average ANS wellhead price would have been even lower, marketing of such crude oil in areas other than the West Coast would have been severely limited, the total ANS crude output might have been reduced, and exploration and development of other Alaskan reserves might have been hindered. Instead, because ANS oil was allowed to compete with equivalent imported oils, the North Slope producers have made extensive efforts to expand the capacity of the Trans-Alaskan Pipeline and have increased total daily deliveries by about 300,000 barrels a day since 1978.

Furthermore, to the extent that the delivered cost of uncontrolled oil did not exceed that of ANS crude oil, refiners of ANS crude oil did not enjoy a competitive advantage.

B. The Current Situation

As a result of the dramatic increases in prices for imported oil in 1979, costs for uncontrolled crude oil have risen sharply. One effect of the rising cost for uncontrolled crude oil was that the delivered price of ANS crude oil increased until the ANS wellhead price reached the upper tier ceiling price in July 1979. The following table indicates the recent levels of ANS crude oil wellhead prices:

Average Wellhead Price/per Barrel

Month:	
January 1979	$5.79
February	5.87
March	6.66
April	7.45
May	8.47
June	8.97
July	13.35
August	14.14
September	13.09
October	13.19
November	13.48
December	13.59
January 1980	13.70

Since July 1979 the wellhead price of ANS upper tier crude oil has been constrained by the upper tier ceiling price. However, the refiner acquisition cost for uncontrolled oil has continued to rise far above the refiner acquisition cost for price-controlled ANS crude oil. Currently, quoted prices for the portion of ANS crude production gradually being released from upper tier to uncontrolled status after December 31, 1979, pursuant to the program for the phased deregulation of upper tier crude oil (*see* definition of "market level new crude oil" in § 212.72 and § 212.74(a)), are in excess of $30 per barrel delivered to the refinery. In January 1980 the average acquisition cost of all uncontrolled oil was $30.39 per barrel.

In comparison, the data reported to DOE indicates that the weighted average cost to refiners for ANS *upper tier* crude oil was only $23.46 per barrel (composed of a wellhead ceiling price of $13.66 per barrel plus average transportation costs of $9.80). In January 1980, ANS upper tier crude oil was acquired at a *net* average refiner acquisition cost, after receiving the same entitlements benefit as uncontrolled crude oil, that was $6.93 per barrel below the average cost of all uncontrolled crudes. *See* the Entitlements Notice issued for the month of January 1980, published at 45 FR 19019 (March 24, 1980). Thus, refiners with access to price-controlled ANS upper tier crude oil have enjoyed lower acquisition costs in recent months and have realized a significant competitive advantage because of the entitlements treatment of ANS crude oil.

The premise of the 1977 rulemaking is no longer valid. There are no longer exists a need to accord ANS crude oil the same entitlements treatment as uncontrolled crude oil to permit an equitable wellhead price. Indeed, this competitive advantage enjoyed by refiners of ANS crude oil is causing anomalies in the retail gasoline market, where the lower crude costs have been reflected in lower gasoline selling prices by marketers supplied by refiners of ANS crude oil. The adverse competitive impact on other marketers, particularly in regions of the country where refiners of North Slope oil have a dominant market position, has in some cases been sever. Where volumes of ANS crude oil are refined into exempt products, the same market distortion potential exists, especially if refiners of ANS upper tier crude oil attempt to comply with the voluntary price guidelines of the Council on Wage and Price Stability.

Finally, the purpose of the entitlements program is to allocate the benefits of price-controlled domestic crude oil equitably among all sectors of the petroleum industry, and among all users. To the extent that the benefits of price controls on ANS upper tier crude oil are enjoyed by a few refiners, rather than by all domestic refiners, several important objectives of the Emergency Petroleum Allocation Act of 1973, as amended (EPAA), are being frustrated. For example, sections 4(b)(1)(D), (F) and (I) of the EPAA require the DOE in administering its price and allocation controls to provide, to the maximum extent practicable, for the "preservation of an economically sound and competitive petroleum industry * * * and * * * the competitive viability of * * * nonbranded independent marketers and branded independent marketers," the "equitable distribution of crude oil * * * at equitable prices among all regions and areas of the United States and sectors of the petroleum industry," and the "minimization of economic distortion." Accordingly, we propose to allocate more equitably among all refiners the economic benefits of price-controlled ANS crude oil production by requiring refiners of ANS upper tier crude oil to incur an entitlements obligation on purchases of ANS upper tier crude oil that reflects the true cost of such oil in the marketplace.

II. Objectives of This Rulemaking

By proposing amendments to the regulations to modify the treatment of ANS crude oil under the entitlements program, we seek to achieve several objectives. First, we seek to minimize the disparities in refiners' acquisition costs for crude oil by eliminating the

competitive advantage realized by refiners of ANS upper tier crude oil caused solely by the current regulatory treatment of such oil. Second, the proposed amendments seek to allow a wellhead price for ANS crude oil that will not cause any lessening in the incentives of North Slope producers to maximize their production efforts.

Adoption of either of the two proposals set forth below would help to reduce the large differentials between refiners' and marketers' prices for gasoline and other products. Under either alternative the average crude oil aquisition cost of refiners with access to ANS crude oil would increase and the crude oil acquisition cost for other refiners would decrease by an offsetting amount. On average there would be no change in refiners' crude oil acquisition costs, and therefore it is not expected that there would be a significant change in *average* product prices nationwide. The purpose of this rulemaking is neither to increase nor decrease average crude oil costs or product prices, but instead to narrow the range of costs and prices around the average.

Finally, in amending the regulations, we also seek to avoid any adverse impact on the market for any other domestically produced crude oil.

III. Alternative Proposed Amendments

Two alternative proposals to amend the regulations to impose an entitlements obligation on refiners of ANS crude oil are proposed. We solicit comments on the efficacy of each of the proposed amendments, in terms of: (1) Allowing an appropriate wellhead price for ANS crude oil; (2) minimizing the existing disparities in refiners' acquisition costs for domestic crude oil; (3) eliminating any unfair competitive advantages enjoyed by refiners of ANS crude oil; and (4) the impact of each proposal on the market for domestically produced crude oil.

A. First Alternative Proposal

The first alternative proposal would impose an entitlements obligation on ANS upper tier crude oil as a separate category of oil based on refiners' reported weighted average cost per barrel for ANS upper tier crude oil. In making the calculation of "deemed old oil" pursuant to § 211.67(b)(2) for purposes of arriving at the national domestic crude oil supply ratio, there would be included a fraction of each barrel of ANS upper tier crude oil equal to the weighted average refiner acquisition cost per barrel for crude oil exempt from price controls, less the weighted average refiner acquisition cost per barrel of ANS upper tier crude oil, and divided by the entitlement price for the month. Old oil and price-controlled upper tier crude oil other than ANS crude oil would continue to be treated separately in calculating a refiner's number of barrels of "deemed old oil." By establishing a separate category for ANS upper tier crude oil, the entitlements obligation imposed on ANS upper tier crude oil would be less than that imposed on other upper tier crude oil because of the higher delivered cost of ANS crude oil.

We anticipate that treatment of ANS upper tier crude oil as a separate category for purposes of the entitlements program will result in ANS upper tier crude production being priced at or near the upper tier ceiling price, although delivered costs to refiners located in PADDs I–IV will exceed those to the West Coast refiners by as much as $3.00 a barrel. DOE's Draft Regulatory Analysis indicates that under this alternative, post-entitlement costs for ANS upper tier crude oil would be less than or equal to those of exempt competitive crudes in both markets. Consequently, producers should be able to realize ceiling prices for deliveries to both markets under this alternative. We request comments, however, concerning whether the uniform entitlements obligation imposed nationwide under this alternative will have an adverse effect on refiner acquisition costs or wellhead prices for ANS or other crudes.

In the event that the comments demonstrate adverse effects as a result of imposition of a uniform entitlements obligation, DOE will consider imposing entitlements obligations on separate categories of ANS upper tier crude oil delivered to refiners located in PADDs I–IV and PADD V based on refiners' reported weighted average cost per barrel for ANS upper tier crude oil delivered in those respective markets. We have proposed regulatory language which would implement this approach as a second option to the First Alternative Proposal.

We solicit comments specifically on the potential effects of both these options on PADD V domestic crude oil prices, incentives for PADD V refiners to make investments to process indigenous heavy crude oils and the impact on imports into both PADD V and the rest of the country. We also request comments on any possible problems which may be encountered by firms with respect to reporting the delivered cost for ANS upper tier crude oil.

B. Second Alternative Proposal

The second alternative proposal under consideration would require refiners of ANS upper tier crude oil to incur entitlements obligations calculated by reducing regular upper tier entitlements obligations by a nationwide transportation adjustment established by DOE. The transportation adjustment could correspond to the estimated additional costs of transporting ANS crude oil to refineries in the lower 48 states.

The transportation adjustment would be calculated by subtracting an average per barrel transportation cost from wellhead to refinery for all other upper tier crude oil from the average per barrel costs associated with transporting ANS crude oil to domestic refineries. For example, if ANS crude oil transportation costs for January 1980 average $8.43 per barrel nationwide, as compared with an average transportation cost from wellhead to refinery of $0.60 per barrel for all other upper tier crude oil, the transportation adjustment would be calculated to be $7.83 per barrel. The entitlement obligation imposed on ANS upper tier crude oil would be reduced by this $7.83 per barrel adjustment.

We propose optional methods to obtain data which will provide the basis for calculating this transportation adjustment. The first method developing data for the transportation adjustment is for refiners to submit data which reflects their actual transportation costs as part of this rulemaking. Based on our analysis of the data submitted by refiners, DOE would establish a per barrel ANS transportation adjustment. Once established, this per barrel ANS transportation adjustment would be incorporated into the text of the regulations, subject to periodic adjustment based on our analysis of additional transportation cost data submitted in the future by refiners acquiring ANS upper tier crude oil.

We request comments on the feasibility of developing ANS transportation cost data in this manner. While we presume that refiners acquiring ANS crude oil would have access to this data, we specifically solicit comments concerning who should be required to report and what data should be submitted.

The second method of calculating the transportation adjustment is for ERA to make that calculation on the basis of monthly reports submitted to ERA by first purchasers and refiners on forms ERA–182 and ERA–49. ERA would calculate the transportation costs for ANS and all other upper tier crude oils by subtracting average wellhead prices from average delivered costs in order to derive the ANS transportation adjustment. The cost differential would be recalculated each month and published with the Entitlements Notices

issued by ERA. We have determined in the Draft Regulatory Analysis that this method of deriving an ANS transportation adjustment for purposes of calculating ANS upper tier entitlements would yield a result essentially equal to the first alternative proposal.

We have proposed alternative regulatory language reflecting alternative methods of calculating an ANS transportation adjustment. We request comments on our proposed methods for calculating the transportation adjustment. Specifically, should we use a transportation adjustment calculated from monthly reports made to ERA (which could vary substantially from month to month and which reflects trades of ANS crude for other crude oil) or should we specify a transportation adjustment based on an analysis of past and/or current differentials? In order to assist us in making this determination, we request refiners to provide us with actual ANS transportation costs for each month from January, 1978 to the present.

If a nationwide ANS transportation adjustment is established by DOE on either a one-time or monthly basis, our Draft Regulatory Analysis indicates that the wellhead price for ANS upper tier crude oil would be at or near the upper tier ceiling price. However, refiners' acquisition costs for ANS upper tier crude oil would not be uniform throughout the United States under this proposal. West Coast refiners' average acquisition costs for ANS upper tier crude oil would be less than the costs incurred by refiners located in PADDs I–IV, reflecting the difference in transportation costs between PADDs I–IV and PADD V.

We request comments on the adequacy of this proposal in minimizing the disparities in refiners' acquisition costs for crude oil, its possible impact on the market for crude oil refined in California, its impact on price-controlled ANS wellhead prices, and any impact on refiners located in PADDs I–IV.

We are also proposing a third option to this second alternative proposal, which would require refiners of ANS upper tier crude oil to incur entitlements obligations based on different transportation differentials established by DOE for ANS crude oil delivered to the refineries located on the West Coast (PADD V) or in PADDs I–IV. The regular upper tier entitlements obligation would be reduced by a lower transportation differential for ANS upper tier crude oil delivered to PADD V refineries than that for ANS upper tier crude oil delivered to refineries located in PADDs I–IV. Thus, the entitlements obligation incurred by West Coast refineries of ANS crude oil would be higher than those of PADDs I–IV refineries, reflecting the increased costs of transporting ANS crude oil to refineries located in PADDs I–IV.

We have proposed alternative regulatory language for this third option, which would have the effect of equalizing the acquisition costs of all refiners of ANS upper tier crude oil regardless of their location. We request comments on the adequacy of this option in minimizing the disparities in refiners' acquisition costs, its impact on price-controlled ANS wellhead prices, its effects on West Coast refiners of ANS upper tier crude oil, and the possible impact on the market for crude oil refined in California. We also request comments on our methods for calculating the respective transportation adjustments, e.g., whether from monthly reports submitted to ERA, actual cost data submitted by refiners, or by some other method.

C. Other Issues On Which Comments Are Requested

1. Decontrol of ANS Crude Oil

The crude oil cost disparity problem dealt with in this rulemaking exists only with respect to price-controlled ANS crude oil. Like all other upper tier oil, ANS oil is being decontrolled, commencing in January 1980, at the rate of 4.6 percent per month. Under this rate of release, all ANS and other price-controlled crude oil will have been decontrolled by October 1, 1981, the date on which the President's authority to control crude oil and product prices expires.

As increasing volumes of ANS crude oil are released from controls (and decreasing volumes remain subject to controls), the cost disparity problems caused by the present entitlements treatment of ANS upper tier oil will diminish in significance. By January 1, 1981, for example, less than half the volume of ANS crude oil being produced in January 1980 will be receiving the current advantages of ANS entitlements treatment. In light of the gradually diminishing volumes of ANS upper tier oil, we request comments on whether continued gradual decontrol of ANS crude oil will be an adequate solution to the current market distortion problems. While we are not proposing it as an option in this rulemaking, we also request comments and analysis on the impacts and effects that might result if all ANS crude oil were promptly decontrolled. In particular, commenters on this issue should address what the effects of immediate decontrol of ANS crude oil would be on producer revenues, crude oil and product prices, the rate of inflation, and the volume of crude oil that would be produced from the North Slope.

2. ANS Crude Oil Quality Adjustment

We understand that ANS crude oil may have a lower gravity and a higher sulfur content than the average of other crudes run by refiners. We solicit comments on whether the entitlements obligation on ANS crude oil under any of the alternatives proposed should be adjusted to reflect these quality differences. We solicit comments which provide specific information as to the basis upon which such adjustments might be made, e.g., the types of imported crudes, exempt domestic crudes, or controlled domestic crudes which would provide a basis for comparison.

IV. Proposed Effective Date of a Final Rule

Since the severe market distortions resulting from the current treatment of ANS upper tier entitlements should be corrected as soon as possible, we propose to make any final rule that is adopted applicable to transactions required to be consumated pursuant to the first Entitlements Notice issued after the effective date of a final rule. We solicit comments, however, which address the appropriate effective date for any of the amendments discussed above. Specifically, consideration is being given to making the final rule effective immediately upon issuance.

The purchase and sale requirements set forth in an Entitlements Notice are based on data reported by refiners pursuant to § 211.66 of the regulations regarding their crude oil receipts and runs to stills for the second month prior to the month of issuance of the Notice. Thus, a final rule adopted in mid-June, effective immediately upon issuance, would be applicable to ANS upper tier crude oil purchased and run in the month of April. However, inasmuch as the entitlements transactions based on the data reported by refiners are not required to be consumated until after issuance by DOE of the Entitlements Notice, and under the refiner price regulations entitlement payments may not be passed through in product pricing until the subsequent month, we have tentatively concluded that parties will not be affected unfairly by our proposed course of action. We solicit comments, however, on the advisability of making any amendment ultimately adopted applicable to transactions required to be consummated pursuant to the first Entitlements Notice issued after the effective date of the final rule, and any

possible adverse effects of such a course of action.

V. Procedural Requirements

A. Section 404 of the DOE Act

Pursuant to the requirements of Section 404(a) of the Department of Energy Organization Act (the DOE Act), we have referred this proposed rule to the Federal Energy Regulatory Commission for a determination whether the proposed rule would significantly affect any matter within the Commission's jurisdiction. The Commission will have until the close of the public comment period to make this determination.

B. Section 7 of the FEA Act and NEPA Considerations

Pursuant to section 7(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. 787 *et seq.*, Pub. L. No. 93–275, as amended), the requirements of which remain in effect under section 501(a) of the DOE Act, the delegate of the Secretary of Energy shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency (EPA) may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the environment. Such comments shall be published together with publication of notice of the proposed action.

A copy of the notice was sent to the EPA Administrator. The Administrator indicated that he does not foresee these actions having an unfavorable impact on the quality of the enviornment as related to the duties and responsibilities of the EPA.

The Assistant Secretary for Environment has determined, after consulation with the Office of the General Counsel, that these amendments would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*) Therefore, neither an enviornmental assessment nor an enviornmental impact statement will be necessary.

C. Executive Order 12044

1. Waiver of 60-Day Public Comment Period and Authorization to Adopt a Final Rule on 30 Days Notice

Section 2(c) of the Executive Order 12044 imposes a 60-day comment period requirement with respect to the promulgation of proposed significant regulations. If the agency determines a 60-day comment period is not possible, it must provide a brief statement of the reasons for a shorter period.

Paragraph 8(i) of DOE Order 2030.1, which implements Executive Order 12044, requires that a 60-day public comment period be provided. However, paragraph 12 of DOE Order 2030.1 provides that the Secretary, Deputy Secretary or Under Secretary may waive requirements imposed by DOE Order 2030.1 with respect to the promulgation of a particular regulation.

The Deputy Secretary has granted a waiver of the normal 60-day public comment period and has authorized the notice and comment period to be shortened to 30 days with respect to this rulemaking. The waiver was granted so that the amendments which will be adopted as a result of this rulemaking can be implemented as soon as possible.

Several reasons led to the Deputy Secretary's decision to grant the waiver. As discussed earlier in the preamble, the competitive advantage enjoyed by refiners of ANS crude oil has resulted in distortions in the refining industry and the retail gasoline market. Marketers who are dependent upon supplies from refiners without access to ANS crude oil hav been placed at a significant competitive disadvantage because they have been underpriced by marketers supplied by refiners with access to ANS crude oil. Recent proceedings before DOE's Office of Hearings and Appeals (Ohio Independents for Survival, Case No. BEL–1075) have demonstrated that the market distortion problems in Ohio particularly, where the largest marketer of gasoline is also a major North Slope producer, are so severe that some marketers without access to gasoline refined from ANS oil are threatened with economic extinction. Similar but more scattered market distortion problems exist in other regions of the country.

In these circumstances, a protracted rulemaking proceeding could result in serious and irreparable injury to gasoline and other product marketers who do not have access to product refined from ANS crude oil. Therefore, pursuant to the waiver issued by the Deputy Secretary, ERA intends to make the amendments which will be adopted applicable to transactions required to be consummated pursuant to the first Entitlements Notice issued after the publication of the final rule. Two public hearings will be scheduled in the 30-day period between publication of the NOPR and adoption of a final rule. Written comments will also be accepted in this same time period.

2. Regulatory Analysis

In accordance with Executive Order No. 12044 "Improving Government Regulations" (43 FR 12661, March 24, 1978) and DOE's implementing Order 2030.1, "Procedures for the Development and Analysis of Regulations, Standards, and Guidelines" (44 FR 1032, January 3, 1979), a Draft Regulatory Analysis has been prepared which examines the impacts of the proposals set forth above. A summary of the Draft Regulatory Analysis is attached as an appendix to this notice. The entire Draft Regulatory Analysis is available for public inspection at Room B–110 of the Economic Regulatory Administration , 2000 M Street, NW., Washington, D.C.

You are invited to provide comments on the Draft Regulatory Analysis at the same time you submit comments on the proposed rule. The comments will be taken into account before the preparation of a Final Regulatory Analysis or any final rule that may be adopted.

VI. Written Comments and Public Hearings Procedure

A. Written Comments

You are invited to participate in this proceeding by submitting data, views or arugments with respect to the issues set forth in this notice of proposed rulemaking. All comments should be submitted by 4:30 p.m., e.d.t., June 13, 1980. Comments should be submitted to the appropriate address indicated in the "Addresses" section of this preamble and should be identified on the outside envelope and on documents submitted with the designation "Alaska North Slope (ANS) Crude Oil Entitlements," Docket No. ERA–R–80–09. Ten copies should be sumitted. All comments recieved by the ERA will be available for public inspection in the DOE Freedom of Information Office, Room GA–152 Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., and in the ERA Office of Public Information, Room B–110, 2000 M Street, NW., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

Any information or data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination.

B. Public Hearings

1. *Procedure for Request to Make Oral Presentation.* The time and place for the hearings are indicated in the "Dates" and "Addresses" sections of this

preamble. If necessary to present all testimony, the hearings will resume at 9:30 a.m. on the next business day following the first day of each hearing.

You may make a written request for an opportunity to make an oral presentation at the hearings. The requests should contain a telephone number where you may be contacted during the day before the particular hearing at which you will speak.

If you are selected to be heard at the Seattle hearing, we will notify you before 4:30 p.m., May 29, 1980; if you are selected to be heard at the Washington hearing we will notify you before 4:30 p.m., June 2, 1980. You will be required to submit 100 copies of your statement on the morning of the hearings scheduled for Seattle at the hearing location and to Room 2313, 2000 M Street, N.W., Washington, D.C. 20461 by 4:30 p.m., June 4, 1980 for the Washington, D.C. hearing.

2. *Conduct of the Hearings.* We reserve the right to select the persons to be heard at the hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based upon the numbers of persons requesting to be heard.

An ERA official will be designated to preside at the hearings. These will not be judicial or evidentiary type hearings. Questions may be asked only by those conducting the hearings. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements have been made and will be subject to time limitations.

You may also submit questions to be asked by the presiding officer of any person making a statement at any hearing to the addresses indicated above for requests to speak, for the location concerned, before 4:30 p.m. on the day before the hearing. If you wish to ask a question at one of the hearings, you may submit the question, in writing, to the presiding officer. The ERA or, if the question is submitted at the hearing, the presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

Transcripts of the hearings will be made. The entire record of the hearings, including the transcripts, will be retained by the ERA and made available for inspection in the DOE Freedom of Information Office, Room GA-152, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., and in the ERA Office of Public Information, Room B-110, 2000 M Street, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcripts from the reporter.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. 787 *et seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. 6201 *et seq.*, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*, Pub. L. 95-91; EO 11790, 39 FR 23185; EO 12009, 42 FR 46267)

In consideration of the foregoing, Part 211 of Chapter II, Title 10 of the Code of Federal Regulations, is proposed to be amended as set forth below.

Issued in Washington, D.C., May 8, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

A. First Alternative Proposal

10 CFR Part 211 is amended as follows:

1. Section 211.62 is amended by deleting the second sentence of the definition of "Alaska North Slope (ANS) crude oil" to read as follows:

§ 211.62 Definitions.

* * * * *

"Alaska North Slope (ANS) crude oil" means crude oil transported through the trans-Alaska pipeline.

* * * * *

2. Section 211.67(b)(2) is amended by revising that subparagraph to read as follows:

First Option—Single Category of ANS Upper Tier Entitlements Nationwide

§ 211.67 Allocation of domestic crude oil.

* * * * *

(b) *Required purchase of entitlements by refiners.*

(2) The number of barrels of deemed old oil included in a refiner's adjusted crude oil receipts for purposes of the definition of the national domestic crude oil supply ratio in § 211.62, paragraph (b)(1) of this section, and paragraph (c) of this section shall be calculated as follows: (i) Each barrel of old oil shall be equal to one barrel of deemed old oil; (ii) Each barrel of upper tier crude oil (except ANS upper tier crude oil) shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the reported weighted average cost per barrel to refiners of imported crude oil, stripper well crude oil (as defined in Part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), tertiary incentive crude oil (as determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less such weighted average cost per barrel to refiners of upper tier crude oil, and the denominator of which is the entitlement price for that month; (iii) Each barrel of ANS upper tier crude oil shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the reported weighted average cost per barrel to refiners of imported crude oil, stripper well crude oil (as defined in Part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), tertiary incentive crude oil (as determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less such weighted average cost per barrel to refiners of ANS upper tier crude oil, and the denominator of which is the entitlement price for that month.

* * * * *

Second Option—Separate Categories of ANS Upper Tier Entitlements for ANS Crude Oil Delivered To Refiners in PADDs I-IV and PADD V

§ 211.67 Allocation of domestic crude oil.

* * * * *

(b) *Required purchase of entitlements by refiners.*

(2) The number of barrels of deemed old oil included in a refiner's adjusted crude oil receipts for purposes of the definition of the national domestic crude oil supply ratio in § 211.62, paragraph (b)(1) of this section, and paragraph (c) of this section shall be calculated as follows: (i) Each barrel of old oil shall be equal to one barrel of deemed old oil; (ii) Each barrel of upper tier crude oil (except ANS upper tier crude oil) shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the reported weighted average cost per barrel to refiners of imported crude oil, stripper well crude oil (as defined in Part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), tertiary incentive crude oil (as

determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less such weighted average cost per barrel to refiners of upper tier crude oil, and the denominator of which is the entitlement price for that month; (iii) Each barrel of ANS upper tier crude oil delivered to refineries in PADDs I–IV shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the reported weighted average cost per barrel to refiners of imported crude oil, stripper well crude oil (as defined in Part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), tertiary incentive crude oil (as determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less the weighted average cost per barrel to refiners of ANS upper tier crude oil delivered to refineries in PADDS I–IV and the denominator of which is the entitlement price for that month; (iv) Each barrel of ANS upper tier crude oil delivered to refineries in PADD V shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the reported weighted average cost per barrel to refiners of imported crude oil, stripper well crude oil (as defined in Part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), tertiary incentive crude oil (as determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provisions of Part 212 of this chapter for the month, less the weighted average cost per barrel to refiners of ANS upper tier crude oil delivered to refineries in PADD V, and the denominator of which is the entitlement price for that month.

3. Section 211.67(i)(4) is amended by deleting the words "ANS crude oil" to read as follows:

§ 211.67 Allocation of domestic crude oil.

* * * * *

(i) *Issuance and transfer of entitlements.* * * *

(4) The price at which entitlements shall be sold and purchased shall be fixed by the ERA for each month and shall be the exact differential between the weighted average cost per barrel to refiners of old oil and such weighted average cost of imported crude oil, stripper well crude oil (as defined in Part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), tertiary incentive crude oil (as determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provisions of Part 212 of this chapter, such costs to be equivalent to the delivered costs to the refinery.

* * * * *

B. Second Alternative Proposal

10 CFR Part 211 is amended as follows:

1. The amendment to the definition of "Alaska North Slope (ANS) crude oil" is unchanged from the First Alternative Proposal.

2. Section 211.67(b)(2) is amended by revising that subparagraph to read as follows:

First Option—Fixed ANS Transportation Adjustment Calculated on the Basis of Data Submitted by Refiners

§ 211.67 Allocation of domestic crude oil.

* * * * *

(b) *Required purchase of entitlements by refiners.* * * *

(2) The number of barrels of deemed old oil included in a refiner's adjusted crude oil receipts for purposes of the definition of the national domestic crude oil supply ratio in § 211.62 of this subpart, paragraph (b)(1) of this section, and paragraph (c) of this section shall be calculated as follows: (i) Each barrel of old oil shall be equal to one barrel of deemed old oil; (ii) Each barrel of upper tier crude oil (except ANS upper tier crude oil) shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the reported weighted average cost per barrel to refiners of imported crude oil, stripper well crude oil (as defined in Part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), tertiary incentive crude oil (as determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provision of Part 212 of this chapter for that month, less such weighted average cost per barrel to refiners of upper tier crude oil, and the denominator of which is the entitlement price for that month; (iii) Each barrel of ANS upper tier crude oil shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the reported weighted average cost per barrel to refiners of imported crude oil, stripper well crude oil (as defined in Part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), tertiary incentive crude oil (as determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less the sum of the weighted average cost per barrel to refiners of upper tier crude oil and a transportation adjustment of —— per barrel, and the denominator of which is the entitlement price for that month. Beginning December 1, 1980, DOE may adjust the transportation adjustment semi-annually to reflect changed transportation costs.

Second Option—Variable Monthly ANS Transportation Adjustment Calculated On the Basis of Monthly Reports Submitted to ERA

§ 211.67 Allocation of domestic crude oil.

* * * * *

(b) *Required purchase of entitlements by refiners.* * * *

(2) The number of barrels of deemed old oil included in a refiner's adjusted crude oil receipts for purposes of the definition of the national domestic crude oil supply ration in § 211.62, paragraph (b)(1) of this section, and paragraph (c) of this section shall be calculated as follows: (i) Each barrel of old oil shall be equal to one barrel of deemed old oil; (ii) Each barrel of upper tier crude oil (except ANS upper tier crude oil) shall constitute that fraction of a barrel of deemded old oil the numerator of which is equal to the reported weighted average cost per barrel to refiners of imported crude oil, stripper well crude oil (as defined in Part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), tertiary incentive crude oil (as determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less such weighted average cost per barrel to refiners of upper tier crude oil, and the denominator of which is the entitlement price for that month; (iii) Each barrel of ANS upper tier crude oil shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the reported weighted average cost per barrel to refiners of imported crude oil, stripper well crude oil (as defined in Part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), tertiary incentive crude oil (as determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less the sum of the weighted average cost per barrel to refiners of upper tier crude oil and the transportation adjustment associated with transporting ANS upper tier crude oil from the North Slope to domestic refiners published by DOE, and the denominator of which is the entitlement price for that month.

Third Option—Different ANS Transportation Adjustments for ANS Crude Oil Delivered to Refiners in PADDs I–IV and PADD V

§ 211.67 Allocation of domestic crude oil.

* * * * *

(b) *Required purchase of entitlements by refiners.* * * *

(2) The number of barrels of deemed old oil included in a refiner's adjusted crude oil receipts for purposes of the definition of the national domestic crude oil supply ratio in § 211.62, paragraph (b)(1) of this section, and paragraph (c) of this section shall be calculated as follows: (i) Each barrel of old oil shall be equal to one barrel of deemed old oil; (ii) Each barrel of upper tier crude oil (except ANS upper tier crude oil) shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the reported weighted average cost per barrel to refiners of imported crude oil, stripper well crude oil (as defined in Part 212 of this chapter), incremental teritiary crude oil (as determined pursuant to § 212.78), tertiary incentive crude oil (as determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less such weighted average cost per barrel to refiners of upper tier crude oil, and the denominator of which is the entitlement price for that month; (iii) Each barrel of ANS upper tier crude oil delivered to refineries in PADDs I–IV shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the reported weighted average cost per barrel to refiners of imported crude oil, stripper well crude oil (as defined in Part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), tertiary incentive crude oil (as determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less the sum of the weighted average cost per barrel to refiners of upper tier crude oil and a transportation adjustment of —— per barrel for ANS crude oil delivered to refineries in PADDs I–IV, and the denominator of which is the entitlement price for that month; (iv) Each barrel of ANS upper tier crude oil delivered to refineries in PADD V shall constitute that fraction of a barrel of deemed old oil the numerator of which is equal to the reported weighted average cost per barrel to refiners of imported crude oil, stripper well crude oil (as defined in Part 212 of this chapter), incremental tertiary crude oil (as determined pursuant to § 212.78), tertiary incentive crude oil (as determined pursuant to § 212.78), and other domestic crude oils the first sale of which is exempt from the provisions of Part 212 of this chapter for that month, less the sum of the weighted average cost per barrel to refiners of upper tier crude oil and a transportation adjustment of —— per barrel for ANS crude oil delivered to refineries in PADD V, and the denominator of which is the entitlement price for that month. Beginning December 1, 1980, DOE may adjust the transportation adjustments semi-annually to reflect changed transportation costs.

3. The amendment to subparagraph (4) of § 211.67(i) is unchanged from the First Alternative Proposal.

Appendix—Summary of Draft Regulatory Analysis

Modification of Entitlements Treatment of Controlled Alaskan North Slope Crude Oil

The increase in cost of exempt crudes in 1979 resulted in a large increase in both the delivered cost of controlled Alaskan North Slope crude oil (ANS) and its wellhead price. In July 1979, the wellhead price reached its upper tier ceiling value, and the delivered cost could no longer match that of exempt crudes. In January 1980, the delivered cost of controlled ANS was $6.93 less than the average cost of the other controlled crudes and $7.97 less than the average cost of imported and exempt domestic crude. This caused the few refiners of ANS crude to have low crude costs, and their gasoline wholesalers and retailers to sell at prices as much as 15–20 cents a gallon below competitors. This significant cost difference is due to treating price controlled ANS in the same manner as exempt crudes in the entitlements program, in accordance with the rule adopted to permit reasonable wellhead prices in 1977 (42 FR 41565, August 17, 1977), when there were no cost benefits to refiners using ANS.

The equitable distribution of all price controlled crude is one of the objectives to be achieved by the regulations promulgated under the Emergency Petroleum Allocation Act of 1973, as amended. In order to achieve this objective, the Department of Energy has proposed amendments to its regulations. Several regulatory proposals are analyzed in this report.

Four objectives should be realized by these proposed amendments.

1. The post-entitlement cost of price controlled ANS crude should be comparable to that for other crudes.

2. ANS producers generally should be able to realize ceiling prices on this controlled crude.

3. No major category of crude should have a post-entitlements cost that gives its users a significant competitive advantage or disadvantage.

4. There should be no increase in the national average costs of crude or products.

The principal alternative changes to the entitlements program considered in this analysis are:

1. Establish a separate tier for controlled ANS.

2. Combine controlled ANS with all other upper tier crudes into a single tier.

3. Combine controlled ANS with all other upper tier into a single tier, but reduce the entitlements obligation on the ANS portion by an amount equal to the added transportation cost of ANS when compared to other upper tier crudes.

The effects of each alternative on the average net acquisition costs of each category of crude were calculated and are shown in the following table derived from entitlements data and estimates of transportation costs for ANS crude for January 1980.

Net Cost to Refiners—January 1980

	Present	Alternatives		
		Separate tier	Upper tier	Upper tier freight adjusted
ANS controlled	17.88	24.81	30.78	25.56
Upper tier	24.81	24.81	21.72	24.43
Lower tier	24.81	24.81	24.81	24.81
Exempt	25.84	24.81	24.81	24.81
Imports	25.17	24.13	24.13	24.13
Domestic	27.73	26.69	26.69	26.69

These alternatives do not affect the average net costs of lower tier crudes nor do they affect the $2.56 cost difference between imports and exempt domestic crudes. Putting the controlled ANS and exempt crudes into separate categories for entitlements purposes causes the exempt crude cost to decline by $1.04/bbl or 2.5 cents a gallon. This is offset by an increase in the cost of controlled ANS under Alternative 1, and an increase in the combined cost of controlled ANS and upper tier in Alternatives 2 and 3. Alternative 1 would make the average net cost of ANS equal that of the three other groups. Alternative 2 would cause the average ANS cost in January 1980 to exceed that of upper tier by $9.06, and would place ANS refiners at a substantial disadvantage. The average cost of ANS would exceed that of lower tier and exempt by $5.97. This alternative would

change the present ANS advantage of $6.93 into a $5.97 disadvantage. The third alternative, offsetting the entitlements burden on ANS by the added transportation costs of ANS compared to all other upper tier crudes, would significantly reduce the disadvantage created under Alternative 2. For example, using a value of $8.53 for ANS freight, the disadvantage for ANS relative to lower tier and exempt was reduced to $0.75. In theory, the added freight cost would equal the incremental acquisiton cost of ANS compared to upper tier, provided that the two groups have the same average quality. When the average net delivered cost difference derived from the refiner acquisition costs reported to ERA is used as the freight cost, Alternative 3 equals Alternative 1.

These net costs were also compared to the net costs of uncontrolled ANS to determine if these costs would exceed the fair market value of this crude, and thus cause downward pressure on wellhead prices. In addition, comparisons of delivered costs on both the Gulf and West coasts were made to determine if separate entitlements treatment would be appropriate for ANS destined for each market. Using freight costs of $10.60 to the Gulf coast and $7.50 to the West coast, the following delivered net costs were developed.

Refiners Net Cost of Controlled ANS

	Alternatives		
	1	2	3
Gulf coast	25.61	31.59	26.43
West coast	22.51	28.49	23.33

The average net delivered cost of exempt ANS in January 1980 was estimated to be $27.38 on the Gulf and $25.18 on the West coast. Alternatives 1 and 3 would produce net costs for the controlled crude that are less than these values on both coasts, and producers should be able to realize ceiling prices under either alternative. The net costs under Alternative 2 exceed the exempt ANS prices on both coasts, and can be expected to put downward pressure on wellhead prices.

These data indicate that the present market structure will allow refiners on the Gulf coast to pay the added freight, and that no regulatory adjustment for this added freight is warranted at this time.

The present program granted a benefit of $304 million to ANS in January 1980. Uncontrolled crudes bore a burden of $304 million. As seen in the following table, the burden and benefits would be eliminated under Alternative 1. ANS would carry a burden and upper tier a benefit under Alternatives 2 and 3. All alternatives will not change the national average crude cost. Rather they will reduce the range of crude costs among refiners, and restore more normal competitive equilibrium in the product markets.

Benefits Granted to Crudes—January 1980

[Million dollars]

	Present	Alternatives		
		1	2	3
ANS controlled	$304	0	−261	−$33
Upper tier	0	0	261	33
Lower tier	0	0	0	0
Exempt	−304	0	0	0

Preferred Alternative

Alternative 1, a separate tier for controlled ANS, is the preferred alternative. It causes the realization of the four objectives of this analysis, and should continue to do so until September 30, 1981, when authority for the Mandatory Petroleum Allocation Regulations expires.

[FR Doc. 80-14770 Filed 5-12-80; 8:45 am]

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federal register

Tuesday
May 13, 1980

Part VII

Department of Agriculture

Food Safety and Quality Service

Fresh Irish Potatoes—Livestock Feed and Starch Manufacture Diversion Program

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

7 CFR Part 2880

Fresh Irish Potatoes—Livestock Feed and Starch Manufacture Diversion Program

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: Heavy supplies of potatoes in Maine have resulted in depressed prices to potato growers. Action must be taken to remove part of the surplus available to the fresh market to enhance returns from the sale of the remainder of the crop. Accordingly, payments are being offered producers in Maine to encourage the diversion of such potatoes for use as livestock feed and in starch manufacture. These payments will compensate those producers for the lower price obtained from the sales of potatoes to these uses.

The purpose of this rule is to set forth the terms and conditions of a potato diversion program for 1979-crop Maine potatoes. This rule sets out the provisions of eligibility for payments, the need for approval of diversion by USDA, the rate of payment to producers, and other conditions of participation. This rule is necessary to inform eligible producers of program requirements.

EFFECTIVE DATE: May 13, 1980 to be terminated no later than June 27, 1980.

FOR FURTHER INFORMATION CONTACT: D. A. Thibeault, Chief, Commodity Procurement Branch, Fruit and Vegetable Quality Division, FSQS, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone: (202) 447–2781.

The Final Impact Analysis describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION:

Significance

This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant".

Background

Heavy supplies of potatoes in Maine have resulted in depressed prices to potato growers. Action must be taken to remove part of the surplus available to the fresh market to enhance returns from the sale of the remainder of the crop. Accordingly, payments are being offered producers in Maine to encourage the diversion of such potatoes for use as livestock feed and in starch manufacture. These payments will compensate those producers for the lower prices obtained from the sales of potatoes to these uses.

The program will be offered in one period of 45 days duration.

Immediate action is necessary to avoid the price-depressing impact which sales of these supplies of potatoes are having on the market value of potatoes. Accordingly, Donald L. Houston, Adminstrator, FSQS, has determined that this document represents an emergency situation requiring immediate program action without a notice and comment period, that compliance with the notice and public procedure provisions of U.S.C. 553 is impracticable and contrary to the public interest, and in accordance with the provisions of Executive Order 12044 (43 FR 12661, March 24, 1978), that it is not possible to publish these regulations in proposed form and allow 60 days for public comment. Therefore, these regulations shall become effective upon publication in the **Federal Register.**

Accordingly, 7 CFR Chapter XXVIII, Part 2880, Subpart—Fresh Irish Potatoes—Livestock Diversion Program, is revised in its entirety to read as follows:

PART 2880—FRESH IRISH POTATOES

Subpart—Fresh Irish Potatoes—Livestock Feed and Starch Diversion Program

Sec.

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Authority: Sec. 32, 49 Stat. 774, as amended, (7 U.S.C. 612c).

Subpart—Fresh Irish Potatoes—Livestock Feed and Starch Diversion Program

§ 2880.1 General statement.

In order to encourage the domestic consumption of fresh Irish potatoes by diverting them from normal channels of trade and commerce, the Secretary of Agriculture, pursuant to the authority conferred by section 32 of Pub. L. 320, 74th Congress, as amended, offers to make payment for the diversion for use as livestock feed and for starch manufacture of 1979-crop potatoes produced and stored in Maine, subject to the terms and conditions set forth in this subpart. Information relating to this program and forms prescribed for use hereunder may be obtained from the following:

Fruit and Vegetable Quality Division, Food Safety and Quality Service, United States Department of Agriculture, Washington, D.C. 20250.

State of Maine Agricultural Stabilization and Conservation Committee.

Maine County Agricultural Stabilization and Conservation Committees.

§ 2880.2 Administration.

The program provided for in this subpart will be administered under the general direction and supervision of the Director, Fruit and Vegetable Quality Division, Food Safety and Quality Service, and in the field will be carried out by the Agricultural Stabilization and Conservation Service through the Maine Agricultural Stabilization and Conservation State Committee and the Aroostook County Agricultural Stabilization and Conservation County Committee, hereinafter referred to as the State and County Committees. The State Committee will authorize one or more employees to act as representatives of the United States Department of Agriculture, hereinafter referred to as USDA, to approve applications for participation. The State and County Committees or their authorized representatives do not have authority to modify or waive any of the provisions of this subpart or any amendments or supplements to this subpart.

§ 2880.3 Area.

This program will be effective in the State of Maine.

§ 2880.4 Period of program.

This program will be effective from May 13, 1980 and continue for 45 days.

§ 2880.5 Rate of payment.

The rate of payment per 100 pounds of potatoes which meet the requirements of Specification A as defined in § 2880.11 and which are diverted as prescribed in

§ 2880.10 will be two dollars and 25 cents per hundredweight from the effective date of the program through a period of 45 days. No payment will be made for any fractional part of 100 pounds and such quantities shall be disregarded.

§ 2880.6 Eligibility for payment.

Payments will be made under this program to any producer of 1979-crop Maine potatoes stored in Maine, (a) who enters into a marketing agreement with the State of Maine for the marketing of the producer's 1979-crop potatoes, (b) who executes and files an application for participation on the prescribed form, (c) who files a performance bound as provided in § 2880.8, (d) whose application is approved, (e) who diverts fresh Irish potatoes produced and stored within the State of Maine, (f) who files claim as provided in § 2880.14, and (g) who complies with all other terms and conditions contained in this subpart. The Administrator, FSQS may prescribe and publish further conditions of eligibility when deemed desirable to assure that growers are the primary recipients of program benefits.

§ 2880.7 Application and approval for participation.

Producers desiring to participate in this program must have voluntarily signed the marketing agreement relative to the marketing of 1979-crop potatoes prepared by the Commissioner of Agriculture, State of Maine, and approved by the Food Safety and Quality Service of USDA. Producers must submit a copy of such signed agreement and a written application on Form ASCS–117 "Application for Participation in Fresh Irish Potato Livestock Feed Diversion Program". Each applicant must submit a performance bond as provided in § 2880.8. Applications and bonds should be submitted to any Maine County ASCS Office. Applications will be considered in the order received and in accordance with the availability of funds. Applicants will be notified of the approval or nonapproval of their application. Approved applications may be modified or amended with the consent of the applicant and the duly authorized representative of the State Committee: *Provided,* That such modification or amendment shall not be in conflict with the provisions of this subpart or any amendment or supplements hereto. An approved applicant is hereinafter referred to as "the producer".

§ 2880.8 Performance bond.

In order to protect the Government's interest, each producer shall submit with his first application for participation a performance bond as further assurance that the potatoes diverted pursuant to this program will be used exclusively for feeding to livestock or for starch manufacture by methods prescribed in § 2880.13. The bond shall be executed on Form ASCS–119, "Performance Bond", by the principal and two individual sureties, all of whom shall agree to indemnify USDA for any losses, claims, or payments made by USDA with respect to any quantity of such potatoes not used for livestock feed or starch manufacture. USDA may disapprove any bond if for any reason any surety does not in the opinion of USDA afford USDA full protection and security.

§ 2880.9 Period of diversion.

The potatoes in connection with which payments are to be made must be diverted (a) after the date of approval of the producer's application, (b) within the time period specified in the approved application, and (c) in any event on or before the termination date of the program.

§ 2880.10 Definition of diversion.

Diversion of potatoes for use as livestock feed or starch manufacture as used herein means the initial processing of potatoes for feeding to livestock or for starch manufacture by cutting, chopping, slicing, gouging, crushing, ensiling, or cooking to the degree that the general appearance of the lot as a whole has been damaged to such an extent that, in the opinion of the FSQS inspector, the potatoes are readily and obviously identifiable as having been initially processed and rendered unsuitable to enter into normal channels of trade and commerce as potatoes.

§ 2880.11 Diversion specifications.

Potatoes in connection with which payments will be made must meet the requirements of "Specification A", which is hereby defined as meaning "Field Run" or "Cellar Run" potatoes which are equal to or better than the quality requirements of the Maine Processing Grade, specified in circular 46, promulgated by the Maine Commissioner of Agriculture, dated November 1, 1971. For those potatoes which fail to meet the requirements of the Maine Processing Grade, payments will be based on the percentage of the potatoes meeting the grade requirements. Notwithstanding the above, after consultation with industry representatives, the Director of the Fruit and Vegetable Quality Division may exclude from meeting the requirements of Specification A any additional grades and sizes which otherwise would meet the requirements of Specification A. Any such exclusion will be set forth in the application form for diversion authorization in the particular area to which it is applicable.

§ 2880.12 Inspection and certificate of diversion.

Prior to diversion, the potatoes shall be inspected by an inspector authorized or licensed by the Secretary of Agriculture to inspect and certify the class, quality, and condition of fresh Irish potatoes. The producer shall be responsible for requesting and arranging for inspection so that the inspector can be present to determine the proportion of potatoes in each lot which meet the quality requirements of Specification A. The inspector shall also verify the quantity of potatoes being diverted and that such potatoes have been diverted as defined in § 2880.10. The producer shall furnish such scale tickets, weighing facilities, or volume measurements as determined by the inspector to be necessary for ascertaining the net weight of the potatoes being diverted. The cost of inspecting verifying the quantity, certifying that diversion has been performed, and issuing certificates thereof shall be borne by the producer. Certificates shall be prepared on Form ASCS–118, "Invoice and Certificates of Inspection and Diversion".

§ 2880.13 Methods of utilization.

Following the initial processing as specified in § 2880.10, the potatoes must be fed to livestock or used for starch manufacture by one or more of the following methods:

(a) Feeding in barns or feed lots directly from troughs, bunkers, bins, or other suitable feeding receptacle;

(b) Utilizing the potatoes for starch manufacture.

§ 2880.14 Claim for payment.

In order to obtain payment, the producer must submit to the State ASCS Office which approved his application a properly executed "Invoice and Certificates of Inspection and Diversion", Form ASCS–118, and (except where the producer is the feeder) a certification of receipt by the ultimate feeder or starch manufacturer. All such claims shall be filed not later than one calendar month after the termination date specified in the applicable approved application.

§ 2880.15 Compliance with program provisions.

If USDA determines that any quantity of potatoes diverted under this program

was not used exclusively for livestock feed or starch manufacture purposes, whether such failure was caused directly by the producer or by any other person or persons, the producer shall not be entitled to diversion payments in connection with such potatoes, shall refund to USDA any payment made in connection with such potatoes, and shall be liable to USDA for any other damages incurred as a result of such failure to use the potatoes exclusively for livestock feed or starch manufacture purposes. USDA may deny any producer the right to participate in this program or the right to receive payments in connection with any diversion previously made under this program, or both, if USDA determines that: (a) The producer has failed to use or caused to be used any quantity of potatoes diverted under this program exclusively for livestock feed or starch manufacture purposes, whether such failure was caused directly by the producer or by any other person or persons, (b) the producer has not acted in good faith in connection with any transaction under this program, or (c) the producer has failed to discharge fully any obligation assumed by him under this program. Persons making any misrepresentation of facts in connection with this program for the purpose of defrauding USDA will be subject to the applicable civil and criminal provisions of the United States Code.

§ 2880.16 Inspection of premises.

The producer, livestock feeder, or starch manufacturer shall permit authorized representatives of USDA at any reasonable time to have access to his premises to inspect and examine such potatoes as are being diverted or stored for diversion, and to inspect and examine the facilities for diverting potatoes in order to determine to what extent there is or has been compliance with the provisions of this program.

§ 2880.17 Records and accounts.

The producer, livestock feeder, or starch manufacturer participating in this program shall keep accurate records and accounts showing the details relative to the diversion and disposition of such potatoes. The producer, livestock feeder, or starch manufacturer shall permit authorized representatives of USDA and the General Accounting Office at any reasonable time to inspect, examine, and make copies of such records and accounts in order to determine to what extent there is or has been compliance with the provisions of this program. Such records and accounts shall be retained for three years after date of last payment to the producer under the program or for two years after date of audit of records by USDA as provided herein, whichever is the later.

§ 2880.18 Set-off.

If the producer is indebted to USDA or to any other agency of the United States, set-off may be made against any amount due the producer hereunder. Setting off shall not deprive the producer of the right to contest the justness of the indebtedness involved, either by administrative appeal or by legal action.

§ 2880.19 Joint payment or assignment.

The producer may name a joint payee on the claim for payment or may assign, in accordance with the provisions of the Assignment of Claims Act of 1940, Public Law 811, 76th Congress, as amended (31 U.S.C. 203, 41 U.S.C. 15), the proceeds of any claim to a bank, trust company, Federal lending agency, or other recognized financing institution: *Provided*, That such assignment shall be recognized only if and when the assignee thereof files written notice of the assignment with the authorized representative of USDA who approved the application, together with a true copy of the instrument of assignment, in accordance with the instructions on Form CSS–66 or ASCS–66 "Notice of Assignment", which form must be used in giving notice of assignment to USDA. The "Instrument of Assignment" may be executed on Form CSS–347 or the assignee may use his own form of assignment. The CSS forms may be obtained from the State ASCS Office or the Washington office shown in § 2880.1.

§ 2880.20 Officials not to benefit.

No member of or delegate to Congress or Resident Commissioner, shall be entitled to any share or part of any contract resulting from this program or to any benefits that may arise therefrom, but this provision shall not be considered to extend to such a contract if made with a corporation for its general benefit or to any such person acting in his capacity as a farmer.

(Sec. 32, 49 Stat. 774, as amended; (7 U.S.C. 612c))

Dated: May 9, 1980.

Donald L. Houston,

Administrator, Food Safety and Quality Service.

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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

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

Note: There were no items eligible for inclusion in the list of **Rules Going Into Effect Today.**

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing May 8, 1980