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October 8, 1980

Highlights

Briefings on How To Use the Federal Register—For details on briefings in **Washington, D.C.**, see announcement in the **Reader Aids** section at the end of this issue.

66769 **The Peace Corps Advisory Council** Executive Order

66185 **Veterans** VA proposes to amend regulation governing exclusions from countable income under the Improved Pension Program; comments by 11-7-80

67018 **Nuclear Energy** NRC proposes standards for protection against radiation; comments by 11-24-80 (Part VI of this issue)

66816 **Waste Treatment and Disposal** EPA provides basis for issuing permits to owners and operators of hazardous waste treatment, storage and disposal facilities; comments by 11-7-80

66984 **Air Pollution** EPA publishes final high-altitude emission standards for 1982 and 1983 model year light-duty motor vehicles; effective 11-7-80 (Part V of this issue)

66960 **Energy Conservation** DOE/SOLAR proposes implementing amendments to the Residential Conservation Service program; comments by 11-24-80 (Part III of this issue)

CONTINUED INSIDE

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There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Highlights

67022 **Loan Program** DOE provides loan guarantees to assist in financing of construction of alcohol fuel, biomass energy, and municipal waste energy projects; effective 10–8–80 (2 documents) (Part VII of this issue)

66952 **Air Pollution** EPA establishes requirements for manufacturers of motor vehicles and motor vehicle engines to provide altitude performance adjustment instructions; effective 11–7–80 (Part II of this issue)

66813 **Improving Government Regulations** Justice/Civil Rights Division publishes semiannual agenda of regulations

66970 **Grant Programs** DOE/SOLAR proposes energy auditor training and certification grants; comments by 11–24–80 (Part IV of this issue)

66809 **Mobile Homes** FTC announces extension of time of 12–15–80 on availability of staff report regarding evidence in rulemaking proceeding on warranty service in mobile home industry

66810 **Motor Vehicles** FTC extends comment period to 11–7–80 on rule concerning practices and information disclosure on used car sales

66771 **Loan Programs** USDA/FHA amends regulations regarding eligible loan purposes for Community Facility loans; effective 10–8–80

66807 **Loan Policies** SBA gives advance notice of proposed rulemaking regarding revisions to business loan and guarantee eligibility standards; comments by 11–24–80

66801 **Mortgages** FHLBB proposes regulation to permit Federal Savings and Loan associations, to make shared appreciation mortgages; comments by 12–1–80

66870 **Consumer Protection** FHLBB gives notice of Consumer Program outlining procedures for dealing with consumer affairs perspective, consumer participation, information materials, education and training, complaint handling and general oversight; comments by 12–8–80

66941 **Sunshine Act Meetings**

Separate Parts of This Issue

66952 **Part II, EPA**
66960 **Part III, DOE/SOLAR**
66970 **Part IV, DOE/SOLAR**
66984 **Part V, EPA**
67018 **Part VI, NRC**
67022 **Part VII, DOE**

Contents

Federal Register
Vol. 45, No. 197
Wednesday, October 8, 1980

The President
EXECUTIVE ORDERS
66769 The Peace Corps Advisory Council (EO 12245)

Executive Agencies

Agriculture Department
See Farmers Home Administration; Forest Service.

Air Force Department
NOTICES
Meetings:
66837 Scientific Advisory Board; cancellation

Arts and Humanities, National Foundation
NOTICES
Meetings:
66929 Design Arts Panel
66929 Music Advisory Panel

Bonneville Power Administration
NOTICES
Public Utility Regulatory Policies Act:
66837 Lifeline rates; hearings

Civil Aeronautics Board
NOTICES
Hearings, etc.:
66825 Caribbean International Airways Ltd. et al.
66824 Competitive marketing of air transportation
66826 Former large irregular air service investigation (2 documents)
66825 Great Northern Airlines, Inc., et al.; service mail rates investigation, etc.

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
66827 Arizona
66827 Connecticut; cancellation
66827 Hawaii; change
66827 Illinois

Commerce Department
See Economic Development Administration; International Trade Administration.

Commodity Futures Trading Commission
NOTICES
66941 Meetings; Sunshine Act

Conservation and Solar Energy Office
RULES
67022 Alcohol fuels, biomass energy and municipal waste energy projects; loan guarantees
67038 Alcohol fuels, biomass energy and municipal waste energy projects; loan guarantees; environmental assessment
PROPOSED RULES
Residential conservation service program:
66970 Energy auditor training and certification grants
66960 Warranty requirements, utility cost and accounting provisions, and prohibition against utility supply and installation

Defense Department
See Air Force Department.

Economic Development Administration
NOTICES
Import determination petitions:
66828 Venture Ride Manufacturing, Inc., et al.

Economic Regulatory Administration
NOTICES
Decisions and orders:
66838 Texaco, Inc.
Environmental statements; availability, etc.:
66841 Jersey Central Power & Light Co.; Sayreville Generating Station Units 4 and 5, N.J.; scoping meeting

Energy Department
See also Bonneville Power Administration; Conservation and Solar Energy Office; Economic Regulatory Administration; Energy Research Office; Federal Energy Regulatory Commission.
RULES
Oil; administrative procedures and sanctions:
66772 Interpretations
NOTICES
Consent orders:
66842 Sun Co., Inc.
Patent licenses, exclusive:
66843 Energy Conversion Systems, Inc.; compact and safe nuclear reactor

Energy Research Office
NOTICES
Meetings:
66842 Energy Research Advisory Board

Environmental Protection Agency
RULES
Air pollution control; new motor vehicles and engines:
66952 Altitude performance adjustment instructions
66984 High altitude emission standards, light duty trucks and vehicles; 1982 and 1983 model years
Air quality implementation plans; approval and promulgation; various States, etc.:
66789 Vermont
66789, 66792 Virginia (2 documents)
PROPOSED RULES
Waste management, solid:
66816 Hazardous waste; standards and interim status period standards for owners and operators of treatment, storage, and disposal facilities; ground water protection; supplemental notice
NOTICES
Air quality implementation plans; approval and promulgation:
66863 Prevention of significant air quality deterioration (PSD); final determinations

Pesticide applicator certification and interim certification; Federal and State plans:
66864 Agriculture Department Federal Agency Plan
Pesticides; tolerances in animal feeds and human food:
66863 Union Carbide Agricultural Products Co., Inc. et al.

Farmers Home Administration
RULES
66771 Community facility loans, small-scale hydroelectric generating systems

Federal Communications Commission
NOTICES
Hearings, etc.:
66866 CLW Communications Group et al.
66866 Houma Broadcasters, Inc., et al.
Meetings:
66870 Marine Services Radio Technical Commission
66941, 66942 Meetings; Sunshine Act (5 documents)
66869 Rulemaking proceedings filed, granted, denied, etc.; petitions by various companies
66870 Television broadcast applications accepted for filing and notification of cut-off date

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act of 1978:
66784 Transportation certificates for natural gas for fuel oil displacement
Public Utility Regulatory Policies Act of 1978:
66787 Small power production and cogeneration facilities; qualifying status; rehearing
PROPOSED RULES
Natural Gas Policy Act of 1978:
66811 Ceiling prices; high cost natural gas produced from tight formations; Tex.
66812 Ceiling prices; high-cost gas produced from tight formations; Wyo.
66810 Production costs and maximum lawful prices in sales of natural gas; hearing
NOTICES
Hearings, etc.:
66856 A. T. Smith Mercantile
66843 Amoco Production Co.
66843 ANR Storage Co.
66844 Appalachian Power Co. (2 documents)
66844 Carolina Power & Light Co.
66845 Cities Service Gas Co.
66845 Coastal Corp.
66846 Colorado Interstate Gas Co. et al.
66845 Commonwealth Edison Co.
66846 Consumers Power Co.
66846 Edison Sault Electric Co. (2 documents)
66847 Gulf Power Corp.
66848 Indiana & Michigan Electric Co.
66848 Indianapolis Power & Light Co.
66849 Kanawha Valley Power Co.
66849 Kansas City Power & Light Co.
66850 Melrose Park Shell Service
66850, 66851 Montana Power Co. (3 documents)
66851 Montana-Dakota Utilities Co.
66851 Montaup Electric Co.
66854 Nevada Power Co.
66854 NGPL-Canyon Compression Co.
66855 Public Service Co. of Colorado (2 documents)
66855 Raton Natural Gas Co.
66855 Republic Geothermal Inc.
66856 Southern California Edison
66856 Southwestern Power Administration
66856 Tennessee Gas Pipeline Co.
66858 Texaco Inc.
66857 Texas Eastern Transmission Corp.
66858 Union Camp Corp.
66858 Wisconsin Electric Power Co.
66862 Yankee Atomic Electric Co.

Federal Home Loan Bank Board
RULES
Federal home loan bank system, etc.;
66781 NOW accounts; authorization for Federal associations to issue accounts and extend overdraft privileges to owners
PROPOSED RULES
Federal savings and loan system:
66798 Graduated payment adjustable mortgage; operations
66801 Shared appreciation mortgages; authorization to make, purchase or participate in
NOTICES
66870 Consumer program; draft; inquiry
66942 Meetings; Sunshine Act
66870 Negotiable order of withdrawal (NOW) accounts; advertising statement

Federal Maritime Commission
RULES
Agreements filed by common carriers in foreign commerce of U.S.:
66795 Terminal facilities located in foreign countries; exemption for leases or arrangements
NOTICES
66873 Agreements filed, etc. (2 documents)

Federal Reserve System
RULES
66779 OTC margin stocks; list (Regulations G, T, U, and X)
NOTICES
Applications, etc.:
66875 Clara City Bancorporation, Inc.
66875 Farmers Bancshares, Inc.
66875 Hopkins Financial Corp.
66874 LeRoy C. Darby, Inc.
66875 McPherson County Bancorp., Inc.
66875 Shawmut International Corp.
66875 Western Development, Inc.

Federal Trade Commission
RULES
Prohibited trade practices:
66784 totes inc.
PROPOSED RULES
66809 Mobile home sales and service; post-record comments, extension of time
66810 Motor vehicles; sale of used cars, dealer window sticker requirements; extension of time

Fish and Wildlife Service
NOTICES
66878 Mitigation policy, draft; inquiry; extension of time

Forest Service
NOTICES
Environmental statements; availability, etc.:
66824 Cibola National Forest Land and Resource Management Plan, N. Mex.; correction

General Services Administration
NOTICES
Property management:
66876 Code of ethics for government service; availability of poster

Geological Survey
NOTICES
Outer Continental Shelf; oil, gas, and sulphur operations; development and production plans:
66879 Exxon Co., U.S.A.

Health, Education, and Welfare Department
See Health and Human Services Department.

Health and Human Services Department
See Human Development Services Office.

Historic Preservation, Advisory Council
NOTICES
66824 Meetings (2 documents)

Human Development Services Office
NOTICES
Meetings:
66876 White House Conference on Aging Technical Committee

Interior Department
See also Fish and Wildlife Service; Geological Survey; Land Management Bureau; Water and Power Resources Service.
NOTICES
Meetings:
66879 Geographic Names, U.S. Board

International Trade Administration
NOTICES
Antidumping:
66833 Carbon steel cold, hot rolled sheet, galvanized sheet, plate and structural shapes from Belgium, Germany; France, Italy, Luxembourg, Netherlands, and United Kingdom; terminations
66835 Menthol from China
Meetings:
66836 Semiconductor Technical Advisory Committee
Scientific articles; duty free entry:
66830 Battelle Memorial Institute
66831 Commerce Department
66828 Frederick Cancer Research Center et al.
66831 Massachusetts Institute of Technology
66831 University of California-Livermore Laboratory
66831 University of Washington et al.
66833 Steel trigger price mechanism; reinstatement
66832 Worldwide Information Trade System (WITS); request for comments; correction

International Trade Commission
NOTICES
Import investigations:
66924 Airtight cast-iron stoves
66925 Apparatus for continuous production of copper rod
66925 Inclined-field acceleration tubes and components
66915 Iron-metal castings from India
66927 Plastic bouquet holders
66926 Steel jacks from Canada

Interstate Commerce Commission
RULES
Rail carriers:
66796 Routing of traffic; appointment of agents
Railroad car service orders:
66797 Embargo agents; appointment
NOTICES
66915 Long and short haul applications for relief
Motor carriers:
66880, 66882 Finance applications (2 documents)
66883, 66884, 66894 Permanent authority applications (3 documents)
66895 Temporary authority applications
66902 Petitions, applications, finance matters (including temporary authorities), alternate route deviations, intrastate applications, gateways, and pack and crate
Railroad operation, acquisition, construction, etc.:
66911 NWS Enterprises, Inc.

Justice Department
See also Parole Commission.
PROPOSED RULES
Improving Government regulations:
66813 Regulatory agenda
NOTICES
Organization, functions, and authority delegations:
66929 Assistant Attorneys Generals in charge of their respective offices

Land Management Bureau
NOTICES
Classification of lands:
66877 Colorado (2 documents)
Motor vehicles, off-road, etc.: area closures:
66877 Utah
Opening of public lands:
66876 California
Sale of public lands:
66877 Colorado
Wilderness areas; characteristics, inventories, etc.:
66876 Arizona

National Science Foundation
NOTICES
Committees; establishment, renewals, terminations, etc.:
66929 Minority Programs in Science Education Advisory Committee; charter amendment

Nuclear Regulatory Commission
PROPOSED RULES
Radiation protection standards:
67018 Liquid scintillation media and animal carcasses containing hydgrogen-3 (titium) or carbon-14; lessening of disposal restrictions
NOTICES
66942 Meetings; Sunshine Act

Parole Commission
RULES
Federal prisoners; paroling, recommitting and supervising:
66789 Parole dates; rescission guidelines; correction

Railroad Retirement Board
NOTICES
66943 Meetings; Sunshine Act

Securities and Exchange Commission
NOTICES
66930 Foreign private issuers; exemption qualifiers, list
Hearings, etc.:
66933 Government Employee's Investment Fund, Inc.
66933, 66934 National Fuel Gas Co. et al. (2 documents)
66935 Reserve Fund, Inc.
66937 United Cash Management, Inc.
Self-regulatory organizations; proposed rule changes:
66932 Pacific Stock Exchange Inc.

Small Business Administration
PROPOSED RULES
Business loan policy:
66807 Eligibility standards for loans and guarantees, revision; advance notice
Pollution control:
66807 Defaulted obligations; repayment by small concerns for funds paid by SBA; interest rate
NOTICES
Applications, etc.:
66939 Associates Commercial Corp. of Delaware
Disaster areas:
66938 Alaska
66938 Kansas
66938 Maine
Meetings; advisory councils:
66939 Maryland
66939 Michigan
66938 Texas

Textile Agreements Implementation Committee
NOTICES
Cotton and man-made textiles:
66836 Thailand

Veterans Administration
PROPOSED RULES
Adjudication; pensions; compensation, dependency, etc.:
66815 Countable income exclusions under improved pension program
NOTICES
Meetings:
66939 Career Development Committee

Water and Power Resources Service
NOTICES
Contract negotiations:
66879 Lower Colorado River Basin

MEETINGS ANNOUNCED IN THIS ISSUE

CIVIL RIGHTS COMMISSION
66827 Arizona Advisory Committee, 11-1-80
66827 Illinois Advisory Committee, 10-27-80

COMMERCE DEPARTMENT
International Trade Administration—
66836 Semiconductor Technical Advisory Committee, 10-21 and 10-22-80

ENERGY DEPARTMENT
66841 Economic Regulatory Administration—Sayreville generating station units 4 and 5, 10-21-80
Energy Research Office—
66842 Energy Research Advisory Board, Solar Photovoltaic Energy Advisory Committee, 10-27 and 10-28-80

FEDERAL COMMUNICATIONS COMMISSION
Radio Technical Commission for Marine Services—
66870 MPS—Automatic Coordinate Conversion Systems, 10-14-80

HEALTH AND HUMAN SERVICES DEPARTMENT
Human Development Services Office—
66876 White House Conference on Aging, Technical Committee Meeting, 10-21-80

HISTORIC PRESERVATION ADVISORY COUNCIL
66824 Meeting, 10-15-80
66824 Protection of Historic and Cultural Properties, 10-14-80

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES
66929 Design Arts Panel, 10-27 and 10-28-80
66929 Music Panel (Professional Training), 10-27 and 10-28-80

SMALL BUSINESS ADMINISTRATION
66939 Region III (Baltimore, Maryland) Advisory Council meeting, 10-23 and 10-24-80
66939 Region V (Detroit, Michigan) Advisory Council meeting, 10-31-80

UNITED STATES BOARD ON GEOGRAPHIC NAMES
66879 Domestic Names Committee, 11-5 and 11-14-80

VETERANS ADMINISTRATION
66939 Career Development Committee, 10-27 and 10-28-80

CHANGED MEETINGS

CIVIL RIGHTS COMMISSION
66827 Hawaii Advisory Committee, 10-25-80 changed to 11-15-80

CANCELLED MEETINGS

CIVIL RIGHTS COMMISSION
66827 Connecticut Advisory Committee, 10-21-80

DEFENSE DEPARTMENT
Air Force Department—
66837 USAF Scientific Advisory Board, 10–17 and 10–18–80

HEARINGS

ENERGY DEPARTMENT
66837 Bonneville Power Administration—Public Utility Regulatory Policies, 11–13–80
Conservation and Solar Energy Office—
66970 Energy auditor training and certification grants, 10–30 and 10–31–80
66970 Residential Conservation Service Program, 10–30–80
Federal Energy Regulatory Commission—
66810 Production costs and maximum lawful prices in sales under the Natural Gas Policy Act of 1978, 10–21–80

CONSUMER SUBJECT LISTING

The following items have been identified by the issuing agency as documents of particular consumer interest. This listing highlights the broad subject area of consumer interest followed by the specific subject matter of the document, issuing agency, and document category.

MOTOR VEHICLES
66810 Sales practices for used cars; Federal Trade Commission.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Executive Orders:

12137 (Amended by 12245)....66769

12245....66769

7 CFR

1942....66771

10 CFR

205....66772

799 (2 documents)....67022, 67038

Proposed Rules:

20....67018

456....66960

457....66970

12 CFR

207....66779

220....66779

221....66779

526....66781

545....66781

563....66781

Proposed Rules:

545 (2 documents)....66798, 66801

13 CFR

Proposed Rules:

111....66807

120....66807

16 CFR

13....66784

Proposed Rules:

441....66809

455....66810

18 CFR

284....66784

292....66787

Proposed Rules:

2....66810

270....66810

271 (3 documents)....66810–66812

28 CFR

2....66789

Proposed Rules:

Ch. I....66813

38 CFR

Proposed Rules:

3....66815

40 CFR

52 (3 documents)....66789–66792

86 (2 documents)....66952–66984

Proposed Rules:

264....66816

46 CFR

522....66795

49 CFR

1033 (2 documents)....66796

Federal Register
Vol. 45, No. 197
Wednesday, October 8, 1980

Presidential Documents

Title 3—

The President

Executive Order 12245 of October 6, 1980

The Peace Corps Advisory Council

By the authority vested in me as President of the United States of America, and in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to provide for Co-Chairpersons on the Peace Corps Advisory Council, Section 1–202 of Executive Order No. 12137 of May 16, 1979, is hereby amended to read as follows:

"1–202. The President shall appoint not more than 30 individuals to serve on the Council and shall designate two members to serve as Co-Chairpersons. Members shall serve at the pleasure of the President.".

Jimmy Carter

THE WHITE HOUSE,
October 6, 1980.

[FR Doc. 80-31517
Filed 10-7-80; 10:52 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 45, No. 197
Wednesday, October 8, 1980

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1942

[10.423]

Community Facility Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding eligible loan purposes for Community Facility loans. The intended effect of this action is to permit the making of loans for hydroelectric generating facilities and related connecting systems and appurtenances for those projects which are not eligible for assistance from the Rural Electrification Administration (REA). This action results from FmHA's desire to support the Rural Energy Initiatives by financing hydroelectric projects.

EFFECTIVE DATE: Effective on October 8, 1980.

FOR FURTHER INFORMATION CONTACT: David J. Howe, Senior Loan Officer, Community Facilities Loan Division, Farmers Home Administration, USDA, Room 6304–S., Washington, DC 20250 Telephone: 202–447–7667.

A Final Impact Statement has been prepared and is available on request from the Office of the Chief, Directives, Management Branch, USDA, FmHA, Room 6346–S., Washington, DC 20250.

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."

The FmHA programs and projects which are affected by this instruction are subject to state and local clearinghouse review in the manner delineated in FmHA Instruction 1901–H.

There were several comments received as a result of the proposal being published in the **Federal Register** dated July 24, 1980, page 49275. The comments received supported the proposal to authorize Farmers Home Administration to make financial assistance available for hydroelectric generating facilities and related connecting systems and appurtenances for those projects not eligible for assistance from the Rural Electrification Administration.

FmHA amends §§ 1942.17 (d)(2), (g)(1)(i) and (g)(2)(i) of Subpart A of Part 1942, Chapter XVIII, Title 7, Code of Federal Regulations.

These amendments add hydroelectric generating facilities and related connecting systems and appurtenances as eligible loan purposes. The regulations previously restricted any loans for electrical purposes to supplemental and supporting structures. Within the Department of Agriculture, REA has primary responsibility for rural electrification and telephone service. However, REA may make loans under its authorities only in places under 1,500 population. It has been determined that there is a need for financing in places up to 10,000 population. The Consolidated Farm and Rural Development Act as amended would permit FmHA to make such loans.

These amendments do not place FmHA in competition with REA. They do make loans for hydroelectric facilities available to a larger number of rural communities. All loan applications will be processed in the same manner as other community facility loans for essential facilities including the determination that other credit is not available at reasonable rates and terms.

One of the President's Rural Initiatives is in the area of energy. This change will permit FmHA to be more responsive to the Rural Energy Initiative by making Community Facility loans for hydroelectric purposes. This regulation change is published as a final rule because of the need to respond rapidly to this Rural Initiative. FmHA has prepared an Impact Analysis Statement which was based in part on public input received at meetings, from telephone inquiries, requests for loans from potential applicants, and comments received on the proposal as published in the **Federal Register** dated July 24, 1980, page 49275.

Accordingly, §§ 1942.17 (d)(2), (g)(1)(i), and (g)(2)(i) of Subpart A of Part 1942 are amended to read as follows:

§ 1942.17 Appendix A—Community facilities.

* * * * *

(d) *Eligible loan purposes.* * * *

(2) To construct, enlarge, extend or otherwise improve community facilities providing essential service to rural residents. Such facilities include but are not limited to those providing or supporting overall community development such as fire and rescue services; transportation; traffic control; community, social, cultural, and recreational benefits. Hydroelectric generating facilities and related connecting systems and appurtenances, and supplemental and supporting structures for other rural electrification or telephone systems (including facilities such as headquarters and office buildings, storage facilities, and maintenance shops) may be considered when they are not eligible for Rural Electrification Administration financing. Funds may be used for development of industrial park sites, consisting of land improvements (e.g. clearing, grading, drainage), necessary access ways and utility extensions to and throughout the site when the park is determined to be an integral part of community development. Funds may not be used in connection with industrial parks to finance on-site utility systems, or business and industrial buildings.

* * * * *

(g) *Security.* * * *

(1) *Public bodies.* * * *

(i) *Utility type facilities* such as water and sewer systems, natural gas distribution systems, electric systems, etc., will be secured by:

* * * * *

(2) *Other-than-public bodies.* * * *

(i) *Utility type facilities* such as water and sewer systems, natural gas distribution systems, electric systems, etc., will be secured as follows:

* * * * *

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that the action does not constitute a major Federal action

significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

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.

(7 U.S.C. 1989; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by Assistant Secretary for Rural Development, 7 CFR 2.70)

Dated: October 2, 1980.

Thomas L. Burgum,

Deputy Assistant Secretary, Rural Development.

[FR Doc. 80-31338 Filed 10-7-80; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF ENERGY

10 CFR Part 205

Administrative Procedures and Sanctions; 1980 Interpretations of the General Counsel

AGENCY: Department of Energy.

ACTION: Notice of Interpetations.

SUMMARY: Attached as Appendix A are interpretations issued by the Office of General Counsel of the Department of Energy under 10 CFR Part 205, Subpart F, during the period September 1, 1980 through September 30, 1980. Appendix B identifies those requests for interpretation which have been dismissed during the same period.

FOR FURTHER INFORMATION CONTACT: Diane Stubbs, Office of General Counsel, Department of Energy, 1000 Independence Ave, S.W., Room 5E052, Washington, D.C. 20585 (202) 252–2931.

SUPPLEMENTARY INFORMATION: Interpretations issued pursuant to 10 CFR Part 205, Subpart F, are published in the **Federal Register** in accordance with the editorial and classification criteria set forth in 42 FR 7923 (February 8, 1977), as modified in 42 FR 46270 (September 15, 1977).

These interpretations depend for their authority on the accuracy of the factual statement used as a basis for the interpretation (10 CFR 205.84(a)(2)) and may be rescinded or modified at any time (§ 205.85(d)). Only the persons to whom interpretations are addressed and other persons upon whom interpretations are served are entitled to rely on them (§ 205.85(c)). An interpretation is modified by a subsequent amendment to the regulation or ruling to the extent that the interpetation is inconsistent with the amended regulation or ruling (§ 205.85(e)). The interpretations published below are not subject to administrative appeal.

Issued in Washington, D.C., October 2, 1980.

Lona L. Feldman,

Acting Assistant General Counsel for Interpretations and Rulings.

Appendix A.—*Interpretations*

No.	To	Date	Category	File No.
1980–27	Standard Oil Co. (Indiana)	Sept. 10	Allocation	A–377
1980–28	Whirlpool Corp	Sept. 10	Conservation	A–491
1980–29	Charter Oil Co	Sept. 16	Allocation and price	A–421
1980–30	Sunmark Industries	Sept. 16	Price	A–508
1980–31	Sun Oil Co	Sept. 22	Price	A–390
1980–32	American Red Cross	Sept. 29	Allocation	A–568

Interpretation 1980–27

To: Standard Oil Company of Indiana.

Regulations Interpreted: 10 CFR 211.51, 211.62, 211.67.

Code: GCW—AI—Entitlements Program; Definitions of Crude Oil Runs to Stills.

Facts

Amoco Oil Company (AMOCO), a wholly-owned subsidiary of Standard Oil Company of Indiana, is a major refiner subject to 10 CFR Part 211, Subpart C of the Mandatory Petroleum Allocation Regulations. AMOCO owns and operates a refinery at Yorktown, Virginia with a current crude oil unit capability of 51,000 barrels per day. The refinery was designed to process high sulfur crude oils that are obtained from foreign sources.

In refining the crude oil, AMOCO first charges it to the main crude oil distillation unit, (the fractionator) where light ends, [1] gasoline, distillates and gas oil are separated from the heavier bottoms. The heavy bottoms are then sent to a coker combination fractionator to prepare them for charging to the delayed coking unit. The coking unit thermally converts the heavy crude oil bottoms to lighter, more valuable products. The residual petroleum coke contains most of the sulfur and metallic impurities in the heavy bottoms and is usually sold as boiler fuel.

The coking process upgrades the heavy bottoms by producing a higher yield of gas oil that can be further catalytically cracked to make gasoline and distillates. During periods of high product demand, AMOCO has the capability to increase its total refinery crude oil inputs by approximately 2,000 to 3,000 barrels per day by charging heavy high sulfur crude oil directly to the coker combination fractionator without first running the crude oil through a distillation unit. Light ends can be removed from the crude oil and the bottoms are sent to the delayed coking unit and thermally converted into lighter products.

AMOCO states that it is uneconomic to increase its refinery throughput by processing crude oil directly into the coker combination fractionator unless these inputs earn entitlements credits under 10 CFR 211.67.

Issue

May AMOCO include the heavy, high sulfur crude oil run directly into the coker combination fractionator, at its Yorktown, Virginia refinery, as "crude oil runs to stills" for the purpose of calculating entitlements under the entitlements program in 10 CFR 211.67?

Interpretation

For the reasons set forth below, AMOCO must include the heavy, high sulfur crude oil that is run into the coker combination fractionator at AMOCO's Yorktown, Virginia refinery, as crude oil runs to stills for the purpose of computing entitlements in accordance with the provisions of 10 CFR 211.67.

Section 211.67 of the Mandatory Petroleum Allocation Regulations governs the issuance of entitlements and provides that issuance of entitlements is based, in part, on a refiner's "crude oil runs to stills." The term "crude oil runs to stills" is defined in 10 CFR 211.62 to mean, in the case of a refiner other than a petrochemical producer, "the total number of barrels of crude oil input to distillation units processed by a refiner and measured in accordance with [Form EIA–87] . . . ." [2] Section 211.67 (a) provides:

(a) *Issuance of entitlements.* (1) For each month, commencing with the month of June 1978, each refiner shall be issued a number of entitlements by the ERA equal to the number of barrels of crude oil included in the total volume of that refiner's crude oil runs to stills for that month multiplied by the national domestic crude oil supply ratio for that month, subject to the entitlement adjustment for small refiners set forth in paragraph (e) of this section and the entitlement adjustments in subparagraph (a)(4) of this section.

Thus, under the literal reading of the regulation, a refiner must use crude oil as

[1] "Light end" products are defined as "naphtha, kerosene, diesel fuel and lube oil produced by a refinery from crude oil" in H. Williams and C. Myers, *Manual of Oil and Gas Terms*, 322 (4th ed. 1976).

[2] Section 211.62 refers to Bureau of Mines Form 6–1300–M. The form was superseded by Form FEA–P320–M–O, which was then superseded by Form EIA–87.

inputs to distillation units to meet the requirements of this section.

One of the objectives of the Entitlements Program as enunciated in § 4(b)(1)(E) of the Emergency Petroleum Allocation Act of 1973 (EPAA), as amended, Pub. L. 93–159 (November 27, 1973) [3] is the allocation of crude oil in such a way as to maximize total domestic refinery capacity. However, a literal reading of § 211.62 does not permit crude oil inputs to processing units to qualify as crude oil runs to stills unless the still is a distillation unit. A similar issue was raised and resolved in *American Petrofina, Inc. (Fina)*, Interpretation 1978–31, 43 FR 29532 (July 10, 1978).

In *Fina*, the firm ran crude oil directly into catalytic cracking units. In considering this procedure the DOE noted:

In appropriate cases the Office of General Counsel of the FEA, now the Department of Energy ("DOE"), has followed the interpretive rule which applies when the apparent literal reading of the regulation being construed leads to an unreasonable result plainly at variance with the purpose of the regulation. In such cases, the literal reading may be rejected in favor of an interpretation which gives effect to the purpose of the regulation concerned. . . . This rule is intended to apply, however, only in clear cases, *i.e.*, only when the purpose of the regulatory provision at issue is clear and when the result reached under a literal reading is plainly repugnant to or inconsistent with that purpose. As discussed below, the case presented by *Fina* falls squarely within this interpretive rule.

The objectives of the entitlements program were to achieve the equitable distribution of the benefits of low priced "old" crude oil among refiners, and to encourage full utilization of refinery capacity. 39 FR 31650 (August 30, 1974); 39 FR 39741 (November 11, 1974); *see Cities Service Co.* v. *FEA*, 529 F.2d 1016, 1021 (TECA 1975), *cert. denied*, 426 U.S. 947 (1977); *Pasco, Inc.* v. *FEA*, 525 F.2d 1391, 1395 (TECA 1975). In view of this general purpose, it would appear appropriate to include Altamont crude oil inputs to the catalytic cracking unit within the entitlements program. However, in light of the regulatory language actually adopted, it is necessary to examine whether there are any special reasons to exclude these inputs to the catalytic cracking unit from "crude oil runs to stills."

The FEA never considered in rulemaking proceedings the fact that the "crude oil runs to stills" basis of measurement excluded crude oil inputs to catalytic cracking units. . . .

* * * * *

The context of this discussion, in the preamble to the rulemaking, in which a system based on "crude runs" is compared with a system tied to refinery capacity, indicates that the FEA was simply contrasting refinery *input* with *capacity*, with no consideration of any technical distinction between "crude oil runs to stills" and crude oil input to catalytic cracking units. This suggests that the term was being used merely as a technical expression, preferable to more colloquial terms.

[3] 15 U.S.C. § 751 *et seq.* (1976).

In AMOCO's case, crude oil inputs into the coker combination fractionator are nearly identical to crude oil inputs to distillation units. The end result, in both cases, is refined petroleum products. As in the *Fina* Interpretation, the application of the literal definition or "crude oil runs to stills" to AMOCO's proposed activities, would reach a result inconsistent with the regulatory purpose of the entitlement program. On the other hand, the inclusion of the heavy, high sulfur crude oil in entitlements computations will more effectively equalize costs, a stated purpose of the entitlements program. 39 FR 39741.

As noted in *Fina*, the agency never considered in rulemaking proceedings the fact that the concept of "crude oil runs to stills" excluded any other basis of measuring inputs into a refinery. The term was used only as a technical expression and not as a purposeful means of excluding other bases of measuring crude oil inputs into a refinery. Moreover, the denial of entitlements benefits for AMOCO for the two to three thousand barrels per day of heavy, high sulphur crude oil that can most efficiently be used in the coker combination fractionator unit, would further no objective of the Entitlements Program and would, in fact, reduce the amount of refined petroleum product produced by the firm. Thus, AMOCO should treat the crude oil input into its coker combination fractionator as crude oil runs to stills under § 211.67.[4]

Accordingly, AMOCO must include the crude oil runs into its coker combination fractionator unit as crude oil runs to stills in reporting its crude oil each month pursuant to 10 CFR 211.67 and 211.66(h).[5]

Issued in Washington, D.C., on September 10, 1980.

Lona L. Feldman,

Acting Assistant General Counsel for Interpretations and Rulings.

Interpretation 1980–28

To: Whirlpool Corporation.

Regulations Interpreted: 10 CFR 430.2(10); Part 430, Subpart B, Appendix J.

Code: GCW–OI—Energy Conservation Program for Appliances, Clothes Washers.

Facts

The Whirlpool Corporation (Whirlpool), which has its headquarters in Benton Harbor, Michigan, is a manufacturer of home appliances that are distributed in commerce under the Whirlpool and Sears Kenmore brand names. Whirlpool manufactures approximately sixty (60) different models of automatic clothes washers and those clothes washers are subject to the test procedures, labeling requirements, and efficiency standards of the Energy Policy and Conservation Act, as amended, Pub. L. No. 94–163 (December 22, 1975) [6] (the Act). Part B of Title III of the Act, entitled the energy conservation program for consumer products other than automobiles, is intended to provide consumers with information regarding the energy consumption of certain consumer products and thereby assist consumers in making purchasing decisions. Section 323 of the Act requires the Department of Energy (DOE) to prescribe energy efficiency test procedures for covered consumer products. The test procedures, part of DOE's energy conservation program for applicances, are set forth in 10 CFR Part 430. Whirlpool has requested an interpretation regarding the proper classification of a type of clothes washer manufactured by Whirlpool and characterized as "timer selected water temperature clothes washers." The firm submits that its timer selected water temperature clothes washers have the wash/rinse temperature selection built into the timer so that the timer setting automatically determines the water temperature used in the wash and rinse cycles. However, these machines require user intervention subsequent to the initiation of the machine operation in order to obtain the most energy efficient temperature selection, i.e. a cold wash/cold rinse temperature selection. In order to obtain a cold wash, the user must set the timer dial to "rinse and spin" until the machine begins agitating and then turn the timer dial to the desired wash time. Whirlpool seeks an interpretation that timer selected water temperature clothes washers are within the definition of automatic clothes washers set forth in § 430.2(10) and that such clothes washers are three temperature selection machines described in Part 430, Subpart B, Appendix J, Section 5.3, Alternate II.

Issue

Under the Department of Energy's energy conservation program for appliances, 10 CFR Part 430, do Whirlpool's "timer selected water temperature clothes washers" qualify as "automatic clothes washers" as defined in § 430.2(10) and are they includable in the test procedures provided in Part 430, Subpart B, Appendix J?

Interpretation

Whirlpool's timer selected water temperature clothes washers qualify as automatic clothes washers as defined in 10 CFR 430.2(10) and are includable in the test procedures provided in Part 430, Subpart B, Appendix J of the energy conservation program for appliances.

Section 323 of the Act authorizes the Secretary of Energy to direct the National Bureau of Standards to develop energy efficiency test procedures for certain covered consumer products. Section 324 directs the Federal Trade Commission (FTC) to prescribe rules which require that covered products carry labels which disclose the estimated annual operating cost or a different useful measure of energy consumption of such products. Pursuant to this authority the FTC issued regulations which require the disclosure of the results of the energy efficiency tests by affixing energy use labels or tags on covered products after May 19, 1980. See 16 CFR 305.18. Section 325 of the

[4] AMOCO also argues that the crude oil coker combination fractionator is a "distillation unit." However, in light of the determination reached here, it is not necessary to address this argument.

[5] AMOCO is required to report all volumes of crude oil run directly into the coker combination fractionator, not just volumes of imported crude oil.

[6] 42 U.S.C. § 6201 *et seq.* (Supp. V 1975).

Act requires the Secretary to prescribe an energy efficiency standard for each type (or class) of covered product. The Act provides a variety of civil enforcement measures for failure to comply. See §§ 333–336.

On May 11, 1977, the Federal Energy Administration (FEA), a predecessor agency of the DOE, issued proposed regulations which set forth the test procedures for automatic and semiautomatic clothes washers and the determination that test procedures cannot be developed for any other class of clothes washers. 42 FR 25329 (May 17, 1977). The proposed regulations invited public comment on all aspects of the proposed test procedures. On September 22, 1977, the FEA issued the final regulations prescribing the test procedures for clothes washers effective November 1, 1977. 42 FR 49802 (September 28, 1977). These regulations contain the following definition at § 430.2(10):

"Automatic clothes washer" means a class of clothes washer which has a control system which is capable of scheduling a preselected combination of operations, such as regulation of water temperature, regulation of the water fill level, and performance of wash, rinse, drain, and spin functions without the need for user intervention subsequent to the initiation of machine operation. Some models may require user intervention to initiate these different segments of the cycle after the machine has begun operation, but they do not require the user to intervene to regulate the water temperature by adjusting *the external water faucet valves.* [Emphasis added].

It is the application of this definition to the timer selected water temperature clothes washers manufactured by Whirlpool which is the primary interpretive problem at issue here.

Whirlpool states that its timer selected water temperature clothes washers require user intervention in order to obtain a cold wash/cold rinse temperature selection. The cold rinse may be dialed directly, but in order to obtain a cold wash as well, the user must set the timer dial to "rinse and spin" until the machine begins agitating, and then turn the timer dial to the desired wash time. Although user intervention must occur for a cold water wash to be designated, the Whirlpool clothes washers still qualify under the literal meaning of the definition of automatic clothes washer which permits user intervention after the machine has begun operation as long as the external water faucet valves do not require adjustment. The user of the clothes washer adjusts a timer dial on the machine itself, not the external water faucets, to achieve the cold wash setting.

This conclusion is further supported by the preamble to the final regulations which include the following statement: "(t)hus, even if user intervention is required to activate different wash and rinse selections by means of pushing a button after the machine is in operation, the model should be considered an 'automatic' under the prescribed test procedures if the user did not also have to intervene to regulate the water temperature by adjusting the external water faucet valves." 42 FR 49802,04.

Accordingly, because these clothes washers are within the definition of automatic clothes washers and because they may achieve a variety of wash and rinse temperatures including a cold wash/cold rinse setting, these machines are specifically covered by section 5 of Part 430, Subpart B, Appendix J. It would be inappropriate in the interpretations process to make a more specific classification without further representations by Whirlpool as to all of the temperature settings which may be achieved on the timer selected water temperature clothes washers. However, this interpretation provides sufficient guidance to permit Whirlpool to make such a classification and test its products within the intent of the regulations.

For the reasons set forth above, Whirlpool's timer selected water temperature clothes washers qualify as automatic clothes washers as defined in 10 CFR 430.2(10) and are includable in the test procedures provided in Part 430, Subpart B, Appendix J of the energy conservation program for appliances.

Issued in Washington, D.C., on September 10, 1980.

Lona L. Feldman,

Acting Assistance General Counsel for Interpretations and Rulings.

Interpretation 1980–29

To: Charter Oil Co.

Regulations Interpreted: 10 CFR 211.67, 212.83(c)(2)(iii)(C)

Code: GCW–AI, PI–Part 211, Subpart C, Entitlements Program, Crude Oil, def.; Part 212, Subpart E, Refiner Price Formula, "A" Factor

Facts

Charter Oil Company (Charter) is a refiner subject to the Mandatory Petroleum Allocation and Price Regulations. Charter produces gasoline from an intermediate feedstock that is an unfinished oil, using a catalytic cracking unit and related units (none of which are distillation units) and by employing processes such as alkylation, cracking reforming, or hydrodesulfurization. Charter produces it own unfinished oils for use as feedstocks (catfeed) for the catalytic craking unit. However, Charter's capabilities and resources for processing gasoline exceed the volume of catfeed it is able to produce. Therefore, Charter also purchases large volumes of domestic and imported unfinished oils.

Issues

I. Do unfinished oils qualify as "crude oil runs to stills" for the purposes of the entitlements program?

II. Are the costs of imported unfinished oils included in a refiner's calculations of increased costs pursuant to the "A" factor of the refiner price rule as set forth in 10 CFR 212.83(c)(2)(iii)(C)?

Interpretation

Unfinished oils do not qualify as "crude oil runs to stills" for the purposes of the entitlements program as set forth in § 211.67. However, the costs of imported unfinished oils are included in a refiner's calculations of increased costs pursuant to the "A" factor of the refiner price rule set forth in § 212.83.

I. Treatment of Unfinished Oils Under the Entitlements Program

The provisions of 10 CFR 211.67 govern the issuance of entitlements. This section determines the number of entitlements a firm will be issued based upon the volume of its crude oil runs to stills. Section 211.67(a)(1) provides as follows:

Issuance of entitlements. (1) For each month, commencing with the month of June 1978, each refiner shall be issued a number of entitlements by the ERA equal to the number of barrels of crude oil included in the total volume of that refiner's crude oil runs to stills for that month multiplied by the national domestic crude oil supply ratio for that month, subject to the entitlement adjustment for small refiners set forth in paragraph (e) of this section and the entitlement adjustments in subparagraph (a)(4) of this section.

"Crude oil runs to stills" is defined in § 211.62 as:

. . . in the case of a refiner other than a petrochemical producer, the total number of barrels of *crude oil input to distillation units* processed by a refiner and measured in accordance with Bureau of Mines Form 6–1300–M and, in the case of a petrochemical producer, the total number of barrels of crude oil input to processing units for conversion into petrochemicals. [Emphasis added.]

This aspect of the entitlements program is specified further by the definition of "crude oil" applicable to Part 211, which is set forth in § 211.51 as follows:

"Crude oil" means a mixture of liquid hydrocarbons including lease condensate that exists in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities.

Accordingly, the regulatory definitions set forth in Part 211 limit the determination of a firm's crude oil runs to stills, which operates as the basis for determining the issuance of entitlements, to volumes of crude oil and other feedstocks that are specifically set forth in § 211.67.[1]

Unfinished oils, which are the subject of Charter's request for interpretation, cannot be identified as crude oil for purposes of the Mandatory Petroleum Allocation Regulations of Part 211. Although no definition for "unfinished oils" has ever been specifically set forth in Part 211 for specialized application to the allocation regulations, the regulatory term is defined in § 212.31 as follows:

"Unfinished oils" means all oils requiring further refining *i.e.*, any operation except mechanical blending or use as an additive.

Unfinished oils, therefore, are petroleum products which have undergone some processing, but which require still more refining. Indeed unfinished oils were

[1] Other feedstocks eligible for entitlements include: plant condensate and synthetic crude oil made from tar sands which are imported from Canada (§ 211.67(d)(3)), certain naphthas imported into Puerto Rico (§ 211.67(d)(5)), and liquids produced from oil shale found in the United States (§ 211.67(d)(8)). Entitlements are also issued pursuant to § 211.67(a)(5) with respect to certain petroleum substitutes and pursuant to § 211.67(a)(6) with respect to certain imported "distillate fuel oil, less No. 4," and "kerosene."

previously regulated by the Mandatory Petroleum Price Regulations set forth in Part 212 under the regulatory designation "general refinery products".[2] Thus, "unfinished oils" refer to partially processed petroleum products that cannot be categorized as "crude oil" for purposes of the entitlements program because the partially processed oils did not "[exist] in natural underground reservoirs."

In *Guam Oil and Refining Co.* (GORCO), Interpretation 1977-5, 42 FR 10967 (February 25, 1977) the agency determined that "feedstocks consisting of unfinished oils [are] not eligible for inclusion in the volume of GORCO's crude oil runs to stills as defined in § 211.62 for purposes of the entitlements program under § 211.67," where GORCO received a feedstock consisting of Arabian crude oil blended with as much as forty-eight percent unfinished oils. The *GORCO* Interpretation also stated:

. . . the definition of crude oil in § 211.51 . . . clearly contemplates that crude oil consists only of the mixture of hydrocarbons existing in natural underground reservoirs, i.e., virgin crude oil, and does not include chemically identical materials produced from a refinery. Once crude oil has been processed at a refinery it ceases to be classified as crude oil under this definition.

42 FR 10967, 10968. Similarly, the unfinished oils processed by Charter cannot be considered as crude oil for purposes of the Entitlements Program.[3]

II. Treatment of Unfinished Oils Under the Refiner Price Rule

The costs associated with a refiner's acquisition of feedstocks for processing in a refinery must be accounted for pursuant to the provisions of 10 CFR 212.83. The costs associated with the acquisition of imported unfinished oils used as refinery feedstocks are calculated pursuant to the provisions of § 212.83(c)(2)(iii)(C), the "A" factor. "A_i" is defined in part as follows:

. . . the sum of the increased costs of crude oil attributable to the specific covered product or products of the type "i" purchased or landed on or after January 1, 1976 and prior to or during the period "s" and not recovered in sales of that product through the period "t" and the increased costs of crude oil attributable to the specific covered product or products of the type "i" purchased or landed on or after January 1, 1976 in the period "t." "A_i" also includes the increased costs of crude oil and purchased products attributable to the covered product or products of the type "i" incurred through December 3, 1975 and not passed through as of January 31, 1976, and not recovered in sales of that product through the period "t." . . .

The volume allocation element of the "A" factor formula is used to determine the costs of crude oil and other feedstocks for "[t]he total quantity or volume of crude oil purchased or landed for refining or for resale. . . ." This element of the "A" factor formula, known as the "Q" factor, specifies that " '[t]he quantity or volume of crude oil' includes quantities or volumes of *unfinished oils* which were covered products as of May 31, 1976. . . ." (Emphasis added.) 10 CFR 212.83(c)(2)(iii)(C).

Unfinished oils were a type of petroleum product "which were covered products as of May 31, 1976" and were not exempted from the price regulations of Part 212 until September 1, 1976.[4] Thus, unfinished oils, whether imported or domestic, are included in computations of "the quantity or volume of crude oil" for purposes of determining the "Q" factor.

"[T]he total *cost of crude oil* purchased or landed . . ." (emphasis added) is determined by the "C" element of the "A" factor formula.[5] The definition of "cost of crude oil" as used in the "C" factor is set forth in § 212.82 as follows:

"Cost of crude oil" means (1) for purposes of domestic crude oil, the first sale price or the purchase price if the transaction occurs after the first sale, provided that the first sale price or purchase price conforms with the requirements of Part 212, plus the cost of transportation. The cost of domestic crude oil also includes the *cost of unfinished oils* which were covered products as of May 31, 1976, and of synthetic fuels (crude oil substitutes) processed from oil shale, tar sands, coal, and other natural deposits that must be mined before the crude oil substitute can be extracted, provided that such oils or fuels are used in refining and are further refined; (2) for purposes of imported crude oil, the *landed cost.* [Emphasis added.]

The definition specifically mentions the inclusion of the "cost of unfinished oils" in relation to domestic crude oil. For purposes of accounting for the costs of imported crude oil, the "cost of crude oil" is defined as "the landed cost." Although the cost of unfinished oils is not specifically mentioned in relation to imported crude oil, the definition of "landed cost" encompasses unfinished oils of the type "which were covered products as of May 31, 1976."

The definition of "landed cost" in § 212.82 does not prohibit the inclusion of imported unfinished oil costs in calculations of the cost of crude oil for the "C" factor. Indeed, the landed cost provisions include costs associated with the purchase of "covered products other than crude oil." The reference to "covered products other than crude oil" in the definition of "landed cost" (which is used to compute costs of imported crude oil for the "C" factor) includes the same products as the reference to "unfinished oils which were covered products as of May 31, 1976" (which is used to compute volumes of crude oil for the "Q" factor). Therefore, imported unfinished oils must be included for both "C" and "Q" factor calculations.

Moreover, the cost calculations of imported feedstocks must include the costs of imported unfinished oils to maintain valid comparisons between the cost of crude oil ("C") and the volume of crude oil ("Q")—which is clearly defined to include volumes of *imported unfinished oils.* The general analysis in the preamble accompanying corrective amendments to § 212.82, supports this proposition, stating:

The cost of unfinished oils which are further refined (the cost of which was includable before any deregulation actions were taken) continues to be properly includable as a "cost of crude oil" even though unfinished oils are no longer a covered product. Accordingly, the definition of "cost of crude oil" . . . continues to include the cost of certain unfinished oils which were covered products before their September 1, 1976, exemption.

42 FR 39195 (August 3, 1977). This explanation for including unfinished oils as a "cost of crude oil" does not limit the inclusion of such costs only to the costs of domestic crude oil.

The interrelationship between the "C" and the "Q" elements of the "A" factor formula and the definitions of the various elements of the "A" factor formula compel the interpretation that Charter must include the costs of imported unfinished oils used as catfeed in its calculations of increased costs pursuant to the "A" factor of the refiner price rule set forth in § 212.83(c)(2)(iii)(C).

III. Conclusion

Accordingly, the proper application of the Mandatory Petroleum Allocation and Price Regulations to the factual situation presented by Charter is as follows:

(1) Unfinished oils used as feedstocks by Charter do not qualify as "crude oil runs to stills" for the purpose of the entitlements program, and

(2) Charter must include its costs of imported unfinished oils in its calculations of increased crude oil costs pursuant to the "A" factor of § 212.83(c)(2)(iii)(C).

Issued in Washington, D.C., on September 16, 1980.

Lona L. Feldman,

Acting Assistant General Counsel for Interpretations and Rulings.

Interpretation 1980-30

To: Sunmark Industries

Regulations Interpreted: 10 CFR 212.83(c)(1)(i)(C); 212.92; 212.93(a)(2)

Code: GCW—PI—Refiner Price Rule; Definition of Acquisition Cost; Retail Price Rule

Facts

Sunmark Industries (Sun), a division of Sun Oil Company of Pennsylvania, qualifies as a refiner of petroleum products under the Mandatory Petroleum Price Regulations, 10 CFR Part 212. Sun is required to compute the maximum allowable selling price for covered products, including motor gasoline, pursuant to the refiner price rule, Part 212, Subpart E.

Sun seeks an interpretation regarding the proper method of determining the dealer tank wagon price for refiners under § 212.83(c)(1)(i)(C) and the acquisition price for the independent retailers of Sun products under § 212.93(a)(2) in the context of Sun's unique method of marketing its motor gasoline. Sun markets four grades of Sunoco brand leaded motor gasoline at the retail level through independent retailers and company-operated stations. Those grades are

[2] Unfinished oils were exempted from the provisions of Part 212 in 10 CFR 212.56, 41 FR 30096 (July 22, 1976), effective September 1, 1976.

[3] *Affirmed, Guam Oil and Refining Co.*, 5 FEA ¶ 80,619 (May 3, 1977). *See also Beacon Oil Co.*, 1 DOE ¶ 81,069 (February 9, 1978), *Phillips Petroleum Co.*, 3 FEA ¶ 83,115 (February 27, 1976), and *Texas Asphalt and Refining Co.*, 3 FEA ¶ 80,529 (December 8, 1975).

[4] 10 CFR 212.56, 41 FR 30096 (July 22, 1976).

[5] The "C" (cost) element is divided by the "Q" (volume) element in a portion of the "A" factor formula.

190, 200, 220 and 240. Sun sells at wholesale only the 190 and 240 grades. Thus, dealer tank wagon prices and acquisition costs of the 190 and 240 grades are readily ascertainable. The 200 and 220 grades are blends, in different proportions, of the 190 and 240 grades. The 200 and 220 grades are blended at the retail level in Sun's custom blending pumps by combining grades 190 and 240. Because Sun does not deliver the intermediate grades of motor gasoline in their blended form and because Sunoco branded retailers do not acquire from Sun the 200 and 220 grades, per se, Sun seeks a clarification of the pricing regulations applicable to its method of marketing its product.

Issue

What is the proper method of determining Sun's dealer tank wagon price for purposes of 10 CFR 212.83(c)(1)(i)(C) and independent retailer's acquisition cost, as defined in § 212.93(a)(2), for intermediate grades of leaded motor gasoline which are blended at the retail level in Sun's custom blending pumps?

Interpretation

For the reasons set forth below, Sun's dealer tank wagon price for purposes of 10 CFR 212.83(c)(1)(i)(C) and independent retailer's acquisition cost, as defined in § 212.93(a)(2), for intermediate blends of leaded motor gasoline which are blended at the retail level must be calculated using a formula which is based upon the proportions of the grades of motor gasoline that comprise each blended product and the prices charged for those grades.

On July 15, 1979, the DOE substantially revised the retailer price rules for motor gasoline. 44 FR 42541 (July 19, 1979). The amendments were designed to simplify the price rules applicable to retail sales of motor gasoline. The maximum lawful selling price that may be charged in sales of motor gasoline by retailers is the gasoline acquisition cost plus a fixed margin (now 16.8 cents per gallon) plus tax costs.[1] The new rule differs significantly from the old rule in that the use of the May 15, 1973, weighted average price is eliminated as the basis for computing price. The July 15, 1979 amendments introduced the definition of acquisition cost.[2] For branded retailers supplied solely by Sun, the most recent acquisition cost means the per gallon price of the most recent purchase from that supplier and includes transportation costs associated with bringing the gasoline into the retailers inventory.

* * * * *

On July 30, 1979, the DOE amended the refiner, reseller-retailer, and retailer price rules with respect to retail sales of motor gasoline. 44 FR 45352 (August 1, 1979). The DOE established that a refiner may not charge a price in retail sales of gasoline which exceeds the refiner's most recent dealer tank wagon selling price to the nearest independent retailer, plus a fixed margin (now 16.8 cents per gallon), plus applicable taxes.[3] While dealer tank wagon price is not a defined term under 10 CFR Part 212, it is an industry term generally understood to mean the delivered price to an independent dealer of a tank wagon of product.

The Mandatory Petroleum Price Regulations unquestionably apply to Sun and to all grades of Sunoco motor gasoline sold by retailers. While the regulations and the preambles to those regulations do not directly addess Sun's method of marketing, particularly, the blending of delivered product at the retail pump, the regulations literally apply to the ingredients that make up the blends. Therefore, the intermediate blends must be viewed as fixed percentage mixtures of motor gasoline to which the price regulations routinely apply.

Furthermore, the purposes of the regulations must be considered in determining the appropriate method of establishing retail prices for Sun's 200 and 220 gasoline blends. In reviewing the purpose of these rules, it is clear that the agency intended to both simplify the price rules and ease the administrative burden of complying with the rules. *See* 44 FR 42541 (July 19, 1979). In order to effectuate this purpose, a simple pricing mechanism is needed to fully pass through the product costs incurred by retailers. To achieve this goal, price must be based upon ascertainable costs and actual delivered volumes. This method is within the regulatory framework and intent of the new price rule, and has the advantage of easy calculation and compliance with DOE regulations.

Accordingly, Sun must impute dealer tank wagon prices for its blended grades, 200 and 220, under § 212.83(c)(1)(i)(C) based upon the proportions of the 190 and 240 grades of motor gasoline that comprise each blended product and Sun's dealer tank wagon prices for the 190 and 240 grades. Similarly, independent Sun dealers must determine their acquisition cost for the 200 and 220 grades under § 212.93(a)(2) by calculating a weighted average acquisition cost based on the proportions of the 190 and 240 grades that comprise the blended products. In both cases, the resulting calculation would be the percentage of 190 grade in the blend, multiplied by the dealer tank wagon price of 190, plus the percentage of 240 grade in the blend, multiplied by the dealer tank wagon price of 240, which equals the imputed dealer tank wagon price of the blend.[4]

For the reasons set forth above, Sun's dealer tank wagon price under 10 CFR 212.83(c)(1)(i)(C) and the acquisition costs of Sun's independent retailers under § 212.93(a)(2) for intermediate brands of leaded motor gasoline which are blended at the retail level must be calculated using a formula which is based upon the proportions of the grades of motor gasoline that comprise each blended product and the prices charged for those grades.

Issued in Washington, D.C., on September 16, 1980.

Lona L. Feldman,

Acting Assistant General Counsel for Interpretations and Rulings.

Interpretation 1980–31

To: Sun Oil Company

Regulations Interpreted: 10 CFR 212.31; and Ruling 1975–18

Code: GCW–PI–Def. Condensate and Natural Gas Liquids

Facts

Since 1978, Sun Production Company, a division of Sun Oil Company of Delaware (Sun), has owned and operated an oil and gas producing property known as the Norge Marchand Unit in Grady County, Oklahoma. Sun recovers a liquid hydrocarbon mixture at this property with an API gravity ranging from 90° to 100° and which consists of approximately 71% pentanes, 18.5% butanes, 9% propane, and 1.5% ethane. The mixture has a high vapor pressure and may not be commingled with conventional crude oil or condensate without a significant loss of the hydrocarbons by evaporation. For this reason, the liquid is transported in trucks separately from crude oil and is stored separately in high pressure facilities. The same methods of storage and transportation are used for natural gas liquids.

The hydrocarbons in question are recovered by means of mechanical separation. Gas which has been produced from an oil well is sent through two compressors located on the property. Each compressor installation consists of three stage compressors with gas coolers between the stages and an aftercooler on the high pressure discharge side of the installation. The liquid hydrocarbons are removed from

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[1] 10 CFR 212.93(a)(2) reads in pertinent part:

With respect to retail sales of gasoline by retailers, a retailer may not charge a price in a sale of any type or grade of gasoline which exceeds the most recent acquisition cost, plus 16.8 cents per gallon, plus tax cost attributable to sales of that type or grade of gasoline. Beginning December 15, 1979, DOE shall adjust semi-annually the fixed cents per gallon amount to reflect the GNP deflator.

[2] "Acquisition cost" is defined in 10 CFR 212.92 as:

(a)(1) For retailers which make three consecutive purchases from the same supplier, the actual purchase price paid for the most recent purchase of a product; or,

(2) For all other retailers, the weighted average purchase price paid for the three most recent purchases computed on a cents per gallon basis.

(3) Notwithstanding the provisions in paragraphs (a) (1) and (2) of this section, for any retailer which historically makes more than three purchases in a twenty-four (24) hour period, the acquisition cost is the weighted average purchase price paid in the immediately preceding three day period.

(c) The purchase price shall:

(1) Be computed on a cents per gallon basis:

(2) Be substantiated by written evidence of purchase; and

(3) Include transportation cost of bringing the product into inventory.

(d) DOE may disallow any purchases which have the effect of frustrating the purpose of the price regulations.

[3] 10 CFR 212.83(c)(1)(i)(C) reads in its entirety:

Nothwithstanding any other provision of this Subpart, a refiner which sells gasoline to independent retailers at dealer tank wagon prices, may not charge a price in retail sales of gasoline at a retail outlet which exceeds the refiner's most recent dealer tank wagon price to the nearest independent retailer to that retail outlet, plus 16.8 cents per gallon, plus tax cost as defined in § 212.92. Beginning December 15, 1979, DOE shall adjust semi-annually the fixed cents per gallon amount to reflect the GNP deflator.

[4] This approach is not without precedent in analogous contexts. For example, in proposed regulations governing the pricing and allocation of gasohol, the DOE proposed to define acquisition cost for retailers which blend gasohol based upon the percentages by volume and respective costs of unleaded gasoline and ethanol in the blended gasohol. *See* 45 FR 34846, 58 (May 22, 1980).

the gas stream both during the inter-stage cooling process and the final cooling cycle.

Sun seeks a determination that the liquid hydrocarbon mixture is "natural gas liquids" to be priced under Subpart K of the Mandatory Petroleum Price Regulations rather than "crude oil" to be priced under Subpart D. Sun maintains that the mixture is natural gas liquids because its physical and chemical makeup is the same as natural gas liquids, and it is stored and distributed in the same manner.

Issue

Are the liquid hydrocarbons recovered by Sun classified as "crude oil" or "natural gas liquids" for purposes of the Mandatory Petroleum Price Regulations?

Interpretation

For the reasons set forth below, sales of the liquid hydrocarbons are sales of "crude oil" as defined in 10 CFR 212.31.

Section 212.31 defines "crude oil" and "natural gas liquids" for the purposes of the Mandatory Petroleum Price Regulations as follows:

"Crude oil" means a mixture of hydrocarbons that existed in liquid phase in underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities. "Crude oil" includes *condensate recovered* in associated or non-associated production *by mechanical separators, whether located on the lease, at central field facilities, or at the inlet side of a gas processing plant.* (Emphasis added.)

Thus, the term crude oil includes condensate.

Section 212.31 further provides as follows:

"Natural gas liquids" means a mixed hydrocarbon stream containing, in whole or in substantial part, mixtures of ethane, butane, (isobutane and normal butane), propane or natural gasoline.[1]

For the purpose of establishing maximum lawful prices, the liquid hydrocarbons must be categorized as crude oil or natural gas liquids. *G. E. Kadane & Sons,* Interpretation 1975-29, 42 FR 23741 (May 10, 1977). Otherwise, sales of these products would be subject to duplicative or inconsistent price regulations.

In Ruling 1975-18, 40 FR 55860 (December 2, 1975), the agency stated that for regulatory purposes the prime distinction between condensate and natural gas liquids or natural gasoline is the method of producing the liquids:

Condensate occurs in nature as the heavy hydrocarbon portion of natural gas in the underground reservoir, and is mechanically separated from natural gas as a liquid through a process of retrograde condensation, involving pressure reduction, sometimes accompanied by a reduction in temperature as well. . . . *Condensate is to be distinguished from the lighter natural gas liquids and natural gas liquid products, whether fractionated or in a mixed stream of natural gas liquids, which are incapable of being separated from natural gas by mechanical means only and are generally recovered from natural gas at a gas processing plant by absorption, adsorption, or extraneous refrigeration processes.* In light of these distinctions, the FEA has determined that condensate should, as a general matter, be treated as crude oil under Subpart D of the price regulations, rather than as natural gas liquids or natural gas liquid products which are treated under Subpart K of the price regulations. *Id.* at 55860 (emphasis added).

The use of the term mechanical separation in the regulatory definition of condensate was designed to distinguish production of liquids by condensation as a result of temperature reduction and accompanying pressure changes (condensate) from production by absorption, adsorption, or extraneous refrigeration processes (natural gas liquids). *Mobil Oil Corporation,* Interpretation 1977-31, 42 FR 46270 (September 15, 1977); *UPG Inc.,* Interpretation 1978-35M, 43 FR at 57590 (December 8, 1978), *aff'd sub nom. UPG, Inc.* v. *Duncan,* No. 79-370-E, (W.D. Ok. August 29, 1980). Sun concedes that the recovery process which it uses for separation is a mechanical process utilizing reduction of temperature and changes in pressure. Furthermore, it does not contend that its compressor stations are gas processing plants employing absorption, adsorption, or extraneous refrigeration processes.[2]

The sole basis for Sun's claim that the liquids in question are natural gas liquids rather than crude oil is that their physical and chemical properties resemble natural gas liquids and they are transported and stored in the same manner. However, the presence of the same chemical components or physical makeup is entitled to little weight since many similar components are frequently present in both condensate and natural gas liquids. The use of the transportation and storage methods which are normally used for natural gas liquids does not advance Sun's position because this merely reflects a substantial overlap among the components of condensates and natural gas liquids.

In *UPG Inc.,* the agency rejected the contention that the physical and chemical similarity of a liquid with natural gas liquids compels the conclusion that it should be classified in that manner with the following comment:

The differing methods of obtaining the liquids, however, provide a more easily administered means of distinguishing among these categories and are, as discussed above, the seminal distinctions applied by the DOE and its predecessor agencies. 43 FR at 57591.[3]

Accordingly, the hydrocarbon liquid which Sun has recovered by mechanical separation is condensate. Since condensate is included within the definition of "crude oil" as defined in 10 CFR § 212.31, the liquid must be priced under Subpart D of the Mandatory Petroleum Price Regulations.

Issued in Washington, D.C., on September 22, 1980.

Lona L. Feldman,

Acting Assistant General Counsel for Interpretations and Rulings.

Interpretation 1980-32

To: The American Red Cross

Regulations Interpreted: 10 CFR 211.51, 211.102 and 211.103

Code: GCW-AI-Allocation Levels, Definition of Emergency Services, Definition of Social Service Agency Use

Facts

The American Red Cross (Red Cross), a non-profit national organization provides blood services and disaster relief service throughout the United States. In fiscal year 1978-1979, the Red Cross, through its Blood Services, collected 5,214,901 pints of blood. This fugure represents 52 percent of the total collections of blood in the country. Eighty-three percent of all Red Cross blood donations were collected by mobile collection units servicing approximately 60,000 collection operations. Red Cross blood went to about 4,400 hospitals, representing 63 percent of all hospitals in the United States. More than 1.3 million people received Red Cross blood or blood components in the 12-month period. The Red Cross maintains that blood and its components must be used and processed expeditiously. Whole blood platelet concentrates must be prepared no more than four hours after collection and must be used within 72 hours. Fresh plasma must be frozen within 6 hours after collection.

Therefore, the Red Cross states that it requires a priority allocation of motor gasoline to prevent its mobile blood units and transportation vehicles from forced delays between collection sites and laboratories during a period of gasoline shortage.

The Red Cross also provides disaster relief for thousands of Americans. Red Cross Disaster Services remove victims from the scene of a disaster, transport food and supplies to victims and to disaster workers. Hundreds of vehicles owned by Red Cross chapters are used exclusively or partially for disaster operations. The national sector of the organization owns 265 disaster vehicles stationed throughout the country.

Red Cross Disaster Services responded to 40,590 disaster incidents during the fiscal year ending June 1979, rendering assistance to 93,158 families and expending $36,635,419

[1] As set forth in § 212.31, natural gasoline means all liquid hydrocarbon mixtures, containing substantial quantities of pentanes and heavier hydrocarbons that have been extracted from natural gas. Sun does not contend that the liquids in question should be classified as natural gasoline.

[2] "Gas plant" is defined in 10 CFR § 212.162 as "a facility in which natural gas liquids are separated from natural gas, or in which natural gas liquids are fractionated or otherwise separated into natural gas liquid products, or both. . . ."

[3] The Court in *UPG* v. *Duncan, supra,* noted that:

It is apparent to this court that the Interpretations show a thorough consideration of the issues, consistent with other interpretations and other relevant factors. The reasoning of the DOE also appears to be grounded on a rational basis. UPG asserts that a narrow statutory standard of review would not render the Interpretations invalid when considered in light of the legislative intent reflected in the Preamble to the enacting legislation. This preamble demonstrates that the crude oil definition reflects a historical and functional basis between condensate and natural gas liquids and was not based upon a narrow, technical meaning known only to those in the natural gas business. The Interpretations are not clearly erroneous and should be deferred to by this court in light of the Department of Energy's greater expertise in this area. (Footnote omitted.) Id. slip. op. at 11.

for disaster assistance. The urgent and sudden demand for relief caused by thousands of disaster incidents requires immediate availability of motor transportation at all times for aid to victims of disasters ranging from single house fires to floods and storms.

The Red Cross also states that it requires a priority allocation for motor gasoline for its other services such as volunteer staff support in hospitals and clinics, transportation for the elderly and handicapped, administrative support services and other community health and safety services. The Red Cross asserts that these fuel needs should be classified as social service agency use pursuant to 10 CFR 211.103(c)(4).

Accordingly, the Red Cross asserts that its Blood and Disaster Services constitute emergency services eligible for a first priority allocation level of motor gasoline as pursuant to 10 CFR 211.103(b)(3). The Red Cross also maintains that its administrative, volunteer support, transportation and other community services constitute social service agency use eligible for a second priority allocation level of gasoline pursuant to 10 CFR 211.103(c)(4).

Issue

Are the activities of the Blood and Disaster Services of the Red Cross eligible for a first priority allocation level of motor gasoline as "emergency services"? Are the administrative and transportation services performed by the Red Cross eligible for a second priority allocation level as a social service agency use?

Interpretation

For the reasons set forth below, the activities of the Red Cross Blood and Disaster Services qualify for a first priority allocation level of motor gasoline pursuant to 10 CFR 211.103(b)(3) only to the extent that the motor gasoline is purchased by the Red Cross on a bulk purchaser or wholesale purchaser-consumer basis and that the gasoline is used for emergency services. In addition, in order to qualify for an allocation level based upon 10 CFR 211.103(c)(4), social service agency use, the Red Cross must first qualify as a bulk purchaser or wholesale purchaser-consumer.

"Emergency services" is defined in § 211.51 as "law enforcement, fire fighting, and emergency medical services."

The term "emergency" includes two separate criteria: an unforeseen situation calling for immediate action or any critical situation where time is of the essence. The Red Cross engages in several activities that meet either one or both of these criteria. Its collection of whole blood or blood plasma and its transportation to hospitals for use in patients by medical staff is clearly a critical medical service. The transportation of the blood or blood plasma when time is of the essence would therefore be an "emergency medical service." Moreover supplying first aid or other medical care to victims after a disaster arises from an unforeseen situation requiring immediate action and is an emergency medical service.

Pursuant to § 211.103(b)(3) emergency services are a first priority end use and are entitled to receive one hundred percent of base period use of motor gasoline not subject to an allocation fraction.

Section 211.51 defines "social service agency use" as:

[U]sage by private, non-profit social service agencies which operate programs for provision of essential health and welfare services.

The activities performed by the Red Cross in its administration, transportation of the elderly and handicapped, volunteer support for hospitals and other community services fall within this definition. In addition, disaster relief in the form of food, clothing or shelter, although critical, qualify as "a social service agency use" rather than "emergency medical services" as this relief provides necessary, but non-medical, aid to victims of disaster.

Pursuant to 211.103(c)(4), social service agency use is a second priority end use and is entitled to receive one hundred percent of base period use of motor gasoline as reduced by application of an allocation fraction.

However, priority allocation levels only apply to allocations made by suppliers to end-users that are bulk purchasers or wholesale purchaser-consumers.

Section 211.103(a) provides in part:

The allocation levels listed in this section only apply to allocations made by suppliers to end-users which are bulk purchasers and to wholesale purchaser-consumers. Suppliers shall allocate to all purchasers to which the allocation levels apply in accordance with the provisions of § 211.10. End-users which are bulk purchasers and wholesale purchaser-consumers which are entitled to purchase motor gasoline under an allocation level not subject to an allocation fraction shall receive first priority and be supplied sufficient amounts to meet 100 percent of their allocation requirements. End-users which are bulk purchasers and wholesale purchaser-consumers which are entitled to purchase motor gasoline for all uses under an allocation level subject to reduction by application of an allocation fraction shall receive second priority.

The term "bulk purchaser" is defined in § 211.102 for the purpose of 10 CFR Part 211, Subpart F and provides in part:

"Bulk purchaser" means any firm which is an ultimate consumer which, as part of its normal business practices, purchases or obtains motor gasoline from a supplier and . . . (a) receives delivery of that product into a storage tank substantially under the control of that firm at a fixed location, ...

The term wholesale purchaser-consumer is defined in § 211.51 as:

"Wholesale purchaser-consumer" means any firm that is an ultimate consumer which, as part of its normal business practices, purchases or obtains an allocated product from a supplier and receives delivery of that product into a storage tank substantially under the control of that firm at a fixed location and which either (a) purchased or obtained more than 20,000 gallons of that allocated product for its own use in agricultural production in any completed calendar year subsequent to 1971; (b) purchased or obtained more than 50,000 gallons of that allocated product in any completed calendar year subsequent to 1971 for use in one or more multi-family residences; or (c) purchased or obtained more than 84,000 gallons of that allocated product in any completed calendar year subsequent to 1971.

Thus, a firm that is an ultimate consumer and as part of its normal business practice purchases or obtains an allocated product directly into a storage tank under the control of that firm and at a fixed location may qualify as a bulk purchaser or wholesale purchaser-consumer. A firm may quality if the storage tank is leased by the firm so long as it is under the substantial control of the firm.

In its submission, the Red Cross did not provide information regarding routine purchasing habits for vehicles involved in Blood and Disaster Services or other community services. If these vehicles do purchase gasoline on a bulk purchaser or wholesale purchaser-consumer basis, the gasoline used for the activities performed by the Blood and Disaster Services could be purchased on a first priority basis, and the gasoline for social service agency uses could be purchased on a second priority basis.

However, if the Red Cross does not quality as either a bulk purchaser or wholesale purchaser-consumer for its emergency services or social service end uses, it is not entitled to a priority allocation level under the Mandatory Petroleum Allocation Regulations. However, each state may establish priority levels as set forth in 10 CFR 211.10(d)(2). That section provides:

The second priority for each supplier shall be to distribute equitably the remainder of the supplier's allocable supply among all end-users or wholesale purchaser-consumers which are not entitled to an allocation level. A state may require or authorize priorities to or among such end-users or wholesale purchaser-consumers purchasing the allocated product for the uses listed in the allocation levels for that product in the subpart of this part applicable to the particular allocated product. Except to the extent that FEO regulations or a State office otherwise may require or authorize, local governments and the supplier may also give priority to or among such end-users or wholesale purchaser-consumers purchasing the allocated product for the uses listed in the allocation levels for that product in the subpart of this part applicable to the particular allocated product. Priority treatment, per se, when granted in accordance with the provisions of this subparagraph, shall not be considered a form of discrimination among purchasers or any other prohibited conduct under § 210.62 of this chapter.

Thus, each state may establish priority levels to enable the Red Cross to obtain sufficient gasoline in time of shortage.[1] Moreover, if the Red Cross is not entitled to priority allocation levels under § 211.103, it may seek exception relief pursuant to 10 CFR Part 205, Subpart D.

Accordingly, the American Red Cross Blood and Disaster Services qualifies for a first priority allocation level of motor gasoline pursuant to 10 CFR 211.103(a) if the gasoline is purchased on a bulk purchaser or wholesale purchaser-consumer basis for use

[1] See Ruling 1980-2, 45 FR 42246 (June 24, 1980).

in emergency services in accordance with 10 CFR 211.103(b)(3). Furthermore, the Red Cross qualifies for an allocation level subject to an allocation fraction if it purchases gasoline on a bulk purchaser or wholesale purchaser-consumer basis for social service agency use pursuant to 10 CFR 211.103(c)(4).[2]

[2] In the event certain Red Cross activities qualify for a first or second priority allocation, based upon its bulk purchaser or wholesale purchaser-consumer status, appropriate records regarding the use of the gasoline must be maintained by the Red Cross' suppliers in accordance with 10 CFR 211.223.

Issued in Washington, D.C., on September 29, 1980.

Lona L. Feldman,

Acting Assistant General Counsel for Interpretations and Rulings.

Appendix B.—*Cases Dismissed*

File No.	Requester	Category	Date dismissed
A-370	Getty Oil Co	Allocation	September 2.
A-345	Diamond Shamrock Corp	Price	September 4.
A-583	Western Trading Co	Allocation and price	September 10.
A-586	Grigsby Oil & Gas	Price	September 16.
A-559	State of Louisiana	Allocation and price	September 22.
A-478	Union Oil Co. of California	Price	September 22
A-400	Texaco, Inc.	Allocation and price	September 29.

[FR Doc. 80-31233 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, and 221

[Regs. G, T, U, and X]

List of OTC Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The List of OTC Margin Stocks is comprised of stocks traded over-the-counter (OTC) that have been determined by the Board of Governors of the Federal Reserve System to be subject to margin requirements under certain Federal Reserve regulations. The List is published from time to time by the Board as a guide for lenders subject to the regulations and the general public. This document sets forth additions to or deletions from the previously published List and will serve to give notice to the public about the changed status of certain stocks.

EFFECTIVE DATE: October 6, 1980.

FOR FURTHER INFORMATION CONTACT: Jamie Lenoci, Financial Analyst, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-2781.

SUPPLEMENTARY INFORMATION: Set forth below are stocks representing additions to or deletions from the Board's List of stocks traded over-the-counter on file at the Office of the Federal Register as of April 7, 1980. The List, as amended, includes those stocks that the Board of Governors has found meet the criteria specified by the Board and thus have the degree of national investor interest, the depth and breadth of market, the availability of information respecting the stock and its issuer to warrant incorporating such stocks within the requirements of Regulations G, T, U, and X. Copies of the current List may be obtained from any Federal Reserve Bank. A copy is also on file at the Office of the Federal Register.[1]

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion on the List specified in 12 CFR 207.5 (d) and (e), 220.8 (h) and (i), and 221.4 (d) and (e). No additional useful information would be gained by public participation. The requirements of 5 U.S.C. 553 with respect to deferred effective data have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of this List as soon as possible.

[1] Copy of current List filed as part of original document.

PART 207—SECURITIES CREDIT BY PERSONS OTHER THAN BANKS, BROKERS, OR DEALERS

PART 220—CREDIT BY BROKERS AND DEALERS

PART 221—CREDIT BY BANKS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCKS

§§ 207.2, 220.2, 221.3 [Amended]

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78g and 78w) and in accordance with § 207.2(f)(2) of Regulation G, § 220.2(e)(2) of Regulation T, and § 221.3(d)(2) of Regulation U, there are set forth below additions to and deletions from the Board's List:

Additions to List

Aero Systems, Inc., $.02 par common
Aeroflex Laboratories Inc., $.10 par common
Air Wisconsin, Inc., $.25 par common
Allied Capital Corporation, $1.00 par common
Altex Oil Corporation, $.01 par common
American Investors Life Insurance Company, Inc., $1.00 par common
Anaren Microwave, Inc., $.01 par common
Ancorp Bancshares, Inc., $3.50 par common
Andersen 2000 Inc., $.25 par common
Apeco Corporation, $.50 par common
Arabian Shield Development Company, $.10 par common
Arapaho Petroleum, Inc., No par common
Argo Petroleum Corporation, 10% convertible subordinated debentures
Automated Marketing Systems, Inc., $.50 par common
Bally's Park Place, Inc., $.10 par common
Bolar Pharmaceutical Co., Inc., $.01 par common
Brae Corporation, $1.00 par common
Brock Exploration Corporation, $.10 par common
Bunnington Corporation, $.10 par common
CACI, Inc. (Arlington, VA), $.10 par common
CB & T Bancshares, Inc. (Columbus, GA), $2.50 par common
CIC Financial Corporation (Chicago), $1.00 par common
Cambridge Royalty Company, $1.00 par common
Cascade Steel Rolling Mills, Inc., No par common
Century Oil & Gas Corporation, $.02 par common
Chittenden Corporation, $10.00 par common
Chyron Corporation, $.01 par common
Coastal Industries, Inc., $.25 par common
Coeur d'Alene Mines Corporation, $1.00 par common
Computer Devices, Inc., $.01 par common
Comserv Corporation, $.10 par common

Conifer Group, Inc., The, $1.00 par common
Conna Corporation, No par common
Consolidated Fibres Inc., $1.00 par common
Cotton States Life and Health Insurance Company, $1.00 par common
Datametrics Corporation, No par common
Dataram Corporation, $1.00 par common
Denelcor, Inc., No par common
Dependable Insurance Group, Inc. of America, The, $.10 par common
Digi-Log Systems, Inc., $.01 par common
Discount Corporation of New York, $2.00 par common
Dranetz Engineering Laboratories, Inc., $.10 par common
Electronic Modules Corporation, $.10 par common
Energy Sources, Inc., $.05 par common
Farr Company, $1.00 par common
First National Bank of Allentown (PA), $2.50 par capital
First State Banking Corporation, $5.00 par common
Florida Coast Banks, Inc., Series A, no par cumulative convertible preferred
Funtime, Inc., No par common
Galaxy Oil Company, 9% convertible subordinated debentures
Gold Medallion Corporation, $.10 par common
Great American Management & Investment, Inc., $.01 par common
Gulfstream Banks, Inc., $1.00 par common
Haemonetics Corporation, $1.00 par common
Harwyn Industries Corporation, $.10 par common
Hechinger Company, $.10 par common
Heritage Communications, Inc., $.50 par common
Hudson United Bank (Union City, NJ), $8.00 par capital
Informatics, Inc., $.15 par common
Intercontinental Life Corporation, $1.00 par common
InterIsland Resorts, Ltd., No par common
Intermedics, Inc., $.10 par common
KRM Petroleum Corporation, $.10 par common
Kevex Corporation, $.01 par common
Liberty National Corporation (Oklahoma City, OK), $5.00 par common
MCI Communications Corporation, $1.80 par cumulative convertible preferred
Magic Circle Energy Corporation, $.10 par common
Mathematical Applications Group, Inc., $.05 par common
Middlesex Water Company, No par common
Midlantic Banks Inc., $2.00 par cumulative convertible preferred
Minerals Engineering Company, $.01 par common
National Data Communications, Inc., $.50 par common
Newport Pharmaceuticals International, Inc., $.10 par common
Nicklos Oil & Gas Company, $.05 par common
Nuclear Medical Systems, Inc., $.04 par common
O.I. Corporation (College Station, TX), $.10 par common
Oklahoma Oil Company, $.10 par common
Oxoco, $.10 par common
Palmetto Federal Savings & Loan Association, $.01 par common
Planters National Bank & Trust Company (Rocky Mount, NC), $5.00 par common
Premier Resources, Ltd., No par common
Presidio Oil Company, $.10 par common
Printronix, Inc., No par common
Professional Investors Corporation, $1.00 par common
Puget Sound National Bank (Tacoma, WA), $5.00 par common
Pyramid Oil Company, No par common
RAI Research Corporation (Hauppauge, NY), $.01 par common
Radiation Systems, Inc., $1.00 par common
Radiofone Corporation, $.10 par common
Rhodes, Inc., $1.00 par common
St. Jude Medical, Inc., $.10 par common
Scholastic Magazines, Inc., $.25 par common
Scientific Computers, Inc., $.10 par common
Scottish Inns of America, Inc., $.10 par common
Scriptomatic Inc., $.01 par common
Shopsmith, Inc., No par common
Siboney Corporation, $.10 par common
Solon Automated Services Inc., $.10 par common
Spectradyne, Inc., No par common
Taylor Rental Corporation, $1.00 par common
Texscan Corporation, No par common
Thompson Medical Company, Inc., $.10 par common
Topaz, Inc., No par common
Transierra Exploration Corporation, $.10 par common
Tultex Corporation, $1.00 par common
Valley Bancorporation (Appleton, WI), $5.00 par common
Vermont Research Corporation, $.50 par common
Vyquest Trust, No par shares of beneficial interest
Wespercorp, No par common
West Chemical Products, Inc., $.50 par common
Weyenberg Shoe Manufacturing Company, $1.00 par common
Xplor Energy Corporation, $.01 par common

Deletions From List

Stocks Removed for Failing Continued Listing Requirements

Amcole Energy Corporation, No par common
Athlone Industries, Inc., 5.714% convertible subordinated debentures
ERC Corporation, 5.75% convertible subordinated debentures
Envirodyne Industries, Inc., $.10 par common
International Life Holding Corporation, $.50 par common
Jamaica Water Properities, Inc., $.10 par common
Med General, Inc., $.01 par common
National Reserve Life Insurance Company, $1.00 par common
New Haven Water Company, $25.00 par common
North American Biologicals, Inc., $.10 par common
Oceanic Exploration Company, $.06¼ par common
United McGill Corporation, No par common

Stocks Removed for Listing on a Notional Securities Exchange or Being Involved in an Acquisition

Anheuser-Busch Companies, Inc., $1.00 par common
Argo Petroleum Corporation, $.10 par common
Bancwest Corporation, $5.00 par common
Bankamerica Realty Investors, $1.00 par shares of beneficial interest
Big Drum, Inc., No par common
Black Hills Power & Light Company, $1.00 par common
Brooks-Scanlon, Inc., $1.00 par common
Buckeye International, Inc., No par common
Cameron Iron Works, Inc., $.62½ par common
Champion Products Inc., $1.00 par common
Cole Consumer Products, Inc., $1.00 par common
Combined Insurance Company of America, $1.00 par common
Compuserve, Inc., No par common
Continuous Curve Contact Lenses, Inc., No par common
Deluxe Check Printers, Inc., $1.00 par common
Fife Corporation, $.10 par common
Frequency Sources Incorporated, $.10 par common
Furr's Cafeterias, Inc., No par common
Globe Life and Accident Insurance Company, $1.00 par common
Horizon Bancorp, $4.00 par common
Interfinancial Inc., $1.00 par common
Keystone Foods Corporation, $.10 par common
Mark Products, Inc., No par common
Noble Affiliates, Inc., $3.33⅓ par common
Ocean Drilling & Exploration Company, $.50 par common
Omni Spectra, Inc., $1.00 par common
PVO International Inc., $5.00 par capital
Pay Less Drug Stores, No par common
Perry Drug Stores, Inc., $.05 par common
Physio-Control Corporation, $.24 par common
Precious Metals Holding, Inc., $1.00 par common
Realty and Mortgage Investors of the Pacific, No par shares of beneficial interest
Royster Company, $.50 par common
Security of America Life Insurance Company, $1.00 par common
Southwestern Life Corporation, $2.50 par common
Standard Life Insurance Company of Indiana, $1.50 par common
Summit Energy, Inc., $.50 par common
Texas American Oil Corporation, $.10 par common
Thermo Electron Corporation, $1.00 par common
Ti-Caro, Inc., $1.00 par common
Timeplex, Inc., $.01 par common
Tyrone Hydraulics, Inc., $1.00 par common
Waters Associates, Inc., $.08⅓ par common
Weingarten, J. Inc., No par common
Wisconsin Centrifugal Inc., $1.00 par common
Worldwide Energy Corporation, $.20 par common
Xomox Corporation, No par common

By order of the Board of Governors of the Federal Reserve System acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)).

Griffith L. Garwood,
Deputy Secretary of the Board.

October 6, 1980.

[FR Doc. 80-31298 Filed 10-3-80; 4:21 pm]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 526, 545, and 563

[No. 80-613]

NOW Accounts

September 30, 1980.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final regulations

SUMMARY: Pursuant to titles III and IV of the Depository Institutions Deregulation and Monetary Control Act of 1980, the Federal Home Loan Bank Board has adopted regulations authorizing Federal associations to issue negotiable order of withdrawal ("NOW") accounts. The regulations also permit Federal associations to extend overdraft privileges to owners of NOW accounts.

EFFECTIVE DATES: Nationwide NOW account and overdraft authority is effective December 31, 1980; overdraft authority for institutions currently authorized to offer NOW accounts is effective September 30, 1980.

FOR FURTHER INFORMATION CONTACT: Michael D. Schley (202-377-6444) or Kenneth F. Hall (202-377-6466), Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: Title III of the Depository Institutions Deregulation and Monetary Control Act (Pub. L. No. 96-221, 94 Stat. 132 (1980)) ("DIDMCA") authorizes Federal associations to permit owners of accounts on which interest is paid to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties. Currently, only Federal associations in New England, New York, and New Jersey are permitted to do so by Federal Law and regulations (12 U.S.C. § 1832; 12 CFR 526.1, 526.8, 545.4-1, 563.7-3). Further, title IV of the DIDMCA amends § 5(c) of the Home Owners' Loan Act of 1933 (12 U.S.C. § 1464(c)) to authorize Federal associations to make loans specifically related to NOW accounts.

The Federal Home Loan Bank Board, by Resolution No. 80-406, dated July 3, 1980 (45 FR 46431, dated July 10, 1980), proposed to amend Part 526 of the Rules and Regulations for the Federal Home Loan Bank System, Part 545 of the Rules and Regulations for the Federal Savings and Loan System, and Part 563 of the Rules and Regulations for the Federal Savings and Loan Insurance Corporation, to implement this new authority and amend current regulations relating to transaction accounts.

The Board requested submission of comments on the proposed amendment by September 6, 1980. One hundred forty-nine letters were received: ninety-four from consumers, forty-eight from savings and loan industry members and trade associations, and seven from Federal Home Loan Banks and Supervisory Agents. Of the responses, only one commenter opposed granting authorization for NOW accounts (although no reason was given). The large consumer response was overwhelmingly in support of the concept. A discussion of these comments and the Board's resulting action with regard to the proposed amendments follows.

1. Definition of NOW Accounts

Some commenters questioned whether a NOW account, defined as a "savings account" in the proposed new § 526.1(1), would be subject to the power of an association to invoke a thirty-day notice period for withdrawals prior to payment. The power to invoke this notice requirement is granted to associations by § 5(b)(1) of the Home Owners' Loan Act of 1933 (12 U.S.C. § 1464(b)(1)), and applies to "any savings account" except time deposits of at least thirty days. The Board has decided not to except NOW accounts from this provision, and this result is consistent with the view of other Federal regulatory agencies regarding NOW accounts at banks. The Board has determined, therefore, to withdraw the proposed amendment to 12 CFR 563. 6 which would have provided that NOW accounts may be characterized as demand securities. Congress has specifically recognized that the 30-day notice is generally not required in practice (S. Rept. No. 96-368, 96th Cong., 1st Sess. 7 (1979)), and it is not expected that this policy will be changed.

Since a NOW account is defined as a savings account, it is generally subject to all the provisions of the Board's regulations relating to savings accounts. This would include, for example, the provisions of 12 CFR 545.4-1(a) authorizing "bill payment" services. Federal associations thus may offer NOW accounts which feature bill paying and other authorized services.

Sixteen commenters requested clarification as to who may hold a NOW account. An individual may open a NOW account in his individual capacity, even though he is the sole proprietor of a profit-making venture. A NOW account may also be held by more than one individual, but an "organization" can open a NOW account only if it is operated for one of the requisite purposes and not for profit. The Board has relied in part on section 1-201(28) of the Uniform Commercial Code in defining "organization" to include a corporation, government or governmental subdivision or agency, business trust, partnership or association, or any other legal or commercial entity.

If a group of individuals is considered an "organization" it will qualify to hold a NOW account only if it is "operated primarily for religious, philanthropic, charitable, educational, fraternal or other similar purposes." It is not sufficient that a particular organization is considered "non-profit." The Board has concluded that all government entities that are operated for one of these purposes do qualify to hold NOW accounts.

The permitted purposes mentioned in the amendment are taken directly from the enabling language of the DIDMCA, except that the word "fraternal" has been added. The regulations of the Board, the Federal Reserve Board, and the Federal Deposit Insurance Corporation have always included "fraternal" (along with religious, philanthropic, charitable and educational) as a permitted purpose for organizations holding NOW accounts; and it is believed that the deletion of this term from the language of the DIDMCA was unintentional.

The Board has adopted guidelines for interpretation of the term "other similar purposes" which are consistent with the interpretation followed by the Federal Reserve Board and Federal Deposit Insurance Corporation. This term is intended to encompass social clubs (such as luncheon clubs), recreational clubs (such as golf and tennis clubs), professional and trade associations (such as bar and medical associations, chambers of commerce, and industry associations), civic groups (such as Rotary and Kiwanis), labor unions, pension funds, volunteer fire companies, and cemetery associations.

Many commenters asked whether Federal associations are authorized to open NOW accounts on their own behalf. Stock associations are profit-making organizations, and are thus precluded from holding NOW accounts by the DIDMCA. Mutual associations might technically be considered non-profit, but they are not operated for "religious, philanthropic, charitable, educational, fraternal or other similar purposes," and thus cannot hold NOW accounts.

The term "beneficial interest" is used to authorize NOW accounts held in a fiduciary capacity. Therefore, a profit-making organization could hold a NOW account in the capacity of trustee for an

entity that is qualified to hold a NOW account itself.

2. Rate of Return

Many commenters requested specific guidance with regard to interest rates on NOW accounts. Their concern was with the competitive impact of the current authority of commercial banks to pay 5¼ percent interest on automatic transfer (ATS) accounts, which effectively results in checking accounts that pay 5¼ percent interest, while thrift institutions are at present limited to a maximum of 5 percent on NOW accounts (12 CFR 526.8(a)). The authority to set maximum interest rates now rests with the Depository Institutions Deregulation Committee ("DIDC"), pursuant to title II of the DIDMCA. On September 9, 1980, the DIDC adopted a resolution establishing 5¼ percent as the maximum rate that thrift institutions may pay on NOW accounts and that commercial banks may pay on ATS accounts, effective December 31, 1980. This provides competitive equality between the two types of accounts. Accordingly, the limitation currently contained in 12 CFR 526.8(a) will be deleted as of December 31, 1980.

The Board notes that the rate set by the DIDC is a maximum rate. The DIDMCA provides that NOW authority applies only to accounts "on which interest or dividends are paid" (section 303), but no minimum rate of interest is specified. Thus, although NINOW (no-interest NOW) acounts are not permitted, associations have the option of paying a very low rate of interest. (The practical equivalent of a NINOW account may also be achieved by use of the minimum balance requirement authority discussed below.)

A Federal association may allow NOW account depositors to choose from several alternative combinations of account terms, such as rate of interest, service fees, and a minimum balance below which no interest would be paid. This enables associations to better serve depositors by tailoring NOW account features to individual needs.

3. Evidence of Account

The Board has amended 12 CFR 545.2(b) so that Federal associations will not be required to issue passbooks or certificates as evidence of ownership of NOW accounts. This additional liberalizing amendment, not contained in the proposal, is in response to a commenter's suggestion, and will result in conformity with current practices of depository institutions issuing draft-type instrument accounts.

4. Distribution of Earnings

Federal associations currently must distribute earnings on the last day or last business day of the month, under 12 CFR 545.3(a). Since this requirement might create an unnecessary burden if associations wish to distribute earnings at the same time that monthly NOW account statements are mailed, the new amendments allows distribution of earnings in regular cycles on any day of the month. In the final regulation, the liberalized provision has been applied to all savings accounts, since it is commonly expedient to distribute earnings to all types of savings accounts at one time.

The new amendments give associations considerable flexibility in choosing distribution dates that fit their accounting needs, as long as the cycle is regular and is on a monthly, quarterly, or semiannual basis. This would permit, for example, the practice of crediting interest to accounts on the last weekend of each month, which is often necessary because monthly processing can require too much time to be accomplished on a weekday night.

5. Minimum Balance Requirements

The Board specifically solicited comments on the question of whether associations should be permitted to establish NOW account minimum balances, in excess of the present $50 limitation of 12 CFR 545.3(g) for regular savings accounts, below which an association would not be required to pay interest. Of the thirty-six responses to this issue, only one requested maintaining the $50 limitation; the others favored allowing the management of each association freedom to develop its own minimum balance policy. Adhering to the policy of deregulation which underlies the DIDMCA, the Board had decided to amend the regulation to exclude NOW accounts from the dollar limitation. This will allow market conditions and competition to be the factors which determine an individual association's policy.

6. Overdraft Authority

The new amendments permit Federal associations to extend credit in the form of overdraft privileges to the owners of NOW accounts. This authority is granted by § 401 of the DIDMCA, which amends § 5(c) of the Home Owners' Loan Act of 1933 (12 U.S.C. § 1464(c)) to provide that Federal associations may make "account loans" (share loans and NOW account loans) with out percentage-of-assets limitations. The new amendment implements this authority, which is effective immediately for Federal Associations with existing NOW account authority.

The proposed amendment would have limited overdraft privileges to *unsecured* credit. This limitation is not dictated by the DIDMCA, and was criticized by industry commenters who pointed out that the option of securing the credit by collateral, such as another savings account, would benefit both depositors and their associations. The new amendment allows secured overdraft credit in order to provide this option.

The overdraft protection authorized by the amendment constitutes a loan, and thus is subject to other provisions of the regulations which apply to loans. For example, by prior arrangement an overdraft loan could be added to a depositor's liability on his credit card issued by the same institution, under Federal associations' new credit card authority (12 CFR 545.4–3; 45 FR 46338 (1980)).

The extension of overdraft protection to an "affiliated person" will be subject to the restrictions imposed by 12 CFR 563.43, since such an extension of credit is a loan within the meaning of that section. The Board has amended § 563.43 to provide specifically that institutions may offer overdraft protection to "affiliated persons," since the former language of that section did not clearly authorize such loans. The section formerly required approval in advance of each loan to an affiliated person by the board of directors. Since this would not be practical with respect to overdraft loans (i.e., approval would be required each time an overdraft was covered), the new language requires approval of each extension of overdraft credit. Thus, approval would be required prior to establishing the initial line of overdraft credit, and again each time the line of credit is increased or the terms changed.

The Board notes that loans in the nature of overdraft protection for NOW accounts will be treated as "consumer credit" under proposed new 12 CFR 561.38 of the Board's Rules and Regulations for the Federal Savings and Loan Insurance Corporation (Resolution No. 80–468, July 31, 1980; 45 FR 52177 (1980)) for purposes of determining the delinquency status of an association's consumer loans.

7. Fees

The proposed amendment permitted an association to impose a service charge on NOW accounts. This authority is needed since Federal associations would otherwise be prohibited by 12 CFR 545.1(c) from

imposing a service charge greater than one dollar in any calendar year.

The final regulation includes this provision and authorizes fees for any service rendered in maintaining a NOW account. For example, associations are permitted to charge depositors fees for handling negotiated orders of withdrawal drawn on insufficient funds.

8. Applicability of Federal Reserve Board Regulations, Clearinghouse Rules and State Law

The proposed amendment to 12 CFR 545.4–1(b)(3) would have provided that applicable Federal Reserve regulations and operating letters, clearinghouse rules, and the Uniform Commercial Code would govern the handling of negotiable orders of withdrawal, unless inconsistent with Part 545. It is believed that negotiable orders of withdrawal will be treated as checks for the purposes of those provisions. Upon further consideration, however, the Board has determined that it is not necessary to provide by regulation that Federal and state law will govern the rights and obligations of associations. Furthermore, adoption of the proposed amendment might suggest that the Board intends to incorporate the cited provisions into its own regulations by reference. The Board therefore has determined to withdraw proposed 12 CFR 545.4–1(b)(3).

9. Effective Dates

By this action, the Board extends NOW account authority to all Federal associations. Pursuant to § 306 of the DIDMCA, nationwide NOW account authority shall take effect on December 31, 1980. The overdraft authority related to NOW accounts is effective immediately for member institutions currently authorized to offer NOW accounts.

Because these amendments implement a statutory directive and the Board believes it is in the public interest that current NOW accountholders be able to avail themselves of the new consumer services authorized by the amendments, the Board finds that publication of the amendments for the period of time specified in 12 CFR 508.11 and 5 U.S.C. § 553(d) prior to effective date is unnecessary, and the Board therefore has determined that the amendments shall become effective as specified herein.

Accordingly, the Federal Home Loan Bank Board hereby amends Parts 526, 545 and 563 (12 CFR Parts 526, 545 and 563) to read as set forth below.

PART 526—LIMITATIONS ON RATE OF RETURN

1. Revise paragraphs (d) and (1) of § 526.1 (12 CFR 526.1) to read as follows:

§ 526.1 Definitions used in this Part.

* * * * *

(d) *Regular account.* A savings account that is not a certificate account, a notice account, or a NOW account.

* * * * *

(1) *NOW (negotiable order of withdrawal) account.* A savings account on which interest is paid, and from which the owner may make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties. The account must consist solely of funds in which the entire beneficial interest is held by one or more individuals or by an organization which is operated primarily for religious, philanthrophic, charitable, educational, fraternal or other similar purposes and which is not operated for profit.

* * * * *

2. Amend the section heading of § 526.8 (12 CFR 526.8), to read as follows Section 526.8 is rescinded as of December 31, 1980.

§ 526.8 Transaction accounts [Rescinded December 31, 1980].

PART 545—OPERATIONS

3. Amend paragraph (c) of § 545.1 (12 CFR 545.1) to read as follows:

§ 545.1 Savings accounts.

* * * * *

(c) *Service charge.* Except as provided in § 545.4–1(d) of this Part, a Federal association may charge one dollar ($1.00) in any calendar year against a savings account if, when the charge is made:

* * * * *

4. Amend the first sentence of paragraph (b) of § 545.2 (12 CFR 545.2) to read as follows:

§ 545.2 Evidence of account.

* * * * *

(b) *Forms of certificates and account books.* A Federal association shall issue to each holder of its savings accounts an account book, or a separate certificate, evidencing ownership of the account and the interest of the holder thereof in the association; but an association is not required to issue account books or certificates evidencing ownership of NOW accounts. * * *

5. Amend paragraphs (a) and (g) of § 545.3 (12 CFR 545.3) to read as follows:

§ 545.3 Time and manner of distribution.

(a) *Monthly, quarterly, semiannually.* A Federal association may distribute earnings on savings accounts or savings deposits, or designated classes thereof, as provided in its charter or by resolution of its board of directors, while the resolution is in force, either monthly, quarterly, or semiannually. Except for interest on savings deposits, no distribution of earnings may be made under this paragraph until provision has been made for payment of expenses and for the pro rata portion of credits to reserves required by the association's charter and by Part 563 of this Chapter.

* * * * *

(g) *Small accounts.* An association may, by resolution of its board of directors, determine not to distribute earnings on any savings account of less than a specified minimum amount. The specified minimum amount shall be less than $50; but this $50 limitation shall not apply with regard to NOW accounts. An association may also so specify a lower minimum for accounts established under a plan offered by the association to children to encourage thrift.

* * * * *

6. In § 545.4–1 (12 CFR 545.4–1), revise the section heading and paragraph (a), delete existing subparagraph (a)(2) and paragraph (c), and add new paragraphs (c) and (d), to read as follows:

§ 545.4–1 Payment to third parties by non-transferable order or authorization; NOW accounts; checks and money orders.

(a) *Payment to third parties by non-transferable order or authorization.* By non-transferable order or authorization, an accountholder of a Federal association may authorize the association, periodically or otherwise, to pay third parties from the account. The association may, at the request of the third party, treat such an order or authorization as a transfer to a savings account of the third party.

* * * * *

(c) *NOW accounts.* (1) *General.* An association may issue NOW accounts, as defined in § 526.1(1) of this Chapter.

(2) *Overdraft authority.* Associations may extend secured or unsecured credit in the form of overdraft privileges specifically related to NOW accounts.

(d) *Fees.* An association may charge a fee for making any payment or transfer or for maintaining a NOW account under this section.

PART 563—OPERATIONS

7. Amend the section heading of § 563.7–3, (12 CFR 563.7–3), to read as follows: Section 563.7–3 is rescinded as of December 31, 1980.

§ 563.7-3 Exception for transactions accounts [Rescinded December 31, 1980].

* * * * *

8. Redesignate subdivisions (v) and (vi) of § 563.43(b)(1) (12 CFR 563.43(b)(1)) as (vi) and (vii) respectively, add a new subdivision (v), and revise the second sentence of new subdivision (vii), to read as follows:

§ 563.43 Restrictions on loans and other investments involving affiliated persons.

* * * * *

(b) *Restrictions concerning loan transactions with affiliated persons.* (1) * * *

* * * * *

(v) Loans in the form of overdraft protection specifically related to NOW accounts, which are not secured by savings accounts maintained by the affiliated person at the institution;

(vi) Loans in the aggregate not exceeding $10,000 for payment of educational expenses; and

(vii) Consumer loans in the aggregate not exceeding $10,000 (including any amounts borrowed under subdivision (ii) of this subparagraph). With respect to loans covered by the exceptions in (i), (ii), (iii), (v), (vi) and (vii) of the preceding sentence, each loan (or, in the case of a loan described in subdivision (v), each new extension of credit) must be approved in advance by a resolution duly adopted with full disclosure by at least a majority (with no director having an interest in the transaction voting) of the entire board of directors of such institution or subsidiary. * * *

* * * * *

(Secs. 303, 401, Pub. L. No. 96-221, 94 Stat. 132; Sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); Sec. 5, 48 Stat. 132, as amended (12 U.S.C. § 1464); 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.

Robert D. Linder,

Acting Secretary.

[FR Doc. 80-31361 Filed 10-7-80; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3040]

Totes Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Loveland, Ohio manufacturer of umbrellas and related rainwear, to cease withholding cooperative advertising credits or allowances, or in any way limiting or restricting dealers from participating in any cooperative advertising program because of the resale price at which the dealer has advertised or sold a product or because the dealer has used price comparisions in the advertising and sale of a product.

DATES: Complaint and order issued September 12, 1980.[1]

FOR FURTHER INFORMATION CONTACT: Robert B. Greenbaum, Acting Director, 9R, San Francisco Regional Office, Federal Trade Commission, 450 Golden Gate Ave., San Francisco, Calif. 94102. (415) 556-1270.

SUPPLEMENTARY INFORMATION: On Tuesday, July 1, 1980, there was published in the **Federal Register**, 45 FR 44324, a proposed consent agreement with analysis. In the Matter of totes incorporated, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart-Delaying or Withholding Corrections, Adjustments or Action Owed: § 13.675 Delaying or withholding corrections, adjustments or action owed.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Carol M. Thomas,

Secretary.

[FR Doc. 80-31337 Filed 10-7-80; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order filed with the original document.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM79-34]

Transportation Certificates for Natural Gas for the Displacement of Fuel Oil

Issued: September 26, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission hereby amends its regulations to specify the treatment accorded natural gas delivered as part of a fuel oil displacement program, when the Commission establishes future pipeline curtailment plans. This amendment rescinds the action taken on August 15, 1980, which was never made effective.

EFFECTIVE DATE: September 26, 1980.

FOR FURTHER INFORMATION CONTACT:

Robert Platt, Assistant Advisory Counsel, Office of the General Counsel, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 357-8457.

Robert J. Cupina, Office of Pipeline and Producer Regulations, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 357-9036.

Glenn Berger, Office of the General Counsel, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 357-8364.

I. Procedural History

On August 15, 1980, the Federal Energy Regulatory Commission (Commission) issued Order No. 30-D,[1] which extended through May 31, 1981, the Commission's program for authorizing transportation of natural gas to replace the consumption of fuel oil by designated end users. Prior to the issuance of Order No. 30-D, the regulations implementing the fuel oil displacement program provided in § 284.206 that volumes of natural gas transported in fuel oil displacement transactions would not be considered in future curtailment plans.[2] Order No. 30-D eliminated this provision's effect on volumes delivered after September 1, 1980.

Consolidated Edison Company of New York (Con Ed) and Public Service Electric and Gas of New Jersey (PSE&G) filed requests for a stay of the amendment to § 284.206 pending rehearing of Order No. 30-D. We granted the stay by order issued on August 29, 1980.[3] On September 5, 1980, Brooklyn Union Gas Company (Brooklyn Union) filed a petition for

[1] 45 FR 56046 (August 22, 1980).

[2] Order No. 30-D amended § 284.206 of the regulations to read:

All volumes of natural gas purchased prior to September 1, 1980, by an eligible user and transported by an interstate pipeline pursuant to this subpart shall not be considered as either a natural gas supply or market in a determination of an interstate pipeline's customers' requirements for present or future allocations of natural gas during periods of natural gas curtailment.

[3] 45 FR 60418 (September 12, 1980).

rehearing of the August 29, order granting the stay.

Petitions for rehearing of Order No. 30–D were filed by Consolidated Gas Supply Corporation (Con Gas), Con Ed, the Department of Energy (DOE), National Gas & Oil Corporation and Ohio Producers (Ohio Group), Orange and Rockland Utilities, Inc. (O&R), the Process Gas Consumers Group (PGCG), and PSE&G. On August 26, 1980, Congressman John D. Dingell petitioned the Commission to reconsider Order No. 30–D.

The pleadings which remain outstanding in this docket allege two grounds for error: whether the fuel oil displacement period should have been extended from September 1, 1980 to May 31, 1981, and whether the curtailment protection provisions of § 284.206 should apply during the extension. Upon consideration of these petitions, we deny rehearing on the first issue and grant rehearing on the second.

II. Extension of Order No. 30

The PGCG opposes the nine-month extension.[4] Congressman Dingell also expresses concerns and urged reconsideration of the extension.

Both PGCG and Congressman Dingell question whether adequate gas supplies exist to support the nine-month extension. The PGCG notes that some interstate pipelines project a degree of curtailment during the coming winter, and suggests that the current gas supply outlook may not justify the nine-month extension.

The Commission has been sensitive to this concern throughout the Order No. 30 program, and has established safeguards to ensure that any volumes of gas transported under the Order No. 30 program are, in fact, surplus supplies. In the case of sales by interstate pipelines who must obtain a certificate for such transactions, the presiding administrative law judge must inquire as to whether no other natural gas company seeks to purchase the gas for its own system supply.[5] In the case of sales by intrastate pipelines and local distribution companies, the appropriate state commission has the opportunity to prevent the transaction if the gas is necessary to alleviate curtailment within the state.[6] Finally, once a transaction has commenced, either the Governor of a state or the Commission may terminate the sale.[7] Given these safeguards, it is unlikely that Order No. 30 sales will be made by systems experiencing a serious threat of curtailment.

Instead of causing curtailment, the Commission expects that the Order No. 30 program will afford certain gas users a means of minimizing the impact of any regional curtailment which may occur this winter. Under the program, an end-user facing curtailment from traditional suppliers may purchase gas from sellers who have a temporary surplus. Thus, the program provides those end-users which might be affected by any regional shortage with the opportunity to obtain supplies from other areas.

PGCG further argues that gas supplies are a finite resource, that gas reserves and production have significantly declined over the last decade, and that the Order No. 30 program accelerates this decline because it encourages unnecessary consumption of gas.

The Natural Gas Policy Act of 1978 (NGPA) 15 U.S.C. §§ 3301–3432, attempts to reverse the decline in production and reserves by providing producers with incentives for new exploration and development. The rapid increase in natural gas supplies which has occurred since enactment of the NGPA indicates to the Commission that the downward trend has abated and that statutes and regulatory policies can significantly effect development of new natural gas reserves. The Order No. 30 program is, in fact, designed to affect gas markets so as to preserve incentives for further development of gas reserves.

Recently most interstate pipelines have been in a position to meet all their customers' requirements. The extensive take-or-pay commitments undertaken by many major interstate pipelines discourages them from contracting for new reserves. Therefore, the current softness in demand tends to discourage further exploration and development efforts.

One benefit of the Order No. 30 program has been that it has helped absorb this temporary surplus and therefore has minimized the negative effect of the surplus upon the development of new reserves. The PGCG incorrectly characterizes the extension of Order NO. 30 as a wasteful "burn-gas-to-get-gas" program which discourages conservation in order to create a market for new production. The Commission does not agree. While the Order No. 30 program does provide a market for excess supplies, the program is tailored to permit these supplies to reduce fuel oil consumption. These fuel oil users do not represent a permanent addition to the natural gas market, and many of the participating end-users had previously used natural gas prior to earlier periods of curtailment. By targeting the gas to fuel oil users, the consumption of the gas furthers the national objective of decreasing our dependence upon imported oil and oil products.

Given the need for a policy that accommodates excess current deliverability while maintaining an environment encouraging producer development of long-term supplies, the Commission has exercised its discretion to create a carefully controlled market for otherwise surplus gas supplies.

Congressman Dingell also expresses concern that Order No. 30 transactions may effectively use imported natural gas to displace less expensive residual fuel oil in many instances. Should this be the case, the nation's balance of payments would be negatively effected and the nation's imported energy dependence would not be changed.

The Commission understands and has fully considered this problem. In seeking public comment on whether to extend Order No. 30 last May, the Commission specifically addressed the issue of whether the regulations should limit the program to purchasers backing out high quality (low sulfur residual and No. 2 distillate) fuel oil. Such a limitation would have resolved Congressman Dingell's concern. However, the Commission decided not to so confine the program.

Two factors underlie this decision. First is the fact that many pipelines are out of curtailment. Many pipelines have demonstrated excess deliverability. It therefore appears feasible for the nation to displace imported oil with domestic natural gas. If the United States' gas markets work with any rationality, pipelines with excess deliverability will reduce to as low as possible their takes of high priced imported gas. This appears to be happening. For this reason, it is unrealistic to regard imported gas as a current source of supply for Order No. 30 transactions.

However, even if a convincing showing could be made that pipelines were taking imported gas in order to facilitate Order No. 30 transactions, the Commission nonetheless might permit such gas to displace low quality fuel oil. The Commission and the Economic Regulatory Administration of the Department of Energy (ERA) would have to determine, on a case-by-case basis, whether the relative price of the imported gas supply over the oil being

[4] Order No. 30–D extended the program by amending the definition of the "fuel shortage emergency period" to extend through May 31, 1981. Despite the name of this term, the Commission does not explicitly find that a fuel shortage emergency exists during this extension period. That term is a carryover from the original rule and was retained for purposes of convenience.

[5] 18 CFR 284.208(d)(2)(i).

[6] 18 CFR 284.202(b)(2).

[7] 18 CFR 284.205(d)(2) and (3).

displaced is so excessive as to render the transaction inconsistent with the public interest. Factors such as the relatively more secure character of imported Canadian and Mexican gas supply, and the nation's relatively smaller overall dependence on imported gas as compared with oil, could warrant upon further examination paying a higher price for imported gas and using that gas to back out expensive imported residual oil.

Because imported gas and oil supply prices can change rapidly, the point raised by Congressman Dingell deserves continued examination. The Commission expects that the ERA will monitor the status of gas and oil imports with care during the remaining eight months of the Order No. 30 program. In response to the monitoring, the Commission is prepared to exercise its termination authority if conditions so warrant.

III. Curtailment Consequences

Con Ed and Con Gas allege that the amendment to § 284.206, which has the effect of limiting the curtailment protection provision to volumes delivered prior to September 1, 1980, subjects to cancellation Con Ed's outstanding contractual relationships with its suppliers of gas under Order No. 30. The concerns of Con Ed, Con Gas, and PSE&G are based upon the fact that Order No. 30 end-users have traditionally been assigned a low priority in end-use curtailment plans. If the Commission were to implement fixed base period curtailment plans in the future, which based the allocation of natural gas upon the amount of gas used during a time period when an Order No. 30 customer was using gas rather than fuel oil, Con Ed and PSE&G fear that Order No. 30 volume would be included in the curtailment data. If such short-term sales were included, then the distributor serving the Order No. 30 customer would be curtailed based upon a greater proportion of low-priority load than is in fact usually served by its system. Thus, if Order No. 30 volumes are not correctly reflected in base period data, a distributor's short-term participation in Order No. 30 might subject it to greater risk of curtailment over the life of a new curtailment plan. Con Ed and the Ohio Group also state that the rulemaking procedure did not afford adequate notice of the amendment to § 284.206, and that Order No. 30–D failed to explain adequately the reasons for the amendment.

The DOE believes that the elimination of the § 284.206 curtailment immunity provision is unwarranted and may substantially reduce the effectiveness of the program. In addition, O&R argues that the amendment to § 284.206 is inconsistent with a Federal Power Commission order which excluded O&R's short-term supplies from its curtailment profile.

In contrast, Brooklyn Union, which requested the amendment to § 284.206 in its written and oral comments, argues that the provisions of § 284.206 could be used by participants in Order No. 30 sales to the detriment of those pipeline customers who decline to participate in the program. Thus, Brooklyn Union asserts that parties would attempt to use §284.206 as a "sword" rather than a "shield" in any future curtailment plan. Brooklyn Union has noted that curtailment policy is in a state of transition and that the exact wording of § 284.206 may not be well-suited for approaches adopted in the future. Hence, Brooklyn Union fears that § 284.206 could be misapplied in the case where a distributor's low priority markets would have been included in a curtailment profile in the absence of Order No. 30 purchase. Similarly, problems could arise when a seller attributes particular supplies to Order No. 30 transactions.

Because the Commission does not wish to disturb existing contractural relationships between fuel oil users and sellers under the Order No. 30 program, § 284.206 shall be amended to apply to the remaining months of the program's duration. However, the Commission notes that the text of § 284.206 will inevitably be subject to interpretation when implementing new interstate pipeline curtailment plans. When such questions of interpretation arise, the Commission intends to prevent § 284.206 from being used to increase curtailment allocations as a result of participation in the Order No. 30 program. Thus, Brooklyn Union's concerns can be met through the careful implementation of any new curtailment plans.

IV. The Stay of § 284.206

Brooklyn Union's petition for rehearing of the August 29 order granting a stay also bears on the curtailment question. Brooklyn Union alleged that the Commission erred by acting on Con Ed's request for stay prior to the time specified in § 1.9(a) for filing answers to a complaint or a petition. The Commission believes that the Con Ed or PSE&G pleadings were in the nature of motions. Since provisions of § 1.9(a) are limited to complaints and petitions, it does not apply in this case.[8] Thus, the Commission did not err in acting upon Con Ed's motion within 10 days from the time it was filed. Furthermore, given the Commission's decision to reinstitute the protections of § 284.206 to volumes delivered after September 1, 1980, Brooklyn Union's grievance is moot. Accordingly, Brooklyn Union's September 5, 1980, petition for rehearing shall be denied.

Similarly, the petition of PSE&G seeking stay of § 284.206 is moot as a result of the action taken in the August 29 order and this order.

V. Summary of Amendments and Effective Date

Subpart F of Part 284 is amended in only two respects: by correcting a clerical error in § 284.202, and by eliminating a provision in § 284.206, which was stayed and never placed into effect.

Because these amendments do not change any effective provision of the Order No. 30 program, good cause exists to waive the 30 days prior notice requirement of 5 U.S.C. § 553(d) and to make this rule effective immediately.

(Natural Gas Act, 15 U.S.C. § 717–717w; Natural Gas Policy Act of 1978, 15 U.S.C. § 3301–3432; Department of Energy Organization Act, 42 U.S.C. § 7101–7352; E.O. 12009, 42 FR 46267)

The Commission Orders:

(A) The applications for rehearing of Order No. 30–D filed by Con Ed, Con Gas, DOE, O&R, Ohio Group, and PSE&G are granted with respect to § 284.206 of the Commission's regulations.

(B) In all other respects, the petitions for rehearing are denied.

(C) In consideration of the foregoing, Part 284 of Chapter I, Title 18, Code of Federal Regulations, is amended, as set forth below, effective immediately.

By the Commission.

Lois D. Cashell,

Acting Secretary.

§ 284.202 [Amended]

1. Section 284.202 is amended in paragraph (a)(1)(iii)(B) by deleting the word "intrastate." and inserting in lieu thereof the word "interstate."

§ 284.206 [Amended]

2. Section 284.206, is amended by deleting the phrase "prior to September 1, 1980,".

[FR Doc. 80–31243 Filed 10–7–80; 8:45 am]

BILLING CODE 6450–85–M

[8] *See* 18 CFR 1.9(c).

18 CFR Part 292

[Docket No. RM79-54]

Order Granting Rehearing of Order No. 70-B and Amending Regulations

Issued: September 26, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order granting rehearing of Order No. 70-B and amending regulations.

SUMMARY: The Federal Energy Regulatory Commission hereby adopts an Order Granting Rehearing of Order No. 70-B. The Order amends § 292.202(n) of the Commission's rules involving small power production and cogeneration facilities. The amendment allows electric utility holding companies which have obtained an exemption from the Securities and Exchange Commission, pursuant to sections 3(a)(3) or 3(a)(5) of the Public Utility Holding Company Act, to own 100 percent of the equity of a qualifying facility.

EFFECTIVE DATE: September 26, 1980.

FOR FURTHER INFORMATION CONTACT: Adam Wenner, Office of General Counsel, 202-357-8033 or Glenn Berger, Office of General Counsel, 202-357-8364, or Michael Kessler, Office of General Counsel, 202-357-5227.

On august 28, 1980, STEAG Aktiengesellschaft (STEAG) applied for rehearing of Order No. 70-B, issued by the Federal Energy Regulatory Commission (Commission) on August 4, 1980.[1] On September 3, 1980, the American Paper Institute, Inc. (API) also applied for rehearing of Order No. 70-B. In Order No. 70-B, the Commission amended its rules to permit gas utility holding companies to own qualifying facilities. That change was accomplished by substituting the words "electric utility holding company" for the words "public utility holding company" in § 292.206(b) and § 292.207 (b)(2)(v) of the Commission's rules, and by adding a definition of "electric utility holding company" to § 292.202.[2]

In Order No. 70-B the Commission also recognized that, as a result of the above changes, certain companies which are not "primarily engaged in the generation or sale of the electric power" may nevertheless be classified as "electric utilities" or "electric utility holding companies." Such companies could not own more than 50 percent of the equity of a qualifying cogeneration or small power production facility.[3] The Commission specifically recognized that:

> Included in this category are companies which derive most of their income from non-utility operations, but which, as a result of selling some electric energy, are classified as "electric utilities" under Section 3(22) of the Federal Power Act; and public utility holding companies which are exempt by rule or order issued by the Securities and Exchange Commission [SEC] pursuant to sections 3(a)(3), 3(a)(4), and 3(a)(5) of the Public Utility Holding company Act of 1935.[4]

Both STEAG and API contend that the definition of "electric utility holding company" added by Order No. 70-B is too restrictive and will exclude certain potential cogenerators and small power producers from obtaining qualifying status, contrary to the intent of Congress as expressed in section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). Both companies point out that the general rule contained in § 292.206(a) of the Commission's rules which paraphrases sections 3(17)(C)(ii) and 3(18)(B)(ii) of the Federal Power Act (FPA), is that a qualifying facility "may not be owned by a person primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities)." They contend that companies which have obtained exemption from regulation as electric utility holding companies by the SEC on the grounds that they are not primarily engaged in the generation or sale of electric power should be similarly exempted from the definition of "electric utility holding company" found in § 292.202(n) of the Commission's rules.

Section 3(a)(3) of PUHCA

API suggests that the Commission allow facilities owned by persons exempt from the requirements of the Public Utility Holding Company Act (PUHCA) by reason of an exemption granted under section 3(a)(3) of that Act to obtain qualifying status. Section 3(a)(3) of PUHCA permits the SEC to grant an exemption to a holding company which is "only incidentally a holding company, being primarily engaged or interested in one or more businesses other than the business of a public utility company."[5] Since the standards under section 3(a)(3) of PUHCA and sections 3(17)(C) and 3(18)(B) of the Federal Power Act are virtually identical, API asserts that exemption under the former clearly satisfies the standard set forth in the latter.

Section 3(a)(3) of PUHCA allows the SEC to exempt any holding company from the provisions of that Act if:

> . . . such holding company is only incidentally a holding company, being primarily engaged or interested in one or more businesses other than the business of a public utility company and (A) not deriving, directly or indirectly, any material part of its income from any one or more subsidiary companies, the principal business of which is that of a public-utility company, or (B) deriving a material part of its income from one or more such subsidiary companies, if substantially all the outstanding securities of such companies are owned, directly or indirectly, by such holding company.[6]

The SEC grants holding companies an exemption under section 3(a)(3) on a case-by-case basis. Although the SEC has the authority to do so, it has not adopted a generic rule regarding this exemption. The statute, however, sets out two basic standards for granting such an exemption. These are: (a) whether the company is only incidentally a holding company, and (b) whether the company is primarily engaged in a business other than that of a public utility.[7]

Under the "incidental ownership" standard, the SEC determines whether the utility operations of the subsidiary company are functionally related to the parent company seeking exemption. An example of this type of ownership is the case where a parent company purchases power for industrial purposes from a utility subsidiary, with only surplus power being sold to others.

Under the "primarily engaged" standard, the SEC examines both the absolute amount of utility assets owned by the parent company, and also compares utility with non-utility gross revenues and assets. Although there is no fixed standard, if, for example, more than 50 percent of a company's revenues were derived from utility revenues, it is unlikely that it would qualify for an exemption. An electric utility holding company must satisfy both of these standards in order to qualify for exemption.

The present definition of an "electric utility holding company" is so broad that many industries which are classified as exempt holding companies may be discouraged from investment in cogeneration or small power production

[1] 45 FR 52779 (August 8, 1980).

[2] *Id.*

[3] *See* § 292.206 of the Commission's rules regarding ownership criteria of cogeneration or small power production facilities.

[4] Order No. 70-B, 45 FR at 52779 (August 8, 1980).

[5] 15 U.S.C. § 79c(a)(3).

[6] 15 U.S.C. § 79c(a)(3).

[7] *Id.*

facilities. The exempt status of such a holding company is not affected by the fact that a facility owned by a subsidiary of the holding company is a qualifying facility. However, if a facility owned by the subsidiary company is not a qualifying facility, the subsidiary company could be subjected to regulation as a "public utility" under Part II of the Federal Power Act, and to State regulation of rates and financial organization. In this case the rates the subsidiary would receive for wholesale sales could be determined not on the basis of avoided costs, but rather under traditional "cost-of-service" utility regulation. This would likely result in less investment in cogeneration and small power production by exempt holding companies.

The Commission believes that a finding by the SEC that a holding company is exempt under section 3(a)(3) satisfies the standard in the Federal Power Act that an owner of a qualifying facility is "not primarily engaged in the generation or sale of electric power." The Commission believes that "incidental" holding companies are, by definition, primarily non-utility companies which, for purposes of this program, should not be treated differently from industries which are not classified as holding companies under the PUHCA.

In the preamble to Order No. 69, the Commission stated that "these rules are not intended to divest a State regulatory agency of its authority under State law to review contracts for purchases as part of its regulation of electric utilities." [8] The Commission believes that review by the State regulatory authority of the prudence of a purchase is especially appropriate when a qualifying facility owned by a subsidiary of an exempt public utility holding company provides power directly or indirectly to an electric utility which is part of the same holding company system.

Moreover, the State regulatory authorities may establish rate for purchases from existing qualifying facilities at less than avoided cost on a finding that the rate "is sufficient to encourage cogeneration or small power production." [9] Under this provision, a rate for purchases from existing facilities which obtain qualifying status could be maintained at existing levels, if the State makes the requisite finding.

[8] 45 FR 12233 (February 25, 1980).

[9] Order No. 69, Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978, § 292.304(b)(3).

Section 3(a)(5) of PUHCA

STEAG contends that the limitation on ownership of qualifying facilities established in the Commission's rules is inapplicable to holding companies which are exempt from SEC regulation under section 3(a)(5) of PUHCA. Section 3(a)(5) of PUHCA allows the SEC to exempt a holding company from regulation if it "is not, and derives no material part of its income, directly or indirectly, from any one or more subsidiary companies which are, a company or companies the principal business of which within the United States is that of a public-utility company." [10] Included in the category of companies that may obtain an exemption under section 3(a)(5) of PUHCA are domestic, as well as foreign holding companies which derive no material part of their income from subsidiary companies, the principal business of which, within the United States, is that of an electric utility.

Based on the legislative history of the ownership criteria established in PURPA section 201, STEAG suggests that Congress was seeking "to preserve the authority of regulatory agencies within the United States over persons with monopoly franchises primarily engaged in the generation or sale of electric power subject to their jurisdiction." [11] The ownership restrictions on qualifying facilities for both electric utilities and their parent holding companies are based on a concern that such companies would divert scarce capital resources or convert existing jurisdictional facilities into unregulated qualifying facilities. [12]

This policy, STEAG contends, has no applicability to foreign holding companies "since they would not be diverting funds or facilities from regulated to unregulated electric utility activities within the United States." [13] STEAG contends that exclusion of electric utility holding companies which have obtained a PUHCA section 3(a)(5) exemption is contrary to the Congressional intent.

STEAG points out that "unless the intention to have a statute apply to actions occurring beyond the limits of the United States is clearly expressed or indicated by its language, purpose, subject matter or history, the presumption is that the statute is intended to have no extraterritorial effect, but to apply only to activities occurring within the territorial jurisdiction of the United States or involving United States citizens." [14] This principle applies "to a statute using general words, such as 'any' or 'all' in describing the persons or acts to which the statute applies." [15] STEAG also contends that the use of the general words "any" and "a" in the PURPA definitions of "electric utility" and qualifying cogeneration and small power production facilities should not be construed to include the generation or sale of electric power which occurs outside the territorial jurisdiction of the United States.

The Commission believes that domestic and foreign holding companies which are exempt under section 3(a)(5) of PUHCA are not "primarily engaged in the generation or sale of electric power" in the United States for the purpose of obtaining qualifying status. So long as these Companies meet the requirements of section 3(a)(5) of PUHCA they should be permitted to own qualifying cogeneration and small power production facilities.

The Commission believes that a determination by the SEC that an electric utility holding company is exempt as such under either section 3(a)(3) or 3(a)(5) of PUHCA satisfies the requirement that a qualifying facility may not be owned by a person primarily engaged in the generation or sale of electric power. Thus, the Commission believes it is appropriate to allow ownership of qualifying facilities by electric utility holding companies which have obtained an exemption as such pursuant to sections 3(a)(3) or 3(a)(5) of PUHCA.

The Commission notes that on May 19, 1980, Elizabethtown Gas Company filed a Petition for Review of Order No. 70 and of the Commission's Order on Rehearing of Order Nos. 69 and 70 in the United States Court of Appeals for the District of Columbia Circuit. On June 30, 1980, the Commission filed with the court the Certificate of Record in Lieu of Record. Under Section 313(b) of the Federal Power Act, that court has exclusive jurisdiction to modify those orders. Accordingly, this order is issued subject to the court's permission.

The Commission orders:

(A) The applications for rehearing of Order No. 70–B filed by STEAG Aktiengesellschaft on August 4, 1980, and the American Paper Institute, Inc., on September 3, 1980, are granted with

[10] 15 U.S.C. § 79c(a)(5).

[11] Application for Rehearing at 6.

[12] *See* Hearings on H.R. 6831, *et al.* Before the Subcomm. on Energy & Power of the House Comm. on Interstate and Foreign Commerce, 95th Cong., 1st Sess. 1745–47 (1977) (answer of the Federal Power Commission).

[13] Application for Rehearing at 4.

[14] 73 Am. Jur. 2d Statutes § 359.

[15] *Id.*

respect to § 292.206 of the Commission's rules.

(B) Section 292.202(n) is amended as set forth below effective September 26, 1980.

(Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 2601 *et seq.*; Federal Power Act, as amended, 16 U.S.C. § 292 *et. seq.*; Department of Energy Organization Act, 42 U.S.C. 3 C.F.R. 142 (1978))

In consideration of the foregoing, the Commission amends Part 292 of Chapter I, Title 18, Code of Federal Regulations, as set forth below, effective September 26, 1980.

By the Commission.

Lois D. Cashell,

Acting Secretary.

1. Section 292.202(n) is amended to read as follows:

§ 292.202 Definitions.

* * * * *

(n) "Electric utility holding company" means a holding company, as defined in section 2(a)(7) of the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79b(a)(7) which owns one or more electric utilities, as defined in section 2(a)(3) of that Act, 15 U.S.C § 79b(a)(3), but does not include any holding company which is exempt by rule or order adopted or issued pursuant to sections 3(a)(3) or 3(a)(5) of the Public Utility Holding Company Act of 1935, 15 U.S.C. § 79c(a)(3) or § 79c(a)(5).

[FR Doc. 80-31242 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners

Correction

In FR Doc. 80-27966 appearing on page 59870 in the issue of Thursday, September 11, 1980, make the following correction:

In the first column of page 59871, in paragraph (2) of § 2.36 (a), ". . . set forth in (A) and (B) below. . ." should have read ". . . set forth in (i) and (ii) below. . .".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1598-1]

Revision to the State Implementation Plan (SIP) for the State of Vermont

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Revisions to the State Implementation Plan (SIP) for the State of Vermont were submitted to EPA on March 21, 1979 by the Governor. Those revisions included a comprehensive air quality monitoring plan intended to meet the requirements of 40 CFR 58.

On May 16, 1980 the Regional Administrator published in the **Federal Register** (45 FR 32337) a Notice of Proposed Rulemaking for this revision to the Vermont SIP, to approve the comprehensive air quality monitoring plan. No comments were received during the 30-day comment period. EPA is taking final action approving the revision.

EFFECTIVE DATE: These regulations take effect November 7, 1980.

FOR FURTHER INFORMATION CONTACT: Donald P. Porteous, Air Section, EPA, Region I, 60 Westview Street, Lexington, Massachusetts 02173, (617) 861-6700.

SUPPLEMENTARY INFORMATION: On May 10, 1979 (44 FR 27558) pursuant to the requirements of Sections 110(a)(2)(C), 319, 313, and 127 of the Clean Air Act, EPA promulgated ambient air quality monitoring, data reporting, and surveillance provisions, establishing a new Part 58 in 40 CFR, entitled Ambient Air Quality Surveillance.

Vermont has submitted a Comprehensive Air Quality Monitoring Plan designed to meet the requirements of Part 58. EPA has found that the Vermont submittal meets the applicable regulations. EPA proposed approval of the Comprehensive Air Quality Monitoring Plan in a notice of proposed rulemaking (45 FR 32337). No comments were received during the 30-day comment period. EPA is now granting final approval of the Vermont plan.

After evaluation of the state's submittal, the Administrator has determined that the Vermont revision meets the requirements of the Clean Air Act and 40 CFR Part 58. Accordingly, this revision is approved as a revision to the Vermont State Implementation Plan.

(Section 110(a) and 301 of the Clean Air Act, as amended, 42 U.S.C. 7401 and 7601).

Dated: September 16, 1980.

Douglas M. Costle,

Administrator.

Subpart UU—Vermont

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

In § 52.2382, delete and reserve paragraph (b)(1) as shown below:

§ 52.2382 Rules and regulations.

* * * * *

(b) Non-Part D—No action. * * *

(1) (Reserved).

* * * * *

[FR Doc. 80-29434 Filed 10-7-80; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 52

[A3 FRL 1615-5]

Approval of Revisions of the Virginia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces the Administrator's approval of revisions to the Virginia State Implementation Plan of amendments in the Virginia State Regulations for the Control of Air Pollution submitted by the Commonwealth of Virginia. The amendments consist of additions and changes to, and deletions from Part I (Definitions), Part II (General Provisions), Part III (Ambient Air Quality Standards), Part IV (Existing and Certain Other Sources) and Part VII (Air Pollution Episode).

EFFECTIVE DATE: Approval Actions: November 7, 1980.

ADDRESSES: Copies of the materials submitted by the Commonwealth of Virginia are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency—Region III, Curtis Building, Tenth Floor, Sixth and Walnut Streets, Philadephia, PA 19106. ATTN: Pat Sheridan (3AH10);

Virginia State Air Pollution Control Board, Room 1106, Ninth Street State Office Building, Richmond, Virginia 23219. ATTN: Mr. John M. Daniel, Jr.;

Public Information Reference Unit, EPA Library, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Eileen M. Glen (3AH11), Air Programs Branch, U.S. Environmental Protection Agency—Region III, Curtis Building, Tenth Floor, Sixth and Walnut Streets,

Philadelphia, PA 19106. REF: AH017VA; FTS—597-8187 (TM).

SUPPLEMENTARY INFORMATION:

Background

Between August 14, 1975 and September 21, 1979, the Commonwealth of Virginia submitted to the Environmental Protection Agency amendments to its Regulations for the Control and Abatement of Air Pollution and requested that they be reviewed and processed as revisions of the Virginia State Implementation Plan (SIP) for the attainment and maintenance of National Ambient Air Quality Standards. The amendments consist of changes to Parts I (Definitions), II (General Provisions), III (Air Quality Standards), IV (Existing and Certain Other Sources), VII (Air Pollution Episode), and Appendix A.

The Commonwealth provided proof that after adequate public notice, public hearings were held with regard to these amendments. The submittal dates of these amendments, as well as the date and locations of the public hearings, are summarized below:

Submittal date	Public hearing date	Locations
Aug. 14, 1975	May 12, 1975	Abingdon, Radford, Lynchburg, Fredericksburg, Richmond, Virginia Beach, and Fairfax.
Oct. 20, 1976	July 23, 1976	Richmond, Roanoke, Lynchburg, and Fairfax.
	July 26, 1976	Abingdon, Fredericksburg, and Virginia Beach.
Mar. 11, 1977	Jan. 18, 1977	Abingdon, Roanoke, Lynchburg, Fredericksburg, Richmond, Virginia Beach, and Fairfax.
Sept. 20, 1978	July 14, 1978	Richmond.
	July 17, 1978	Abingdon, Roanoke, Lynchburg, Fredericksburg, Virginia Beach, and Fairfax.
Sept. 21, 1979	July 16, 1979	Abingdon, Radford, Lynchburg, Richmond, Virginia Beach, Falls Church, and Fredericksburg.
	May 14, 1979	Abingdon, Radford, Lynchburg, Richmond, Virginia Beach, Falls Church, and Fredericksburg.

Parts of the various submittals were proposed in the **Federal Register** at different times. The following is a list of the proposed rulemaking notices:

Submittal date	FEDERAL REGISTER date	FEDERAL REGISTER citation
Aug. 14, 1975	Nov. 19, 1975	40 FR 53595.
	Mar. 28, 1977	42 FR 16446.
	May 21, 1980	45 FR 34018.
Oct. 20, 1976	Mar. 28, 1977	42 FR 16446.
Mar. 11, 1977	Aug. 1, 1977	42 FR 38920.
	May 21, 1980	45 FR 34018.
Sept. 20, 1978	May 21, 1980	45 FR 34018.
Sept. 21, 1979	May 21, 1980	45 FR 34018.

Description of Amendments

Unless otherwise noted, the amendments listed below were submitted on September 20, 1978. In cases where the State has submitted amendments to the same regulation at different times, the State has requested that the most recent version be considered for review as a revision of the Virginia SIP.

The amendments being considered for final action at this time are as follows:

I. Part I—Definitions

A. Additions
1. Facility
2. One-Hour
3. Pollutant (9/21/79)

B. Modifications
1. Emergency
2. Fossil Fuel-Fired Steam Generator
3. Fuel Burning Equipment
4. One Hour Period
5. Particulate
6. Performance Test
8. Source
9. Stationary Source

C. Deletions
1. Dust Removal System
2. Heating Value

Regulation	Brief description
II. Part II—General Provisions	
Section 2.06, § 2.06(a), § 2.06(b) (8/14/75), § 2.06(c) (8/14/75), § 2.06(d).	Local Ordinances—Local governmental body would not be able to grant variances to any pollution control ordinance if such variance would violate the requirements of the State Regulation.
III. Part III—Ambient Air Quality Standards	
Section 3.02(a)	The primary annual standard for particulate matter in State Region 7 (the Virginia portion of the National Capital Interstate AQCR) is changed from 60μg/m³ to 75 μg/m³
Section 3.02(b)	Contains minor administrative changes.
IV. Part IV.—Regulations Controlling Emissions From Existing Sources	
Rule EX-2—Emission Standards for Visible Emissions and Fugitive Dust	
New Section 4.20	Applicability and Designation of Affected Facility—New Section.
Current Section 4.20	Emission Standards—Deleted.
Current Section 4.22	Traffic Hazard—redesignated as Section 4.27—Unchanged.
New Section 4.22 (9/21/79)	Standard for Visible Emissions—Section basically replaces current Section 4.20.

Regulation	Brief description
IV. Part IV.—Regulations Controlling Emissions From Existing Sources —Continued	
Rule EX-2—Emission Standards for Visible Emissions and Fugitive Dust	
Section 4.23	Standard for Fugitive Dust—Current Section 4.41—Amendments require removal of dirt or other materials spilled during transportation as well as dried sediments resulting from soil erosion.
Section 4.25	Test Methods and Procedures—New Section.
Section 4.26 (a), (b), (c)	Waivers—New section.
Rule EX-5—Emission Standards for Gaseous Pollutants	
Section 4.51, § 4.51(a)	Sulfur Oxides Emissions and Other Gases and Compounds Containing Sulfur—General requirements—the wording is revised.
§ 4.51(b) (Formerly part of § 4.51(a))	Amendments would increase the allowable sulfur emissions from coal-burning sources located in the Virginia portion of the National Capital Interstate AQCR and reinstate the conditions by which compliance is determined. *(Former §§ 4.51 (b) through (g) is changed to §§ 4.51 (c) through (h)).*
Rule EX-7—Emission Standards for Incinerators	
Section 4.07.05 (8/14/75)	Emission Testing—Deleted.
V. Part VIII—Air Pollution Episode	
Section 7.01(b)	General Provisions—The Forecast Stage is renamed the Watch Stage.
Section 7.02 (a), (b), (d)	Episode Determination—The forecast Stage is renamed the Watch Stage; "air stagnation advisory" would replace "atmospheric stagnation forecast."
Section 7.03	Standby Emission Reduction Plans.
(8/14/75)	Minor wording changes.
(3/11/77)	Minor wording changes.
(9/21/79)	1. The regulation is revised to specify that only stationary sources emitting any criteria pollutant are required to prepare a standby emission reduction plan. 2. The provision which would have exempted less than 100 ton sources from preparing a standby emission reduction plan is deleted.
Section 7.04(c) (3/11/77)	Control Requirements—Minor wording changes.
VI. Appendices	
Appendix A	Abbreviations—The following terms are added: ampere (A), actual (act), cubic centimeter (cc), cubic feet (cu ft), day (d) dry cubic feet (dcf), dry cubic meter (dcm), feet (ft), hertz (Hz), Joule (j), megagram (Mg), mole (mol), newton (N), nanogram (ng), pascal (Pa), pounds per square inch gage (psig), second (s), cubic foot at standard conditions (scf), cubic feet per hour at standard conditions (scfh), cubic meter at standard conditions (scm), sulfur oxides (SOx), square feet (sq ft), at standard conditions or standard (std), microliter (ul), volt (V) watt (W), year (yr) and ohm (Ω). The term "at standard conditions (s)" is deleted.

Summary of Public Comments

During the public comment period, EPA received comments from the Commonwealth of Virginia, the District of Columbia and Potomac Electric Power Company. At that time the Commonwealth advised EPA that a control strategy demonstration would be submitted in support of the revision to § 4.51(b). The correspondence addressed several other issues and administrative matters which are discussed in more detail below. The other two commentors also addressed § 4.51(b) and their comments will be discussed at a later date when EPA takes final action on this section.

EPA Evaluation

The Definitions (additions, modifications and deletions) as submitted on September 20, 1978 and the definition of "Pollutant" as submitted on September 21, 1979, are acceptable.

EPA proposed, on May 21, 1980, to approve a definition of "cold stand-by unit" as submitted August 14, 1975. Because the Commonwealth of Virginia has asked for this definition to be deleted (see submittal of October 20, 1976) EPA is hereby withdrawing this term from further consideration as a SIP revision.

Sections 2.06 (a), (b), and (c), of Part II, were modified and renumbered from former § 2.02 in the submittal dated August 14, 1975. The submittal of September 20, 1978 modified § 2.06(a) and § 2.06(d) was added. EPA is hereby approving §§ 2.06 (a) and (d) as submitted September 20, 1978 and §§ 2.06 (b) and (c) as submitted August 14, 1975.

Sections 3.02 (a) and (b), of Part III, were modified by the August 14, 1975 submittal. Section 3.02(a) as submitted on September 20, 1978 changes the primary ambient air quality standard in AQCR 7 to the same standard as the other AQCR's in Virginia. Section 3.02(b) has a minor administrative change made in the September 20, 1978 submittal. Section 3.02 (a) and (b) are approved as written in the September 20, 1978 submittal.

The submittal dated September 20, 1978 deletes § 4.20, which was approved in 43 FR 38700, August 30, 1978. A new § 4.20, Applicability and Designation of Affected Facility, was then added. EPA is approving the new § 4.20 as written September 20, 1978.

Section 4.22, as approved on August 30, 1978, 43 FR 38700, was renumbered to § 4.27 by the September 20, 1978 submittal and a new § 4.22, Standard for Visible Emissions was added. The submittal of September 21, 1979 modified § 4.22 and is approved as written in the latter submission.

Section 4.23, former § 4.41, has no wording changes and is approved as written.

Section 4.25 is a new section as of September 20, 1978 and is approved.

A new § 4.26 (Waivers) was added to Rule EX-2 by the September 20, 1978 submittal. The section outlines the procedure under which waivers to the opacity limitations may by granted. Sections 4.26 (a) and (b) are acceptable as submitted. Section 4.26(c) states that waivers may be granted for an indefinite period of time and, as such, would constitute an exception to the Regulations. Such exceptions or variances to the SIP do not become effective without EPA approval. The reader should be aware that revisions of a plan are not considered part of the SIP until such revisions have been approved by the Administrator. Therefore, should a source begin operating under the terms of the variance prior to EPA approval of such variance as a SIP revision, said source could be subject to enforcement proceedings by EPA for violation of the SIP. The normal public hearing procedures for SIP revisions will apply to all such waivers. EPA has determined that the Clean Air Act does not require that such waivers have a specified time limit, therefore § 4.26 is approvable.

It should be noted that in EPA's Proposed Rulemaking published on May 21, 1980 (45 FR 34018), we stated that § 4.26 was unacceptable because the regulation did not specify what source surveillance techniques were to be used. This was done in error. Section 4.26(b) adequately specifies what methods must be used to comply with these regulations.

Section 4.27, formerly § 4.22, is approved as the change was only a redesignation of the section number.

Section 4.51 was modified when the section was redesignated from §§ 4.05.02 and 4.705.02 in the August 14, 1975 submittal. Section 4.51(b) thru (g) were approved on August 30, 1978, 43 FR 38700. The September 20, 1978 submittal renumbered § 4.15(a) to § 4.51(a) and (b). Former § 4.51(b) thru (g) were renumbered § 4.51(c) thru (h). Section 4.51(a), (c), (d), (e), (f), (g) and (h) as written September 20, 1978 are approved. Section 4.51(b), as submitted

September 20, 1978, increases the allowable sulfur dioxide emissions form coal burning sources in State Region 7 (The Virginia portion of the National Capital Interstate Air Quality Control Region). However, the Commonwealth did not submit a control strategy demonstration required by 40 CFR 51.13 showing the effect of this emissions relaxation on sulfur dioxide levels in the National Capital Interstate AQCR.

Therefore, the Administrator is delaying final action on the change to § 4.51(b) until the Commonwealth submits the required control strategy demonstration which it has agreed to do in the near future.

Section 4.07.05 is deleted as requested by Virginia in the submittal dated August 14, 1975.

Section 7.01(b) of Part VII, was modified September 20, 1978 and is approved as written.

Section 7.02(a) was revised on March 11, 1977. Sections 7.02(a), (b) and (d) were revised on September 20, 1978. These paragraphs are approved as written September 20, 1978.

On August 14, 1975, § 6.03 was redesignated as § 7.03(a) thru (e) with minor administrative changes. Section 7.03(a), (b), (c) and (e) were modified March 11, 1977. Virginia was informed that this section did not conform to 40 CFR Part 51. On September 21, 1979 the Commonwealth submitted revised provisions in § 7.03(a) and (b) thereby satisfying the requirements of 40 CFR Part 51. The Administrator is approving § 7.03 (a) and (b) as written on September 21, 1979, § 7.03(c) and (e) as written on March 11, 1977 and § 7.03(d) as submitted August 14, 1975.

Section 7.04(c) contains minor administrative changes made on August 14, 1975. On October 20, 1976 and March 11, 1977 § 7.04(c) was again modified by minor wording changes. EPA is approving § 7.04(c) as submitted on March 11, 1977.

Appendix A is modified by adding abbreviations and deleting one. These changes are approved by the Administrator.

Deletion of Previously Submitted Amendments

On March 11, 1977, the Commonwealth of Virginia, after adequate notice and public hearings, submitted amendments to Part II of the Virginia Regulations for the Control and Abatement of Air Pollution and requested that they be reviewed and processed as revisions of the Virginia SIP. Because it was the intent of Virginia not to have a requirement for evidential public hearings in the SIP, EPA's approval of the evidential public hearings provision in § 2.04 was in error.

EPA proposed deletion of § 2.04(a)(2) from the Virginia SIP on May 21, 1980, 45 FR 34018, and no adverse public comments were received. Therefore, EPA is hereby deleting § 2.04(a)(2) from the Virginia SIP.

Conclusion

Based on the above discussions, the Administrator approves the amendments to Parts I, II, III, IV and VII of Virginia's air pollution control regulations as revisions to the Virginia Implementation Plan as set forth above.

In conjunction with the Administrator's approval, 40 CFR § 52.2420 (Identification of Plan) of Subpart VV (Virginia) is revised to incorporate these amendments.

Under § 307(b)(1) of the Clean Air Act, judicial review of this SIP revision is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

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.

(42 U.S.C. 7401–642)

Dated: October 2, 1980.

Douglas M. Costle,

Administrator.

Part 52 of Title 40, Code of Federal Regulations, is revised to read as follows:

Subpart VV—Virginia

1. In § 52.2420, paragraph (c) is amended by adding paragraphs (c)(33), (34), (35), and (36) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

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

* * *

(33) Amendments to Part II (General Provisions), § 2.06 (b) and (c); and Part VII (Air Pollution Episode), § 7.03(d); and deletion of Part IV (Existing Sources), Rule EX–7, § 4.07.05 submitted on August 14, 1975 by the Secretary of Commerce and Resources.

(34) Amendments to Part I (Definitions), § 1.02; Part II (General Provisions), § 2.06 (a) and (d); Part III (Ambient Air Quality Standards), § 3.02 (a) and (b); Part IV (Existing Sources), §§ 4.20, 4.21, 4.23 (formerly § 4.41), 4.25, 4.26, 4.27, and 4.51(a); Part VII (Air Pollution Episode), former § 4.51 (b) through (g) are changed to § 4.51 (c) through (h). Sections 701(b) and 7.02 (a), (b), and (d); and Appendix A; and, deletion of former §§ 4.20, 4.21, and 4.22 submitted on September 20, 1978 by the Secretary of Commerce and Resources.

(35) Amendments to Part VII (Air Pollution Episode), §§ 703 (c) and (e) and 7.04(c); and deletion of Part II (General Provisions), § 2.04(a)(2) as submitted on March 11, 1977 by the Secretary of Commerce and Resources.

(36) Amendments to Part I (Definitions), § 1.02; Part IV (Existing Sources), Rule EX–2, § 4.22; and Part VII (Air Pollution Episode), § 7.03 (a) and (b) as submitted on September 21, 1979 by the Secretary of Commerce and Resources.

[FR Doc. 80-31327 Filed 10-7-80; 8:45 am]

BILLING CODE 6560-26-M

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40 CFR Part 52

[A3-FRL; 1620-3]

Approval and Disapproval of Revisions of the Virginia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces the Administrator's approval of revisions of the Virginia State Implementation Plan of amendments in the Virginia State Regulations for the Control of Air Pollution submitted by the Commonwealth of Virginia. The amendments consist of additions and changes to, and deletions from Part I (Definitions), Part II (General Provisions), Part III (Ambient Air Quality Standards), Part IV (Existing and Certain Other Sources) and Part VII (Air Pollution Episode). This notice also disapproves Section 4.02(a)(3) of Part IV submitted by Virginia pertaining to opacity standards.

EFFECTIVE DATE: Approval actions: November 7, 1980. Disapproval action: October 8, 1980.

ADDRESSES: Copies of the materials submitted by the Commonwealth of Virginia are available for public

inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Programs Branch, Curtis Building, Tenth Floor, 6th & Walnut Streets, Philadelphia, PA 19106, Attn: Patricia Sheridan.

Virginia State Air Pollution Control Board, Room 1106, Ninth Street Office Building, Richmond, VA 23219, Attn: Mr. John M. Daniel, Jr.

Public Information Reference Unit, EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Ms. Eileen M. Glen 3AH11, Air Program Branch, U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Curtis Building, Tenth Floor, Philadelphia, PA 19106, Ref: AH 016 VA, (215) 597-9814.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 1975, January 29, 1976, October 20, 1976, March 11, 1977, and September 20, 1978, the Commonwealth of Virginia submitted to the Administrator of the Environmental Protection Agency amendments to its Regulations Governing the Control of Air Pollution and requested that they be reviewed and processed as revisions of the Virginia State Implementation Plan (SIP) for the Attainment and Maintenance of National Ambient Air Quality Standards (NAAQS).

The Commonwealth provided proof that after adequate public notice, public hearings were held with regard to these amendments. The submittal dates of these amendments, as well as the date and locations of the public hearings, are summarized below:

Submittal date	Public hearing date	Locations
Aug. 14, 1975	May 12, 1975	Abingdon, Radford, Lynchburg, Fredericksburg, Richmond, Virginia Beach, and Fairfax.
Oct. 20, 1976	July 23, 1976	Abingdon, Radford, Lynchburg, Fredericksburg, Richmond, Virginia Beach, and Fairfax.
Mar. 11, 1977	Jan. 18, 1977	Abingdon, Roanoke, Lynchburg, Fredericksburg, Richmond, Virginia Beach, and Fairfax.
Sept. 20, 1978	July 14, 1978	Richmond.
	July 17, 1978	Abingdon, Roanoke, Lynchburg, Fredericksburg, Virginia Beach, and Fairfax.

The following is a list of the proposed rulemaking notices applicable to the amendments discussed herein:

Submittal date	FEDERAL REGISTER date	FEDERAL REGISTER citation
Aug. 14, 1975	Nov. 19, 1975	40 FR 53595.
	Mar. 28, 1977	42 FR 16446.
Oct. 20, 1976	Mar. 28, 1977	42 FR 16446.
Mar. 11, 1977	Aug. 1, 1977	42 FR 38920.

In many cases, the Commonwealth has submitted amendments to the same regulation at different times over the past several years. In these instances, only the most recent version is being considered for review as a revision to the Virginia SIP. Because of the number of revisions being addressed today, the submittal date of each is shown in parenthesis.

I. Part I—Definitions

A. Additions
1. Emergency Special Order (8/14/75)
2. Equivalent Method (8/14/75)
3. Modified Source (8/14/75)
4. Nitric Acid Plant (10/20/76)
5. Nitrogen Oxides (8/14/75)
6. Reconstruction (10/20/76)
7. Startup (8/14/75)

B. Modifications
1. Capital Expenditure (10/20/76)
2. Construction (8/14/75)
3. Modification (Stationary Source) (10/20/76)
4. New Source (10/20/76)
5. Person (8/14/75)
6. Owner (8/14/75)
7. Standard Metropolitan Statistical Area (SMSA) (8/14/75)

C. Deletions
1. Area Source (8/14/75)
2. Dust (8/14/75)

Regulation	Brief description
II. Part II—General Provisions	
Section 2.02 (a), (c), (e), (8/14/75), § 2.02(b) (3/11/77), § 2.02(d) (9/20/78).	Establishment of Regulations and Order (formerly § 2.01 (a), (b) and (d))—Administrative amendments and regulations added relating to State regulatory adoption procedures.
Section 2.05(b) (8/14/75)	Fuel Variances—Regulations would permit the State Air Pollution Control Board to grant temporary fuel variances for a period of up to 120 days.
Section 2.11 (8/14/75)	Conditions of Approval—Regulation would permit the State Air Pollution Control Board to impose conditions and would allow the owner of a conditioned permit to appeal the condition.
III. Part III—Ambient Air Quality Standards	
Section 3.02(c) (10/20/76)	Particulate Matter—amended by adding provisions to allow the use of additional reference methods for the monitoring of air quality.

IV. Part IV—Special Provisions	
Section 4.02 (10/20/76)	Compliance (formerly § 2.04). Provisions require that existing sources comply with standards within 90 days of the effective date. Provisions relative to prohibited acts.
Section 4.03 (10/20/76)	Emission Testing—Provisions are added to describe emission testing procedures for existing sources.
Rule EX-1 (Open Burning)	
Section 4.10 (8/14/75)	General—Provisions explain what may be burned, or what may not be burned.
Section 4.11 (8/14/75)	Exceptions (AQCR's 1-6)—This section explains the types of open burning that are permitted, as well as the time of day and the distance from a building when and where open burning is permitted.
Section 4.13 (8/14/75)	*Exclusion*—Open burning is permitted if certain methods or specifications are used, and opacity limitations are met.
Rule EX-3—Particulate Emissions From Fuel Burning Equipment	
Former Section 4.03.02 (8/14/75)	Emission Testing—This provision is deleted.
Rule EX-5—Emission Standards for Gaseous Pollutants	
Former Section 4.05.03 (8/14/75)	Control of hydrocarbon emissions—Region 1-6—This provision has been deleted. Subsequent regulations governing control in nonattainment areas for ozone have been adopted.
Former Sections 4.05.04, 4.705.04 (8/14/75)	Control of carbon monoxide emissions—these provisions are deleted.
Former Sections 4.05.05(b), 4.705.05 (8/14/75)	Control of nitrogen oxides emissions from fuel burning equipment—these provisions are deleted.
Rule EX-10—Emission Standards for Mobile Sources	
Former Section 4.10.03 (8/14/75)	Determination of Violation—This section is deleted.
V. Part VII—Air Pollution Episode	
Section 7.04 (a), (b), (d), (e) (10/20/76)	Control Requirements amended to allow the Board to select sources to be affected by the standby reduction plan based upon the type of episode in effect.

Summary of Public Comments

During the public comment period following EPA's notice of rulemaking (42 FR 16446 (1979)), EPA received comments from the Citizens Against the Refinery's Effects (CARE, Inc.). The commenter suggested that Regulation 4.05.03, pertaining to control of hydrocarbon emissions, not be deleted until the State submitted replacement regulations. New regulations have since been submitted by the Commonwealth and are the subject of a separate rulemaking.

No public comments were received, relative to the other proposed revisions, during the public comment periods following EPA's notices of rulemaking.

EPA Evaluation

Some of the amendments to Part I (Definitions) result from Virginia's revised new source review regulations. Certain definitions are deleted because they are no longer used in the Virginia regulations.

The amendments to § 2.02 (a), (c) and (e) submitted August 14, 1975 relative to establishment and adoption procedures required by the State were acceptable as written. Section 2.02(b) was revised by the March 11, 1977 submittal to delete evidential hearings. Section 2.02(d) was revised in the September 20, 1978 submittal by adding provisions relative to the adoption of emergency regulations and orders. This was in response to EPA's request. Sections 2.02 (a), (b), (c), (d) and (e) are hereby approved as revisions to the Virginia SIP.

Section 2.05(b), pertaining to temporary emergency fuel variances, was originally added as a State regulation in 1974 and subsequently amended on August 14, 1975. Because this Section satisfies the requirements of Section 110(a)(2) of the Clean Air Act pertaining to the procedures for submitting a SIP revision, EPA is approving this Section as submitted. However, the reader should be aware that such temporary fuel variances can be approved as SIP revisions only after the conditions in Section 110(f) of the Act have been satisfied.

Section 2.11 of Part II, pertaining to conditions on approvals, is added with the intent to allow the State Air Pollution Control Board to place conditions on approvals and prescribe automatic cancellation upon failure to adhere to the conditions. The regulations make clear the fact that appeal of a condition must follow a certain procedure and therefore is approvable as a revision of the Virginia SIP.

Section 3.02(c), relative to the measurement of particulate matter emissions, was originally submitted to EPA on August 14, 1975. Minor administrative changes were submitted on October 20, 1976 and this section is now being approved as a revision to the Virginia SIP.

Section 4.02, pertaining to compliance by existing sources, was submitted to EPA on October 20, 1976. Sections 4.02 (a), (a)(1), (a)(2), (b), (c) and (d) are approvable as written. However, § 4.02(a)(3) is deficient and is hereby disapproved for the following reason:

The amendment in § 4.02(a)(3) states that "the opacity standard prescribed under this part shall apply at all times except during periods of startup, shutdown, malfunction and as otherwise provided in the applicable standard." Section 4.02(a)(3) should be rewritten to require that the visible emission standard in § 4.22 be complied with at all times. EPA cannot approve a regulation that would allow unrestricted opacity violations for indefinite periods of time. If the Commonwealth believes that an exemption provision for start-up and shut-down periods is still necessary, then EPA recommends that both an opacity and a time limitation be imposed. This would be consistent with EPA policy and provisions contained in the SIPs of nearby States.

The amendments to § 4.03 of Part IV, Special Provisions, amend the procedures for emission testing and sampling. These amendments are approved as revisions of the Virginia SIP.

Section 4.10, 4.11, and 4.13 of Part IV, Rule EX-1 (open burning provisions), are amended to allow exceptions for firefighting, forest management, agricultural practices, land clearing and destruction of materials by flares. In addition, exceptions for leaf burning and refuse burning have been added, and conical burners are no longer controlled by open burning regulations. The State has demonstrated that these amendments will not result in violation of the national suspended particulates (TSP) standards. Therefore, these amendments are approvable as a revision of the Virginia SIP. One commentor has raised a concern about § 4.11(f) in that the terms "flare" and "flare stack" are not defined. While this is a valid point, EPA has decided that the lack of such definitions does not warrant disapproval of this Section. Both terms are standard expressions with a generally accepted meaning within the industry. Therefore, while it might be helpful to have a separate definition of these terms, it is not mandatory and this Section is approved as written.

Other amendments in Part IV delete regulations pertaining to emission

testing for sources of particulates, control of hydrocarbon emissions from stationary sources in Region 1 through 6, and Statewide control of carbon monoxide and oxides of nitrogen emissions from stationary sources. The deletion of the emission testing regulation is approvable because § 4.03 of the current regulation contains acceptable procedures for emission testing. The deletion of the control regulations for carbon monoxide and nitrogen dioxide is acceptable as the State informed EPA by letter of May 1, 1979 that the regulations would have been applicable only if the State Air Pollution Control Board had taken specific action to enact them; yet at no time had the State in fact enacted them. Therefore, deletion of these regulations is approvable.

The State further informed EPA by letter of January 17, 1978 Section 4.05.03 governing control of hydrocarbons emissions from Stationary sources in State Regions 1–6 had never been enacted. However, the Commonwealth of Virginia has submitted regulations controlling violatile organic compound emissions in areas designed as nonattainment of the National Ambient Air Quality Standards for ozone (see 40 CFR § 81.347) as part of its Part D (Clean Air Act) nonattainment plan. These regulations were proposed as revisions of the Virginia SIP on July 30, 1979, 43 FR 44564. Therefore, the deletions of Section 4.05.03 is approvable.

Sections 7.04(a), (b), (d) and (e), pertaining to control requirements during air pollution episodes, were submitted to EPA on August 14, 1975 and revised on October 20, 1976. These sections related to the selection of sources affected by standby reductions plans based on the type of episode in effect and are approved.

Miscellaneous

On March 9, 1978, EPA published final rulemaking (43 FR 9603) pertaining to revisions to Emergency Episode portion of the Virginia SIP. At this time, we wish to correct a typographical error that occurs throughout the Notice. All references to Section 7.02(b)(5)(ii) should read "Section 7.02(b)(4)(ii)."

Conclusion

Based on the above discussions, the Administrator approves the amendments to Parts I, II, III, IV (except for Section 4.02(a)(3)), and VII of Virginia's air pollution control regulations as revisions to the Virginia Implementation Plan.

In conjunction with the Administrator's approval; 40 CFR § 52.2420 (Identification of Plan) of Subpart VV (Virginia) should be revised to incorporate these amendments.

At the same time, EPA disapproves Section 4.02(a)(3) as a revision to the Virginia SIP. Accordingly, 40 CFR § 52.2023 (Approval Status) of Subpart VV (Viginia) should be revised to reflect the Administrator's disapproval action.

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 have determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(42 U.S.C. 7401–7642)

Dated: October 2, 1980.

Douglas M. Costle,

Administrator.

Part 52 of Title 40, Code of Federal Regulation is revised to read as follows:

Subpart VV—Virginia

In § 52.2420, Subsection (c) is revised by adding paragraphs (c) (29), (30), (31), and (32) to read as follows:

§ 52.2420 Identification of Plan.

* * * * *

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

(29) Amendments to Part I (Definitions), § 1.02; Part II (General Provisions). Sections 2.02(a), (c), and (e) (former § 2.01(a), (b), and (d)), § 2.05(b), § 2.11; and Part IV (Regulations for Existing Sources), §§ 4.10, 4.11, and 4.13 deletion of the following regulations from Part IV: Former §§ 4.03.02, 4.05.03, 4.05.04, 4.05.05(b), 4.10.03, 4.705.04, and 4.705.05 submitted on August 14, 1975 by the Secretary of Commerce and Resources.

(30) Amendments to Part I (Definitions), § 1.02; Part III (Ambient Air Quality Standards), § 3.02(c); Part IV (Special Provisions), § 4.02(a), (a)(1), (a)(2), (b), (c), and (d) (Formerly § 2.04) and § 4.03; and Part VII (Air Pollution Episode), §§ 7.04(a), (b), (d), and (e) submitted on October 20, 1976 by the Secretary of Commerce and Resources.

(31) Amendments to Part II, (General Provisions), § 2.02(b) submitted on March 11, 1977 by the Secretary of Commerce and Resources.

(32) Amendments to Part II, (General Provisions), § 2.02(d) submitted on September 20, 1978 by the Secretary of Commerce and Resources.

2. Section 52.2423 is revised by adding paragraph (d) to read as follows:

§ 52.2423 Approval Status.

* * * * *

(d) Section 4.02(a)(3) of Part IV of the Virginia Regulations for the Control and Abatement of Air Pollution is not considered part of the Applicable plan because it contradicts a previously approved section of the SIP.

[FR Doc. 80-31326 Filed 10-7-80; 8:45 am]

BILLING CODE 6560-26-M

FEDERAL MARITIME COMMISSION

46 CFR Part 522

[General Order 24; Amdt. 1; Docket No. 80-32]

Filing of Agreements Between Common Carriers of Freight by Water in the Foreign Commerce of the United States

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission exempts agreements solely involving terminal facilities located in foreign countries from the filing and approval requirements of section 15 of the Shipping Act, 1916. Since terminals located in foreign countries have no significant contact with the commerce of the United States, exemption of agreements which solely involve such terminals will not impair effective regulation by the Commission, be unjustly discriminatory, or be deterimental to commerce.

EFFECTIVE DATE: October 8, 1980.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, Room 11101, 1100 L Street, N.W., Washington, D.C. 20573, (202) 523–5725.

SUPPLEMENTARY INFORMATION: By notice filed in the Federal Register on May 27, 1980, the Federal Maritime Commission solicited comments on a proposed rulemaking to exempt pursuant to section 35 of the Shipping Act, 1916 (46 U.S.C. 833a) leases or arrangements solely involving terminal facilities located in foreign countries from the filing and approval requirements of section 15 of the Act (46 U.S.C. 814).

Section 35 provides that the Commission, upon application or on its own motion, may be order or rule exempt any class of agreements

between persons subject to the Act, or any specified activitiy of such persons from any requirements of the Act, where it finds that such exemption will not impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce.

In the main, comments expressed the view that leases or arrangements solely involving terminal facilities located in foreign countries are not within the Commission's jurisdiction under the Shipping Act.

The Commission has occasionally approved agreements involving terminal facilities located abroad. These agreements, between two vessel operating common carriers, as defined in section 1 of the Shipping Act, provided for joint use of a terminal in a foreign port which necessarily involved a degree of rationalization of sailings and coordination of schedules which could affect service and frequency at U.S. ports. The Commission considered these agreements to be within its jurisdiction. Therefore, it can be said that some agreements involving terminal property at a foreign port are subject to section 15. On the other hand, the Commission is not unmindful that international law principles of comity and sovereignty, the fact that these foreign terminal operators have no direct contact with the United States, and the frequent lack of practical means to carry out any regulations, militate against the positive assertion of jurisdiction in many of these cases. However, to separate those agreements which have such remote contacts with any area of regulatory concern as to compel a determination that no jurisdiction exists, from those within the jurisdiction of the Commission, is difficult in the abstract and unnecessary for the purpose of this order. The Commission is of the opinion that it should exempt the entire class of these agreements rather than attempt to draw an abstract jurisdictional line between them.

Since terminals located in foreign countries have no significant contact with the commerce of the United States, exemption of agreements which solely involve such terminals will not impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce. Therefore, the Commission will exempt these agreements, to the extent of our jurisdiction, from the filing and approval requirements of section 15.

Now, therefore, pursuant to sections 15, 35, and 43 of the Shipping Act, 1916 (46 U.S.C. 814, 833a, and 841a) and section 4 of the Administrative Procedure Act (5 U.S.C. 553) *It is ordered*, that, effective upon publication in the **Federal Register**, Title 46 CFR Part 522 is hereby amended by the addition of a new § 522.8 as follows:

§ 522.8 Exemption of agreements between common carriers by water in foreign commerce solely involving terminal facilities.

(a) *Exemption*—To the extent the Commission has jurisdiction, agreements solely involving foreign terminal facilities are exempted from the filing and approval requirements of section 15 of the Shipping Act, 1916.

(b) *Compliance with the Filing and Approval Requirements of Section 15*—Notwithstanding paragraph (a) of this section, persons who desire Commission approval of agreements solely involving foreign terminal facilities may file such agreements with the Commission for section 15 consideration in accordance with ordinary filing procedures.

(Secs. 15, 35, 43, Shipping Act, 1916 (46 U.S.C. 814, 833a, 841a); Section 4, Administrative Procedure Act (5 U.S.C. 553)).

By the Commission.

Joseph C. Polking,

Assistant Secretary.

[FR Doc. 80-31230 Filed 10-7-80; 8:45 am]

BILLING CODE 6730-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Service Order No. 1344]

Rerouting of Traffic—Appointment of Agents

AGENCY: Interstate Commerce Commission.

ACTION: Revised Service Order No. 1344.

SUMMARY: Service Order No. 1344 appointed agents of the Commission, vested with the authority to authorize diversion and rerouting of loaded and empty freight cars from and to any point in the United States whenever, in their opinion, an emergency exists whereby any railroad is unable to move traffic currently over its lines. Revised Service Order No. 1344 modifies the previous order by appointing Joel E. Burns, Director, and Robert S. Turkington, Associate Director, Office of Consumer Protection, as agents of the Commission, with the authority to reroute and divert such traffic. This revision reflects the reorganization of the Bureau of Operations into the Office of Consumer Protection, and subsequent changes in titles relating to the reorganization.

EFFECTIVE DATE: 12:01 a.m., May 18, 1980, and continuing in effect until 11:59 p.m., May 18, 1981.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275-7840.

SUPPLEMENTARY INFORMATION: When, for any reason, a carrier by railroad subject to Section 10501 of the Recodified Interstate Commerce Act is unable to transport traffic offered, car service will be promoted in the interest of the public and the commerce of the people by the appointment of agents with authority to reroute and divert such traffic. Notice and public procedure are impracticable and contrary to the public interest, and good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1034.1344 Service Order No. 1344.

(a) *Rerouting of traffic—appointment of agents.* Joel E. Burns, Director, and Robert S. Turkington, Associate Director, Office of Consumer Protection, Interstate Commerce Commission, Washington, D.C., are hereby appointed Agents of the Interstate Commerce Commission and vested with authority to authorize diversion and rerouting of loaded and empty freight cars from and to any point in the United States whenever, in their opinion, an emergency exists whereby any railroad is unable to move traffic currently over its lines.

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

(c) *Effective date.* This order shall become effective at 12:01 a.m., May 18, 1980.

(d) Expiration date. This order shall expire 11:59 p.m., May 18, 1981, unless otherwise modified, amended or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304-10305 and 11121-11126.

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

By the Commission: Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum, Alexis and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-31318 Filed 10-7-80; 8:45 am]

BILLING CODE 7035-01-M

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49 CFR Part 1033

[Service Order No. 1345]

Appointment of Embargo Agents

AGENCY: Interstate Commerce Commission.

ACTION: Revised Service Order No. 1345.

SUMMARY: Service Order No. 1345 appointed agents of the Commission, vested with authority to direct the placement of embargoes by railroads at such points where freight cars are being delayed due to accumulations, congestions or other interferences which create emergency situations. Revised Service Order No. 1345 modifies the previous order by appointing Joel E. Burns, Director, and Robert S. Turkington, Associate Director, Office of Consumer Protection, as agents of the Commission, with authority to direct placement of embargoes. This revision reflects the reorganization of the Bureau of Operations into the Office of Consumer Protection and subsequent changes in titles relating to the reorganization.

EFFECTIVE DATE: 12:01 a.m., May 18, 1980, and continuing in effect until 11:59 p.m., May 18, 1981.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr. (202) 275-7840.

SUPPLEMENTARY INFORMATION: Whenever any carrier by railroad, subject to Section 10501 of the Recodified Interstate Commerce Act, is unable to control freight traffic movements because of car accumulations, threatened congestions or other interferences of a temporary nature, car service will be promoted in the interest of the public and the commerce of the people by the appointment of agents with authority to direct the placement of embargoes which compel restrictions against car movements. Notice and public procedure are impracticable and contrary to the public interest, and good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1345 Service Order No. 1345.

(a) Appointment of embargo agents. Joel E. Burns, Director, and Robert S. Turkington, Associate Director, Office of Consumer Protection, Interstate Commerce Commission, Washington, D.C., are hereby appointed Agents of the Interstate Commerce Commission and vested with authority to direct the placement of embargoes by railroads at such points where freight cars are being unduly delayed due to accumulations, congestions or other interferences which create emergency situations.

(b) Embargoes placed under this order shall be at the direction of the Agents of the Commission and shall be published through the Association of American Railroads, Car Service Division, in conformity with Rule 16 of the "Code of Car Hire Rules and Interpretations—Freight" of the Association of American Railroads and Circular CSD-87, Sixth Revision, both published in the Official Railway Equipment Register, ICC-RER No. 6410-E or successive issues thereof, issued by W. J. Trezise.

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

(d) *Rules, Regulations, and Practices Suspended.* The operation of all rules, regulations, and practices insofar as they conflict with the provisions of this order, is hereby suspended.

(e) *Effective date.* This order shall become effective at 12:01 a.m., May 18, 1980.

(f) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., May 18, 1981, unless otherwise modified, amended or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304-10305 and 11121-11126.

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

By the Commission: Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum, Alexis and Gilliam.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-31315 Filed 10-7-80; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 45, No. 197
Wednesday, October 8, 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.

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 545

[No. 80-612]

Graduated Payment Adjustable Mortgage

September 30, 1980.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Board proposes to authorize Federal savings and loan association to make, purchase and participate in graduated payment adjustable mortgage instruments. A graduated payment adjustable mortgage (GPAM) combines the adjustable interest rate feature of the renegotiable rate mortgage with the graduated payment feature of the graduated payment mortgage. Authorization of GPAMs would provide an additional instrument for mortgage lending.

DATE: Comments must be received by: December 1, 1980.

ADDRESS: Send comments to the Office of the Secretary, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Hall, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, N. W., Washington, D.C. 20552, (202) 377-6466.

SUPPLEMENTARY INFORMATION: Since the spring of 1976, the Board has been studying the use of alternative mortgage instruments to meet the needs of homeowners during different phases of their financial life cycles. This continuing study has resulted in the introduction of several new types of mortgages. On December 14, 1978, and May 30, 1979, the Board adopted regulations authorizing Federally-chartered associations to offer three new types of mortgage instruments, including the variable rate mortgage and the graduated payment mortgage (FHLBB Res. Nos. 78-708, 79-303; 43 FR 59336 (1978), 44 FR 32199 (1979)). On April 3, 1980, the Board authorized the use of the renegotiable rate mortgage (RRM) (FHLBB Res. No. 80-231; 45 FR 240108 (1980)). Now, the Board proposes to permit Federal Associations to offer an additional mortgage instrument, called the graduated payment adjustable mortgage (GPAM), that combines the major features of the RRM and the graduated payment mortgage (GPM).

Under the GPM (see 12 CFR 545.6-4(b)), scheduled payments begin at a level lower than that of a comparable standard mortgage instrument and gradually rise to a level sufficient to amortize the remaining principal balance at the then-existing interest rate over the remaining term of the mortgage. The graduation period, the actual rate of increase in the monthly payments, and the interest rate are fixed at loan origination. Graduation periods are limited to 10 years, and the maximum rate of increase may vary from 7.5 percent annually for a graduation period of five or fewer years, to 3 percent annually for a graduation period of 10 years. Monthly payment amounts may not be changed more than once a year. Because monthly payments at the beginning of the graduation period are lower than the payment amounts that would be required to fully pay the interest on the loan, there is "negative amortization" during the graduation period, *i.e.*, the borrower's equity in the property actually declines, unless the market value of the property increases at least as much as the negative amortization. Because of these features, the GPM enables individuals who otherwise could not afford the conventional financing costs of a home loan, but whose incomes are expected to increase in the future, to secure a home mortgage loan.

The RRM is a loan program that permits adjustments in the interest rate every 3, 4 or 5 years (see 12 CFR 545.6-4a). Changes in the RRM loan interest rate are tied to a national index (the national average contract rate for all major lenders for the purchase of previously-occupied, single-family homes) calculated monthly by the Board. Associations are required to permit borrowers to prepay their RRM loans at the time of notification of the initial rate adjustment and at any time thereafter.

The GPAM should be attractive both to borrowers and to associations since it would make mortgage funds available to a broader category of borrowers while increasing associations' investment flexibility. As proposed, the GPAM initially would have lower monthly payments than either a conventional fixed-rate mortgage or an RRM. The monthly payment amount would increase gradually during a period of up to ten years. The proposed regulation would also permit changes in the loan interest rate every 3, 4 or 5 years, depending on the movement of the national index currently used by the RRM regulation. However, there would be a 15 percent limit during the graduation period on the amount by which the monthly payment could increase from any one year to the next. Except for the graduated payment feature, the GPAM would operate similarly to the RRM.

The proposed limitations on the monthly payment increase are calculated to ensure that increases in a borrower's monthly payments would not, in most cases, be unduly burdensome. The effect of the payment limitation is illustrated by the following example, which illustrates the maximum payment increases possible with a $50,000 mortgage that has an interest rate of 13% and a graduation period of five years, and permits adjustment of the interest rate every three years:

	Balance at end	Rate (percent)	Monthly payment	Payment increase (percent)	Cumulative payment increase (percent)
Year:					
1	$51,362.90	13	$428.09	0	0
2	52,517.69	13	460.20	7.5	7.5
3	53,408.42	13	494.71	7.5	15.6
4	54,325.58	14.5	568.92	15	32.9
5	54,863.70	14.5	611.59	7.5	42.86
6	54,929.41	14.5	657.46	7.5	53.58
7	54,672.70	16	753.78	14.65	76.08
8	54,374.92	16	753.78	0	76.08
9	54,029.50	16	753.78	0	76.08
10	53,698.51	17.5	815.51	8.19	90.5

In this example, the payment increase limitation of 7.5 percent set out in subparagraph (b)(2) of the GPM regulation would apply to the increases in years 2, 3, 5 and 6 of the loan, and the 15 percent limit would apply only in the fourth year. Where, if not for the 15 percent limit, an association would increase the monthly payment, at adjustment of the interest rate, by more than 15 percent, the amount of interest in excess of 15 percent would be added to the principal balance of the loan, as occurs in year 4 of the example above. An association would never lose interest as a result of the limitations on the monthly payment increase. In the example, the maximum loan balance would be $54,929.41, which would represent a maximum loan-to-value ratio of 95 percent and would occur in the sixth year of the mortgage loan.

The Board's regulations establish maximum loan-to-value limitations on home mortgage loans (see 12 CFR 545.6–2(a)). These limitations would apply also to GPAM loans and may not be exceeded at any time during the period of a loan. To ensure that the maximum 95 percent loan-to-value limitation is not exceeded, which would occur as a result of the negative amortization feature of the proposed mortgage instrument, the loan-to-value ratio at origination of the mortgage could not exceed 86.47 percent. This would mean that a borrower who has a GPAM loan with a 15 percent limitation on the annual monthly payment increase would have to make an initial downpayment of at least 13.53 percent. In addition, the borrower would have to maintain private mortgage insurance as long as the loan balance exceeded 90 percent of the value of the security property (see 12 CFR 545.6–2 (a)(3)). If the loan contract established a limitation on the maximum annual monthly payment increase that was smaller than 15 percent, the minimum required downpayment would have to be higher than 13.53 percent. The amount of the minimum downpayment would vary with the initial interest rate, the term of the loan, the length of the graduation period, and the limitations on increases in the monthly payment.

Since the requirements of the RRM regulation would apply to the GPAM, a GPAM borrower would have the right to prepay all or any part of a GPAM loan, without penalty, at any time after receiving notice from the association of the first interest rate adjustment. This and the other features of the GPAM are described in a disclosure form that associations would be required to give borrowers at the time of application for a GPAM loan.

The Board requests comments on all aspects of the proposed regulation and, in particular, on the following questions:

1. What is the potential market for GPAMs?

2. Should the Board limit the graduation period of the GPAM to 10 years or some longer or shorter period? What considerations should be taken into account in determining the term?

3. Should the Board limit the extent to which associations can design a payment schedule with negative amortization? Does negative amortization raise special problems for associations by increasing the likelihood of foreclosure?

4. Should the Board limit the annual increase in monthly payments to 15 percent or to some higher or lower rate? What consideration should be taken into account in determining the rate?

5. What consumer and civil rights safeguards are most important with a GPAM?

6. On GPAMs that, as a result of negative amortization, would require private mortgage insurance, how should this coverage be structured?

Accordingly, the Federal Home Loan Bank Board proposes to amend Part 545 of the Rules and Regulations for the Federal Savings and Loan System (12 CFR Part 545) by adding a new § 545.6–4c to read as set forth below:

PART 545—OPERATIONS

§ 545.6–4c Graduated payment adjustable mortgage instruments.

(a) *Authorization.* (1) A Federal association may make, purchase, or participate in a graduated payment adjustable mortgage loan under this section if the loan complies with the provisions of § 545.6–2(a) of this Part, pertaining to one-to-four-family home loans. (2) This regulation is promulgated pursuant to the plenary and exclusive authority of the Board to regulate all aspects of the operations of Federal associations, as set forth in § 5(a) of the Home Owners' Loan Act of 1933, as amended. This exercise of the Board's authority is preemptive of any state law purporting to address the subject of a Federal association's ability or right to

make, purchase, or participate in graduated payment adjustable mortgages, or to directly or indirectly restrict such ability or right.

(b) *Description.* For purposes of this section, a graduated payment adjustable mortgage loan is a renegotiable rate mortgage loan on which the scheduled monthly payments begin at a level lower than that of a standard renegotiable rate mortgage loan. As such, a graduated payment adjustable mortgage is subject to the provisions of § 545.6–4a of this Part except to the extent they are inconsistent with the provisions of this section. During a period the length of which is fixed at loan origination (the "graduation period"), the scheduled payments gradually rise to a level sufficient to amortize the remaining principal balance at the then-existing interest rate over the remaining term of the mortgage. Limitations on the rate of increase in the scheduled payments due both to graduation and to changes in the interest rate are also fixed at loan origination.

(c) *Changes in the monthly payment amount and in the interest rate.* (1) *Monthly payment amounts.* Limitations on the length of the graduation period and on the maximum rate of increase of monthly payment amounts shall be as set out in paragraph (b)(2) of § 545.6–4 of this Part, relating to graduated payment mortgages. However, an increase in the monthly payment amount may exceed the limitations of paragraph (b)(2) if made in conjunction with an increase in the loan interest rate pursuant to paragraph (c)(2) of this section, *provided* that the monthly payment amount may never be increased during the graduation period by more than fifteen percent from any one year to the next year. Monthly payment amounts may not be changed more than once a year, and the first change may not occur less than one year after the date of the first regular loan payment.

(2) *Interest-rate changes.* The loan interest rate may be changed every 3, 4, or 5 years as provided in paragraphs (c) and (d) § 545.6–4a of this Part. At least 90 but not more than 120 days before the change in the loan interest rate, the association shall send written notification to the borrower in the form required by paragraph (e) of § 545.6–4a.

(d) *Application disclosure.* An applicant for a graduated payment adjustable mortgage loan must be given, at the time of receipt of an application, a disclosure notice in the following form:

Information About the Graduated Payment Adjustable Mortgage

You have received an application form for a graduated payment adjustable morgage (GPAM). The GPAM, which combines the major features of the renegotiable rate mortgage (RRM) and the graduated payment mortgage (GPM) into one loan instrument, differs from a standard, fixed-rate mortgage in the following two respects:

(1) *Graduated payments.* During the early years of the loan, monthly payments are lower than they would be on a standard mortgage or even on a mortgage with an adjustable interest rate, and are not sufficient to cover the interest being charged on the loan. As a result, the outstanding principal balance on the GPAM loan actually increases somewhat during these years.

To compensate for the intital, lower payments, monthly payments increase gradually each year during a period of up to 10 years (the "graduation period") until they reach a level sufficient to pay all interest and pricipal by the end of the loan term. The amount of the maximum payment increase due to the graduation feature varies from 7.5 percent per year for a 5-year graduation period to 3 percent per year for a 10-year graduation period. The length of the graduation period is established as a matter of negotiation between the borrower and the association.

(2) *Interest rate adjustments.* The interest rate on a GPAM loan may be adjusted up or down every 3, 4 or 5 years. As a result, in addition to increases in monthly payments due to the "graduation" feature, payments may also increase due to an adjustment in the interest rate. If an increase in the monthly payment is due to an adjustment of the interest rate, then the maximum payment increases set out in paragraph (1) above do not apply. Instead, an increase in the monthly payment during the graduation period is limited to no more than 15 percent of the amount of the preivous year's monthly payments (the association may establish a payment increase limitation smaller than 15 percent).

The monthly payment amount, then, may increase as a result of two factors. First, it may increase annually during the graduation period until it reaches the level that is sufficient to fully pay the balance of the loan at the then-applicable interest rate over the remainder of the mortgage. Second, it may also increase every three, four or five years due to an increase in the interest rate. IN NO CASE, HOWEVER, MAY THE MONTHLY PAYMENT AMOUNT BE INCREASED DURING THE GRADUATION PERIOD BY MORE THAN 15 PERCENT FROM ANY ONE YEAR TO THE NEXT.

How the Interest Rate is Adjusted

Changes in the interest rate are based on changes in an index rate computed monthly by the Federal Home Loan Bank Board, an agency of the Federal government. The index is the national average contract rate for all major lenders for the purchase of previously-occupied, single-family homes. If at the time of adjustment the index rate has moved higher than it was at the beginning of the mortgage, the association has the right to adjust the interest to a rate equalling the

original interest rate plus the increase in the index rate. This is the maximum increase permitted to the association. Although taking such an increase is optional with the association, you should be aware that the association has this right and may become contractually obligated to exercise it. If the index has moved down, the association must at the time of adjustment reduce the original interest rate by the decrease in the index rate.

No matter how much the index rate increases or decreases, however, the association, at the time of adjustment, may not increase or decrease the interest rate on your GPAM loan by an amount greater than [*a number no greater than 0.5*] percentage points per year, and the total increase or decrease in the interest rate over the life of the loan may not be more than [*a number no greater than 5*] pecentage points.

As the borrower, you have the right to prepay the loan in part or in full without penalty at any time after the association notifies you of the first interest rate adjustment. To give you enough time to make this decision, the association, at least ninety (90) but not more than one-hundred twenty (120) days before adjustment of the interest rate, will send a notice stating the date of adjustment, the new interest rate and the monthly payment amount. If you do not respond to the notice, the interest rate will be adjusted to the new rate. You will not have to pay any fees or charges at the time of adjustment of the interest rate.

Example of Operation of GPAM

Consider a $50,000 GPAM that has an interest rate of [*lender's current commitment rate*] percent and a graduation period of ——— years, and provides for adjustment of the interest rate every ——— years. The monthly payment on this loan for the first year will be $——— and will rise, at a *maximum*, by ———% to $——— in the second year and by ———% to $——— in the third year.

The first adjustment in the interest rate of the loan would occur at the end of the ——— year. The maximum permissible rate increase at the first adjustment would be ———%. This would result in a monthly payment during the ——— year equivalent to $———, an increase of ———% over the monthly payment of $——— in the ——— year. The highest interest you might have to pay over the life of the mortgage would be ———%, the lowest would be ———%, and the highest monthly payment you might have over the life of the mortgage would be $———.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464, Reorg. Plan No. 3 of 1947; 2 CFR 1943–1948, Comp. 1071)

By the Federal Home Loan Bank Board.

Robert D. Linder,

Acting Secretary.

[FR Doc. 80-31364 Filed 10-7-80; 8:45 am]

BILLING CODE 6720-02-M

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12 CFR Part 545

[No. 80-610]

Shared Appreciation Mortgage

September 30, 1980.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed regulations.

SUMMARY: The Board has proposed a regulation to permit Federal savings and loan associations to make shared appreciation mortgages. A shared appreciation mortgage bears a fixed interest rate set below the prevailing market rate over the life of the loan, and contingent interest based on the appreciation of the property securing the loan at the earlier of maturity or payment in full of the loan or sale or transfer of the property. The share of the appreciation payable as contingent interest is determined at the beginning of the loan and may not exceed 40 percent of net appreciation. The proposed maximum term of the shared appreciation mortgage is 10 years, with guaranteed long-term refinancing.

DATE: Comments must be received by: December 1, 1980.

ADDRESS: Send comments to the Office of the Secretary, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

FOR FURTHER INFORMATION CONTACT: Peter M. Barnett, Office of General Counsel, (202) 377–6445, or Dale Riordan, Director, Office of Policy and Economic Research, (202) 377–6750, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: The Board proposes to authorize Federal savings and loan associations to make, purchase or participate in shared appreciation mortgage ("SAM") loans. The SAM would differ from other types of mortgages now authorized for Federal associations by permitting associations to charge contingent deferred interest based on the appreciation of the property securing the loan from the date of purchase until the earlier of maturity or payment in full of the loan or sale or transfer of the property in exchange for charging below-market-rate fixed interest over the term of the loan. Contingent interest would be payable on the earlier of maturity or payment in full of the loan or the sale or transfer of the security property. The share of appreciation payable as contingent interest would be determined at the origination of the loan and would be limited to a maximum of 40 percent of net appreciated value. The term of the loan would be limited to a maximum of 10 years, but the association would be required to guarantee refinancing of the outstanding indebtedness on the loan, including contingent interest, at maturity. Board staff has prepared a regulatory analysis of the shared appreciation mortgage which is available from the Communications Office upon request.

Background

In the spring of 1976, the Board initiated a major research undertaking known as the *Alternative Mortgage Instruments Research Study* ("AMIRS"). The AMIRS effort was designed to provide a comprehensive and systematic review and analysis of a number of proposed new mortgage instruments. The neef for analysis of alternative mortgage instruments ("AMIs") stemmed from the increasingly recognized inadequacies of the standard fixed-rate, level-payment mortgage instruments widely in use. The AMIRS report was published in November, 1977.

As a result of AMIRS, the Board authorized several new forms of mortgage instruments for Federal associations. In December of 1978, the Board authorized the use of graduated payment mortgages ("GPMs") and reverse annuity mortgages ("RAMs") for all Federal associations and variable rate mortgages ("VRMs") for Federal associations in California. In May of 1979 and April of 1980, respectively, the

Board authorized VRMs and renegotiable rate mortgages ("RRMs") for all Federal associations.

Since the mid-1960's, the American economy has been characterized by high and/or rising interest rates induced by rapid inflation, uneven real economic growth, and restrictive credit conditions. The current economic environment has accentuated the problem of high and/or rising interest rates by introducing unprecedented volatility into the credit cycle. The fixed-payment mortgage, which was designed to operate in a relatively stable economic and financial environment, has limited utility under these conditions. The AMIs previously adopted by the Board to ameliorate the inflexibility of the standard mortgage document by offering flexibility to meet diverse borrower financial needs and requirements and by permitting lenders to adjust earnings to prevailing economic conditions have not been sufficient to assure the affordability of housing finance or to provide a hedge to lenders against unanticipated inflation. In this context, the Board is proposing the use of the shared appreciation mortgage to increase the possibilities for borrowers and lenders to provide for the financing of homeownership.

The Board does not intend for the shared appreciation mortgage to supplant other instruments. The Board is proposing the SAM as an alternative to currently authorized instruments, and if the Board finds that associations are making SAMs exclusively, or nearly exclusively, the Board would consider imposing portfolio limitations.

Potential Impact of the Shared Appreciation Mortgage

Since the mid-1960s, the savings and loan industry has been the largest provider of construction and permanent financing for residential real estate in the United States. This same period has witnessed the flight from the residential real estate market of life insurance companies and other discretionary lenders. Since investors and lenders have shown a preference for mortgage investments that share in the appreciation of the security property, introduction of a residential mortgage instrument which provides for participation in property appreciation has the potential for inducing the return of discretionary lenders to residential mortgage finance through the purchase of interests in pools of mortgages. An increased participation in the residential real estate market by discretionary lenders would increase the availability, and possibly lower the cost, of funds for housing.

Introduction of the SAM also offers potential direct benefits to home purchasers. In exchange for giving the lender a share of the appreciation of the property securing the loan, the borrower would receive a below-market fixed rate of interest on the loan. In periods of high interest rates, such below-market rates would make available mortgage financing to borrowers otherwise unable to find affordable financing by closing the "financing gap" associated with the standard, fixed-payment mortgage.

Potential Market for the SAM

As with any new mortgage instrument, the level of interest in the shared appreciation mortgage cannot be determined accurately prior to its authorization and introduction. However, two principal considerations that would influence the decision of a borrower to accept a SAM are: first, the portion of the appreciation payable to the lender as contingent interest; and, second, the reduction from current market rates in the fixed interest payable over the term of the loan. In balancing these considerations, the borrower would be required to evaluate the size of the downpayment made, the anticipated duration of his/her ownership of the property and the anticipated rate at which the value of the property may appreciate. A potential borrower would have to balance these considerations against each other and against the alternatives of other mortgage instruments in making a decision.

Since it would permit a lower fixed rate of interest and monthly payment than more traditional instruments, the SAM would be most attractive to buyers ordinarily priced out of the market. First-time homebuyers and moderate-income borrowers are most likely to be interested in the SAM. In some cases, the SAM may be useful to elderly homeowners refinancing existing homes or buying down to smaller homes as a means of avoiding large monthly payments. While any borrower desiring lower monthly payments could consider it, existing homeowners who have accumulated equity and borrowers with above-average incomes would be less likely to be interested in a shared appreciation mortgage.

The Board also has considered acceptability of the shared appreciation mortgage on the secondary mortgage market. There appear to be no insurmountable technical obstacles to pooling SAMs for sale directly or through mortgage pass-through securities, as currently is done for conventional mortgages. While the level of interest in SAMs is difficult to assess initially, the Board anticipates that there would be interest in this type of investment by both traditional mortgage investors and non-mortgage-oriented investors.

Fixed Interest Contingent Interest

The regulation that the Board is proposing would permit Federal associations to make, purchase or participate in home mortgage loans with two distinct elements of interest. The first element would be a below-market rate of interest fixed at origination of the loan and paid over the term of the loan as a portion of monthly installments. Monthly installments would be equal in amount and sufficient to amortize fully a loan with the same principal amount and fixed interest rate over a period of up to 40 years, although the maximum term of the SAM would be 10 years with guaranteed refinancing.

The second element of interest would be contingent in nature based upon the "net appreciated value" of the security property and the sharing ratio agreed upon between the borrower and the association. The portion of net appreciated value to be paid as contingent interest would be fixed at the origination of the loan; however, the amount of contingent interest payable on the loan would not be determinable until the earlier of maturity or payment in full of the loan or sale or transfer of the security property. The proposal limits contingent interest to a maximum of 40 percent of net appreciated value. Although the proposal does not establish a formula for relating the below-market rate of fixed interest to the sharing ratio for net appreciated value, the Board anticipates that associations will balance fixed interest and contingent interest to produce an overall competitive rate of return.

Net Appreciated Value

Calculation of net appreciated value depends on how market value is determined, which in turn depends on whether the loan goes to maturity or is prepaid in full or the security property is sold or transferred prior to maturity. In the event of sale or transfer, the association could choose to accept the net sales price as a determination of market value. Net sales price, or amount realized on the sale under the Internal Revenue Code, is the gross sales price less expenses of sale such as commissions, advertising, transfer and stamp taxes, legal, escrow and recording fees, and other similar payments if made by, or charged to, the borrower.

If the association does not choose to accept the net sales price as market value, or the loan matures or is paid in

full prior to sale or transfer, the market value would be determined by appraisal. The appraisal would be performed by an appraiser selected by the borrower and the association from a list of appraisers who have made appraisals which were accepted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association. If the borrower and the association do not agree on an appraiser, each party would choose an appraiser, and market value would be determined by an average of the two appraisals. In the event that the borrower does not select an appraiser within 30 days of receipt of the notice of maturity sent by the association, the appraiser selected by the association would perform the appraisal. The proposal defines market value in a manner accepted by Federal housing and financial regulatory agencies and the appraising profession.

Net appreciated value is determined by subtracting from the market value of the property: (1) the cost of the security property to the borrower; (2) the cost of any capital improvements made to the property by the borrower; and (3) the cost of any appraisals needed to determine market value. Cost of the security property to the borrower includes commissions, cost of title search or title insurance, legal, appraisal and inspection fees, and payments to clear title of prior liens. The downpayment made by the borrower on purchase is part of the cost of the property and is not shared with the association. In the event that the loan is used to refinance a property, the cost of the property would be determined by an appraisal performed at the time of the originating of the loan. Capital improvements include new structures or permanent improvements to existing structures.

The proposal expressly incorporates the treatment under the Internal Revenue Code of the net sales price, cost of the property and capital expenditures, thus paralleling the Code's calculation of gain or loss on sale. By so doing, the proposal draws on the Code itself, Treasury Regulations and other Treasury determinations rather than creating a new regulatory structure to calculate net appreciation. The Board also hopes that the parallel treatment will assist borrower understanding of the calculation procedure.

The Board has considered the alternative of calculating the amount of appreciation to be shared with the lender as contingent interest on a gross appreciation basis. While calculation on a gross basis offers simplicity, it does not reflect fairly borrower improvements or the expenses to a borrower associated with the initial purchase and subsequent sale of the security property. By adopting a method which parallels Internal Revenue Code calculation of gain or loss on sale, the proposal takes into account the cost of improvements without attempting to allocate the value of those improvements in the appreciation and nets out all cash expenditures associated with the initial purchase and subsequent sale. The Board notes, however, that borrowers will be required to establish costs associated with purchase and the amounts of capital expenditures.

Preemption of State Law

The Board proposes to preempt all conflicting state laws which would directly or indirectly restrict the right of a Federal association to make, purchase or participate in a SAM, pursuant to the plenary and exclusive authority of the Board to regulate all aspects of the operations of Federal associations under section 5(a) of the Home Owner's Loan Act of 1933, as amended. The Board points out, however, that, while other aspects of state usury laws would be preempted, this preemption does not reach interest rate ceilings set by state usury laws. Such ceilings were preempted under section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (the "Act"), Pub. L. No. 96–221, 94 Stat. 132, but may be reinstated by affirmative action by states prior to April 1, 1983. Under the Act, loans made during the usury preemption period would be unaffected by any later reinstatement of rate ceilings, but loans made after a state had acted would be subject to such ceilings in assessing contingent deferred interest.

Loan Term

The Board has considered the question of the appropriate term of the SAM. A term in the range of 30 years raises problems related to the accumulation of a potentially significant amount of contingent interest. A borrower holding a loan to maturity may not be able to afford to refinance the interest and may be forced to sell the home. Conversely, the association holding the loan until maturity would be required to carry a below-market rate mortgage on its books until the contingent interest was realized, with subsequent adverse impact on the earnings of the association. The Board has determined that neither of these results is desirable and has proposed a maximum 10-year term. An association may choose to offer SAMs with a shorter term.

Guaranteed Refinancing

The proposal provides for the guaranteed refinancing of the outstanding principal indebtedness plus the full amount of contingent interest if the loan is not paid in full or the property securing the loan is not sold or transferred prior to maturity. Refinancing would be effected using any mortgage instrument other than the SAM authorized for owner-occupied homes and would be made at prevailing market rates for new residential mortgages at the time of refinancing. At present, these include the fixed-payment mortgage, pledged-account mortgage, flexible-payment mortgage, GPM, RAM, VRM and RRM. If the association offers refinancing with more than one type of instrument, the borrower would have the option of choosing among such instruments. The minimum term which could be offered on refinancng would be 30 years, and fees (except for appraisal cost) associated with refinancing would be borne by the association. The borrower may agree, however, to terms other than those required to be offered by the association. Refinancing would be required to be offered by the association without regard to the forecast of borrower's income; however, an association would not be required to offer refinancing in violation of other requirements of the lending regulations, such as those pertaining to as loan-to-value ratio, term, escrows and amount of monthly installments. In addition, an association would be able to condition refinancing on the borrower satisfying any intervening lien against the property arising since the SAM was made.

No Prepayment Penalty

In order to facilitate refinancing by the borrower, the Board proposes to prohibit prepayment penalties both on the SAM and on the loan effecting a subsequent guaranteed refinancing.

Required Covenants

In proposing this new authority, the Board was required to make a threshold determination that the portion of appreciation payable to the association constitutes contingent interest and a payment for the use of money rather than an equity investment in the underlying property. The Board has determined that, if the following covenants are provided in SAMs, the portion of appreciation payable to the association constitutes contingent interest, and the SAM constitutes a permissible investment for Federal associations: the borrower shall occupy

the property; borrower and association agree and state their intention to create a debtor-creditor relationship only, the mortgage secures the indebtedness only; the obligation to the ownership of the property shall be the sole responsibility of the borrower: the borrower may exercise the right to sell, transfer, encumber, improve or otherwise use the property without consent of the association; and the association is not liable for any decrease in market value of the property. This determination conforms with the statutory investment authority of Federal associations, which is limited, with certain specific exceptions, to investing in, selling or otherwise dealing in loans.

Disclosure and Notice

The proposal also requires that an association making the SAM provide to an applicant, at the time an application is requested, detailed disclosures setting forth the terms and conditions of the mortgage. The disclosure requirement includes comparsions of SAMs and conventional mortgages under different assumptions regarding terms and appreciation rates and showing the projected total interest cost to the borrower. In addition, 90 days prior to the maturity date, the association must send the borrower written notification of the due date, the method of determining contingent interest, and the terms of refinancing.

Nondiscrimination Requirements

Like all other types of loans made by members of the Federal Home Loan Bank System, SAMs offered by Federal associations would be subject to the nondiscrimination requirements contained in Part 528 of the Rules and Regulations for the Federal Home Loan Bank System (12 CFR Part 528). Specifically, these regulations prohibit discrimination in the extension of credit, or in setting the terms and conditions of a loan, on the basis of certain characteristics of the applicant or other residents, or on the basis of the age or location of the security property. Accordingly, while an association may, as a matter of sound business practice, seek to concentrate SAMs in areas or types of housing that it believes will appreciate rapidly, it may not limited the availability of these will appreciate rapidly, it may not limit the availability of these instruments to certain neighborhoods. Other limitations such as a minimum loan amount, purchase price, remaining economic life, or a certain history of appreciation, are not *per se* prohibited, but may prove objectionable if they are discriminatory in effect. A lending policy limitation will be discriminatory in effect if it has a disproportionately adverse impact on lending to protected classes of individuals. To extend a policy is discriminatory in effect, as association must be prepared to demonstrate that its policy achieves a genuine business need which cannot be achieved by means which are either not discriminatory in effect or less discriminatory in effect.

Accounting Treatment

Under generally accepted accounting principles, contingent gain, such as contingent interest payable on a SAM, should not be recognized in income prior to its realization. With a SAM this would be the earlier of the maturity or payment in full of the loan or the sale or transfer of the property. Fixed interest over the term of the loan would be recorded as received at the stated rate on the mortgage note. The Board has determined that the treatment outlined above would be the proper accounting treatment of the shared appreciation mortgage by Federal associations. Since § 563.23–3 of the Rules and Regulations of the Federal Savings and Loan Insurance Corporation already requires that associations prepare financial statements and reports to the Board on the basis of generally accepted accounting principles, an amendment to the regulation is not required.

Tax Treatment

The Board believes that the structure of the SAM will cause it to have tax consequences which differ significantly from those of other residential mortgage instruments. For example, the payment of contingent interest by a borrower on maturity or payment in full of the loan or sale or transfer of the property could result in an income tax deduction for the borrower in excess of his/her taxable income for the year. Any such excess deduction could be neither carried forward nor added to basis. In addition, contingent interest received from a borrower by a lender or secondary market purchaser of the SAM would be taxable income in the year it is received. Moreover, as contrasted to certain widely used non-residential mortgage arrangements involving equity participation by the lender, the portion of the appreciation received by an association on a SAM would constitute ordinary income, rather than capital gain.

Service Corporation SAMS

The Board recognizes that pursuant to § 545.9–1 of the Rules and Regulations for the Federal Savings and Loan System (12 CFR 545.9–1), a service corporation of a Federal association could make shared appreciation mortgages on terms other than as proposed for Federal associations. The Board urges Federal associations to have their service corporations make shared appreciation mortgages on the same terms as the associations, particularly with regard to loan term, guaranteed refinancing, treatment of improvements to the property, disclosure and other consumer protection requirements. The Board reminds associations that § 545.9–1 requires that real estate lending by service corporations must be done "on a prudent basis" and that it would review nonconforming shared appreciation mortgages on that basis.

Solicitation of Comments

The concept of a lender sharing in the appreciation of the real property securing a loan has been common for income-producing properties since the mid-1960's. Although frequently proposed, the concept has not been applied in the home mortgage area with the exception of a few recent instances. Thus, in making its proposal, the Board has had little benefit from past experience with shared appreciation mortgages. The Board has tried to structure a proposal which is basically fair to both borrowers and associations but specifically solicits comments on the following matters:

1. What is the potential market for SAMs?
2. Should the relationship between below-market-rate fixed interest and the proportion of appreciation charged as contingent interest be established or limited by regulation?
3. Should the term of the SAM be limited to 10 years or some longer or shorter period? What considerations should be taken into account in determining the term?
4. Is net appreciated value the best basis for calculating contingent interest? Should appreciation attributable to capital improvements be appraised separately and deducted from net appreciated value? How should the cost of required appraisals be allocated?
5. On what terms should refinancing be guaranteed? Should refinancing with another SAM be permitted?
6. What disclosure information and consumer safeguards are most important with a SAM?
7. Should the Board impose limits on the percentage of an association's portfolio which may be in SAMs?
8. What special problems of enforcing an association's security interest in the underlying property are raised by use of SAMs?

9. Will the accounting and tax treatments for SAMs outlined above affect the attractiveness of the instrument to borrowers and lenders?

10. Should one or more of the limitations placed on SAMs made by Federal associations be placed on SAMs made by service corporations of Federal associations?

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 545 of the Rules and Regulations for the Federal Savings and Loan System (12 CFR Part 545) by adding a new § 545.6–4b, to read as set forth below.

§ 545.6–4b Shared appreciation mortgage instruments.

(a) *Authorization.* A Federal association may make, purchase or participate in a shared appreciation mortgage loan under this section, if the loan otherwise complies with the provisions of § 545.6–2(a) pertaining to owner-occupied one-to-four-family home loans, except to the extent that the provisions of such section are inconsistent with the provisions of this section. This regulation is promulgated pursuant to the plenary and exclusive authority of the Board to regulate all aspects of the operations of Federal associations, as set forth in section 5(a) of the Home Owner's Loan Act of 1933, as amended. This exercise of the Board's authority is preemptive of any state law purporting to address the subject of a Federal association's ability or right to make, purchase, or participate in appreciation mortgages, or to restrict such ability or right directly or indirectly.

(b) *Description.* For purposes of this section, a shared appreciation mortgage loan is a loan bearing (1) interest at a fixed rate below the prevailing market rate for similar loans over the term of the loan and (2) contingent interest not to exceed 40 per cent of the net appreciated value of the security property payable upon the earlier of maturity or payment in full of the loan or sale or transfer of the security property. The term of the loan shall not exceed 10 years, with guaranteed refinancing at maturity as provided in paragraph (d) of this section. The loan must be repayable in equal monthly installments of principal and fixed interest during the loan term in an amount sufficient to retire a debt with the same principal and fixed interest rate over a period not exceeding 40 years, with the unamortized principal and contingent interest payable on the earlier of maturity or payment in full of the loan or sale or transfer of the security property. For purposes of this section, a sale or transfer shall not include (i) the creation of a lien or encumbrance subordinate to the shared appreciation mortgage; (ii) the creation of a purchase money security interest for household appliances; (iii) a transfer by devise, descent or operation of law, upon the death of a joint tenant; or (iv) the grant of any leasehold interest of three years or less not containing an option to purchase.

(c) *Definitions.* As used in this section, the following definitions apply unless the context otherwise requires:

(1) *Cost of the security property.* The term "cost of the security property" shall mean (i), in the event that the loan is used for the purchase of the security property, the cost of the security property as determined under the Code (excluding any amount paid to the seller as reimbursement for real property taxes treated under the Code as imposed on the purchaser), or (ii), in the event that the loan is used for refinancing of the security property, the market value of the security property at the time of the origination of the loan.

(2) *Code.* The term "Code" means the Internal Revenue Code, as amended.

(3) *Market value.* (i) The term "market value" means the net sales price or, in the event of maturity or payment in full of the loan prior to sale or transfer of the security property or at the option of the association, the highest price in terms of money which a property will bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(A) buyer and seller are typically motivated;

(B) both parties are well informed or well advised, and each acts in what he/she considers his/her own best interest;

(C) a reasonable time is allowed for exposure in the open market;

(D) payment is made in cash or its equivalent;

(E) financing, if any, is on terms generally available in the community at the specified date and typical for the property type in its locale; and

(F) the price represents a normal consideration for the property sold unaffected by special financing amounts and/or terms, services, fees, costs or credits incurred in the transaction.

(ii) Unless determined by net sales price, the market value of the security property shall be determined by an appraisal performed by an appraiser selected by the borrower and the association from a list of appraisers who have made appraisals which were accepted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association. In the event that the borrower and the association do not agree on the selection of an appraiser, the market value shall be determined by the average of appraisals performed by two appraisers selected from such list, one selected by the borrower and one by the association. In the event that the borrower does not agree on the selection of an appraiser with the association and does not select an appraiser within 30 days of receipt of the notice provided for in paragraph (g) of this section, the appraiser selected by the association shall perform the appraisal.

(4) *Net appreciated value.* The term "net appreciated value" means the amount equal to the difference of (i) the market value of the security property, and (ii) the sum of (A) the cost of the security property, (B) any expenditure properly chargeable to capital account (including the cost of improvements made to the property) under the Code, and (C) the cost of any appraisal performed pursuant to paragraph (c)(3) of this section.

(5) *Net sales price.* The term "net sales price" means the amount realized from the sale or other transfer of the security property as determined under the Code.

(d) *Guaranteed refinancing.* In the event of the maturity of the loan prior to the sale or transfer of the security property, the association shall offer, without regard to the forecast of borrower's income, to refinance the outstanding indebtedness on the loan, including any contingent interest, by means of one or more of the loan instruments authorized pursuant to §§545.6–2, 545.6–4 or 545.6–4a of this Part, under the terms, conditions and interest rates prevailing for new loans on the security of homes at the time of such refinancing. Any refinancing offered pursuant to this paragraph shall be for a term of not less than 30 years, and the borrower may not be charged any costs or fees (other than for appraisal as provided in paragraph (c)(4) of this section) in connection with the refinancing. The association may require as a condition of refinancing that any intervening lien or encumbrance arising between the origination of the shared appreciation mortgage and the time of refinancing be released of record or subordinated to the mortgage or deed of trust securing the refinancing.

(e) *Prepayment without penalty.* The borrower may prepay, in full or in part, the principal loan balance secured by the shared appreciation mortgage or

refinanced mortgage without penalty at any time.

(f) *Required covenants.* The mortgage securing the loan shall contain provisions requiring that:

(1) the property securing the loan be occupied by the borrower;

(2) the borrower and the association intend that their relationship be that of debtor to creditor and not a joint venture or partnership;

(3) the instrument is intended to secure the obligation of the borrower to repay the loan, including contingent interest, and the interest of the association in the security property is not that of an owner;

(4) the obligation to pay any real property taxes, insurance premiums, or any other charges relating to the ownership of the security property shall be the sole responsibility of the borrower;

(5) the borrower's right to sell, transfer, encumber, improve or otherwise use the security property may be exercised by the borrower without the prior consent of the association; and

(6) the association shall not be liable to the borrower for any reduction in market value of the security property.

(g) *Maturity notice.* At least ninety (90) days before the maturity date of the loan, the association shall send written notification in the following form to the borrower:

Notice

Your loan with _____ Federal Savings and Loan Association, secured by a [mortgage/deed of trust] on the property located at [address], is due and payable on [no earlier than 90 days from date of notice]. Unless you choose to refinance the loan as set forth below, the outstanding indebtedness on your loan shall be payable on [no earlier than 90 days from date of notice]. The outstanding indebtedness on your loan on that date shall consist of the principal balance of [actual principal balance] and contingent interest in the amount of [number not to exceed 40] percent of the amount of appreciation on the property since the beginning of the loan. The amount of appreciation is determined by subtracting from the value of the property as of the date the loan is due (i) the cost of the property to you, (ii) the cost of improvements made by you, and (iii) the cost of appraisal to determine the value of the property.

The appraisal shall be performed by an appraiser selected by you and the association from a list of appraisers who have made appraisals accepted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association. You may obtain a copy of this list from the association. In the event that you do not agree with the association on the selection of an appraiser, you and the association shall each select an appraiser from the list and the market value shall be determined by an average of the two appraisals. In the event that you do not select an appraiser within 30 days from receipt of this notice, the appraisal shall be performed by an appraiser selected by the association.

The association is required to provide you with the opportunity to refinance the entire amount due with a loan for a term of not less than 30 years. Refinancing may be by use of any home mortgage loan presently being made by the association, including [specify types of loans being made], under current terms and conditions, including interest rates. The association may not look to the forecast of your income in offering to refinance the loan. However, as a condition of refinancing, the association may require that you satisfy any claims against your property arising since the making of the original loan. You may contact the association regarding the terms and conditions of such refinancing.

For further information with regard to this notice, please contact [*title and telephone number of association employee.*]

(h) *Application disclosure.* An applicant for an appreciation mortgage must be given, at the time he/she requests an application, a disclosure notice in the following form:

Information About the Appreciation Mortgage

You have received an application form for an appreciation mortgage. The appreciation mortgage differs from other mortgages commonly in use in that there are two elements used in calculating interest with the appreciation mortgage. The first element of interest is fixed at the beginning of the loan and is paid over the term of the loan as part of the monthly installment. The second element of interest is contingent in nature, based upon the amount of the increased value of the residence securing the loan between the time of purchase and either the maturity or payment in full of the loan or the sale or transfer of the property. The amount of Contingent Interest which you will pay cannot be determined at this time.

The contingent interest on the shared appreciation mortgage is equal to a percentage of the appreciation of the property not to exceed 40%, as agreed to by the borrower and lender. Contingent interest is payable on the earlier of the maturity or payment in full of the loan or the sale or transfer of the property. The obligation to pay contingent interest will diminish the amount of appreciation realized by you on the property. The attached table shows examples of the total cost of a shared appreciation mortgage and comparisonsge with conventional mortgages. Contingent interest is calculated as follows:

Market value of the property [The association may choose to use the amount realized on the sale or transfer of the property as a measure of market value].

– (less) Cost of the property to you [This amount includes certain costs paid by you incident to the purchase. In the event that the loan will be used to refinance the property the cost of the property will be determined by the market value as of the time that the loan is made.].

– (less) Cost of capital improvements made by you [You will be required to provide proof of such costs.].

– (less) Cost of appraisal [If used to determine market value.].

= (equals) Net appreciated value.

× (times) Percentage of net appreciated value to be paid by the borrower.

= (equals) Total Contingent Interest.

If the property is not sold prior to the maturity of the loan, the lender must offer to refinance the outstanding obligation on the loan, including any contingent interest. The lender must offer refinancing using any fully amortizing mortgage instrument with a term of at least 30 years. You may request a loan with a shorter term. Refinancing may be by use of any home mortgage loan being made by the association at the time of refinancing under terms and conditions, including interest rates, then prevailing for home mortgage loans. If the association offers more than one type of loan for refinancing, you may choose between them. The association may not look to the forecast of your income in offering to refinance. However, as a condition of refinancing, the association may require that you satisfy any claims against your property arising since the making of the original loan. The interest rate and specific terms of any refinancing are subject to then-prevailing market conditions. The interest rate and monthly payment on renewal cannot be determined at this time.

Use of the appreciation mortgage may have income tax or estate planning consequences. For further information, consult your accountant, attorney or other financial advisor.

[A side-by-side comparison of a SAM and a comparable standard mortage instrument (with a fixed interest rate, level payments and full amortization) must be made in the following format. The initial property value, loan amount, fixed interest rate and ratio for sharing appreciation do not have to be exactly the same as the loan for which the applicant is applying, but must be similar enough to permit a fair comparison.]

Examples of Total Cost of a Shared Appreciation Mortgage

[Initial property value [1]]

Loan amount—percentage of appreciation to lender	A number not to exceed 40		
	Monthly [2] interest	Contingent [3] interest	Total interest cost
5-year life:			
Conventional mortgage at —% interest			
Shared appreciation mortgage at:			
[x]% fixed interest [2] and 5% property appreciation			
[x]% fixed interest [2] and 10% property appreciation			
[x]% fixed interest [2] and 15% property appreciation			
10-year life;			
Conventional mortgage at —% interest			
Shared appreciation mortgage at:			
[x]% fixed interest [2] and 5% property appreciation			
[x]% fixed interest [2] and 10% property appreciation			

Examples of Total Cost of a Shared Appreciation Mortgage—Continued

[Initial property value [1]]

Loan amount—percentage of appreciation to lender	A number not to exceed 40		
	Monthly [2] interest	Contingent [3] interest	Total interest cost
[x]% fixed interest [2] and 15% property appreciation			

[1] This chart assumes that no improvements to the property are made by the borrower. The cost of such improvements would be deducted from appreciation prior to calculating contingent interest.

[2] A fixed rate of interest of [x]% is assumed. The fixed rate on your loan may not be the same.

[3] Contingent interest equal to [number not to exceed 40] percent of net appreciated value is assumed. The rate on your loan may not be the same. This chart assumes that there are no costs incident to sale. Such costs are deducted prior to calculating contingent interest.

Date Received: _____

Borrower Signature: _____

Lending Officer: _____

(Sec. 5, 48 Stat. 132, as amended, (12 U.S.C. 1464); Reorg. Plan No. 3 of 1947, 3 CFR, 1943–1948 Comp., p. 1071)

By the Federal Home Loan Bank Board.

Robert D. Linder,

Acting Secretary.

[FR Doc. 80-31362 Filed 10-7-80; 8:45 am]

BILLING CODE 6720-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 111

Pollution Control Guarantee Program; Proposed Addition to Regulations Providing for the Interest Rate at Which the Small Concern Repays SBA for Payments Under Its Guarantee

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The proposed rule would provide that a small concern which defaults on its obligations under the Qualified Contract of the Pollution Control Gurarantee Program, requiring SBA to pay the small concern's creditors as stated in § 111.10 of the regulations, must repay SBA for all funds paid by SBA under the Guarantee at a rate of interest determined by the Secretary of the Treasury taking into consideration the current average yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the then remaining maturity of the small concern's defaulted obligation.

DATE: Comments must be received on or before November 7, 1980.

ADDRESS: Comments should be sent in duplicate to: Associate Administrator for Investment, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416, (202) 653–6632.

FOR FURTHER INFORMATION CONTACT: Vincent A. Fragnito, Chief, Pollution Control Guarantees, Magazine Building, Rosslyn, Virginia 22209, (703) 235–2902.

SUPPLEMENTARY INFORMATION: The proposed rule would require the defaulting small concern to pay to SBA interest at a rate comparable to the Government's own cost of money, or (where surplus funds are used) comparable to the lost return which the fund could have earned under Section 405 of the Small Business Investment Act, as amended by Section 112 of Pub. L. 96–302. This foregone investment opportunity represents the real cost of SBA's money used in covering defaults, rather than the usually lower rate of interest paid on the revenue bonds, the proceeds of which are used to pay the small concern's project cost.

Notice is hereby given that pursuant to the authority contained in Section 308(c) of the Small Business Investment Act, it is proposed to add the following to the end of § 111.10.

§ 111.10 Payments of installments in default.

* * * * *

The small concern shall repay SBA for all payments made under the Pollution Control Guarantee at a rate of interest determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the then remaining maturity of the small concern's defaulted obligation.

(Catalog of Federal Domestic Assistance No. 59.031 Small Business Pollution Control Financing Guarantee)

Dated: September 26, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-31225 Filed 10-7-80; 8:45 am]

BILLING CODE 8025-01-M

13 CFR Part 120

Business Loan Policy; Revision to Business Loan and Guarantee Eligibility Standards

AGENCY: Small Business Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: SBA is acutely aware of the large number of recent mergers and acquisitions in the media industries, and we are concerned about the tendency that these takeovers have to eliminate many media oriented small businesses and to promote concentration of ownership. We are also concerned that our present "opinion molder" policy relative to media industry eligibility may be unnecessarily inhibiting our ability to assist these small businesses, and that it may thereby indirectly promote undesirable concentration. We are therefore in the process now of developing an approach to altering this policy, and as we have expressed in recent testimony before the Congress, we favor a regulatory rather than a legislative approach to accomplishing this purpose.

As a first procedural step, we are publishing this advance notice of proposed rulemaking to invite public comment on our own thinking on how best to accomplish a change. We anticipate publication of proposed rules within 60 days of publication of this ANPRM. We hope that this ANPRM will help to explain present SBA policy and our intentions for the future. We also hope it stimulates public comment which will help us to frame our new regulatory approach.

DATE: Written comments should be submitted by November 24, 1980.

ADDRESS ALL COMMENTS TO: Martin D. Teckler, Associate General Counsel for Legislation, Small Business Administration, 1441 L Street NW., Room 700, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Martin D. Teckler, (202) 653–6662.

SUPPLEMENTARY INFORMATION:

I. Policy History

Under SBA's present regulatory policy, no business loans may be made to an applicant engaged in the "creation, origination, expression, dissemination, propagation, or distribution of ideas, values, thoughts, opinions or similar intellectual property, regardless of medium, form, or content," (13 CFR 120.2(d)(4)). There are several express exceptions to this prohibition.

This policy was originally adopted in 1953 under the authority granted by Section 4(d) of the Small Business Act (15 U.S.C. 633(d)), which permits SBA to "establish general policies which shall govern the granting and denial of applications for financial assistance by the Administration."

There are three basic reasons for the policy: First, the prohibition is based upon SBA's desire to avoid any possible accusation that the government is attempting to control editorial freedom by subsidizing media or communication for political or propaganda purposes. Second, the agency has generally sought to avoid government identification through its business assistance programs with concerns which might publish or produce matters of a religious or controversial nature. Third, SBA recognizes that the constitutionally

protected rights of freedom of speech and press ought not be compromised either by the fear of government reprisal or by the expectation of government financial assistance.

Exceptions to the Policy

On January 27, 1978, in order to increase the participation in its business assistance programs of small business concerns in the broadcasting industry, SBA made an exception to the general policy by permitting assistance to otherwise qualified applicants for the purchase or construction of broadcasting stations or cable TV systems. This decision was based upon the assumption that providing loans to acquire federally regulated broadcasting facilities would not cause any significant increase in government interference in the broadcasting industry. For Fiscal Year 1979, 145 loans were issued to radio and TV broadcasters and related communications services, amounting to $30,998,500.

Another exception to the rule relates to advertising concerns. They have been considered eligible for SBA business assistance if they offer no editorial comments and do not engage in the publication of news or otherwise endeavor to influence public opinion. The availability of the advertising exception does not depend upon the nature of the goods or services for which the applicant prepares or places advertising. Akin to this exception is another one that allows assistance to publishers of shoppers' newspapers or circulars consisting of advertising material only, without editorial, narrative, or filler material.

There is also an exception for commercial printing firms, provided there is no common ownership of the applicant and an ineligible concern, and the printer has no direct financial interest in the commercial success of the material it produces. "Common ownership" is construed to include ownership within a family relationship (spouse, parent, child). For Fiscal Year 1979, SBA granted 289 loans to commercial printing firms, amounting to $28,789,170.

Academic schools are generally denied business assistance under the rule. This limitation does not, however, include motivational instruction, e.g., sales, speech or motivation, but does apply to the private academic tutoring of individuals. Assistance is allowed for nursery and pregrade schools if they are not primarily engaged in teaching academic subjects.

An exception to the rule has been established for general merchandise stores which also sell books, magazines, newspapers, etc., and for general book or music stores. Sales of opinion molding merchandise by general merchandise stores and general bookstores are assumed to be *de minimis*, an insignificant part of their gross sales or otherwise eligible activities. The exception is not available, however, to specialty bookstores which only sell books in a single or limited subject area. The rationale underlying this distinction between general bookstores and specialty bookstores is that financial assistance to a store which stocks books covering a range of opinions would not involve SBA in the propagation of a particular set of ideas or values.

In deciding whether a bookstore is a general or specialty bookstore, we consider whether it carries in stock a variety of titles in a variety of fields, from a variety of publishers, including best-sellers. If so, it is considered a general bookstore. During the Fiscal Year 1979, SPA granted 147 business loans to general bookstores amounting to $10,892,536.

II. Other Assistance to Media Concerns

SBA is well aware of the problems of small media concerns and is not indifferent to their plight. Under present SBA policy, Small Business Investment Companies (SBIC's) are permitted to finance small business concerns which deal in mass media publication or opinion molding. At present, there are several SBIC's financing communication concerns. These include specialists in radio, television, and printing. There are two SBIC's and one MESBIC which SBA recently licensed to specialize in investing in the movie industry. All of this financing has been conducted under a pilot program approach, and we are presently studying this program to determine if licensing of investment companies which are active in the media industry should be continued.

Since SBIC's are independently owned and operated, they make their own investment judgments and are, therefore, free from any accusation of government or political control or supression as a result of their loan-making activities. SBIC assistance to media concerns is similar to the approach taken by the Congress in funding broadcasting through a nonprofit corporation, the Corporation for Public Broadcasting. SBIC's operate within SBA regulations, but their transactions with small companies are private arrangements and have no connection with SBA. Their funding comes from private, SBA, and other nonprivate sources.

In addition, SBA has been making disaster loans to media concerns and schools since 1953, based on humanitarian grounds. However, by its nature disaster relief can be distinguished from loans given for business reasons. The disaster loan program is based upon a theory of restitution to restore to an injured party that which was lost due to circumstances beyond its control. SBA's business loans are issued to promote and aid the development of small concerns which cannot obtain credit in the private sector.

III. Conclusion: Future Efforts

SBA has come to the conclusion that such assistance as is rendered under exceptions to the "opinion-molder" rule and the SBIC and disaster programs may not be sufficient to assist the small businesses in the media industries which are demonstrably in need of increased assistance. We feel that time has come for a complete revision of our "opinion-molder" policy. We note that there has been strong sentiment in both Houses of Congress favoring a change in the policy, and we acknowledge that the present policy has produced inconsistent results in the way our assistance has been rendered. Therefore, we have recently undertaken a review of the policy from a legal stand-point, and we feel that we are not legally prohibited from making regulatory changes in the policy which we feel will allow us to make much more assistance available from SBA to media concerns.

We favor a regulatory approach to this problem because we feel it will permit us to maintain its valid features while allowing increased assistance to worthly elements of the media industry.

In this regard, we believe that the following changes in the policy could be made by regulation without fear of successful legal attack:

1. Retain the present rule, but provide a waiver procedure by which media concerns denied assistance could demonstrate that the purpose of the rule is not served by the denial of assistance.

This proposal would add a "rule of reason" into SBA's current strict policy of denying assistance to all "opinion molders" except those which qualify for specific exemptions. This proposal would give SBA administrative flexibility to allow funding of certain enterprises covered by the rule where application of the rule would serve no useful purpose (e.g., most publishers or distributors of greeting cards, sheet music, pictures, and posters; producers or distributors of musical broadcasts or recordings; specialty bookstores that do

not promote a particular point of view; most neighborhood newspapers). The waiver procedure would be administered by a central office committee to ensure fairness and uniformity in ruling on waiver requests.

2. Expand the exceptions in the current rule to allow SBA assistance to those types of businesses which meet the present broad definition of an "opinion molder," but which do not primarily mold opinions, and the funding of which would not be likely to promote governmental interference with freedom of speech and press.

This proposal would substantially reduce the number of cases in which SBA is forced to deny assistance to concerns which technically are covered by the rule but in which no real purpose is served by denying them assistance. Unlike the waiver procedure described above, this proposal would directly exclude from the rule certain types of media enterprises; the case-by-case determinations involved in the waiver procedure are absent from this proposal.

3. Replace the present broad proscription against assisting "opinion molders" with specific prohibitions against certain types of assistance to certain types of enterprises. This proposal would reverse the structure of the current extremely broad rule by making small media concerns eligible for assistance unless otherwise prohibited from receiving it. This proposal would have the effect of widening the scope of media concerns to which SBA would provide assistance.

4. Prohibit SBA assistance to certain forms of media enterprises which advocate a particular religious, political, social, or economic point of view.

This proposal would narrow the "opinion molder" rule to cover those cases where its purpose is best served. The danger of government censorship of the press is greatest where a newspaper, magazine, or book publisher, or bookstore advocates a particular point of view. Refraining from assisting all such businesses (regardless of what point of view is advocated), while funding other media concerns which do not advocate a particular point of view, would reasonably accommodate SBA's desire to assist eligible media enterprises while avoiding actual or apparent government censorship of the media.

For purposes of this proposal, a daily or weekly newspaper serving a city or community would not be considered as advocating a particular point of view, even if it carried editorials as well as news stories.

5. Prohibit SBA assistance to an applicant if more than thirty percent of the applicant's annual gross income is derived from the sale, rental, or lease of religious products, materials, or services.

This proposal, which includes but is not limited to media concerns, would ensure that SBA's liberalization of the "opinion molder" rule would not run afoul of the First Amendment's prohibition of governmental establishment of religion. The Supreme Court has repeatedly held that government cannot act in a manner which will have a primary effect that advances religion or which will promote excessive entanglement with religion. For SBA to fund religious bookstores or broadcast stations which emphasize religious programming would advance religion and excessively involve the government in religiously-oriented enterprise. The thirty percent income limitation contained in the proposal is a reasonable standard by which SBA could determine that assisting an enterprise would violate the First Amendment.

6. Prohibit SBA assistance to an applicant if more than thirty percent of the applicant's annual gross income is derived from the sale, rental, or lease of sexually explicit products, materials, or services.

This proposal, which includes but is not limited to media concerns, would keep SBA from funding hard-core sex industries. Such businesses (e.g., sexually explicit magazines, pornographic bookstores or theaters) are generally not in need of governmental assistance and thus SBA's finite resources could be more productively applied to other types of businesses.

7. Prohibit direct SBA loans to "opinion molders."

Presently, all financial assistance, including SBA loan guarantees as well as direct loans, are denied to "opinion molders." The dangers of government interference with freedom of speech and press is greatest where direct loans are involved. This proposal would be a reasonable accommodation between SBA's desire to assist eligible media enterprises while minimizing the danger of actual or apparent government censorship of the media.

Since this advance notice contemplates a major change in SBA policy, we are providing the public with ample opportunity to provide us with suggestions on the best manner in which to accomplish the change. In this regard, a 45-day comment period on this advance notice is made available. In addition, there will be an ample comment period available subsequent to the publication of proposed rules which we anticipate will take place in early November 1980.

Dated: September 26, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-31226 Filed 10-7-80; 8:45 am]

BILLING CODE 8025-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 441

Mobile Home Sales and Service; Extension of Comment

AGENCY: Federal Trade Commission.

ACTION: Extension of the time to file post-record comments until December 15, 1980.

SUMMARY: In response to several requests for additional time to submit post-record comments on the Presiding Officer's Report and the Final Staff Report, the Commission is extending the post-record comment period in the rulemaking proceeding on the proposed trade regulation rule on Mobile Home Sales and Services. (40 FR 23334, 1975). Comments will now be accepted if received on or before December 15, 1980.

DATE: Written comments on both the Presiding Officer's Report and the Final Staff Report must be received by the Commission no later than December 15, 1980.

ADDRESSES: Copies of the Final Staff Report and the Presiding Officer's Report are available at the Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580; telephone: 202-523-3593.

Written comments, in four copies if possible, should be sent to Raymond L. Rhine, Presiding Officer, Federal Trade Commission, 600 E Street, NW., Room 667, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Arthur B. Levin, Eloise Gore, or Allen Hile, Attorneys, Bureau of Consumer Protection, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580; telephone: 202-523-3500.

SUPPLEMENTARY INFORMATION: On August 13, 1980, the Director of the Bureau of Consumer Protection published in the **Federal Register** (45 FR 53839) notice of the publication of the Final Staff Report on the proposed Trade Regulation Rule on Mobile Home Sales and Service. Pursuant to § 1.13(h) of the Commission's Rules of Practice (16 CFR § 1.13(h)) the publication of this

report commenced the 60-day period for filing post-record comments on both the Final Staff Report and the Presiding Officer's Report (which was published on September 11, 1979; see 44 FR 53538). Therefore, the August 13, 1980 notice announced that comments would be accepted until October 14, 1980.

The Commission has received three requests to extend the post-record comment period for from six to eleven and one-half months. On September 26, 1980, the Commission determined that in view of the size of the rulemaking record in this proceeding and the Senate Commerce Committee Consumer Subcommittee oversight hearings which were held after commencement of the post-record comment period, an extension of 60 days should be granted. Therefore, comments will now be accepted if received on or before December 15, 1980.

Pursuant to § 1.13(i) of the Commission's Rules of Practice (16 CFR 1.13(i)) the Commission may allow persons who have previously participated in this rulemaking proceeding to make oral presentations to the Commission during its review of the rulemaking record. Requests to participate in such an oral presentation must be received by the Commission no later than the close of the post-record comment period. Since the Commission has extended the post-record comment period in this proceeding until December 15, 1980, requests to participate in an oral presentation will be accepted if received by the Commission on or before December 15, 1980.

By direction of the Commission dated September 26, 1980.

Carol M. Thomas,

Secretary.

[FR Doc. 80-31228 Filed 10-7-80; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 455

Sale of Used Motor Vehicles; Disclosure and Other Regulation

AGENCY: Federal Trade Commission.

ACTION: Extension of comment period on proposed rule.

SUMMARY: The Federal Trade Commission, in response to requests from the National Automobile Dealers Association and the Center for Auto Safety, has extended until November 7, 1980, the period in which the public may respond to questions about the proposed Trade Regulation Rule Concerning the Sale of Used Motor Vehicles. The questions are set out in the August 7, 1980 Federal Register notice [45 FR 52750].

DATES: Comments will be accepted through November 7, 1980.

ADDRESS: Send comments to Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580. Submissions should be labeled "Sale of Used Motor Vehicles".

FOR FURTHER INFORMATION CONTACT: Michael A. Katz, (202) 523-1670; or Denise Mercherson, (202) 523-0425.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-31240 Filed 10-7-80; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 270, and 271

[Docket Nos. RM80-47 and RM80-72]

Regulations Implementing Section 110 of the Natural Gas Policy of 1978 and Establishing Policy Under the Natural Gas Act; and Production Costs and Maximum Lawful Prices in Sales Under the Natural Gas Policy Act of 1978; Public Hearing

September 26, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of opportunity for the oral presentation of data, views and comments.

SUMMARY: On December 1, 1978, the Federal Energy Regulatory Commission (the Commission) adopted interim regulations implementing section 110 of the Natural Gas Policy Act of 1978 (the NGPA). 43 FR 56448, 56574-56577 (Dec. 1, 1978). On July 25, 1980 under Order No. 94, (Docket No. RM80-47) the Commission amended those interim regulations and provided for further comments. 45 FR 53099 (Aug. 11, 1980). In addition, and as part of the general regulatory scheme under Order No. 94, the Commission issued on September 9, 1980 a notice of proposed rulemaking under Docket No. RM80-72 to bar sellers of natural gas under the NGPA from shifting production costs to their purchasers. Because final regulations adopted by the Commission under both Docket No. RM80-47 and Docket No. RM80-72 would be regulations issued under the NGPA, the Commission, consistent with the requirements of the NGPA, is providing an opportunity for the oral presentation of data, views and comments on both the amendments issued July 25, 1980 and the notice of proposed rulemaking issued September 9, 1980. Because the two are closely related, the opportunity for oral presentation is being conducted for the two in one proceeding.

DATES: Requests to participate to be filed by October 17, 1980; oral presentations to commence at 10 A.M. local time on October 21, 1980.

ADDRESSES: Requests to participate should reference Docket No. RM80-47 and Docket No. RM80-72 and should be addressed to: The Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

Oral presentation is to be held at the Offices of the Federal Energy Regulatory Commission, at 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: John Conway, Office of the General Counsel, Room 8100-K, 825 North Capitol Street NE, Washington, D.C. 20426, (202) 357-8150.

SUPPLEMENTARY INFORMATION: On December 1, 1978, the Commission adopted Subpart K of Part 271 of its rules as interim regulations.[1] The new subpart, entitled "Adjustments for State Severance Taxes, Allowances and Certain Production-Related Costs", was adopted to implement section 110 of the NGPA, 15 U.S.C. § 3320 (Supp. II 1978) which gives the Commission authority to permit natural gas sellers to charge prices in excess of established ceiling prices to recoupe certain production-related costs. In response to comments received on these interim regulations, the Commission issued amendments to those regulations on July 25, 1980.[2] Because the amendments of July 25, 1980 were not final rules, the Commission solicited further comment on them.

The amendments of July 25, 1980 under Order No. 94 defined the types of production-related costs that may be applied for, permitted the automatic add-on of certain costs without application and expanded the scope of persons who may apply for production-related costs. The amendments also provided that costs of compression and gathering cannot be applied for until the conclusion of generic rulemakings to establish appropriate allowances for

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[1] "Natural Gas Policy Act of 1978: Interim Regulations", Docket No. RM79-3 at 247-253 (issued Dec. 1, 1978), 43 *Fed. Reg.* 56448, 56574-56577 (Dec. 1, 1978).

[2] Order No. 94, "Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act" (issued July 25, 1980), 45 *Fed. Reg.* 53099 (Aug. 11, 1980).

these activities. In addition, and apart from Subpart K, Order No. 94 also introduced a policy statement under the Natural Gas Act to provide that certain types of costs incurred by interstate pipeline producers will be deemed prudently incurred.

In issuing Order No. 94, the Commission noted that a rule would be proposed to bar sellers from selling gas so that a purchaser would incur costs to produce the gas in addition to a first sale price.[3] That rule was noticed on September 9, 1980 under Docket No. RM80-72.[4] The notice proposed to amend § 270.101(a) of the Commission's regulations to provide that any first sale (other than a sale of deregulated high-cost gas) that results in the purchaser bearing production costs in addition to the first sale price is a first sale exceeding the applicable maximum lawful price.

In that a final order in both Docket Nos. RM80-47 and RM80-72 would implement rules under the NGPA, the Commission will provide an opportunity for the oral presentation of data, views and arguments on both the amendments of Order No. 94 and the proposed rule of Docket No. RM80-72 as required by section 502(b) of the NGPA. Because they are related, and for the convenience of the public, the opportunity for oral presentations in both will be combined in one proceeding. To this end, a public hearing will be held in Washington, D.C. on October 21, 1980. The hearing will be held at the Offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., and will begin at 10:00 A.M., local time.

Requests to participate in the hearing should be directed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426 and should be made no later than October 17, 1980. Requests should reference Docket Nos. RM80-47 and RM80-72 and should indicate the name of the person who will be making the presentation, a phone number at which that person may be contacted, and the amount of time requested for the presentation.

Persons participating in the public hearing should, if possible, bring 20 copies of their testimony to the hearing. A list of the participants in the hearing and the room number in which the hearing will be held will be available in the Commission's Office of Public Information prior to the hearing and will be available at the Commission on the morning of the hearing.

The hearing will not be a judicial or evidentiary-type hearing and there will be no cross examination of persons presenting statements. The presentations will be made before a panel whose members will be designated by the Chairman of the Commission. Members participating on the panel before whom the presentations are made may ask questions. If time permits, they may also ask such relevant questions as are submitted to them by participants. Other procedural rules relating to the hearing will be announced at the time the proceedings commence. A transcript of the hearing will be made and a copy of that transcript will be placed in the public file for these dockets and be made available for inspection at the Commission's Office of Public Information in Room 1000, 825 North Capitol Street, N.E., Washington, D.C.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31295 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[3] *Id.* at 3 note 3; 45 *Fed. Reg.* at 53100.

[4] Notice of Proposed Rulemaking, "Special Rule Under Part 270: Production Costs and Maximum Lawful Prices in Sales Under the Natural Gas Policy Act of 1978", Docket No. RM80-72 (issued Sept. 9, 1980), 45 *Fed. Reg.* 61643 (Sept. 17, 1980).

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18 CFR Part 271

First Sale Regulation Under Natural Gas Policy Act of 1978; Ceiling Prices

AGENCY: Office of Pipeline and Producers Regulation, Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking contains the recommendations of the Texas Railroad Commission that the Canyon Sandstone formation be designated as a tight formation pursuant to § 271.703(d).

DATE: Comments on the proposed rule are due on November 1, 1980.

Public hearing: No hearing is scheduled in this docket as yet. Written requests for a public hearing are due on October 17, 1980.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8299 or William Bushey, (202) 357-8590.

I. Background

On September 22, 1980, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation in accordance with § 271.703 of the Commission's final regulations (45 *Fed. Reg.* 56034, August 22, 1980), that the Canyon Sandstone formation, located in the western part of the state of Texas be designated as a tight formation in the Commission's regulations. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that the Canyon Sandstone formation be designated a tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

The recommended formation is found in Crockett, Edwards, Schleicher, Sutton, Terrell and Val Verde Counties, Texas. To the south the boundary is the Texas-Mexico border and the eastern and southern county lines of Val Verde and Edwards Counties. The northern boundaries are the northern boundaries of Crockett and Schleicher Counties. The boundary to the east is the eastern county lines of Schleicher, Sutton and Edwards Counties, and the western boundary is the western lines of Terrell and Crockett Counties. The two major fields within the Canyon Sandstone are the Ozona field and the Sonora field. The top of the Canyon Sandstone formation in the Ozona field is found at an average depth of 6180 feet in the north and 2675 feet in the south, and its thickness is approximately 380 feet in the north and 1240 feet in the south. The top of the recommended formation in the Sonora field is found at approximately 5900 feet in the north and 4775 feet in the sought, and its thickness is approximately 485 feet in the north and 1475 feet in the south.

II. Discussion of the Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public

hearing convened by Texas on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of crude oil per day.

Texas further asserts that existing state and federal regulations assure that development of this formation will not adversely affect and fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Pursuant to § 271.703(b)(6) of the Commission's regulations, Texas stated that a limited portion of the recommended formation has been drilled consistent with field rules and a subsequent amendment to the field rules has reduced the size of the drilling units. Texas stated that it has no information that indicates that this portion of the recommended formation can be developed absent the incentive price.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued August 1, 1980, in Docket No. RM80-68, (45 *Fed. Reg.* 53456, August 12, 1980), notice is hereby given of the proposal submitted by Texas that the Canyon Sandstone formation, as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

III. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, on or before November 1, 1980. Each person submitting a comment should indicate that the comments are being submitted in Docket No. RM79-76 (Texas—2), and should give reasons including any supporting data for any supporting data for any recommendations. Comments should also indicate the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the secretary of the Commission. Written comments will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Commission no later than October 17, 1980.

(Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301-3342)

Accordingly, the Commission proposes to amend the regulations in Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Texas' recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

1. Section 271.703(d) is amended by adding new subparagraphs (1) and (2) to read as follows:

§ 271.703 Tight formations

* * * * *

(d) *Designated tight formations.* (1) the following formations are designated as tight formations:

(i) through (v) [Reserved]

(vi) *Canyon Sandstone formation in Texas.*

(A) *Delineation of formation.* The Canyon Sandstone formation is found in Crockett, Edwards, Schleicher, Sutton, Terrell and Val Verde Counties, Texas.

(B) *Depth.* The top of the Canyon Sandstone formation in the Ozona field is at an average depth of 6180 feet in the north and 2675 feet in the south and ranges in thickness from approximately 380 feet in the north to 1240 feet in the south. The top of the Canyon Sandstone formation in the Sonora field is found at approximately 5900 feet in the north and 4775 feet in the south and the thickness ranges from approximately 485 feet in the north to 1475 feet in the south.

(2) A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79-76, and is also located in the official files of jurisdictional agency which submitted the recommendation.

[FR Doc. 80- 31241 Filed 10-7-80; 8:45 am]

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18 CFR Part 271

Ceiling Prices; High Cost Natural Gas Produced From Tight Formations Office of Pipeline and Producer Regulation

AGENCY: Federal Energy Regulatory Commission Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations are high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking contains the recommendations of the posed rulemaking contains the recommendations of the Wyoming Oil and Gas Conservation Commission that the Frontier and Mesaverde formations be designated as tight formations pursuant to § 271.703(d).

DATES:

Comment date: Comments on the proposed rule are due on October 23, 1980.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requestes for a public hearing are due October 10, 1980.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N. E., Washington, D. C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8299 or Victor Zabel (202) 357-8559.

(Issued September 23, 1980.)

I. Background

On August 5 and 7, 1980, respectively the State of Wyoming Oil and Gas Conservation Commission (Wyoming) submitted to the Commission, in accordance with § 271.703 of the final regulations (45 FR 56034, August 22, 1980), recommendations that the Frontier formation in Sweetwater, Unita

and Lincoln Counties, Wyoming, (Wyoming—1), and the Mesaverde formation in Carbon and Sweetwater Counties, Wyoming, (Woyming—2), be designated as tight formations in the Commission's regulations. The United States Geological Survey joined in the designations. Pursuant to § 271.703(c)(4) this Notice of Proposed Rulemaking is hereby issued to determine whether the Commission should adopt Wyoming's recommendation that the Mesaverde and Frontier formations be designated as tight formations. Wyoming's recommendations and supporting data are on file with the Commission and are available for public inspection.

The vertical limits of the Frontier formation are defined by the Hilliard Shale above and the Mowry Shale below. The lands are located in portions of Sweetwater, Uinta and Lincoln Counties and are more fully described in the recommendations on file with this Commission and Wyoming.

The vertical limits of the Mesaverde formation are defined by the Lewis Shale above and Steele Shale below. The lands are located in portions of Sweetwater and Carbon Counties and are more fully described in the recommendations on file with this Commission and Wyoming.

II. Discussion of the Recommendations

Wyoming has made the recommendations that the Frontier and Mesaverde formations be designated as tight formations based upon its findings that:

1. The estimated average in situ gas permeability throughout the formations' pay sections, is expected to be 0.1 millidarcy or less;

2. The stabilized production rate of wells completed for production in the formations without stimulation, is not expected to exceed the production rate determined in accordance with the Table found in § 271.703(c)(2)(i)(B) of the Commission's regulations; and

3. No well drilled into the recommended formations is expected to produce more than five (5) barrels of crude oil per day.

Wyoming also found that Rule 320 of the Wyoming Oil and Gas Conservation Commission Rules and Regulations assures that development of the recommended formations will not adversely affect fresh water aquifers. Rule 320 requires that surface casing of a well be run to a depth below all known or reasonably estimated utilizable domestic fresh water levels, and run to prevent blow-outs or uncontrolled flows.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued August 1, 1980, in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Wyoming that the Frontier and Mesaverde formations, as described and delineated in Wyoming's recommendations filed with the Commission, be designated as tight formations pursuant to § 271.703.

III. Public Comment 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 Street, N.E., Washington, D.C. 20426. Comment should reference Docket No. RM79-76 (Wyoming-1) or (Wyoming-2). All comments and information received by the Commission prior to October 23, 1980 will be considered prior to the issuance of the regulation.

Dates and locations of any hearings which may be held on this rulemaking will be announced in the near future. Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests for a hearing should be filed with the Commission no later than October 10, 1980.

(Natural Gas Policy Act, 15 U.S.C. 3301-3342)

Accordingly, the Commission proposes to amend the regulations in Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Wyoming's recommendations are adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

1. Section 271.703(d) is amended by adding new subparagraphs (1) and (2) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* (1) The following formations are designated as tight formations:

(i) [Reserved]

(ii) [Reserved]

(iii) *Frontier formation in Wyoming.*

(A) *Delineation of formation.* The Frontier formation is located in portions of Sweetwater, Uinta and Lincoln Counties, Wyoming.

(B) *Depth.* The top of the Frontier formation is marked by the Hilliard Shale and the bottom of the formation is marked by the Mowry Shale.

(iv) *Mesaverde formation in Wyoming.*

(A) *Delineation of formation.* The Mesaverde formation is located in portions of Carbon and Sweetwater Counties, Wyoming.

(B) *Depth.* The top of the Mesaverde formation is marked by the Lewis Shale and the bottom of the formation is marked by the Steele Shale.

(2) A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79-76, and is also located in the official files of the jurisdictional agency which submitted the recommendation.

[FR Doc. 80-30060 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

DEPARTMENT OF JUSTICE

28 CFR Ch. I

Improving Government Regulations; Semiannual Agenda of Regulations

AGENCY: Civil Rights Division, Department of Justice.

ACTION: Semiannual agenda of regulations.

SUMMARY: The Civil Rights Division is publishing its semiannual agenda of regulations under Executive Order 12044.

FOR FURTHER INFORMATION CONTACT: For information regarding individual regulations, contact the individual identified as the knowledgeable official.

SEMIANNUAL AGENDA OF REGULATIONS

Education Programs or Activities Receiving or Benefiting From Federal Financial Assistance—Implementation of Title IX of the Education Amendments of 1972, as Amended

Discussion of Regulation

The regulation will establish standards to assure nondiscrimination on the basis of sex in education programs and activities receiving Federal financial assistance from all components of the Department of Justice except the Law Enforcement Assistance Administration.[1]

[1] Section 518(c) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and Section 262 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, prohibit sex discrimination by any recipient of Federal financial assistance under those Acts. Since the scope of these Acts is broader than that of Title IX, the Law Enforcement Assistance Administration regulation

Footnotes continued on next page

It will define and prohibit discrimination on the basis of sex in these programs and activities, encompassing such matters as recruitment, admissions, the delivery of services, and employment. Covered programs and activities will include training programs provided by the Bureau of Prisons through its National Institute of Corrections, training assistance provided by the Drug Enforcement Administration, citizenship education and training funded by the Immigration and Naturalization Service, and education assistance provided by the Federal Bureau of Investigation.

Legal Basis

Title IX of the Education Amendments of 1972, as amended, 901, 902, 20 U.S.C. 1681 *et seq.*

Regulatory Analysis

The appropriateness of regulatory analysis is presently under consideration.

Knowledgeable Official

Stewart B. Oneglia, Office of Coordination and Review, Civil Rights Division, Department of Justice, Washington, D.C. 20250, (202) 724–6757.

Matters Relevant to Section 2(b) of Executive Order 12044

Issues and Alternatives Considered

Section 902 of the Education Amendments of 1972, as amended, mandates the issuance of a regulation to enforce the prohibition of Section 901 of the statute against discrimination because of sex in educational programs or activities receiving Federal financial assistance. Furthermore, Section 902 requires approval of the proposed regulation by the President before it becomes effective. Such approval will be obtained prior to publication of this regulation in final form in the **Federal Register.**

Every effort has been made to keep this regulation as consistent as possible with the Title IX regulations promulgated by the Department of Health, Education, and Welfare and the Department of Agriculture.

Public Comment

A ninety day comment period is in progress since initial publication of the proposed regulation in the **Federal Register** on June 17, 1980. In addition, the proposed regulation will be brought to the attention of persons known to have particular interest in enforcement of Title IX of the Education Amendments of 1972.

Timetable

Final Rule—November, 1980

Programs or Activities Receiving or Benefiting From Federal Financial Assistance—Implementation of Age Discrimination Act of 1975, as Amended

Discussion of the Regulation

The regulation will establish standards to assure nondiscrimination on the basis of age in programs and activities receiving Federal financial assistance from all components of the Department of Justice. It will define and prohibit discrimination on the basis of age against beneficiaries in these programs and activities and will detail statutory exceptions contained in the Act. Covered programs and activities would include those administered by State and local units of the criminal justice system receiving Federal assistance in the form of grants and Federal assistance contracts from the Law Enforcement Assistance Administration (*e.g.*, police departments, prisons, courts) or training from the Federal Bureau of Investigation or other agencies within the Department of Justice. Procurement contracts and contracts of insurance of guaranty are not considered Federal assistance within the meaning of the Age Discrimination Act of 1975, as amended.

Legal Basis

Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.;* Department of Health, Education, and Welfare Government-Wide Age Discrimination regulation, 44 FR 33768 (June 12, 1979).

Regulatory Analysis

Regulatory Analysis is not required.

Knowledgeable Official

David B. Marblestone, Appellate Section, Civil Rights Division, Department of Justice, Washington, D.C. 20530, (202) 633–4492.

Matters Relevant to Section 2(b) of Executive Order 12044

Issues and Alternatives Considered

In furtherance of its statutory authority, the Department of Health, Education, and Welfare has required each Federal department or agency to issue regulations which are consistent with the Federal-wide regulations promulgated by that Department. Section 90.31(c) requires each Federal department or agency to submit its final regulation to HEW for review no later than 120 days after publication of proposed age discrimination regulations. Accordingly, there are no alternatives to the standards which HEW has published (44 FR 33768) in terms of scope, timing of substantive requirements obligating recipients of Federal Assistance from the Department of Justice.

Public Comment

A thirty-day comment period was provided after initial publication of the proposed regulation in the **Federal Register.** In addition, the proposed regulation was brought to the attention of persons known to have particular interest in the enforcement of the Age Discrimination Act of 1975.

Timetable

Final Rule—November, 1980

Procedures for the Administration of Section 5 of the Voting Rights Act of 1965 (28 CFR Part 51)

Discussion of the Regulation

Section 5 of the Voting Rights Act of 1965, as amended in 1970 and 1975, 42 U.S.C. 1973c, requires that certain States, counties, cities, school districts, and other political units (primarily in the South and Southwest) submit to the Attorney General (or to the United States District Court for the District of Columbia) any changes in voting procedures, practices, or standards for a determination that such changes do not have the purpose and will not have the effect of discriminating on the basis of race, color, or membership in a language minority group. Procedures for the administration of Section 5 of the Voting Rights Act of 1965 were first published on September 10, 1971, 36 FR 18186. These procedures are currently under revision. The procedures, explain the preclearance requirement, the Department's internal procedures, the submissions process to be followed by affected jurisdictions, the information required by the Attorney General to evaluate proposed changes and the standards utilized in reviewing such changes. They also inform interested persons of the manner in which they can be notified of submitted changes and can comment upon them.

The Section 5 procedures do not impose new requirements on the affected jurisdictions. Rather, they provide guidance on compliance with requirements imposed by Congress. The procedures allow the preclearence requirements of Section 5 to be more easily understood, facilitate the preparation of submissions without legal counsel, and enable the submission

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Footnotes continued from last page
implementing the nondiscrimination provisions of those Acts, 28 CFR Part 42.201 *et seq.*, will be amended to include Title IX in its authority, and a reference to 28 CFR Part 42.201 *et seq.* will be made in the proposed Title IX regulation.

process to operate more expeditiously than it otherwise would.

Legal Basis

Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c; *Georgia* v. *United States*, 411 U.S. 526 (1973).

Regulatory Analysis

A regulatory analysis is not required.

Knowledgeable Official

David H. Hunter, Voting Section, Civil Rights Division, Department of Justice, Washington, D.C. 20530, (202) 724-7189.

Matters Relevant to Section 2(b) of Executive Order 12044

Issues and Alternatives Considered

Section 5 of the Voting Rights Act of 1976, as amended by the Voting Rights Act Amendments of 1970 and 1975, 42 U.S.C. 1973c, requires that certain states, counties, cities, school districts, and other political units (primarily in the South and Southwest) submit to the Attorney General (or to the United States District Court for the District of Columbia) any changes in voting procedures, practices, or standards for a determination that such changes do not have the purpose and will not have the effect of discriminating on the basis of race, color, or membership in a language minority group. Procedures for the administration of Section 5 were first published on September 10, 1971, 36 FR 18186. These procedures are currently under revision.

Three alternatives have been considered: (1) Have no published procedures; (2) Retain the existing procedures; (3) and Prepare revised procedures. The third alternative has been selected. The Section 5 procedures were originally adopted in 1971, after six years of experience without such published procedures demonstrated a need for them. Since 1971, the passage of the Voting Rights Act Amendments of 1975, a number of court decisions, and the experience of the Department have made necessary the preparation of revised prodecures. Within this context, the major issues will become more clearly defined once the comments have been analyzed.

Public Comment

A sixty-day comment period was provided after initial publication of the proposed revised procedures in the **Federal Register.** At that time copies of the proposed revised procedure were also sent to all persons and organizations listed in the Registry of Interested Individuals and Groups (see 28 CFR 51.13), and to officials of affected jurisdictions. In addition, the procedures have been brought to the attention of other persons known to have a particular interest in the administration of Section 5.

Timetable

Final Rule—September 21, 1980

Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs—Implementation of Executive Order 11764

Discussion of the Regulation

Under Executive Order 11764, 3A CFR Part 124 (1974 comp.), the Attorney General is charged with the responsibility of coordinating Federal Government enforcement of Title VI of the Civil Rights Act of 1964, as amended. Pursuant to that authority the Department of Justice issued regulations, 28 CFR 42.401-.415, in December 1976, setting minimum standards for the Federal grant agencies to use in enforcing Title VI. Experience in implementing this regulation has demonstrated that changes need to be made in the present regulation to increase its effectiveness. The changes proposed will improve the ability of the Department of Justice to direct agencies to take steps to adequately enforce Title VI. Additionally, it will clarify and broaden the enforcement authority of the grant agencies' civil rights offices; will provide clearer direction to the grant agencies and the public on how the Department of Justice expects Title VI to be enforced; and will provide further impetus towards reducing unnecessary duplication of effort.

Legal Basis

Executive Order 11764, issued January 21, 1974.

Regulatory Analysis

A regulatory analysis is not required.

Knowledgeable Official

Stewart B. Oneglia, Office of Coordination and Review, Civil Rights Division, Department of Justice, Washington, D.C. 20250, (202) 724-6757

Matters Relevant to Section 2(b) of Executive Order 12044

Issues and Alternatives Considered

Executive Order 11764 has charged the Attorney General with the responsibility for coordinating all Federal Government activity involving Title VI. Experience with the current regulations issued pursuant to the Attorney General's authority and studies conducted by the General Accounting Office and the President's Reorganization Task Force have shown that problems in the quality and quantity of Title VI enforcement still remain. The Department of Justice believes that the changes it is proposing in 28 CFR 42.401-.415 will, in part, address the deficiencies identified by our own experience and the studies cited above. These changes will improve the Department's ability to carry out its mandated responsibilities under the Executive Order and will assist the grant agencies in enforcing Title VI.

Public Comment

A sixty day comment period will be provided after initial publication. Additionally, comments will be solicited directly from the affected government agencies.

Timetable

NPRM—October/November, 1980
Final Rule—March/April, 1981

Drew S. Days III,
Assistant Attorney General, Civil Rights Division.

[FR Doc. 80-31292 Filed 10-7-80; 8:45 am]
BILLING CODE 4410-01-M

VETERANS ADMINISTRATION

38 CFR Part 3

Exclusions From Countable Income Under Improved Pension Program

AGENCY: Veterans Administration.

ACTION: Proposed rule.

SUMMARY: The Veterans Administration is proposing to amend its regulation governing exclusions from countable income under the Improved Pension Program. The need for this action results from our determination that payments under the Foster Grandparent Program are not to be included in countable persion income under the Improved Pension Program. The effect of this action will be to permit persons in receipt of Improved Pension to receive income under Foster Grandparent Program (and under other Domestic Volunteer Service Act Programs) without loss of Veterans Administration pension entitlement or benefits.

DATES: Comments must be received on or before November 7, 1980.

Comments will be available for inspection at the above address during normal business hours until November 17, 1980.

It is proposed to make this amendment effective January 1, 1979, the date the Improved Pension Program began.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810

Vermont Avenue, NW., Washington, D.C. 20420.

FOR FURTHER INFORMATION CONTACT: T. H. Spindle (202-389-3005).

SUPPLEMENTARY INFORMATION: Under the pension programs in effect prior to January 1, 1979, any income that a pensioner received under a Domestic Volunteer Service Act (DVAS) program was excluded by the Veterans Administration in determining the pensioner's countable pension income. 38 CFR 3.262(q). This exclusion was based on 42 U.S.C. 5044(g) (1973) which provided that payments under a DVSA program should not in any way reduce the level of assistance a volunteer might be receiving from other governmental programs.

The Improved Pension Program was brought into being by the enactment of Pub. L. No. 95-588 on November 4, 1978 and became effective January 1, 1979. Pub. L. No. 95-588 did not expressly provide for the exclusion of income received from a DVSA program in determining countable income for Improved Pension purposes. Since Pub. L. No. 95-588 was enacted after 42 U.S.C. 5044(g) (1973), there was some question as to whether the new pension law impliedly repealed 42 U.S.C. 5044(g) insofar as entitlement to Improved Pension was concerned.

We have recently examined this question and have concluded that clarification of the regulation is necessary. Consequently, we propose to amend 38 CFR 3.272 to expressly exclude from countable income under the Improved Pension Program certain payments received under the Foster Grandparent and other DVSA programs.

On December 13, 1979, 42 U.S.C. 5044(g) was amended by Pub. L. No. 96-143, section 9. Section 5044(g) now provides that payments under a DVSA program shall not be excluded from determining entitlement to other governmental programs if, based upon the hours served, the Director of the ACTION Agency determines that a volunteer's payments equal or exceed the minimum wage then in effect under the Fair Labor Standards Act of 1938 or the minimum wage of the State where the volunteer services were performed, whichever is the greater.

We, therefore, propose to amend 38 CFR 3.272 to exclude from countable income under the Improved Pension Program all payments received under a DVSA program before December 13, 1979 and only such payments received after December 12, 1979 which do not equal or exceed the applicable minimum wage as determined by the Director of the ACTION Agency.

The minimum wage provision does not apply to a person receiving pension under a pension program that was in effect prior to January 1, 1979, since Pub. L. No. 95-588, § 306 provides that such a person may continue to receive pension subject to the law in effect on December 31, 1978. Thus, a person still entitled to pension under a pension program in effect prior to January 1, 1979 is entitled to have all income received from a Domestic Volunteer Service Act program disregarded in determining pension entitlement without regard to whether such payments exceed the Federal or State minimum wage.

The Veterans Administration does not consider this to be a significant proposal since no compliance burdens or costs are imposed.

Additional Comment Information

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans' Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until November 17, 1980. Any person visiting the Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, D.C. for the purpose of inspecting any such comments will be received by the Veterans Administration Central Office Veterans Services Unit in room 132. Such visitors to a VA field station will be informed that the records are available for inspection only in the Veterans Administration Central Office and furnished the address and the above room number.

Approved: October 1, 1980.

By direction of the Administrator.

Rufus H. Wilson,

Deputy Administrator.

In § 3.272, paragraph (k) is added to read as follows:

§ 3.272 Exclusions from income.

The following shall be excluded from countable income for the purpose of determining entitlement to improved pension:

* * * * *

(k) *Domestic Volunteer Service Act Programs.* Payments received under a Domestic Volunteer Service Act (DVSA) Program (including Volunteers in Service to America (VISTA), University Year of ACTION (UYA), Foster Grandparent Program (FGP) and Older American Community Service Program, Retired Senior Volunteer Program (RSVP), Senior Companion Program) shall be excluded as provided in paragraph (k) (1) and (2) of this section:

(1) All DVSA payments received before December 13, 1979, shall be excluded from determining entitlement to improved pension. 42 U.S.C. 5044(g) (1973).

(2) DVSA payments received after December 12, 1979, shall be excluded from determining entitlement to improved pension if the Director of the ACTION Agency determines that, based upon the number of hours served, the volunteer's payments did not equal or exceed the minimum wage then in effect under the Fair Labor Standards Act of 1938 or the minimum wage of the State where the volunteer served, whichever is the greater. 42 U.S.C. 5044(g) (1979).

[FR Doc. 80-31367 Filed 10-7-80; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 264

[SW FRL 1626-4]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: EPA is in the process of finalizing its regulations under the Resource Conservation and Recovery Act that will provide a basis for issuing permits to owners and operators of hazardous waste treatment, storage and disposal facilities. The portions of those regulations that protect ground water resources from the adverse effects of land disposal facilities are particularly significant. This notice sets forth a broad outline of EPA's intended approach for controlling hazardous waste contamination of ground water to the extent necessary to protect public health and the environment. EPA seeks public comment on this approach. In addition EPA seeks comment on the applicability of this approach to other hazardous waste management options, such as incineration, and to its solid waste regulations under Subtitle D of RCRA.

DATE: Comments must be received on or before November 7, 1980.

ADDRESS: Comments should be addressed to Docket Clerk [Docket No. 3004-BEJ], Office of Solid Waste [WH-

562], U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

The public docket for this regulation is located in Room 2711, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Michael Kosakowski, Office of Solid Waste [WH-564], U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460 (202) 755-9120.

SUPPLEMENTARY INFORMATION: Under Subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended, EPA is to issue regulations setting forth a complete "cradle-to-grave" system for the management of hazardous wastes. This hazardous waste management program is to establish a manifest system that tracks wastes from the point of generation, through their transportation to the points of treatment, storage and disposal. Owners and operators of facilities for treatment, storage and disposal of hazardous wastes must receive permits from the EPA (or EPA-approved States.)

On December 18, 1978, EPA proposed, at 43 FR 58946, the major regulations required under Subtitle C. These included the Identification and Listing of Hazardous Waste (Section 3001), Standards Applicable to Generators of Hazardous Waste (Section 3002), Standards Applicable to Transporters of Hazardous Waste (Section 3003), and Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities (Section 3004). After extensive opportunities for public participation, EPA began to issue final regulations early in 1980. The standards for generators and transporters of hazardous waste, as well as the Preliminary Notification of Hazardous Waste Activity form under Section 3010 of RCRA, were issued on February 26, 1980 (45 FR 12746).

On May 19, 1980 at 45 FR 33066, EPA issued final regulations that established the basis for identifying and listing hazardous wastes, under Section 3001. The May 19 regulations also established portions of the standards for owners and operators of hazardous waste treatment, storage and disposal facilities. Specifically they established standards applicable to facilities during "interim status," a period recognized by statute during which certain existing facilities will be treated as if they had a permit while they await EPA action on their permit application. They also included many of the administrative requirements that will be used in the issuance of actual permits. EPA is working on the principal technical requirements under Section 3004 that will be used in issuing permits to treatment, storage and disposal facilities and intends to issue them soon.

Some of the most important elements of those technical requirements are the standards for land disposal facilities which are aimed at protecting ground water. The legislative history of RCRA reflects Congress's special concern for the effects of waste disposal on ground water. Ground-water contamination has been the central concern in some of the most tragic incidents involving hazardous waste. EPA is therefore particularly concerned that its approach to ground-water protection be protective of public health and the environment.

In the proposed regulations of December 18, 1978 EPA sought to protect ground water with specific design requirements for landfills, surface impoundments and landfarms. For example, one proposed landfill standard would have required placement of a soil liner of at least 1.5 meters which had a permeability of less than 1.0×10^{-7} cm/sec. Many commenters on the proposed regulation objected to such reliance on uniform technical design standards, arguing that such an approach was unnecessary inflexible and did not allow adequate consideration of site-specific factors that might affect the need for more or less stringent requirements. EPA believes that those comments raised an important issue. Since the rule was proposed, EPA has also begun to develop a comprehensive ground-water strategy that will guide many of its programs. In developing that strategy, in close cooperation with members of the public, EPA has also come to realize the importance of providing flexibility in regulations aimed at ground-water protection so that regulatory decisions can take account of local ground-water uses and needs as well as physical (*e.g.* hydrogeologic) conditions. EPA has concluded, therefore, that facility design standards are not completely adequate to assure ground-water protection.

In this Notice EPA is seeking comment on the ground-water protection scheme which it is currently intending to implement. EPA believes that the relatively short 30-day comment period provided in the Notice is necessary. Beginning on November 19, on new facilities may accept waste for disposal unless the facility has a permit. EPA must finalize its Section 3004 regulations if it is to issue any such permits. Moreover EPA is under court order from the U.S. District Court for the District of Columbia to issue final Section 3004 regulations this fall. Under these circumstances it is important to expedite all rulemaking activities to allow for prompt promulation of the land disposal standards.

I. Alternatives Examined

In developing a ground water protection approach for the hazardous waste facility regulations EPA examined four principal alternatives:

A. Facility Design Requirements

As in the proposed regulation, EPA could establish specific design requirements applicable to all land disposal facilities. For example, the regulations could require all landfills to install liners meeting minimum specifications (*e.g.* the equivalent of 20 feet of clay having a permeability of 10-7 cm/sec.), leachate collection systems capable of removing 98% of the leachate generated in the facilities, and highly impermeable final covers. While EPA has decided not to rely primarily on this approach at the present time, it does recognize that this approach provides a specificity that is desirable. Where such standards are used, both the permit issuing authority writer and the permittee have a clear idea of what is expected. This facilitates prompt issuance of permits. EPA recognizes the limits of this approach in devising land disposal standards for hazardous wastes, and therefore has not relied principally on design standards to protect ground water. Where justified, however, specific design requirements will be used. Moreover, EPA will continue to examine the possibility of using specific design requirements in future regulations as the state of the art in hazardous waste management technology improves.

B. Containment Strategies

Another approach to which EPA gave serious consideration was an engineering performance standard that would require containment of hazardous waste and hazardous waste constituents within certain boundaries. Such an approach could at least assure that the environment outside the regulatory boundaries would not be degraded.

The containment approach can take one of two forms. First it can be viewed purely as a design specification for a land disposal facility. Thus the regulation would specify a period of time over which there could be no leakage from the facility to useable ground water. The permittee would then present a facility design (based on liner, leachate collection and cover

specifications as well as on the natural hydrogeologic setting) that would assure that no leachate would emerge from the bottom of the facility for a specified period of time.

In selecting the time period EPA would need to make a policy choice based on a consideration of the risks inherent in hazardous waste management. As a matter of policy, EPA would stipulate a finite but long period of time (e.g. 100 years) to allow for waste degradation and attenuation that would reduce the risks attending leachate releases after the containment period. Providing such a long containment period would allow for development of technologies that might be able to treat or recycle the hazardous wastes that have been placed in land disposal facilities or to restore ground water quality.

There are several key elements that a permittee could manipulate in designing the facility. For liners the principal variables are the liner thickness and the resistance of the liner material to leachate flow. To predict the containment potential of a liner design EPA would use variations of Darcy's Law to relate the liner thickness and its resistance to flow to the specified containment period. Models or equations used to make predictions could account for various factors. For example, in calculating the performance of a soil liner differing equations might be used for saturated and unsaturated liners. With a saturated liner the resistence of a liner to flow will be heavily dependent on the force of gravity. Thus predictions of flow would need to account for the head of leachate above the liner. With unsaturated liners, however, migration through the liner would be affected by capillary action, of diffusivity. Thus predictions, in that case, would need to include a variable that accounts for the surface tension forces that accelerate leachate migration in unsaturated liners.

Other key design features to be considered would be the efficiency, period of operation and leachate treatment capabilities of the facility's leachate collection and removal system. The permittee would also include in the proposed design specifications concerning the slope, thickness, permeability, configuration and period of maintenance of the final cover, as well as any methods for waste treatment (pretreatment, stabilization or fixation, in situ treatment) that may be used at the facility.

A second form of a containment approach is one which requires managing leachate such that it is contained within some area surrounding the facility for a period of time. Again, the regulations would need to establish the duration of the containment period (*e.g.* 100 years), based on a consideration of acceptable risks. This approach would acknowledge that some leachate would emerge from the facility and enter the ground water. The leachate, however, could not migrate beyond the established containment area during the containment period. The permittee would be obligated to design and operate the facility to meet these conditions. In establishing the boundary of the containment area in the regulations, EPA would be concerned with the ability of the permittee to take corrective action to restore the ground water if contamination spread beyond the containment boundary. This would suggest, for example, that the regulatory boundary might be set at the permittee's property boundary in order to allow the permittee to take corrective action (*e.g.* installation of interceptor wells on-site) that would control any contamination that would occur. Variations from this boundary point, based on the use of or need for the downgradient ground water, might be allowed providing there were adequate methodologies (*i.e.* mass transport models) to predict migration. In evaluating facility designs, EPA would be seeking a thorough description of underlying hydrogeology, a predictive analysis adequate to assure that any contamination would remain within the containment area during the containment period, a method for detecting whether the containment objective is met (*e.g.* ground water monitoring) and a corrective action plan for responding when containment is not achieved.

EPA does not currently intend to use this approach in the land disposal regulations. As discussed later, EPA is concerned that this approach only guarantees human health and environmental protection for the finite time period (*e.g.* 100 years) selected as the containment period. While this might be an acceptable level of protection in some cases, it may not be so in others.

C. Specific Ambient Health and Environmental Performance Standards

This approach would involve establishing specific, often numerical, standards in the regulations that would be based on EPA determinations about unacceptable health risks. Thus EPA would evaluate available data on the health and environmental effects of specific hazardous waste constituents to establish tolerance limits for those constituents in the ground water or in the surface waters that are hydrologically connected to the aquifer below the facility. Facilities would have to provide adequate assurance that any leachate that might emerge from the facility would not cause the ground water or surface water at specified points to exceed the tolerance levels for the hazardous waste constituents in the leachate.

In establishing such specific health and environmental standards, EPA would build on other Agency efforts to establish such tolerance levels. For example, EPA would look to such things as the Water Quality Criteria (developed under Section 304 of the Clean Water Act), the National Interim Primary and Secondary Drinking Water Regulations (developed under Section 1412 of the Safe Drinking Water Act), the suggested No Adverse Risk Levels (SNARL'S) used as guidance in EPA's drinking water programs, and the work of EPA's Cancer Assessment Group to provide the scientific basis for these tolerance levels. In addition efforts to develop such tolerance levels could be initiated in coordination with other Federal agencies studying similar problems.

A key element in this approach concerns the points at which the established tolerance level would have to be met. EPA would specify this in the regulation. EPA could require that the tolerances must be met at any points of ground-water or surface-water use downgradient from the facility. For example, EPA might specify that the tolerance could not be exceeded at the upgradient side of the zone around a water supply well delineated by the cone of depression around the well. Such a zone would be dependent on the rate of withdrawal from the well.

EPA might also specify the tolerance levels as ambient standards and allow for the establishment of mixing zones around facilities that relate the maintenance of the ambient standard back to specific "effluent limits" that may be released from the facility. This approach would have particular appeal when the media of concern is surface water because it would allow the RCRA standard to be coordinated with existing state water quality standards programs. EPA could also require that the tolerance limits be met in ground waters at the edge of the facility property boundary. This approach would provide protection for any future users (as well as existing users) that may use the water downgradient from the facility.

Another variation of specific health and environmental performance standards would be the specification of a risk level in the regulation, allowing the permit writer to then establish

tolerance levels that are based on that risk factor. For example, the regulation might specify that the risk factor from a known carcinogen may not exceed 1x10-6 (the possibility of one additional death per 1,000,000 people) over a 70-year life span.

Even where EPA had established ambient health and environmental performance standards, the permittee would have to provide an extensive analysis of the facility in order to allow EPA to apply the specific performance standard. The informaton requirements would include prediction of (1) the amount, quality and nature of the leachate generated, (2) the migration, dispersion and attenuation of the leachate in both the unsaturated and saturated zones, and (3) the concentration and types of contaminants that would occur at various points in underlying ground waters and in hydrologically-connected surface waters.

EPA does not currently intend to rely primarily on this approach because the available ambient health and environmental performance standards are not yet comprehensive enough to address the full range of adverse effects associated with hazardous wastes.

D. Non-numerical Health and Environmental Standards

Finally, the regulations could establish a set of non-numerical health and environmental standards that lay out broad objectives which permittees must seek to meet. The regulations also would set forth a set of factors and considerations which the permittee must address in devising and justifying the facility's design. Essentially these standards establish a mode of analysis which the permit writer and the permittee will use to address the many complex elements that would go into a determination of whether a facility is adequate to protect public health and the environment.

By clearly specifying objectives and considerations, such standards focus attention on the key site-specific factual issues that must be addressed in the permit process. The burden is then on the permittee to develop the information necessary to show the design he has chosen will satisfy the objectives specified in the regulations. The permit writer will, after providing an opportunity for full public review and for presentation of alternative points of view, evaluate the permittee's demonstration and decide whether to grant, deny or seek further information on the permit. Unless the permittee satisfies the regulatory objectives after full consideration of all relevant factors, no permit my be issued.

The development of information is a key element of this approach. The regulations will guide the permittee by specifying the kinds of information which he will need to develop. EPA assumes that most of this information would have to be developed on a site-specific basis so that full consideration may be given to the unique aspects of the facility, its surrounding environment and the types of hazardous wastes handled. Certainly, however, the permittee could rely on scientific research and data from other facilities if he could demonstrate that such information took account of the same key conditions found at the facility seeking the permit. Likewise the permit writer would not be limited to the information generated by the permittee but could also consider information presented by other members of the public and on data developed by EPA or by the scientific community in general. (It should be noted that even where specific ambient health and environmental performance standards could be specified, many of the same information needs would be present.)

Since non-numerical standards inevitably involve the exercise of discretion by the permit-issuing authorities, it is important that they be used in a procedural context that allows for full development of all information relevant to the factual issues that must be resolved. EPA's permitting regulations provide a full opportunity for the concerned public to participate in the development of permits. EPA anticipates that in using non-numerical standards to evaluate particular facility designs, the permit-issuing authority would seek to insure that the permittee had adequately responded to the concerns raised by the public in the permit process.

II. EPA's Intended Approach

After evaluating these various alternatives, EPA has decided to develop regulations that combine elements of several approaches. First, where justified EPA will establish technical design requirements that reduce the risk of ground-water and surface-water contamination. Second, EPA will also require that disposal facilities do not degrade surface waters and ground waters below certain established ambient health and environmental performance standards (*e.g.* water quality standards.) Finally, EPA will use non-numerical health and environmental standards to protect against any potential adverse effects not addressed by the other types of standards. These non-numerical standards would place a heavy burden (including the provision of essential information) on permittees to demonstrate that any ground-water or surface-water contamination caused by their facilities would not adversely affect public health and the environment. Initially the non-numerical health and environmental standards will be the key tool for assuring full protection for public health and the environment. Over time, as the information about disposal of hazardous waste improves, EPA expects to refine the regulations, shifting the mix of standards more towards facility design standards and ambient health and environmental performance standards.

The regulatory scheme which EPA currently intends to implement offers several distinct advantages. First, it is designed to engender maximum public confidence that land disposal facilities which receive permits under this program will not threaten public health or the environment. Unless the permittee can demonstrate that the facility will not contaminate ground or surface water used or needed for any purpose, EPA would require the permittee to document the nature and extent of contamination caused by the facility and to justify why such contamination will not adversely affect public health or the environment. By placing this heavy burden on the permittee, EPA can assure that all risks associated with hazardous waste, including those raised by the public, will be fully illuminated and carefully considered during the permit process.

Second, it allows EPA to address the full range of environmental issues raised by land disposal without awaiting the establishment of health and environmental performance standards for each of the hazardous waste constiutents. In identifying the objectives and considerations necessary for a complete evaluation of a facility, EPA can immediately begin to develop permits which are responsive to the multiple ground water concerns (e.g. effects on drinking water, irrigation, the many uses of hydrologically connected surface water) and to the complex natural processes (e.g. ground-water flow patterns, soil attenuation potential) that may arise at each site. In short, narrative health and environmental standards are adaptable to the type of holistic, site-specific analysis which the public would expect in the development of permits for hazardous waste disposal facilities.

Third, non-numerical standards are most adaptable to the unique health and environmental risks presented by each

disposal facility. This is in contrast to approaches which rely exclusively on some types of design standards. A given design requirement may constitute over regulation at particular locations. More importantly a set of design requirements stipulated in a national regulation may not be stringent enough to protect public health and the environment in particularly sensitive settings. The kind of non-numerical health and environmental standards which EPA intends to promulgate should not suffer from this flaw. EPA's non-numerical health and environmental standards would set forth a uniform mode of analysis for evaluating facilities against precise health and environmental objectives, but would not attempt to define the acceptability of a particular site in terms of rigid numerical specifications. Such an approach allows the permit-issuing authority to tailor each permit to the particular human health and environmental hazard presented by each waste in the facility. In doing so, this approach responds to those commenters who sought a regulatory system that recognized the degree of hazard of particular wastes.

Fourth, the non-numerical standards approach allows EPA to establish a comprehensive basis for permitting now and yet allows for future refinement of the standards over time. EPA is not forced to avoid consideration of some phase of a comprehensive ground-water protection policy (*e.g.* protection of drinking water against contamination by a particular constituent) while it awaits the development of specific health and environmental performance standards. At the same time, EPA may continue to develop such performance standards, relying in part on data developed during the permit process. Later EPA can amend the regulations to establish more explicit national performance standards where warranted. Thus, through narrative standards, EPA can establish an initial program that is fully responsive to all aspects of ground-water protection without compromising the program's capacity to mature over time.

EPA's approach to ground-water protection in the hazardous waste regulations is founded on several key considerations that underlie the Agency's ground-water strategy and that characterize the problem of hazardous waste management under RCRA in general:

1. EPA's statutory mission under RCRA is to protect public health and the environment. In devising regulations to implement that mandate EPA must keep itself focused on the public health and environmental questions of concern to the Congress and the public. While technical requirements and engineering approaches are certainly authorized by the statute and may be desirable as a matter of policy, EPA does not intend to get sidetracked from its general mission by regulations or permits that become unduly preoccupied with narrow debates over engineering specifications.

2. EPA does not recognize a general right to pollute. Pollution of our nation's environment is an unfortunate and undesirable result of human activity that should be avoided to the extent possible. In devising regulatory programs aimed at protecting public health and the environment, EPA must begin with a presumption that any environmental degradation is to be avoided. This is particularly true with a sensitive resource like ground water. It is extremely difficult, often impossible, to clean up an aquifer once it has been contaminated.

3. EPA also acknowledges, however, that a regulatory system designed to protect ground water must recognize that some ground water can be limited (physically and administratively) to specific uses. In seeking to protect ground water, EPA's programs must maintain water quality at levels required by these differing uses. Where states and localities have made or make conscious decisions to designate aquifers or portions of aquifers for certain uses, EPA will seek to achieve levels of water quality that are consonant with those uses.

4. Hazardous waster management is a new and developing field. The relatively recent concern with the dangers presented by the disposal of hazardous waste has spawned new efforts in the scientific and engineering community to develop new technologies that are capable of recycling, treating and safely disposing of these materials. EPA wants to encourage innovation in hazardous waste management. In devising regulations, therefore, it is important to avoid rigid approaches that stifle the development of new technologies.

5. The available information about hazardous wastes and their effects on public health and the environment is extremely limited. More information is needed to refine our knowledge of the risks presented by these substances. EPA must, therefore, devise a regulatory system that generates as much information as possible about particular disposal facilities and their likely effects on the surrounding area. This provides all parties—EPA, the owners and operators of facilities, the states, the courts and the public—the necessary tools to make rational decisions about the real risks associated with each facility.

Based on these considerations, as well as a consideration of the comments received on the proposed regulation, EPA has developed a specific outline for protecting ground water from the adverse effects of land disposal facilities. The approach is primarily aimed at landfills but would also be adaptable to other disposal options, such as surface impoundments or land treatment facilities. The key elements of the approach include:

1. *Presumption against any degradation.*—The regulations would start from a presumption that it is unacceptable to allow the facility to cause any contamination of a downgradient water supply used for any purpose (drinking water, agricultural, industrial, etc.) This concern would not be limited to a particular period of time, but rather would extend as long as the environmental effects of the facility would continue. Likewise the nondegradation standard would apply to both ground water and hydrologically-connected surface waters.

The nondegradation standard would be modified somewhat for surface waters where water quality standards had been established under the Clean Water Act. These standards, rather than the nondegradation presumption, would provide the basic targets for protecting hydrologically-connected surface waters. Where surface waters were being used for water supply purposes, however, the nondegradation presumption would apply.

The nondegradation standard (i.e. no contamination from hazardous waste constituents) would be applied at all points where water is or may be withdrawn for water supply purposes. This approach would allow some degradation of the ground water below and beyond the facility, but only where the permit applicant could demonstrate that such controlled release of waste constitutents would not result in contamination of current or future water supplies. The consideration of water supply withdrawal points would include likely future points of withdrawal, based on development plans and projections for the area potentially affected by the facility.

In defining ground-water supplies, particular emphasis would be given to those used for drinking water. Ground water used as a drinking water source would be defined similarly to the "underground source of dirnking water" (USDW) used in the Underground Injection Control program under the Safe Drinking Water Act. (See 45 FR

42474 for an explanation of that definition).

2. *Minimum technical standards.*—In addition the regulations would require that the facility owner or operator employs certain management practices and certain design features that would control adverse effects on ground water and surface water, as well as prevent or minimize other surface environmental effects. Many of these standards would be similar to those required in the May 19, 1980 hazardous waste regulation (Part 265 at 45 FR 33233) for facilities operating during interim status. The basic purposes of these requirements are to minimize the production of leachate and to avoid situations that could interfere with the integrity and function of the facility's liner and final cover, where applicable. For landfills, these requirements include:

a. Prevention of run-on to the facility;
b. Control of run-off from the facility;
c. Prevention of commingling of incompatible wastes;
d. Prevention of the placement of wastes that are incompatible with the facility liner;
e. Restrictions on the disposal of bulk liquid wastes;
f. Restrictions on the disposal of containerized liquid wastes;
g. Restrictions on the disposal of empty containers;
h. Requirement that there be no "ponding" of liquids during operation;
i. Requirement for a facility cover that is stable (*i.e.* topped with humus and vegetation to avoid erosion) and that is capable of avoiding the buildup of liquids in the landfill (the so-called "bathtub" effect) by providing a lesser permeability that of the facility liner.

Requirements for surface impoundments and land treatment facilities would be modified to reflect the differing purposes of these disposal options. EPA intends, for example, to place somewhat different requirements on surface impoundments than on landfills. EPA believes that surface impoundments should generally be used as treatment or storage, rather than disposal, facilities. As treatment or storage facilities they should be designed so as not to leak during their active life. At closure the remaining waste and contaminated liner material should be removed and properly disposed.

Since such surface impoundments would not be permanent disposal facilities, there would not be the same requirements for eliminating liquids from the facility that are applicable to landfills. Instead, diking requirements (e.g. protective cover for earthen dikes), freeboard requirements (e.g. minimum of five feet) and inspection requirements (e.g. daily for freeboard, weekly for dikes) would be established to provide protection from the types of hazards that will arise at surface impoundments.

3. *Permissible demonstration that limited degradation will not threaten public health or the environment.*—While EPA believes that the nondegradation goal must be the starting point in the regulation, it recognizes that in some circumstances it may be possible to show that limited degradation will not adversely affect public health or the environment. The burden would be on the permittee to make this demonstration. The regulations would set forth the kinds of considerations that would provide the basis for allowing limited degradation. These considerations would shape the kinds of informational requirements that would have to be met before the permit writer could make a judgment about the acceptability of such limited degradation. In making a demonstration sufficient to justify this kind of variance, the permittee would be required to provide the following types or information for landfill facilities:

a. A description of the specific hazardous wastes and other wastes to be disposed of in the facility and the specification of the expected rate of deposition of each waste.

b. A description of any in-situ treatment process that is expected to occur in the facility.

c. A description of the rate of mass transport of leachate from the disposal facility, which shall include—

i. the mass rate of infiltrating rainwater and other liquids disposed of or generated within the facility expected to leach from the facility;

ii. the mass rate of hazardous wastes, hazardous waste constituents and decomposition byproducts thereof expected to leach from the facility;

iii. the mass rate of any other waste, waste constituent or decomposition byproduct thereof expected to leach from the facility.

d. A description of the earth materials above the zone of saturation through which the leachate released from the facility will migrate, which shall include a specification of—

i. the lateral and vertical extent of the expected migration of leachate in any materials emplaced to control the rate of leachate migration (*i.e.*, liners);

ii. the lateral and vertical extent of the expected migration of leachate in each natural earth material formation in the unsaturated zone below the facility.

e. A description of the earth materials in the saturated zone in which the leachate released from the land disposal facility will migrate, which shall include a specification of—

i. any alteration in the vertical elevation of the zone of saturation expected to occur due to the existence of the facility of the discharge from the facility to the saturated zone;

ii. the lateral and vertical extent of the expected migration of leachate within each natural earth material formation in the saturated zone below the facility;

iii. the concentration or mass of hazardous waste, hazardous waste constituents, decomposition byproducts thereof, other wastes and decomposition byproducts thereof in the leachate plume in the saturated zone.

f. A description of the hydrogeology of the area surrounding the facility which includes—

i. a mapping of the area to define ground surface contours, bedrock contours and ground-water elevation contours;

ii. a description of any changes in ground surface contours, bedrock contours and ground-water elevation contours that will result from construction or operation of the facility;

iii. a description of the character of each earth material formation through which leachate will flow, specifying its location, slope, uniformity, permeability, porosity, weathering (of bedrock), fracturing (of bedrock and aquifer formation), fault or karst zones (for bedrock) and swelling (for clay);

iv. a complete mapping of the expected progress of the leachate plume.

g. A description of the discharges (into surface water) and withdrawals of ground water that will be mixed with leachate from the disposal facility including a specification of—

i. the net and maximum mass rate of discharge from the saturated zone of leachate contaminants and the decomposition byproducts thereof into any flowing or standing surface waters or to the surface of the ground;

ii. the net and maximum mass rate of withdrawal from the saturated zone of leachate contaminants and the decomposition byproducts thereof into any well, or ground water collection device within the projected leachate plume from the facility.

h. A description of the use of all surface water and ground water that comes in contact with the projected leachate plume which includes—

i. an identification of all existing uses for each surface water or ground water withdrawal point, and an estimate of the quantity of water allocated to each such use, affected by the projected leachate plume;

ii. a prediction of likely future uses of the surface water or ground water affected by the projected leachate plume, including an estimate of the

quantity of water allocated to each such use;

iii. a prediction of the nearest surface water or ground water withdrawal points used for any present of future use.

i. A description of the potential human health and environmental effects of each constituent found in the liquids, wastes, byproducts and substances from the facility present in each surface water or ground water withdrawal point, including—

i. a prediction of the human health risks (acute and chronic) presented by the constituent at the concentration found in the water used by humans;

ii. a prediction of the risks to plants and domestic animals presented by the constituents at the concentration found in the water used for agriculture;

iii. a prediction of the risks to aquatic life and other wildlife presented by the constituent at the concentration found in the water used by such wildlife;

iv. a prediction of the risks to physical equipment, chemical or biological production processes or other industrial operations presented by the constituent at the concentration found in the water used for industrial purposes.

EPA would then use this information to determine whether the permittee had adequately justified a claim that limited degradation of surface and ground water supplies would not threaten public health or the environment. The regulations would define the meaning of public health and environmental protection in terms of the types of adverse effects to be avoided (*e.g.* significant risk of chronic or acute toxicity, carcinogenesis, mutagenesis, teratogenesis in humans, toxicity to wildlife, phytotoxicity) and in terms of the availability of other waste management options (*e.g.* treatment, resource recovery, other disposal options.) The regulations would also specify that certain minimum standards (*e.g.* water quality standards for surface waters, the National Interim Primary Drinking Water Regulations for drinking water supplies) could not be exceeded due to operation of the facility.

Owners and operators of surface impoundments that are designed with liners to prevent subsurface and non-point surface releases of their contained wastes during their operating life would not be required to make the above demonstrations. However, owners and operators of surface impoundments that are not so designed would be required to make the above demonstration. Similar demonstrations would be required of owners and operators of land treatment facilities with respect to contaminants that are not treated or contained in the soil treatment zone and which might migrate into ground or surface waters.

III. Additional Issues for Comment

EPA seeks comment in this Notice on all aspects of the alternative approaches considered for use in the regulation as well as on the intended approach, as discussed above. In addition, EPA seeks comment on some additional issues that are related to the ground-water protection approach under Subtitle C:

A. New Versus Existing Facilities

Under pending legislation now before Congress, EPA's specific authority under RCRA to distinguish between new and existing facilities when writing regulations under Section 3004 would be specifically recognized. EPA believes that it has authority to distinguish between new and existing facilities under the existing law and thus is considering such a distinction as part of its ground-water protection approach.

EPA is considering applying the scheme outlined in this Notice to all new facilities and major expansions of existing facilities. "Major expansions" would include new separate landfill trenches or landfill areas developed at an existing interim status facility to handle a significantly expanded volume of hazardous waste, new surface impoundments at an existing interim status facility, and new separate land treatment areas developed at an existing interim status facility to handle a significantly expanded volume of waste.

For existing land disposal facilities (including unlined surface impoundments) that are continuing the same level and type of operation, EPA would apply the approach outlined in this Notice only to those facilities at which hazardous constituents are found to have entered ground water, based on the ground water monitoring data developed to satisfy the interim status requirements (Part 265, Subpart F, at 45 FR 33239.) EPA is considering amending the interim status requirements to require owners and operators who discover that hazardous waste or hazardous constituents have entered ground water to assess not only the extent and rate of migration of the contaminants, as required under the existing regulations, but also to evaluate the affects of that contamination on existing downgradient ground-water and surface-water use. First priority in permit review would be given to facilities that were causing significant contamination of existing water supplies.

EPA is interested in public comment on the issue of whether the approach outlines in this Notice should be applied to both new and existing facilities as described. If commenters believe that a distinction should be made between new and existing facilities, but believes that the requirements suggested above are not appropriate, EPA requests recommendations for alternative schemes. EPA also seeks public suggestions on how it might distinguish between new and old cells in existing facilities.

B. Relationship to Subtitle D Facilities

Under Sections 4004(a) and 1008(a)(3) of RCRA, EPA issued the Criteria for Classification of Solid Waste Disposal Facilities and Practices (44 FR 53438). Those Criteria included provisions designed to protect ground water from certain types of contamination. As part of its general review of ground-water policy, EPA is reexamining those provisions.

EPA is particularly interested in public comment on the question of whether the approach described in this Notice should be applied to Subtitle D facilities as well. The Subtitle D program generally addresses different types of wastes in a regulatory context quite different than that found in Subtitle C. It is not clear, however, how the progrmmatic differences between Subtitles C and D should affect ground water protection standards. EPA, therefore, seeks public comment on this issue. If commenters believe that there should be differences in the ground-water protection approaches of Subtitles C and D, EPA seeks an explanation justifying the differences and suggestions about what the differing requirements would be. Where commenters recommend differences between the two programs, they should address the issue of how consistency between the Subtitle C and D programs can be maintained.

C. Relationship to Other Portions of the Subtitle C Regulations: Incineration

In commenting on the approach outlines in this Notice, commenters should address the question of how this approach relates to other elements of the hazardous waste regulations. Specifically EPA is interested in public comment on how the land disposal approach contrasts with the regulations on incineration.

Currently EPA intends to finalize incinerator standards that greatly resemble those contained in the proposed regulations. Incinerators would have to maintain operating conditions capable of destroying or removing 99.99% of the wastes, or hazardous constituents present in the waste, that feed into the incinerator. The

permit writer could relate the destruction or removal efficiency (DRE) to all or some of the hazardous waste constituents in the waste after considering the quantity, burnability and hazardousness of the constituents in the waste.

Special provisions would be made for products of incomplete combustion (PIC's) that are created during the combustion process (either through oxidation or other chemical reactions.) As an analog to the 99.99% DRE standard, the incinerator would have to be capable of destroying or removing PIC's to assure that the mass of the PIC's emitted from the stack is not more than .01% of the total mass of the waste from which the PIC was derived which is fed into the incinerator. In addition variances allowing lesser or greater destruction efficiencies for certain waste constituents or PIC's would be permitted where such alterations were justified to protect public health and the environment.

EPA does not intend to use a presumption against any degradation in regulating incinerators. EPA believes this is justified because incinerators actually destroy large masses of hazardous waste constituents. While some treatment can occur in land disposal facilities, land disposal options are not known to provide the kind of destruction efficiency possible with incineration. In light of these benefits of incineration, EPA believes, as a matter of policy, that incinerators should not be held to the rigors of the nondegradation presumption applicable to land disposal. It should be recognized, however, that a 99.99% DRE should achieve a reduction of most constituents down to a level that is sufficient to protect public health and the environment. Moreover the standard would allow tightening of the DRE on a case by case basis where it was necessary to protect public health and the environment.

EPA specifically seeks comment on this distinction between the land disposal and incinerator regulations.

D. Implementation Issues

Each of the alternatives outlined above would have different implications for EPA and the States. When standards are very specific, there is a danger of inflexibility. However, specific design or performance standards simplify the task of the permit writer because less individual judgment is required. When standards are phrased broadly, the individual circumstances of the site, the degree of necessary protection and other factors can be taken into account in fashioning a comprehensive, site-specific set of permit requirements. The latter approach, however, would require more information from the permittee; as well as being resource-intensive for the permit issuing authority. EPA specifically solicits comments on this issue.

E. Interim Regulations

Under Section 3005 of RCRA new facilities must receive permits in order to treat, store or dispose of hazardous wastes. Such permits may not be issued until more specific technical standards have been promulgated under Section 3004. While EPA intends to promulgate such standards soon, it is possible that circumstances, including the comments on this notice, might lead to delays in EPA's plans for promulgation.

In order to allow for issuance of permits to new facilities is such a contingency arises, EPA is considering issuing separately interim regulations applicable to all management options other than landfills. These regulations would establish specific technical requirements for those options or would establish a general narrative standard that would apply to such options. The narrative standards EPA is considering would require the permit applicants to demonstrate that their facilities will use the best available technology. EPA solicits comments on this approach.

Dated: October 3, 1980.

Barbara Blum,

Deputy Administrator.

[FR Doc. 80-31360 Filed 10-7-80; 8:45 am]

BILLING CODE 6560-30-M

Notices

Federal Register
Vol. 45, No. 197
Wednesday, October 8, 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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Public Information Meeting

Notice is hereby given pursuant to § 800.6(b)(3) of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that on October 14, 1980, at 7:30 p.m., a public information will be held in conjunction with the public hearing scheduled by the city of Detroit at the Kettering High School, 6101 Van Dyke, Detroit, Michigan.

The meeting is being called by the Executive Director of the Council in accordance with § 800.6(b)(3) of the Council's regulations. The purpose of the meeting is to provide an opportunity for representatives of national, State, and local units of government, representatives of public and private organizations, and interested citizens to receive information and express their views concerning the proposed Central Industrial Park Project, and undertaking of the city of Detroit that will adversely affect the Doge Main Plant and other historic and cultural properties in the cities of Detroit and Hamtramck, properties potentially eligible for the National Register of Historic Places. Consideration will be given to the undertaking, its effects on National Register or eligible properties, and alternate courses of action that could avoid, mitigate, or minimize any adverse effects on such properties.

The following is a summary of the Agency of the meeting.

I. An explanation of the procedures and purpose of the meeting by a representative of the Executive Director of the Council.

II. A description of the undertaking and an evaluation of its effects on the properties by the city of Detroit.

III. A statement by the Michigan State Historic Preservation Officer.

IV. Statements from local officials, private organizations, and the public on the effects of the undertaking on the properties.

V. A general question period.

Speakers should limit their statement to five minutes. Written statements in furtherance of oral remarks will be accepted by the Council at the time of the meeting. Additional information regarding the meeting is available from the Executive Director, Advisory Council on Historic Preservation, Attn: Patrick H. Steele, 1522 K Street NW., Washington, D.C. 20005.

Dated: October 3, 1980.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 80-31347 Filed 10-7-80; 8:45 am]

BILLING CODE 4310-10-M

Meeting

Notice is hereby given that a panel of the Advisory Council on Historic Preservation will meet on October 15, 1980, in Washington, D.C., to consider the information obtained as a result of its previous meeing in New Castle, Pennsylvania, held on September 24–25, and other information subsequently submitted in order to respond to the request of the Secretary of the Interior pursuant to Section 9(a) of the Mining in National Parks Act (16 U.S.C. 1908). The Panel of Council members will use this information to develop its recommendations for adoption by the full Council concerning advice as to alternative measures that may be taken by the United States to mitigate or abate the adverse effects of surface coal mining proposed to take place adjacent to McConnell's Mill State Park National Natural Landmark. The Panel will meet in Suite 510, 1522 K Street NW., Washington, D.C. 20005. The record for the panel meeting of September 24–25, will be open until the close of business on October 9, 1980, so that written statements can be submitted for consideration by the panel.

The Council was established by the National Historic Preservation Act to advise the President and the Congress on matters relating to historic preservation. Additionally, pursuant to the Mining in National Parks Act, the Council also provides advice upon request to the Secretary of the Interior concerning designated historic or natural national landmarks that may be threatened by surface mining activity.

Additionally information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, Suite 430, 1522 K St., NW, Washington, D.C. 20005, 202–254–3967.

Robert R. Garvey, Jr.,

Executive Director.

Dated: October 3, 1980.

[FR Doc. 80-31335 Filed 10-7-80; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Forest Service

Correction of Notice of Intent To Prepare an Environmental Impact Statement on the Cibola National Forest Land and Resource Management Plan

The "Notice of Intent to Prepare an Environmental Impact Statement on the Cibola National Forest Land and Resource Management Plan" was published in the **Federal Register**, Vol. 45, No. 183, page 62173, Thursday, September 18, 1980.

In addition to the proclaimed Cibola National Forest lands, the proposed plan will include the proposed land and resource management for the following National Grasslands administered by the Cibola National Forest:

Kiowa—Located in Union, Colfax, Mora, and Harding Counties, New Mexico.

Rita Blanca—Located in Dallam County, Texas, and Cimarron County, Oklahoma.

Black Kettle—Located in Roger Mills County, Oklahoma, and Hamphill and Gray Counties, Texas.

September 29, 1980.

M. J. Hassell,

Regional Forester.

[FR Doc. 80-31184 Filed 10-7-80; 8:45 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

[Docket 36595]

Competitive Marketing of Air Transportation; Rescheduling of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the hearing now scheduled to be held on October 14, 1980 (45 FR 51865, August 5, 1980), is rescheduled for November 4, 1980 at 10:00 a.m. (local time), in Room 1003, Hearing Room A, Universal North

Building, 1875 Connecticut Avenue, NW., Washington, D.C.

Dated at Washington, D.C., October 3, 1980.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 80-31369 Filed 10-7-80; 8:45 am]

BILLING CODE 6320-01-M

[Order 80-10-17 Dockets 37226 and 37227]

Foreign Air Carrier Permits Authority Renewal; Between the Caribbean, Washington/Baltimore and Boston

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause: Order 80-10-17.

SUMMARY: The Board proposes to approve the following applications:

Applicants: Caribbean International Airways Limited and Laker Airways Limited.

Application Dates: December 6 and 7, 1979. Dockets: 37226 and 37337.

Authority Sought: Renewal of foreign air carrier permits for authority between points in the Caribbean and Washington/Baltimore and Boston.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall NO LATER THAN October 27, 1980, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassadors of the United Kingdom of Great Britain and Northern Ireland and Barbados. A statement of objections must cite the docket numbers and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit.

ADDRESSES FOR OBJECTIONS:

Dockets 37226 and 37227, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

Caribbean International Airways Limited and Laker Airways Limited, c/o Robert M. Beckman, 1001 Connecticut Avenue NW., Washington, D.C. 20036.

TO GET A COPY OF THE COMPLETE ORDER: Request it from the C.A.B. Distribution Section, Room 516, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION: Contact Frank Forman, Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board; (202) 673-5134.

By the Civil Aeronautics Board: October 2, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-31367 Filed 10-7-80; 8:45 am]

BILLING CODE 6320-01-M

[Order 80-10-1; Dockets 37165; 38590; and 38773]

Great Northern Airlines, Inc., and Alaska International Air, Inc.; Service Mail Rates Investigation and Transfer of Certificate Authority

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 1st day of October, 1980. Great Northern Airlines, Inc., Service Mail Rates Investigation (Docket 37165); application of Great Northern Airlines, Inc., for the transfer of certificate authority (Docket 38590); and Alaska International Air, Inc., Service Mail Rates Investigation (Docket 38773).

By Order 80-9-107 the Board approved the transfer of Great Northern Airlines' present certificate for Route 208, with the exception of passenger authority, to Alaska International Air (AIA). At the time of the transfer, GNA was transporting mail for the Postal Service and the Postal Service was paying GNA a temporary mail rate for that service at the same level of rates established for Wien Air Alaska (Wien). The order, however, did not make provision for the application of that mail rate to AIA, a necessary step if AIA is to continue GNA's service without interruption on October 1, 1980. AIA filed on September 22, 1980 a request that GNA's temporary rates be made applicable to it and that it be made a party to *Great Northern Airlines, Inc., Service Mail Rates Investigation,* Docket 37165.

We will establish GNA's mail rates for AIA. Ordinarily, mail rates are established after notice and opportunity for comment by the Postal Service (14 CFR Part 302.300). Here, however, we are dealing with rates that went through the full notice and comment procedures when they were originally established for Wien Air Alaska and that are currently being paid by the Postal Service for exactly the same services that AIA will perform. We therefore conclude that the institution of show-cause procedures on these rates is unnecessary and that they should be made effective on October 1, 1980, in order to insure uninterrupted mail service when the transfer of certificate authority is effective.[1]

Order 79-11-203 established the *Great Northern Airlines Service Mail Rate Investigation,* Docket 37165, to set a final mail rate for the carrier. We will institute by this order a similar investigation to determine AIA's final mail rates.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, particularly Sections 204(a), and 406, and the Board's Procedural Regulations promulgated in 14 CFR, Part 302:

1. We institute an investigation to determine the fair and reasonable service mail rates to be paid by the Postmaster General to Alaska International Air, Inc., (AIA), for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, over AIA's operations on Route 208 on and after October 1, 1980.

2. The fair and reasonable temporary rates of compensation to be paid by the Postmaster General to Alaska International Air, Inc., on and after October 1, 1980 for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, for operations between points in Route 208 are the rates established by Order 80-4-53.

3. The temporary service mail rates established in this order shall be paid in their entirety by the Postmaster General and shall be subject to retroactive adjustment to the date of the commencement of mail operations as may be required by the order establishing final service mail rates in the investigation instituted by this order.

4. Alaska International Air, by notice, may elect to transport mail between points for which rates here established are applicable at a reduced rate equal to the rate then in effect for such service between such points by any other carrier or carriers.

(a) An original and three copies of each notice of election and agreement shall be filed with the Board and a copy thereof shall be served upon the Postmaster General and each carrier providing service between the stated points. Such notice shall contain a complete description of the reduced charge being established, the routing over which it applies, how it is constructed and shall similarly describe

[1] As requested by AIA its rates will be subject to the customary provisions allowing for rate equalization.

the charge with which it is being equalized.

(b) Any rate established shall be effective for the electing carrier or carriers on the date of filing of the notice, or such later date as may be specified in the notice, until such election is terminated. Elections may be terminated by any electing carrier upon ten days notice filed with the Board and served upon the Postmaster General and each carrier providing service between the stated points.

5. We shall serve this order upon the Postmaster General, Great Northern Airlines, Inc., and Alaska International Air, Inc.

We will publish this order in the **Federal Register.**

By the Civil Aeronautics Board.[2]

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-31310 Filed 10-7-80; 8:45 am]

BILLING CODE 6320-01-M

[Dockets 33361 and 32413]

Former Large Irregular Air Service Investigation; Application of Standard Airways, Inc.; Hearing

Notice is hereby given, pursuant to the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on November 6, 1980, at 9:30 A.M. (local time), in Room 1003, Hearing Room B, Universal North Building, 1875 Connecticut Avenue, NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., October 3, 1980.

Elias C. Rodriguez,

Administrative Law Judge.

[FR Doc. 80-31306 Filed 10-7-80; 8:45 am]

BILLING CODE 6320-01-M

[Order 80-10-14; Dockets 33361, 33362, 33363]

Former Large Irregular Air Service Investigation; Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 2nd day of October, 1980.

By Order 78-3-159, March 31, 1978, we instituted the above captioned investigation in response to applications filed by two former large irregular carriers for authority to engage in worldwide charter air transportation. We invited applications for such certificate authority from any person, although our solicitation was aimed primarily at the former large irregular carriers. Two needs presented themselves as the result of the response by approximately 60 applicants. One was the need for a standardized set of evidence for submission by the applicants. The other was the need for a forum to manage effectively a large and possibly increasing volume of charter applications. Accordingly, by Order 78-7-106, July 21, 1978, we defined the scope of the issue to be considered, prescribed a standard evidence request for all applicants—attachment "B" to Order 78-7-106—and established a procedural framework for the investigation.[1]

Throughout the past two years we have accepted additional applications for charter authority and consolidated them into the *Former Large Irregular* case for consideration. As of October 2, 1980, 113 applications had been filed, and we had granted certificate authority to 41 applicants.[2] Of the remaining active applications, six were before an administrative law judge, six were before us for final decision, and sixteen were at various other stages of the adjudicatory process.[3]

We believe that the case has been conducive to orderly and expeditious processing. In the interests of fairness and efficiency, however, we have decided that it is necessary to alter some of the special procedures set out in our instituting orders.[4]

We are eliminating the standard evidence request contained in Appendix "B" to Order 78-7-106—Evidence to be submitted by all Applicants—and the procedure by which applicants file the required information as direct exhibits. The request and filing procedure are obsolete. Part 204 of our Regulations, effective August 25, 1980,[5] specifies the minimum fitness data to be filed by the applicants for authority and by its terms governs the minimum evidentiary requirements for determining initial fitness. It also requires that applicants file fitness data their applications. From now on, therefore, applicants for authority in this proceeding will be required to comply with this rule and file applications that contain the minimum fitness data specified in Part 204. In addition, our review indicates that prompt and effective processing of applications in this proceeding requires the production of certain information contained in Appendix "B" but not encompassed within the data submission requirements of Part 204.[6]

Accordingly, we will require that applicants accompany their applications with the data specified in footnote 6 in addition to supplying basic 204 data. We leave to the Administrative Law Judge and the staff to determine any other necessary data requirements.

Second, we believe the waiver of the filing fees, established in Order 78-3-159, has already benefited those it was intended to, and any additional applicants should be treated in the same manner as all other applicants for certificate authority. Therefore, we will require that all further applicants in this proceeding comply with the filing fee requirements of Part 389 of our Economic Regulations.[7]

We have also determined that the scope of this proceeding should be expanded to include charter authority for transatlantic cargo, due to the completion of the *Transatlantic Cargo Case* (Docket 30789). Further, although we initially excluded domestic all-cargo

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[2] All members concurred.

[1] In addition, because of the large response to our order, we divided the investigation into three separate phases to consider the applications of the three distinct types of applicants that had sought authority—the actual former large irregular carriers; carriers currently providing air service under some type of Board, FAA, or state authority; and new entrants to the airline industry.

[2] Two applications were denied. One of these, that of Universal Airlines, Inc., has been remanded to an administrative law judge for further hearings.

[3] Forty applicants have been dismissed without prejudice either at the request of the applicant or for lack of prosecution of their applications. As of August 25, 1980, there were no applications awaiting consolidation into this proceeding.

[4] Order 78-3-159, March 31, 1978; Order 78-7-106, July 21, 1978.

[5] 14 CFR, Part 204—"Data to Support Fitness Determinations".

[6] The data that we will require applicants to continue to file, that is not required by Part 204, is as follows:

(1) A description of current equipment (other than aircraft) and ground facilities owned and/or leased;

(2) A description of the traffic for the last full year of operations under authority currently held (*i.e.*, type of aircraft, aircraft hours flown, revenue passenger miles flown, revenue cargo ton miles flown and general geographic area);

(3) A description of compliance disposition of the principals and key personnel and/or proposed key personnel (*i.e.*, Whether any of these people were themselves found in violation of Board rules or were associated with an air carrier that had a formal or docketed complaint lodged against it within the past ten years);

(4) A description of the sources of the proposed capital which will be used to implement the proposed services; and

(5) A description of any plans or contacts made for the acquisition of support services.

[7] While in the future we will not waive filing fees as we have done in the past for those applications consolidated into this investigation, we will nevertheless continue to process applications with a view toward minimizing the cost to the applicants. The waiver of filing fees in the *Former Large* case was originally intended to minimize the costs of the two former large irregular air carriers whose exemption applications precipitated this proceeding as well as the other actual former large irregular carriers. In fact, all applicants have benefited from the filing fee waiver. Our decision in that case was not meant, however, as precedent for a general waiver of filing fees in charter certification cases.

authority from issue in this proceeding, on the basis that it could be more quickly obtained through a § 418 application, we see no reason not to allow an applicant the ability to choose for itself the manner in which it will pursue the desired authority. Accordingly, we will expand the scope of this proceeding to include domestic all-cargo authority as well.[8]

There are two additional matters to address. Effective April 26, 1980, Part 312 of the Board's Regulations was amended to delete the requirement that applicants submit environmental evaluations in conjunction with their applications, and that the Board issue a specific environmental notice, except under certain circumstances described in the revised Part 312. Therefore, we will treat applicants in this proceeding in the same manner as all applicants for certificate authority, and require that environmental evaluations and notices only be filed when specifically required by our revised Part 312. Finally, we are modifying the service requirements to require that only those parties that express a desire to be included on the service list of a particular application must be served by that applicant and the Bureau. The requirement that each applicant and the Bureau serve all parties in their respective dockets has become unmanageable, particularly in the third phase (Docket 33363), in which there are a large number of new applicants.

Accordingly, 1. We delete Attachment B to Order 78-7106;

2. We require that application for charter authority in the *Former Large Irregular Air Service Investigation* (Dockets 33361, 33362, and 33363) filed on and after October 8, 1980, be accompained by the data set forth in Part 204 of our Economic Regulations and footnote 6 of this order;

3. We expand the scope of authority at issue in this proceeding to include charter authority for transatlantic cargo and domestic all-cargo authority;

4. Effective October 8, 1980, all new application in this proceeding must be accompained by the filing fees in accordance with Part 389 of the Board's Economic Regulation;[9] and

5. We require that environmental evaluations and notices only be filed when specifically required by revised Part 312 of our Regulations; and

6. Effective October 8, 1980, we require that the Bureau and each applicant for authority in this proceeding serve only those parties that have specifically asked to be included in the service list of that particular application.

We will publish this order in the **Federal Register.**

By the Civil Aeronautics Board:[10]

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-31306 Filed 10-7-80; 8:45 am]

BILLING CODE 6320-01-M

[8] Applicants for domestic all-cargo authority should be aware that by choosing to pursue this authority within the *Former Large Proceeding* they are effectively waiving the 180 day statutory time period in section 418 of the Act.

[9] The fee is currently $300 for each application.

[10] All members concurred.

CIVIL RIGHTS COMMISSION

Arizona Advisory Committee; Meeting

Notice is hereby given pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 12:00 noon, on November 1, 1980, at the Ramada Inn, 3801 East Van Buren, Phoenix, Arizona 85008. The purpose of the meeting is to discuss program planning and schedule meetings for fiscal year 1981.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Prof. Morrison F. Warren, 1081 E. Magdelena Drive, Tempe, Arizona 85283, (602) 965-6529 or the Western Regional Office, 3660 Wilshire Boulevard, Suite 810, Los Angeles, California 90010, (213) 688-3437.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., September 29, 1980.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 80-31311 Filed 10-7-80; 8:45 am]

BILLING CODE 6335-01-M

Connecticut Advisory Committee; Cancelled Meeting

Notice is hereby given pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee of the Commission originally scheduled for October 21, 1980, at Bridgeport, Connecticut, (FR Doc. 80-30438 on page 65002) has been cancelled.

Dated at Washington, D.C., October 3, 1980.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 80-31313 Filed 10-7-80; 8:45 am]

BILLING CODE 6335-01-M

Hawaii Advisory Committee; Changed Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Hawaii Advisory Committee to the Commission originally scheduled for October 25, 1980, at the Honolulu, Hawaii, (FR Doc. 80-30437 on page 65002) has been changed.

The meeting now will be held on November 15, 1980, beginning at 2:00 p.m. and ending at 5:00 p.m., at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, Hawaii.

Dated at Washington, D.C., October 3, 1980.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 80-31314 Filed 10-7-80; 8:45 am]

BILLING CODE 6335-01-M

Illinois Advisory Committee; Meeting

Notice is hereby given pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 3:00 p.m., on October 27, 1980, at the 230 South Dearborn Street, Room 350, Chicago, Illinois 60604. The purpose of the meeting is to discuss the SAC Chairpersons Conference and reports from the Special Education Subcommittee, Update of Chicago School Desegregation and Senator Richard Newhouse will discuss civil rights issues in the state.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Miss Theresa F. Cummings, 2636 W. Lawrence Avenue, Springfield, Illinois 62704, (217) 525-1117 or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604, (312) 353-7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 1, 1980.

Thomas L. Neumann,

Advisory Committee Management Officer.

[FR Doc. 80-31312 Filed 10-7-80; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Economic Development Administration

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from the following firms: (1) Venture Ride Manufacturing, Inc., Rural Route 5, Highway 14, Green, South Carolina 29651, producer of amusement rides and military and commercial lighting (accepted September 15, 1980); (2) Brooks Leather Sportswear, Inc., 14511 West 11 Mile Road, Oak Park, Michigan 48237, producer of men's and women's leather jackets, vests and pants (accepted September 15, 1980); (3) Montesano Cedar Products, 150 Monte-Brady Road, Montesano, Washington 98563, producer of cedar shakes (accepted September 16, 1980); (4) Cleveland Motive Products, Inc., 30505 Clemens Road, Westlake, Ohio 44145, producer of automotive universal joints and hanger bearings (accepted September 16, 1980); (5) Lynnwear Corporation, 1400 Broadway, New York, New York 10018, producer of women's blouses, dresses, tops, pants, skirts, jackets and suits (accepted September 17, 1980); (6) Charlton Woolen Company, Charlton, Massachusetts 01508, producer of women's coats (accepted September 17, 1980); (7) Juliet Footwear Company, Inc., 7 Paul Kohner Place, Elmwood Park, New Jersey 07407, producer of men's footwear (accepted September 19, 1980); Caprican Clothing Company, Inc., 850 South Broadway, No. 510, Los Angeles, California 90014, producer of women's dresses, suits and blazers (accepted September 19, 1980); (9) The Belzak Corporation, 850 Bloomfield Avenue, Clifton, New Jersey 07012, producer of sodium glucoheptonate (accepted September 19, 1980); (10) Universal Chain Company, Inc., 92 Burnett Avenue, Maplewood, New Jersey 07040, producer of jewelry chain and links; finger rings; and wire (accepted September 19, 1980); (11) Formative Products Company, 140 Piedmont Street, Troy, Michigan 48084, producer of die models; welding and assembly fixtures; jigs, gages and molds (accepted September 19, 1980); (12) Fairhaven Corporation, 358 Belleville Avenue, New Bedford, Massachusetts 02746, producer of handbags (accepted September 22, 1980); (13) Aquamarine Corporation, P.O. Box 616, Waukesha, Wisconsin 53187, producer of weed harvesting machinery (accepted September 22, 1980); (14) Sportsguide Manufacturing Company, Inc., 54–72 Commercial Street, Worcester, Massachusetts 01608, producer of men's, women's, and childrens' coats and jackets (accepted September 22, 1980); (15) Kem Manufacturing Company, Inc., River Road, Fair Lawn, New Jersey 07410, producer of automotive ignition parts, battery cables and fuel pumps (accepted September 22, 1980); (16) New Jersey Rubber Company, 100 Arlington Street, Taunton, Massachusetts 02780, producer of shoe soles and heels (accepted September 22, 1980); (17) Joan Fabrics Corporation, 122 Western Avenue, Lowell, Massachusetts 01853, producer of upholstery fabrics and textile machinery (accepted September 22, 1980); (18) Blair Fashions, Inc., 2650 West Belden Avenue, Chicago, Illinois 60647, producer of women's body support garments, dresses and slacks, and boatsails (accepted September 22, 1980); (19) Ridgway Steel Fabricators, Inc., Box 428, Ridgway, Pennsylvania 15853, producer of coal mining equipment (accepted September 24, 1980); (20) Wikit, Inc., P.O. Box 1449, LaGrange, Georgia 30241, producer of industrial wiping towels and mops (accepted September 26, 1980); (21) Maui Divers of Hawaii, Ltd., 1520 Liona Street, Honolulu, Hawaii 96814, producer of jewelry (accepted September 29, 1980); (22) Leon Clothing Manufacturing, Inc., 660 Summer Street, Building 32, Boston, Massachusetts 02210, producer of men's coats (accepted September 29, 1980); (23) Dependable Knitwear, Inc., 87–46 123rd Street, Richmond Hill, New York 11418, producer of men's and children's sweaters (accepted September 29, 1980); (24) King Mushroom Farm, R.D. No. 2, Box 16, Nottingham, Pennsylvania 19362, producer of mushrooms (accepted September 29, 1980); (25) Mari-Anne Bag Corporation, 170 Walsh Avenue, New Windsor, New York 12550, producer of handbags (accepted September 29, 1980); and (26) Peter LaFrance, P.O. Box 243, Avondale, Pennsylvania 19311, producer of mushrooms (accepted September 29, 1980).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93–618) and Section 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalogue of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A–95 regarding review by clearinghouses do not apply.

Charles L. Smith,

Acting Chief, Trade Act Certification Division, Office of Eligibility and Industry Studies.

[FR Doc. 80–31277 Filed 10–7–80; 8:45 am]

BILLING CODE 3510–24–M

International Trade Administration

Applications for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific and cultural Materials Importation Act of 1966 (Public Law 89–651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230, on or before October 28, 1980.

Regulations (15 CFR 301.9) issued under the cited Act prescibe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 A.M. and 5:00 P.M., Monday through Friday, in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 80–00394. Applicant: Frederick Cancer Research Center, P.O. Box B, Frederick, Maryland 21701. Article: Micro-processor Digital Scan Unit. Manufacturer: VG Micromass/VG

Data Systems, United Kingdom. Intended use of Article: The article is an accessory to an existing mass spectrometer and is used for the identification and quantitation of a wide range of substances obtained or produced by the vaied interdisciplinary carcinogenesis research programs. These will include: (1) high molecular weight antitumor and antibiotic compounds isolated from microbial fermentations; (2) products formed by the interaction of carcinogenic polycyclic aromatic hydrocarbons and metabolic derivatives with components of DNA and RNA; (3) metabolities of bile acids, sterols, and aromatic amines which affect tumor development; (4) metabolites and related derivatives of the carcinogen 7,12-dimethylbenz(*a*)anthracene; (5) anticancer drugs and metabolites; hormones and small peptides which may serve as biologicals markers; (6) synthetic compounds (polycyclic aromatics, steroidsm nitrosamines, etc.) prepared for use in cancer research; (7) metabolites of nitrosamines; (8) alkylated pyrines and pyrimidines resulting from reations with carcinogens; and (9) components of complex mixtures resulting from chemical studies of carcinogens and related compounds. Application Received by Commissioner of Customs: July 23, 1980.

Docket No. 80–00395. Applicant: Tulane University, 6823 St. Chas. Ave., New Orleans, LA 70118. Article: Solar Panel Test Facility MSTF-1 and Accessories. Manufacturer: Solarin Products, Canada. Intended use of Article: The article is intended to be used in the course Solar Energy Design (M.E. 619) to develop in the students the ability to analyze and design solar energy systems. Application received by Commissioner of Customs: July 24, 1980.

Docket No. 80–00396. Applicant: Massachusetts Institute of Technology, 77 Mass. Ave., Cambridge, MA 02139. Article: 250 MHz Nuclear Magnetic Resonance Spectrometer. Manufacturer: Bruker-Physik AG, West Germany. Intended use of article: The article is intended to be used for studies of the structures and dynamics of molecules and the interactions of molecules within molecular aggregates. Pulsed Fourier transform NMR spectra will be obtained for several nuclei including ^{1}H, ^{2}H, ^{13}C, ^{19}F, ^{31}P, $^{35}C1$, $^{37}C1$, ^{95}Mo, ^{101}Ru and ^{195}Pt. The ^{1}H and ^{13}C NMR spectra of many complex natural products and synthetic precursors will be obtained. Spectra of complex biological macromolecules in $^{1}H_2O$ as solvent will be measured, often at fairly high dilution. Techniques such as spin-spin decoupling will be used along with chemical shifts, coupling constants, Overhauser effects, and temperature effects to obtain structrual and dynamic information. Application received by Commissioner of Customs: July 24, 1980.

Docket No. 80–00397. Applicant: Vanderbilt University, Dept. of Pharmacology, School of Medicine, Nashville, TN 37232. Article: MN70–70 Mass Spectrometer and Accessories. Manufacturer: VG Organic Limited, United Kingdom. Intended use of article: The article is intended to be used to perform a wide variety of different experiments and analyses in the areas of pharmacology, toxicology, medicine, biochemistry, organic chemistry, analytical chemistry, inorganic chemistry and environmental sciences. Categories of the principal although not exclusive research projects which will use the instrument are shown below:

(i) Studies involving quantiative analysis (selected ion monitoring) at high or low mass spectrometric resolution coupled with high or low resolution gas chromatography of a wide variety of hormones including trace amounts of catecholamines, prostaglandins, thromboxanes and their metabolites, with application to the roles of these substance in normal physiology and in pathological states.

(ii) Studies of gas phase ion-molecule reactions including qualitative and quantitative positive and negative ion chemical ionization of prostaglandins, thromboxanes and their metabolites which might have applications in the development of new methodology as in (1) above.

(iii) Characterization and structural elucidation of various compounds isolated from physiological and biomedical media, natural products, drug metabolites and compounds of environmental interest, steroids, prostaglandin metabolites, terpenes, antibiotics of the ristocetin family, carbohydrates, alkaloids and aromatic amino acids.

(iv) Characterization of newly synthesized organic compounds and their derivatives including (1) alkaloids (2) polyketides (3) terpenes and diterpenes (4) catecholamines (5) table-isotope-labled analogs of prostaglandins and thromboxanes (6) novel amino acids and (7) intermediates in their synthesis.

(v) Studies in drug metabolism including projects on the metabolic fate of procainamide, the effect of aging of the disposition of meperidine in man and the pharmacokinetics of indomethacin in premature infants.

The primary goal of these studies is to obtain new information about structure and reactions in chemical and biological systems which advances the understanding of the molecular phenomena. In some cases these results may assist in the prevention and/or cure of disease. An ancillary goal of the studies involves training of students in advanced mass spectrometric techniques so they can become tomorrow's research scientists. The article will also be used to train up to six graduate students and post-doctoral fellows in advanced techniques in mass spectrometry. Application received by Commissioner or Customs: July 28, 1980.

Docket No. 80–00404. Applicant: Dartmouth College, Earth Sciences Dept, Fairchild Science Center, Hanover, N.H. 03755. Article: Single Gas COSEP IVB High-Sensitivity Correlation Spectrometer. Manufacturer: Barringer Research, Canada. Intended use of article: The article is intended to be used for measurements at active volcanoes at various angles and levels. Investigations will be conducted to estimate total SO_2 emission from the world's volcanoes. In addition, the article will be used in a Geology Field Course. Application received by Commissioner of Customs: August 1, 1980.

Docket No. 80–00405. Applicant: University of Texas at Austin, Electrical Engineering Research Lab., Austin, TX 78758. Article: Millimeter Reflex Klystron. Manufacturer: Varian Assoc., Canada. Intended use of article: The article is intended to be used for research purposes in the field of radio astronomy. The phenomena studied are the spectral line emissions of interstellar molecules, the continuum radiation of planets and the emission of atmospheric constituents. The article will also be used for educational purposes in a sequence of astronomy courses which all graduate students obtaining a Ph. D. in millimeter wavelength radio astronomy must take. Application received by Commissioner of Customs: August 4, 1980.

Docket No. 80–00406. Applicant: National Radio Astronomy Observatory, Associated Universities, Inc., 2010 N. Forbes Blvd., Suite 100, Tucson, AZ 85705. Article: Repair of Klystron, VRB2113A30 SNO557D8. Manufacturer: Varian Canada, Inc., Canada. Intended use of article: The article is intended to be used as a phase-locked local oscillator in a millimeter wave radio astronomy receiver which is used in conjunction with a microwave antenna to measure the intensity, polarization, frequency and direction of cosmic radiation. Application received by Commissioner of Customs: August 4, 1980.

Docket No. 80-00407. Applicant: University of Florida, Soil Science Department, 106 Newall Hall, Gainesville, FL 32611. Article: Isotope Ratio Mass Spectrometer, Model 602E. Manufacturer: VG Micromass, United Kingdom. Intended use of article: The article is intended to be used to measure ^{15}N in soils, waters and plant materials. Nitrogen-15 will be used as a tracer to follow transformations such as nitrification, denitrification and N-fixation. Research using ^{15}N will be conducted in the following areas:

1. Evaluation of nitrogen fertilizer efficiency for a variety of crops.
2. Determination of nitrogen loss for cropping systems.
3. Nitrogen fixation.
4. Agricultural pollution studies.
5. Application of sewage effluents and sludges to land.
6. Fundamental research on nitrogen transformation in soils and waters.

Application received by Commissioner of Customs: August 4, 1980.

Docket No. 80-00409. Applicant: U.S. Dept. Agriculture—Science & Education Administration Rm. 101 Bldg. 004, Agricultural Research Center, Beltsville, MD 20705. Article: Model JEM 100CX Electron Microscope and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of article: The article is intended to be used for the study of the structure of viruses, virus-induced products of infection and other pathogenic organisms in studies on multiplication and distribution of these agents and their interactions and effects on cells and tissues of plants. Studies will also be done to correlate cell selection processes of normal cells with structural changes induced by stress environments in cells and tissue culture. This research is part of a program conducted by cell biologists on factors influencing the preservation of stable genotypes in long term preservation of high plant germplasm. Application received by Commissioner of Customs: August 5, 1980.

Docket No. 80-00369. Applicant: Veterans Administration Medical Center, 4100 W. Third Street, Building 115-151B, Dayton, Ohio 45428. Article: Monocrhomatic Spectro Irradiator, Model CRM-FA. Manufacturer: Japan Spectroscopic Co. Ltd., Japan. Intended use of article: The article is intended to be used for studies of nude mouse skin which has been irradiated with specific wavelengths of ultraviolet for the observation of skin cancer development and connective tissue alterations. Investigations will be conducted to determine the most effective wavelength to produce specific types of skin cancers and collagen and elastic fiber degenerations. The article will also be used for educational purposes in a postgraduate residency training program in which residents will be trained in selective use of ultraviolet rays for the diagnosis and treatment of patients. Application received by Commissioner of Customs: July 21, 1980.

Docket No. 80-00371. Applicant: University of Maryland Medical School, 660 W. Redwood Street, Baltimore, Maryland 21201. Article: Electron Microscope, Model EM 109R and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of article: The article is intended to be used for studies of biological tissues most of which will be of nervous systems from electric fish (the electric organ) and from mammmalian brain. The experiments with electric organ will involve quick freezing slices while the nerves are sending messages to fire the organ. The nerves will then be examined in the electron microscope to see what the vesicles were doing at the time of message sending. The electron density of calcium should also help to see where it goes in relation to the synaptic vesicles. When the normal process is clearly visualized, drugs will be applied to see how they affect the system. The experiments with rat brain will be to measure the length of nerve terminal pseudopodia which have invaded neighboring nerve terminals both before and after a series of electrical and drug-induced seizures. If the length increases, then the psuedopodial process could act as variable ion traps. Application received by Commissioner of Customs: July 11, 1980.

Docket No. 80-00372. Applicant: Solar Energy Research Institute, 1617 Cole Blvd., Golden, CO 80401. Article: Sunshine Recorder, Campbell-Stokes type model 7.1405.00. Manufacturer: Enercorp Instruments, Canada. Intended use of article: The article is intended to be used for routine measurement of sunshine duration. Application received by Commissioner of Customs: July 11, 1980.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-31283 Filed 10-7-80; 8:45 am]

BILLING CODE 3510-25-M

Battelle Memorial Institute; 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. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

No. 80-00139. Applicant: Battelle Memorial Institute, Pacific Northwest Laboratories, P.O. Box 999, Richland, WA 99352. Article: Mass Spectrometer, Model MM ZAB. Manufacturer: VG Micromass, United Kingdom. Intended use of article: The article is intended to be used for studies of energy technology related fossil fuel materials arising from coal and shale utilization; biochemical samples of animal and plant origin environmental matrices for pollutants; and other as yet unspecified chemical analyses. Associated phenomena include mutogenicity and carcinogenicity of coal and shale derived liquids, the biological effects of electric field exposure on small animals, and the formation of environmental pollutants associated with electrical energy production.

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, is being manufactured in the United States.

Reasons: The foreign article provides static resolution greater than 70,000 (10% valley). The National Bureau of Standards advises in its memorandum dated May 19, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

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 is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-31279 Filed 10-7-80; 8:45 am]

BILLING CODE 3510-25-M

Department of Commerce, NOAA; 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. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 80–00125. Applicant: U.S. Department of Commerce, NOAA, National Marine Fisheries Service, 8604 La Jolla Shores Dr., P.O. Box 271, La Jolla, CA 92038. Article: Multiple Zooplankton Sampler "Messhai". Manufacturer: Institute fur Meereskunde, West Germany. Intended use of article: The article is intended to be used for studies of anchovy larvae vertical distribution.

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, is being manufactured in the United States.

Reasons: The foreign article provides unique experimental multiple sampling and several channels for recording data on the retrieval of larvae or plankton. The National Bureau of Standards advises in its memorandum dated May 27, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

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 is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer,

Acting Director,

[FR Doc. 80–31281 Filed 10–7–80; 8:45 am]

BILLING CODE 3510–25–M

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 regulations issued thereunder as amended (15 CFR Part 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. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, 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.

Reasons: 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 No. 79–00214. Applicant: University of Washington, Quaternary Research Center, Seattle, WA 98195. Article: VG Micromass 903 Triple Collector Isotope Ratio Mass Spectrometer-Siamses and Accessories. Date of Dential without prejudice to resubmission: May 31, 1980.

Docket No. 79–00454. Applicant: University of Illinois/Urbana-Champaign Campus, Purchasing Division, 223 Administration Building, Urbana, IL 61801. Article: Isotope Ratio Mass Spectrometer, Model 250 and Accessories. Date of Dential without prejudice to resubmission: May 9, 1980.

Docket No. 80–00022. Applicant: Electric Power Research Institute, 3412 Hillview Avenue, P.O. Box 10412, Palo Alto, CA 94303. Article: Real Time Digital Data Acquisition System. Date of Dential without prejudice to resubmission: May 16, 1980.

Docket No. 80–00048. Applicant: State of California, Department of Water Resources, P.O. Box 388, 1416 Ninth Street, Sacramento, CA 95802. Article: 4 (Each) Earthquake Isolators, 4 pole, sixstack GAPEC. Date of Dential without prejudice to resubmission: May 16, 1980.

Docket No. 80–00068. Applicant: University of Alabama, University of Alabama Medical Center, Pathology Department, Lyons-Harrison Research Building, 619 South 19th Street, Birmingham, AL 35233. Article: Ultramicrotome, Model LKB 2128–010 and Accessories. Date of Dential without prejudice to resubmission: May 16, 1980.

Docket No. 80–00084. Applicant: Wilmington Medical Center, 501 West 14th Street, Wilmington, DE 19801. Article: Electron Microscope, Model EM 109 and Accessories. Date of Dential without prejudice to resubmission: May 16, 1980.

Docket No. 80–00045. Applicant: The Ohio State University, Research

Foundation, 1314 Kinnear Road, Columbus, OH 43212. Article: Mass Spectrometer, MS-9. Date of Dential without prejudice to resubmission: May 16, 1980.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer,

Acting Director, Statutory Import Program Staff.

[FR Doc. 80-31282 Filed 10-7-80; 8:45 am]

BILLING CODE 3510-25-M

Massachusetts Institute of Technology; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of scientific article pursuant to Section 6(c) of the Educational, Sceintific, 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. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Wasington, D.C. 20230.

Docket No. 80-00128. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Article: Backward-Wave Oscillator; MM-Wave, Type ROW-50. Manufacturer: Siemens Corporation, West Germany. Intended use of article: The article is intended to be used as a radio-frequency pump for a low-noise maser receiver which is being used in a wide variety of astronomical observations. Investigations to be carried out will include: (a) the distribution of such emission in the sky, to determine its associations with celestrial objects; and (b) its variation with frequency and time to improve the understanding of the physics of the objects and in some cases the mechanism of emission, where such mechanism is not obviously the usual themal-equiblibrium excited-line radiation.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent sceintific value to the foreign article, for such purposes as this article in intended to be used, is being manufactured in the United States.

Reasons: The foregin article provides wide band operation in the 43 to 50 gigahertz frequency range at an output of at least 150 milliwatts. The National Bureau of Standards advises in its memorandum dated June 2, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the fóreign article for the applicant's intended use.

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 is being manufacturd in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-31278 Filed 10-7-80; 8:45 am]

BILLING CODE 3510-25-M

University of California; 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. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Docket No. 80-00126. Applicant: University of California, Lawrence Livermore Laboratory, P.O. Box 5012, Livermore, California 94550. Article: Streaking and Framing Camera. Manufacturer: John Hadland Photographic Instrument Ltd., United Kingdom. Intended use of article: The article is intended to be used in research into prompt diagnostics instrumentation for the Nuclear Test Program for the study of optical fibers, pulsed light sources and fast image recording. The goals of this study are (1) to develop optical fibers as a transmission link in nuclear weapons diagnostics, and (2) to develop techniques for time-resolved image recordidng of nuclear weapons radiation. In pursuit of the first goal, measurements will be made of the time dispersion of 50-ps light pulses transiting radiation-induced absorption cells and optical-fiber transmission links. Measurement will also be made of the temporal response of radiation-induced light sources. Time-resolved imaging will be studied using the camera's framing and multi-channel streak feature. Images will be recorded and compared quantitatively to images recorded using other techniques to define image distortion, resolution, uniformity and temporal smearing.

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, is being manufactured in the United States.

Reasons: The foreign article provides fast framing (4-8 x 10^8 frames per second) and fast streak capability (equal to or greater than 10 nanoseconds per millimeter). The National Bureau of Standards advises in its memorandum dated May 23, 1980 (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

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 is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Stanley P. Kramer,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 80-31280 Filed 10-7-80; 8:45 am]

BILLING CODE 3510-25-M

Worldwide Information and Trade System (WITS); Request for Information

Correction

In FR Doc. 80-30076, appearing at page 64613, in the issue of Tuesday, September 30, 1980, make the following correction:

In the third column, the first paragraph, line eleven, insert the word "private" between the words "existing" and "sector" so that the sentence reads: "The Congress has indicated its intention that the objective be accomplished in a manner which utilizes, to the maximum extent possible, existing private sector data bases and other information services and does not duplicate or compete with them."

BILLING CODE 1505-01-M

Carbon Steel Cold Rolled Sheet, Hot Rolled Sheet, Galvanized Sheet, Plate and Structural Shapes From Belgium, the Federal Republic of Germany, France, Italy, Luxembourg, the Netherlands, and the United Kingdom; Termination of Antidumping Investigation

AGENCY: U.S. Commerce Department.

ACTION: Termination of antidumping investigations.

SUMMARY: This notice is to advise the public that the antidumping investigations concerning carbon steel cold rolled sheet, hot rolled sheet, galvanized sheet, plate and structural shapes from Belgium, the Federal Republic of Germany, France, Italy, Luxembourg, the Netherlands and the United Kingdom are being terminated. The termination is based on the withdrawal of the original antidumping petitions, as detailed in this notice and an appendix hereto.

EFFECTIVE DATE: October 1, 1980.

FOR FURTHER INFORMATION CONTACT: F. Lynn Holec, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C., Telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On March 21, 1980, petitions in proper form were received from the United States Steel Corporation, Pittsburgh, Pennsylvania, alleging that certain carbon steel products from Belgium, the Federal Republic of Germany (FRG), France, Italy, Luxembourg, the Netherlands, and the United Kingdom (U.K.) are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (93 Stat. 162, 19 U.S.C. 1673). On the basis of information contained in the petitions received from U.S. Steel, the Department of Commerce announced the initiation of 29 antidumping investigations on April 17, 1980. (45 FR 26109-15).

On October 1, 1980, United States Steel Corporation submitted a letter indicating its decision to withdraw its petitions. This letter is reproduced as an appendix to this notice.

Section 734(a) of the Tariff Act of 1930 (93 Stat. 165, 19 U.S.C. 1673c) provides that "(a)n investigation under this subtitle may be terminated by either the administering authority or the Commission after notice to all parties to the investigation, upon the withdrawal of the petition by the petitioner."

The Department of Commerce has notified all parties to the investigation that United States Steel Corporation has withdrawn its petitions concerning carbon steel products from Belgium, FRG, France, Italy, Luxembourg, the Netherlands and the U.K. and has consulted with the International Trade Commission regarding the withdrawal of the petitions. Further, the Department has concluded that termination of the investigations is in the public interest.

Accordingly, I hereby conclude that based upon the withdrawal of the antidumping petitions and in view of the fact that imports of the carbon steel products here involved will be monitored pursuant to the reinstated trigger price mechanism, it is appropriate to terminate these investigations.

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

October 1, 1980.

Before the U.S. Department of Commerce: United States Steel Corp., Petitioner—United States Steel Antidumping Petitions Against Certain Carbon Steel Products From Belgium, the Federal Republic of Germany, France, Italy, Luxembourg, the Netherlands, and the United Kingdom Filed on March 21, 1980.

Notice of Withdrawal of Petitions Without Prejudice

In the U.S. Department of Commerce.

Now, this first day of October, 1980, United States Steel Corporation, petitioner, by its counsel, hereby withdraws the above-captioned petitions without prejudice.

Respectfully submitted,

M. G. Heatwole,

D. B. King,

J. J. Mangan,

C. T. Myers,

C. D. Mallick,

Attorney for United States Steel Corp.

M. G. Heatwole.

[FR Doc. 80-31244 Filed 10-7-80; 8:45 am]

BILLING CODE 3510-25-M

Reinstatement of the Steel Trigger Price Mechanism

AGENCY: Department of Commerce.

ACTION: Reinstatement of the steel trigger price mechanism.

SUMMARY: This notice is to advise the public that the Department of Commerce will reinstate the steel trigger price mechanism (TPM) on or before October 21, 1980. The TPM is designed to permit the Department to monitor steel imports to ascertain expeditiously whether sales are occurring at prices which are likely to constitute sales at less than fair value under the antidumping law.

FOR FURTHER INFORMATION CONTACT: F. Lynn Holec, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C., Telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION: On December 30, 1977 (42 FR 65214), the Treasury Department announced its intention to implement a "trigger price mechanism". The TPM was instituted under the authority of section 201(a) of the Antidumping Act of 1921, as amended (19 U.S.C. 160(a)) and consisted of four parts: (1) the establishment of trigger prices for steel mill products imported into the United States; (2) adoption of a new Special Summary Steel Invoice ("SSSI") applicable to imports of all steel mill products; (3) the continuous collection and analysis of data concerning (a) the cost of production and prices of steel mill products in the countries that are the principal exporters of such products to the United States and (b) the condition of the domestic industry; and (4) where appropriate, the expedited initiation and disposition of proceedings under the Antidumping Act of 1921 with respect to imports below the trigger prices.

Responsibility for the administration of the antidumping law was transferred to the Department of Commerce on January 2, 1980, as part of Reorganization Plan #3 of 1979. The TPM, which was designed as a substitute for and not a supplement to major antidumping petitions by the domestic industry, was suspended by the Department of Commerce on March 24, 1980 (45 FR 20150). Under the TPM, resources of the administering authority were utilized to continuously monitor all basic steel mill product imports. When on March 21, 1980, dumping petitions involving basic steel mill products from seven European countries were filled with the Department of Commerce by United States Steel Corporation, it was decided that continuation of the TPM while investigating the industry complaints would undercut the basis upon which the TPM was established.

The announced intention of United States Steel Corporation to withdraw its antidumping complaints against the European producers and acceptance of withdrawal by the Department have created the conditions necessary for reinstatement of the TPM. The Department of Commerce is reinstating the TPM in a modified form for a limited period of time. In announcing its intention to reinstate the TPM, the Department made the following statement:

Statement Concerning Reintroduction of the Trigger Price Mechanism

The decision of the United States Government to reinstate the Trigger Price Mechanism (TPM), with certain

modifications, is premised on the following important principles:

First, the TPM will be reinstated for a limited period of time to provide, where appropriate, for the expedited initiation of antidumping proceedings.

Second, the United States industry recognizes the critical need for it to accelerate modernization of its facilities and the Commission of the European Communities recognizes the need for adjustment by the European steel industry.

Third, the TPM is designed to promote the elimination of injurious dumping and subsidization of imported steel and thereby to moderate the adverse effects on the domestic industry that can result from such unfair import competition. It will not affect access to the U.S. market for fairly traded steel.

Fourth, the TPM must operate efficiently and effectively. The Department of Commerce will improve the administration of the TPM, particularly emphasizing the transparency and regularity of its application.

Reinstatement of Modified TPM

1. Commerce intends to reinstate within three weeks the TPM, modified as outlined below. The new TPM levels will involve an average increase of approximately 12%.[1] Steel mill product imports entering the United States after the TPM is reinstated, other than those which are precleared as described in paragraph 8, will be subject to the TPM, unless such imports have been sold pursuant to a binding purchase contract, with a fixed price to an unrelated purchaser, entered into before September 5, and, further, the imports are exported to the United States no later than November 5.

2. Commerce will seek information from knowlegeable cost analysts, on a regular basis, in an effort to enchance the accuracy of the TPM. Before establishing quarterly trigger prices, Commerce will discuss weith steel industry cost experts developments in production costs, including electric furnace producers' costs, as reflected in available data. TPM levels will be established on as current a basis as possible. For example, known cost increases will be factored in on a current basis. In determining the TPM level for any quarter, Commerce will review the best available public data to determine whether there is any discrepancy between these data and TPM cost information obtained from the Japanese. This review will include a "top-down/bottom-up"[2] Analysis of the financial statements of Japanese steel producers, as well as a comparison with cost data from other sources to reconcile any differences. Appropriate adjustments to TPM levels will be made on the basis of the review.

3. Commerce will disclose all nonconfidential information on TPM calculations, including an updated and revised explanation of TPM methodology, and information on the manner in which specific cost items are allocated among TPM cost categories for purposes of calculating TPM. Commerce will continue to honor the confidentiality of cost information submitted by the Japanese.

4. In reinstating TPM, Commerce will retain the product coverage and cost coefficients for specific products, which were used at the time TPM was suspended. Upon reinstatement, Commerce will announce in the **Federal Register** a review of product coverage and cost coefficients. In this connection, Commerce will consider comments previously received and will solicit comments from interested parties. Changes, if any, will be introduced for the first quarter of 1981, or as soon thereafter as possible.

5. Thereafter, requests for modifications of specific product coverage will be received by Commerce and published in the **Federal Register**. Interested parties will have 30 days in which to comment. Generally, Commerce will make product coverage decisions not later than, and effective with, the following quarterly TPM announcement.

6. In order to minimize the impact of exchange rate fluctuations on TPM levels, exchange rates will be calculated on the basis of a 36 month rolling average. On this basis, the exchange rate used in reinstating TPM will be 223 yen to the dollar.

7. Commerce will improve enforcement of the TPM by adopting the suggestions set forth in Annex A, which were made in the General Accounting Office (GAO) report on administration of the TPM. Commerce will also establish training programs for Customs officer at major ports of entry for steel imports. Commerce will send teams to each major port on a spot check basis, at least two or three times a year, to insure proper processing of the Special Summary Steel invoices. Commerce will also make regular audits of import under TPM, particularly where transactions between related parties are involved, to assure that compliance with TPM is not being avoided and to assure that all distribution and processing costs in related party transactions are properly accounted for.

8. With regard to preclearance procedures, Commerce will permit preclearance only of specific steel mill products of individual companies. Because this is a departure from past preclearance procedures, Commerce will allow preclearance for shipments under preexisting procedures for 130 days after reinstatement of the new TPM. During that time, exporters who had preclearance must make new applications for preclearance as specified by Commerce in accordance with these new procedures. Notice of and opportunity for comment on preclearance requests will be given. During the preclearance review, Commerce will look at home market prices as well as costs to avoid issuing preclearances that would allow entries below fair value. Commerce will review preclearance at least once a year for changed circumstances.

9. Commerce will consult, on an individual basis, with parties affected by the TPM, including representatives of steel producers, distributors, steelworkers, and importers concerning administration of the TPM.

Addition of Anti-Surge Provision to TPM

10. In addition to the modification to TPM methodology and enforcement outlined above, there will be an anti-surge provision to TPM to assure that TPM is being administered effectively and to help identify instances in which dumped or subsidized imports may be causing injury. Under the anti-surge provision, Commerce will under certain circumstances examine sales to consider whether the sales are at less than fair value or are subsidized and appear to be causing injury.

11. Commerce, on request at any time, will consult with the United States industry concerning surges[3] in apparently dumped or subsidized imports. Whenever steel mill product imports rise over 13.7% of apparent domestic consumption,[4] the United States industry is operating below 87%

[1] Reflects cost information through June 1980.

[2] This is an analysis of average revenue less profit per ton of steel produced and an ananlysis of the cost elements which sum to the total cost of producing a ton of steel.

[3] In determining whether there has been a surge in the volume of imports of a particular product or products, Commerce will consider the amount of increase in those imports, the period in which this increase occurred, and the significance of the amount in light of prevailing market conditions and seasonal and recent representative patterns in trade.

[4] Calculated on a rolling three month average basis.

capability utilization,[5] and there appears to be a surge in imports of one or more specific products from one or more specific countries, Commerce will review the situation.[6] If, as a result of this review, it appears that TPM is being evaded, appropriate action will be taken. Whenever aggregate imports exceed 15.2% of apparent domestic consumption, the U.S. industry is operating below 87% capability utilization, and there appears to be a surge in imports of one or more specific products from one or more specific countries, Commerce will examine the situation to ascertain whether the imports are apparently (1) being dumped on a cost or price basis, (2) the result of government subsidization, or (3) the result of fair competition. Commerce will complete this process within 90 days.[7] During the period of time the United States Trade Representative will discuss the issue with the government concerned. If Commerce determines the imports appear to be a result of unfair competition (dumping or subsidization) and if the apparent unfair practice does not abate promptly, Commerce will either initiate dumping/countervailing duty cases on the specific country/product line basis or will immediately make nonconfidential materials and the results of its examination available and any interested party may then file an antidumping or countervailing duty petition and Commerce will not suspend the TPM. In all cases, Commerce will consult with the domestic industry regarding its review.

Reinstatment of Improved TPM and Anti-Surge Provision To Provide for Transition To Normal Market Conditions

12. The TPM will be reinstated for a five-year period. However, during the six-month period before the end of the third year, the Secretary of Commerce will review the progress made toward increased modernization of the domestic industry, in view of the ability of domestic steel producers to raise necessary capital within their steel sector, financial capability.[8] If the Secretary concludes increased modernization is not progressing at an adequate pace, the Secretary may terminate TPM after an appropriate period which, in no event, will be less than three months after such conclusion.

13. The Secretary or his designee, in order to evaluate the progress made toward the objectives of paragraph 12, will consult with domestic industry on the effectiveness of TPM administration, and, on an individual basis, domestic producers will periodically review with the Secretary or his designee the progress that has been made toward modernization.

14. During the period the TPM is in effect, if any interested party files a dumping or contervailing duty petition on products covered by the TPM other than under circumstances described in paragraph 11, then the TPM may be withdrawn.

15. The prior paragraphs set forth policies and practices which the Department of Commerce expects to follow in administering the TPM program as a means for efficiently enforcing the antidumping law as to the products in question. However, this statement, and the Department's reinstatement of the TPM, do not limit the legal rights of any person to file antidumping or countervailing duty petitions, or the legal rights or obligations of the Government to alter or terminate the policies and practices set forth herein nor do they create any legal rights of any kind for any person, or constitute the basis for any legal complaint by any person.

GAO Recommendations of TPM Enforcement

1. Continue efforts to reduce import specialists' high rate of errors in making trigger price calculations, (through training sessions, spot reviews at the major ports of entry for steel, etc.)

2. Establish cumulative telexing criteria and telex significant cumulative below-trigger-price shipments.

3. Establish procedures for automatically sending follow-on inquiries to importers who have not replied to telexes and other requests for information after a fixed period of time.

4. Make systematic antidumping reviews of TPM information, using criteria established by Commerce.

5. Prepare written procedures for conducting antidumping reviews.

6. Limit preclearance treatment to specific steel mill products and companies which have in fact been precleared.

7. Periodically check the prices of precleared items to ensure that they are within fair-value range, as established by preclearance investigations.

8. Respond fully to all recommendations to initiate antidumping investigations.

9. Exercise care in dealing with recommendations to initiate antidumping investigations and the investigations themselves.

10. Maintain complete files on the disposition of TPM cases.

In this regard, all SSI's reflecting imports below the trigger price applicable to the period in which the shipment was made will be evaluated by the Special Steel Task Force. The fact that any particular item reflected on the SSSI is not at or above the trigger prices established by the Secretary will not, by itself, result in any action by the Department.

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

October 1, 1980.

[FR Doc. 80-31245 Filed 10-7-80; 8:45 am]

BILLING CODE 3510-25-M

[5] Id.

[6] This would be in addition to regular monitoring to insure enforcement of TPM. Commerce would, of course, examine all allegations of imports below the TPM level.

[7] Provided that this time period will be reduced by the time already spent in investigation of the surge (not to exceed 30 days) when imports were above 13.7% but not above 15.2%.

[8] Of course, the TPM alone will not assure all the accelerated modernization of the domestic steel industry which is sought by both the industry and the government.

Menthol From the People's Republic of China, Postponement of Preliminary Decision

AGENCY: Department of Commerce.

ACTION: Postponement of preliminary antidumping determination.

SUMMARY: This notice informs the public that the Department of Commerce has determined that this antidumping case is "extraordiarily complicated," and that the Department will postpone the preliminary determination as to whether sales of menthol from the People's Republic of China have occurred at less than fair value until not later than January 7, 1981.

EFFECTIVE DATE: October 8, 1980.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Supervisory Import Administration Specialist, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230 (202) 377-5496.

SUPPLEMENTARY INFORMATION: On July 2, 1980, the Department of Commerce published notice in the **Federal Register** (45 FR 44976) that its was initiating, under section 732(b) of the Tariff Act of 1930 (19 U.S.C. 1673a(b)), an antidumpting investigation to determine whether natural menthol from the People's Republic of China is being or is likely to be sold at less than fair value. The notice stated that, unless the investigation were extended, the Department would issue a preliminary determination not later than November 18, 1980.

Section 733(c) of the Act provides that the Department of Commerce may postpone its preliminary determination concerning sales at less than fair value if it concludes that the parties involved are cooperating in the investigation, the case is extraordinarily complicated, and additional time is needed to make the preliminary determination.

Pursuant to section 733(c) of the Act, the Department concludes that the parties concerned are cooperating and that this case is extraordinarily complicated because it presents a novel issue. This is the first dumping case brought against the People's Republic of China. In order to determine the appropriate measure of fair value, the Import Administration must analyze the nature of the Chinese economy in general and the agricultural sector in detail because natural methol is a direct derivative of an agricultural product. Therefore, the Department will need additional time to perform this analysis and collect and analyze data necessary for a preliminary determination.

Accordingly, the Department will issue a preliminary determination in this case not later than January 7, 1981.

This notice is published pursuant to section 733(c)(2) of the Act (19 U.S.C. 1673b(c)(2)).

John D. Greenwald,

Deputy Assistant Secretary for Import Administration.

October 2, 1980.

[FR Doc. 80-31334 Filed 10-7-80; 8:45 am]

BILLING CODE 3510-25-M

Semiconductor Technical Advisory Committee; Partially Closed Meeting

Pursuant to Section 10 (a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Semiconductor Technical Advisory Committee will be held on Tuesday, October 21, 1980, at 9:30 a.m. in Room 3708, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C. The meeting will continue October 22, in room 3708, Main Commerce Building to its conclusion. This meeting is being called on short notice because of the need to consider the impact on the export control regulations by the critical technologies report published by the Defense Department in the October 1, 1980 **Federal Register.**

The Semiconductor Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, August 28, 1978, and August 29, 1980 the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(h)(1) of the Export Administration Act of 1979, 50 U.S.C.A. App. 2401 *et seq.* and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical specifications and policy issues relating to those specifications which are of concern to the Department, (B) worldwide availability of products and systems, including quantity and quality, and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to any goods or technology, and (D) exports of the aforementioned commodities subject to unilateral and multilateral controls in which the United States establishes or in which it participates including proposed revisions of any such controls.

The Committee meeting agenda has five parts:

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Review of published Qualified General License.
4. Subcommittee reports.
a. Discrete Semiconductor Device,
b. Microcircuit, and
c. Semiconductor Manufacturing Materials and Equipment.

Executive Session

Discussion of matters properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting is open to the public, at which a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be presented at any time before or after the meeting.

With respect to agenda item (5), the Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 16, 1980, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in the Sunshine Act, P.L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive order to be kept secret in the interests of the national defense or foreign policy. All materials to be reviewed and discussed by the Committee during the Executive Session of the meeting have been properly classified under Executive Order 11652 or 12065. All Committee members have appropriate security clearances.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, Washington, D.C. 20230, telephone: 202-377-2583.

Copies of the minutes of the open portion of the meeting can be obtained by calling Mrs. Margaret Cornejo, Office of the Director of Licensing, Office of Export Administration, Room 1609, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202-377-2583.

For further information contact Mrs. Cornejo either in writing or by phone at the address or number shown above.

Saul Padwo,

Acting Director, Office of Export Administration, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 80-31504 Filed 10-7-80; 8:45 am]

BILLING CODE 3510-25-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Restraint Levels for Certain Cotton and Man-Made Fiber Textile Products From Thailand

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: (1) Reducing the 1980 level for cotton coats in Category 334/335 by the deduction of 2,643 dozen of carryforward used in 1979 and 1979 overshipments amounting to 3,809 dozen;

(2) Increasing the import control levels for men's and boys' woven cotton shirts in Category 340 and woven cotton blouses in Category 341 for the 1980 agreement year by the application of available carryover from the previous agreement year;

(3) Reducing the 1980 level for man-made fiber woven blouses in Category 641 by deducting 2,707 dozen of carryforward used in 1979.

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 4, 1978, as amended, between the Governments of the United States

and Thailand provides, among other things, for the borrowing of designated percentages of yardage from the succeeding year's levels (carryforward) and for deducting those amounts, to the extent that they are used, during the succeeding year. The agreement also provides for the carryover of shortfalls in certain categories from the previous agreement year.

EFFECTIVE DATE: October 6, 1980.

FOR FURTHER INFORMATION CONTACT: Carl Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

SUPPLEMENTARY INFORMATION: On December 27, 1979, there was published in the **Federal Register** (44 FR 76574) a letter dated December 20, 1979 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established levels of restraint for certain specified categories of cotton and man-made fiber textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1980. In the letter published below, and in accordance with the terms of the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the levels of restraint for Categories 334/335, 340, 341, and 641 to the designated amounts.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

October 3, 1980.

Committee for the Implementation of Textile Agreements

Commissioner of Customers,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: On December 20, 1979, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, during the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980, of cotton and man-made fiber textile products in certain specified categories, produced or manufactured in Thailand, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 4, 1978, as amended, between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on October 6, 1980 and for the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980, to amend the twelve-month levels of restraint established for cotton and man-made fiber textile products in categories 334/335, 340, 341, and 641 to the following:

Category	Amended 12-mo. level of restraint [1] (dozen)
334/335	40,674
340	99,928
341	101,668
641	139,419

[1] The levels of restraint have not been adjusted to reflect any imports after December 31, 1979.

The actions taken with respect to the Government of Thailand and with respect to imports of cotton and man-made fiber textile products from Thailand have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioners of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80–31246 Filed 10–7–80; 8:45 am]

BILLING CODE 3510–25

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 4, 1978, as amended, between the Governments of the United States and Thailand, which provide, in part, that: (1) specific levels of restraint may be increased for carryover and carryforward up to 11 percent of the applicable category limit with the amount of carryforward used being deducted from the succeeding year's level; and (2) administative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

DEPARTMENT OF DEFENSE

Department of the Air Force

Scientific Advisory Board; Cancelled Meeting

September 30, 1980.

The USAF Scientific Advisory Board Electronic Systems Division Advisory Group meeting published in the **Federal Register**, Volume 45, No. 187, Wednesday, September 24, 1980 (45 FR 63328), has been cancelled.This meeting will be rescheduled for a later time, dates unknown at the present.

For further information contact the Scientific Advisory Board Secretariat at (202) 697–8404.

Carol M. Rose,

Air Force Federal Register Liaison Officer.

[FR Doc. 80–31299 Filed 10–7–80; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Public Utility Regulatory Policies Act Hearings

AGENCY: Department of Energy, Bonneville Power Administration.

ACTION: Notice of hearings respecting lifeline rates.

SUMMARY: Bonneville Power Administration (Bonneville) will hold hearings on Thursday, November 13, 1980, to consider and determine whether or not it is appropriate for Bonneville to implement lifeline rates, as provided by Section 14 of the Public Utility Regulatory Policies Act (PURPA, Pub. L. 95–617).

DATES: Public hearings concerning the adoption of lifeline rates will be held Thursday, November 13, 1980, in the Auditorium, Bonneville Power Administration Headquarters Building, 1002 NE. Holladay Street, Portland, Oregon, commencing at 9 a.m. and at 7 p.m.

SUPPLEMENTARY INFORMATION: The Public Utility Regulatory Policies Act (PURPA), Section 114, requires certain nonregulated electric utilities to consider the adoption of lifeline rates and to make a determination concerning whether or not it is appropriate to implement such rates. The consideration is required to be after an evidentiary hearing; the announced hearing is the evidentiary hearing for such purpose. Written and oral evidence will be accepted at the hearing. The determination concerning whether to implement lifeline rates must be based upon such evidence.

SUBJECT OF HEARINGS: The Federal Standards which must be considered and which define the scope of this hearing are specified by Section 114(a) of the Public Utility Regulatory Policies Act.

The standard proposed by PURPA raises the issues which are to be considered and determined as a result of these hearings. The proposed standard generally provides that:

Lifeline Rates—An electric utility may fix and approve a rate for essential needs of

residential electric consumers which is lower than a rate determined by application of a cost of service study made in accordance with the standard of Section 111(d)(1) of PURPA.

PROCEDURE OF HEARING: All interested persons are invited to participate in this hearing. Persons desiring to appear and make statements shall present themselves, in person or by counsel, at the beginning of the hearing at 9:00 a.m. or 7:00 p.m. on Thursday, November 13, 1980.

The hearing will be presided over by a hearing officer designated by the Administrator of Bonneville.

The hearing officer will determine the order in which evidence shall be presented. If a large number of persons ask to speak, the time allowed each speaker may be limited.

This will be a judicial and evidentiary hearing. Evidence will be given on oath or affirmation. Persons presenting statements will be subject to cross-examination by counsel representing the parties to the proceeding. Rebuttal evidence will be accepted. Rebuttal evidence will be given in the order in which the initial statements are made. Any decision made by Bonneville with respect to the subject matter of the hearing will be based on all information presented by evidence.

The hearing officer will disclose at the beginning of the hearing any additional rules necessary for insuring orderly procedure.

The hearing will be transcribed. Copies of the transcript may be ordered at the cost of reproduction from the office of the General Counsel, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208.

Any party to the proceeding may present on or before 4:30 p.m. on Friday, December 12, 1980, proposed findings and conclusions and supporting reasons for the proposed findings and conclusions.

The Bonneville Division of Rates will prepare a written statement concerning the applicability of the lifeline rate standard to Bonneville. The statement will be offered into evidence as a part of the official record, will be available to the public upon request, and will be subject to cross-examination as any other evidence.

Copies of the staff statement will be available at the hearings; they will also be available both before and after the hearing from Donna Lou Geiger, Public Involvement Coordinator, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212, or from Bonneville's Areas and Districts, located as follows: Spokane Area, Room 561, U.S. Court House, Spokane, Washington 99201; Kalispell District, Box 758, Kalispell, Montana 59901; Wenatchee District, Room 314, U.S. Federal Building, 301 Yakima Street, P.O. Box 741, Wenatchee, Washington 98801; Portland Area, 1500 NE. Irving Street, Room 288, P.O. Box 3621, Portland, Oregon 97208; Eugene District, U.S. Federal Building Room 206, 211 East 7th Street, Eugene, Oregon 97401; Seattle Area, 415 First Avenue North, Room 250, Seattle, Washington 98109; Walla Walla Area, West 101 Poplar, P.O. Box 1518, Walla Walla, Washington 99362; Idaho Falls District, 531 Lomax Street, P.O. Box 2558, Idaho Falls, Idaho 83401.

The official record of the proceedings will consist of the verbatim transcript of the hearings and copies of all evidence submitted within the time set forth above. The summary of the record will be prepared by the hearings officer and will be transmitted to the Bonneville Administrator along with the complete official record. The record will be used by the Administrator in making the determination required by Section 114(b) of the Public Utility Regulatory Policies Act of 1978.

Individual copies of the record will be available to the public at cost of reproduction. Copies will also be kept on file for public inspection at the Office of the Public Involvement Coordinator, Room 494, Bonneville Power Administration, 1002 NE. Holladay Street, Portland, Oregon.

CONSUMER REPRESENTATION: Any person may appear at this hearing either in person or by an attorney or both.

As provided by Section 122 of PURPA, Pub. L. 95–617, if no alternative means for assuring representation of electric consumers is provided, and if an electric consumer of Bonneville substantially contributes to the approval, in whole or in part, of a position advocated by such consumer at these hearings and relating to any of the subjects of this hearing, Bonneville will compensate such consumer for reasonable attorney fees, expert witness fees, and other reasonable costs incurred in preparation and advocacy of such position in this hearing.

A notice of intention to claim such fees and costs shall be presented in writing before the close of the hearing. Those electirc consumers of Bonneville who are found to be entitled to such fees and costs under Section 122(a) of PURPA will be so notified and required therafter to file a written claim. The written claim shall be on oath and shall state: (1) the names and addresses of the consumer and of his/her attorney; (2) a recitation of the entire fee contract made between the consumer and his/her attorney and witness; (3) a detailed statement of the time and charges of the attorney or witness or both for which reimbursement is sought; (4) an itemization of any other costs for which reimbursement is sought; and (5) information as to the financial situation of the consumer.

The determination as to what, if any, attorney fees, witness fees, and costs will be reimbursed by Bonneville will be included in the final order or determination in these proceedings. Payment to be made will be processed in due course thereafter and mailed to the consumer, his/her attorney, or both.

FURNISHING INFORMATION: Bonneville will furnish information on PURPA standard in accordance with the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Lou Geiger, Public Involvement Coordinator, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212; 503–234–3361, extension 4261. Toll-free numbers are: for Oregon callers, 1–800–452–8429; for callers from Washington, Idaho, Montana, Utah, Nevada, Wyoming, and California, 1–800–547–6048.

Dated: September 19, 1980.

Stanley E. Efferding,

Acting Administrator.

[FR Doc. 80–31236 Filed 10–7–80; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Texaco, Inc.; Application for Reassignment of Purchasers

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of issuance of order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that on October 2, 1980, a Decision and Order was issued pursuant to the provisions of 10 CFR § 205.90 *et seq.* and § 211.10(b) denying Texaco, Inc.'s (Texaco), July 16, 1979, request for the reassignment of certain purchasers. The application, if granted, would have relieved Texaco of its obligation under the Mandatory Petroleum Allocation Regulations to supply wholesale purchasers and end-users in Montana, northern Idaho, eastern Washington, and western North Dakota and cause DOE to reassign them to a replacement supplier.

A copy of the Decision and Order, with proprietary information deleted, is attached.

FOR FURTHER INFORMATION REGARDING THIS ORDER, CONTACT:

John A. Carlyle, Economic Regulatory Administration, Office of Petorleum Operations, Room 2104–I, 2000 M Street NW., Washington, D.C. 20461, Telephone: (202) 653–3701.

Joel M. Yudson, Office of the General Counsel, Room 6A–127, 1000 Independence Avenue SW., Washington, D.C. 20585, Telephone: (202) 252–6744.

Issued in Washington, D.C., on the 2d day of October 1980.

Doris J. Dewton,

Assistant Administrator, Office of Petroleum Operations Economic Regulatory Administration.

Economic Regulatory Administration Decision and Order

To: Texaco, Inc., 2000 Westchester Avenue, White Plains, New York 10650.

Subject: Texaco's Applications for Reassignment of Purchasers Case No. WD–79–001.

I. Introduction

On July 16, 1979, Texaco, Inc. (Texaco), filed an application with the Department of Energy's (DOE) Economic Regulatory Administration (ERA) for the reassignment of certain purchasers pursuant to 10 CFR Part 205, Subpart G and 10 CFR § 211.14(d). The application, if granted, would relieve Texaco of its obligations under 10 CFR § 211.9 to supply wholesale purchasers and end-users in Montana, northern Idaho, eastern Washington and western North Dakota (hereinafter referred to as the withdrawal area) and cause ERA to reassign them to a replacement supplier or suppliers.

II. Legal Authority

Texaco's application is being processed in accordance with 10 CFR § 205.90 *et seq.* and § 211.14(d).

III. Background

Texaco is a fully integrated petroleum company which conducts activities in virtually every phase of the petroleum industry in both the U.S. and abroad. The firm owns and operates eleven refineries in the U.S. with a total refining capacity of approximately 1,059,000 barrels per day. Texaco also is capable of entering into exchange and processing arrangements with other refiners to obtain additional supplies of refined petroleum products. Furthermore, it has substantial capacity to import crude oil and refined products into the U.S. The firm owns storage, transportation, and pipeline systems for the distribution of its products throughout the U.S. where it markets a wide variety of petroleum products at both the wholesale and retail levels.

According to Texaco, the firm is currently marketing motor gasoline and other petroleum products in the U.S. in excess of its domestic refining capability. Thus, Texaco has set out to reduce its product sales to a level at which the firm is able to supply nearly all of its requirements from its own refinery production. Cessation of marketing activities in the withdrawal area is an integral part of the plan. Since 1975 Texaco has succeeded in reducing its sales obligations in the withdrawal area by approximately 40% by making arrangements on its own with other substitute suppliers. If Texaco is permitted to withdraw from the area it would require the reassignment of 29 distributors and jobbers; 16 consignees and tank truck dealers; 25 branded service stations dealers; 2 unbranded independent marketers and 51 wholesale purchaser consumers to replacement suppliers. These base period purchasers have relied on Texaco for their supply and it is likely that they would generally not be able to purchase gasoline from sources other than their base period supplier.

Texaco has no refinery in the withdrawal area. Its nearest refinery is located at Casper, Wyoming, and there is no pipeline distribution system flowing from Casper northward into the withdrawal area. Furthermore, according to Texaco, the motor gasoline produced at the Casper refinery is already committed to customers in other areas. All refined products sold by Texaco in the withdrawal area are refined and distributed from the refinery owned by Exxon Company, U.S.A. at Billings, Montana. Under the terms of a processing agreement between the two firms, which commenced in January 1978, Exxon receives crude oil deliveries from Texaco (obtained from Canada and various domestic exchanges) and refines it into motor gasoline, kerosene and diesel fuel. The refined petroleum products are returned to Texaco at various pipeline terminals within the withdrawal area. Product is transported by common carrier from these terminals to Texaco's customers. Texaco's current annual adjusted base period motor gasoline supply obligations in the withdrawal area are approximately XXXXXX barrels in Idaho; XXXXXX barrels in Washington; XXXXXX barrels in Montana; and XXXXX barrels in North Dakota.

Texaco contends that it is uneconomical for the firm to market petroleum products in Montana because of the high processing fee which it must pay to Exxon. The firm also alleges that the Canadian government's policy of reducing its crude oil exports will eventually decrease Texaco's available supplies below the levels necessary to support its marketing commitments in the withdrawal area. According to Texaco, crude oil obtained from other sources is not easily transported to the withdrawal area. It is also asserted to be difficult and economically impractical for Texaco to transport refined products into the region. Moreover, Texaco contends that its equity refining capacity at its Casper, Wyoming, and Puget Sound, Washington, refineries in not adequate to assume any additional commitments.

IV. Comments to Texaco's Application

On August 17, 1979, the ERA issued a notice of Texaco's request to terminate its motor gasoline supply obligations in the withdrawal area (44 **Federal Register** 48320 August 17, 1979). The notice invited written comments from interested persons. During the pendency of Texaco's application, the ERA received fourteen comments, five of which were from major integrated petroleum companies. Table A lists those persons which filed written comments. Four commenters, Exxon Company, U.S.A., the Governor of Montana, Mr. Marvin C. Beck (jobber), and Mr. Alfred H. Hunt (jobber), objected to Texaco's withdrawal; five commenters did not oppose the withdrawal but were unwilling to accept the responsibility of supplying Texaco's customers, and five commenters would not object if DOE assigns reliable replacement suppliers. Comments in opposition to Texaco's application generally reflect the following arguments:

(1) That Texaco has not shown that it is impractical for the firm to continue to supply its customers.

(2) That the current worldwide petroleum supply situation is extremely uncertain.

(3) That suppliers in the market area do not have adequate product available to assume Texaco's obligations.

V. Analysis and Findings

Under the Mandatory Petroleum Allocation Regulations, specifically 10 CFR § 211.9 through § 211.13, purchasers of motor gasoline are generally entitled to receive product from their base period suppliers. The base period for motor gasoline is the corresponding month of the period November 1977 through October 1978. As a general matter, the maintenance of base period supplier/purchaser relationships is the cornerstone of the DOE allocation program for gasoline. However, under the provisions of 10 CFR § 211.14(d), suppliers which seek to withdraw from marketing and distribution activities in a region may apply to DOE for reassignment of their base period and assigned wholesale purchasers in that region.

Section 211.14(d) states that:

Any refiner, importer, or other supplier which has significantly reduced or which intends to reduce marketing or distribution activities in any region or area and which is required by DOE regulations to supply its base period and assigned wholesale purchasers in that region or area may apply to the National DOE to seek a change in the method of supplying such wholesale purchasers. The DOE may order the reassignment of wholesale purchasers or end-users from one supplier to another. . . .

In Ruling 1974–3, *(1)* which was issued by the Federal Energy Admiunistration (FDA), a predecessor of DOE, it was stated that the DOE, in determining whether to permit withdrawal from a market area, must consider whether it is impractical for a supplier to provide allocations to its purchasers in a region. The ERA has previously discussed some of the issues which are given particular weight in evaluating the impracticality of a firm to supply its customers:

(1) Whether there are any methods which the firm can use to transport gasoline into the affected area.

(2) Whether the firm is capable of entering into exchanges or processing arrangements with other refiners to obtain supplies of motor gasoline to meet its sales obligations.

(3) Whether the firm, after diligent effort, has been or will be unable to purchase gasoline on the open market.

(4) Whether the firm has attempted to arrange to supply its purchasers through

another supplier or suppliers under the provisions of 10 CFR § 211.25.

In addition, the DOE Office of Hearings and Appeals (OHA) described other factors which the ERA should consider in determining whether to authorize reassignment of customers pursuant to 10 CFR § 211.14(d) See *Mobil Oil Corporation*, 5 FEA ¶ 80,586 (1977) and *Caldo Oil Company, Inc.*, 3 DOE ¶ 80,135 (1979). These factors include findings concerning the effect the withdrawal will have upon independent marketers in the area, and upon the alternate suppliers and their customers. However, the ERA does have a large degree of discretion in determining when such an application should be approved. See *Mobil Oil Corporation*, supra.

In the base period, Texaco supplied its customers in the withdrawal area with motor gasoline through the use of the Exxon processing arrangement, which is discussed above. At the present time, Texaco continues to furnish gasoline to its coustomers by that means. Texaco has failed to offer any evidence that it will be unable to continue its processing arrangement with Exxon for an indefinite period of time. *(2)* The firm does not claim that it could not secure a similar type of processing arrangement in the future with various other refiners operating in the withdrawal area if the arrangement with Exxon is ultimately terminated. Moreover, Texaco has not provided any factual material to demonstrate that it no longer prossesses the capability to acquire adequate volumes of motor gasoline to meet its customers' supply requirements.

Although Texaco states there is a steady decline in the availability of Canadian crude oil, which is designated for delivery to Exxon under the terms of the processing arrangement, the firm has provided no conclusive evidence that it does not have the capability to reach a mutually satisfactory arrangement with Exxon for transporting or exchanging crude oil from other areas. As a major integrated petroleum company, Texaco has a wide range of experience and capacity to obtain crude oil through exchanges or through other means available to firms such as Texaco. In this connection, Texaco has failed to adequately document its contention that its alternate sources of crude oil are so costly as to be impracticable.

We are unable to accept Texaco's contention that the granting of its application would not have a serious impact upon supplies of gasoline in the withdrawal area. The ERA will be compelled to replace, the nearly XXXXXXXX gallons of gasoline which Texaco would otherwise be obligated to offer for sale to its base period customers annually by permanently assigning alternate suppliers. If the ERA directs another firm to supply motor gasoline in place of Texaco, there is a strong possibility that it will cause that firm to decrease its allocation fraction and thereby reduce gasoline sales to its own customers. At the same time, relieving Texaco of its supply obligations in the withdrawal area allows the firm to distribute more gasoline at a higher allocation fraction to its customers in other areas throughout the U.S.

We have carefully considered Texaco's application in view of the standards referred to above and the comments of all persons who participated in this matter. The ERA has determined that Texaco should not be relieved of its supply obligations. The information submitted by Texaco in support of its request fails to show that it is truly impractical for the firm to provide gasoline allocations to its customers in the withdrawal area.

We note that in *Mobile Oil Corporation*, supra., OHA stated:

The [DOE] is bound by the strict provisions of its enabling legislation and a mere showing that a firm would prefer to discontinue supplying a market area with allocated petroleum products does not, in and of itself, constitute a sufficient basis for the approval of an application for withdrawal from a marketing area. Certainly the entire [DOE] allocation program would be disrupted if suppliers of refined petroleum products were permitted to select the particular sections of the country in which it is least burdensome for them to operate and to withdraw from all other areas. The effects on purchasers of refined products if such a course of action were followed would be most severe. Thus, the [DOE's] decision with respect to an application by a firm to withdraw from a marketing area must be consistent with the policy objectives and directives of the legislation under which the agency operates.

Texaco has not demonstrated or even alleged that any supply burden which it may be experiencing is substantially different from those experienced by other major refiners. Rather than being based on impracticability Texaco's request rests principally on the firm's desire to reduce its nationwide petroleum product supply obligations to the level at which they can be met exclusively from Texaco's own refinery production. Under the current circumstances, there is no basis for ERA to abrogate Texaco's base period supplier/purchaser relationships and assign new suppliers of motor gasoline. ERA will not reassign customers to firms which would not otherwise choose to enter into sales relationships merely because a supplier, in order to pursue a corporate policy, would prefer to cease marketing operations in a particular area.

Since Texaco has failed to demonstrate that it is impractical under present and prospective market conditions for the firm to provide motor gasoline allocations to its base period customers either directly or through exchange agreements with other suppliers, it is not necessary for ERA to evaluate the effect of the proposed withdrawal on the independent sector of the petroleum industry in the withdrawal area. For the same reason it is unnecessary to assess whether the assignment of other suppliers in the withdrawal area to furnish motor gasoline to Texaco's base period purchasers will seriously and adversely affect those alternate suppliers and their base period customers.

It would appear that a more appropriate course of action would be for the firm to continue to pursue all reasonable avenues to supply its purchasers through another supplier or suppliers under the provisions of 10 CFR § 211.25. Accordingly, the ERA has determined that this request should be denied.

VI. Order

This order is issued pursuant to the provisions of 10 CFR § 205.90 *et seq.* and § 211.14(d).

It is, therefore, ordered that:

(1) The application filed by Texaco, Inc., be and hereby is denied.

(2) In accordance with the provisions of 10 CFR, Part 205, an aggrieved party may file and appeal from this Decision and Order with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. The provisions of 10 CFR, Part 205, Subpart H, set forth the procedures and criteria which govern the filing and determination of any such appeal.

(3) Communications, other than appeals, regarding this directive should be referred to John A. Carlyle, Gasoline Allocation Branch, Allocated Products Division, Office of Petroleum Operations, Economic Regulatory Administration, Room 2104–I, 2000 M Street NW., Washington, D.C. 20461, telephone number (202) 653–3701.

Doris J. Dewton,

Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

References

(1) FEA Ruling 1974–3, 39 **Federal Register** 4467 (February 4, 1974), provides in part that: "Any supplier which, during or since the base period, has significantly reduced its marketing or distribution activities in any of the 10 regions of the Federal Energy Office may apply to the National Federal Energy Office to seek adjustment in the method of supplying customers in that region. The application shall contain an explanation of the reasons why it is impractical for that supplier to provide allocations to its base period wholesale purchasers in the region—either directly or through exchange agreements with other suppliers. . . . Based on an application prepared in accordance with the foregoing, the Federal Energy Office will consider whether to authorize reassignments of customers pursuant to Section 211.14(d) of the Regulations."

(2) In its April 23, 1980, comments to Texaco's application, Exxon states, "Recent communications between Exxon and Texaco attest to the continuing interest of both parties in the processing agreement."

Table A

Commenters to Texaco's Application

Amoco Oil Company
Caribou Four Corners, Inc.
Chevron USA, Inc.
Continental Oil Company
John Dompier Oil Company, Inc.
Exxon Company, USA
Mr. Marvin C. Beck (jobber)
Gull Industries, Inc.
Husky Oil Corporation
Mr. Alfred H. Hunt (jobber)
Mobil Oil Corporation
Montana-Dakota Utilities Company
Thomas L. Judge, Governor of Montana
Save Way Gas, Inc.

[FR Doc. 80-31237 Filed 10-7-80; 8:45 am]
BILLING CODE 6450-01-M

Sayreville Generating Station Units 4 and 5: Intent To Prepare an Environmental Impact Statement (EIS) and Conduct Public Scoping Meeting

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of intent to prepare environmental impact statement and conduct public scoping meeting.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare an EIS evaluating the impact of its Proposed Prohibition Order for the Sayreville Generating Station Units 4 and 5. These units are located in Sayreville, New Jersey, and are owned and operated by Jersey Central Power and Light Company. The Prohibition order, if finalized, would prohibit the burning of petroleum or natural gas in these units. Subsequent operation of these units would require the burning of an alternate fuel such as coal. Interested agencies, organizations, and the general public desiring to submit written comments or suggestions for consideration in connection with the preparation of this EIS are invited to do so and/or to attend the public scoping meeting which will be held on October 21, 1980, in order to assist DOE in identifying significant environmental issues and the appropriate scope of the EIS. Parties who desire to present oral comments at the scoping meeting should provide advance notice to the Economic Regulatory Administration (ERA) as described below. Upon completion of the draft EIS, its availability will be announced in the **Federal Register**, at which time further comments will be solicited.

The meeting is scheduled to begin at 11:00 a.m. and will continue until all persons wishing to speak have had an opportunity to do so.

Written comments, notice of intent to present comments at the scoping meeting, and questions concerning the meeting should be addressed to: Mr. Steven E. Ferguson, Chief, Environmental Analysis Branch, Office of Fuels Conversion, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Washington, D.C. 20461. Telephone (202) 653-3684.

For general information on the EIS process, contact: Robert J. Stern, Acting Director, Division of NEPA Affairs, Office of the Assistant Secretary for Environment, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. Telephone (202) 252-4600.

Date and Location of Scoping Meeting: October 21, 1980, in the Sayreville Municipal Building, Council Chambers, 167 Main Street, Sayreville, New Jersey. The meeting will begin at 11:00 a.m.

Written Comments Due: November 21, 1980.

SUPPLEMENTARY INFORMATION: On July 30, 1980, the Economic Regulatory Administration (ERA) published in the **Federal Register** a proposed Prohibition Order for Unit 4 (138 MW) and Unit 5 (125 MW) of the Sayreville Generating Station, located in Sayreville, New Jersey. The proposed order was issued pursuant to Section 301 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. 95-620). If finalized, the order would prohibit these units from burning natural gas or petroleum as its primary energy source. The proposed prohibition order was based on an ERA finding that this powerplant has, or previously had, the technical capability to use an alternate fuel as a primary energy source. It was determined that this powerplant was designed and constructed to burn coal as a primary energy source and had previously burned coal.

Environmental Impact Statement

The EIS will present a comprehensive analysis of the environmental impact of ERA's proposed action in issuing a final order prohibiting Units 4 and 5 of the Sayreville Generating Station from burning natural gas or petroleum as primary fuels. This analysis will discuss the environmental consequences of the proposal and alternatives including the environmental impacts of burning coal or other alternate fuels as primary fuels. Among the impacts to be discussed are air quality, water quality, solid waste generating and disposal, and transportation and storage of fuel, as well as other impacts determined to be potentially significant during the public comment process. In addition, the EIS will evaluate methods for meeting the requirements of the Clean Air Act, Federal Water Pollution Control Act, Resource Conservation and Recovery Act, and other relevant environmental statutes. The EIS will be prepared in accordance with Section 102(2)(c) of the National Environmental Policy Act (NEPA).

It is possible that DOE may, in the future, issue prohibition orders to other facilities in the area of the Sayreville Generating Station. If it appears that the environmental effects of conversions in proximity result in cumulative impacts, DOE may opt to combine these conversions in a single EIS. DOE will assess various strategies for combining or tiering requisite NEPA documentation that may better serve the decision making process. DOE solicits the public's views and suggestions concerning this subject.

Scoping Meeting

DOE desires to know what the public considers to be the major environmental issues associated with prohibiting Sayreville Units 4 and 5 from burning natural gas or petroleum as its primary energy source. The meeting on October 21, 1980, at the address and time noted at the beginning of this notice, will be held to receive comments on the structure and scope of the EIS, anticipated energy/environmental problems, actions that might be taken to address them and reasonable alternatives which should be considered.

The scoping meeting will be conducted informally with the presiding officer affording all interested individuals in attendance an opportunity to speak. A transcript of the meeting will be prepared. The presiding officer will establish the order of speakers and provide any additional procedures necessary for the conduct of the meeting. Attendees at the meeting will be asked to register.

If possible, those planning to present information at the meeting should notify Mr. Ferguson. Participants are encouraged to submit to Mr. Ferguson, in advance, their intent to participate, and copies of any written material. However, public participation is encouraged even without the advance submission of written material.

Speakers will be allotted approximately fifteen minutes for their oral statements. Should any speaker desire to have additional time, or to provide further information for the record, such additional information may be submitted in writing by November 21, 1980.

Written comments will be considered and given equal weight with oral comments. All comments or suggestions received will be carefully considered in the preparation of the draft EIS.

A transcript of the scoping meeting will be retained by DOE and made available for inspection at the Freedom of Information Library, Room 6A-152, Forrestal Building, 1000 Independence Ave., SW., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday. In addition, any one may make arrangements with the reporter to purchase a copy of the transcript.

Those individuals who do not wish to submit comments or suggestions at this time but who would like to receive a copy of the draft EIS for review and

comment when it is issued should so notify Mr. Ferguson.

Any questions regarding the meeting should be addressed to Mr. Ferguson.

Issued in Washington, D.C., October 2, 1980.

Carol A. Jolly,

Acting Assistant Secretary for Environment.

[FR Doc. 80-31231 Filed 10-3-80; 11:43 am]

BILLING CODE 6450-01-M

Office of Energy Research

Solar Photovoltaic Energy Advisory Committee of the Energy Research Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Solar Photovoltaic Energy Advisory Committee of the Energy Research Advisory Board

Date and Time: October 27, 1980—9:00 a.m. to 4:00 p.m.; October 28, 1980—9:00 a.m. to 12:00 noon.

Place: California Institute of Technology, 1201 East California Boulevard, Millikan Library, Millikan Board Room, Pasadena, California 91125.

Contact: Georgia Hildreth, Director, Advisory Committee Management, Department of Energy, Forrestal Building, Room 8G087, 1000 Independence Avenue SW., Washington, D.C. 20585, Telephone: 202-252-5187.

Purpose of the Committee: To advise the Secretary on the scope and pace of research and development with respect to solar photovoltaic energy systems; the need for and timing of solar photovoltaic energy systems demonstration projects; the need for change in any research, development, or demonstration program established under this Act; and the economic, technological, and environmental consequences of the use of solar photovoltaic energy systems.

Tentative Agenda:

- Discussion of Utility Utilization, Incentives and Perspectives for Photovoltaic Energy
- Discussion of Regulatory Point of View
- Discussion of Issues for Committee
- Election of Chairperson for Committee
- Public Comment (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Advisory Committee Management Office 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 Committee 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 Public Reading Room, Room 5B180, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Executive Summary: Available approximately 30 days following the meeting from the Advisory Committee Management Office.

Issued at Washington, D.C. on October 2, 1980.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 80-31235 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-01-M

Office of the Secretary

Proposed Consent Order With Sun Co., Inc.

AGENCY: Department of Energy (DOE).

ACTION: Notice of proposed consent order with opportunity for public comment.

SUMMARY: The Office of the Special Counsel for Compliance (OSC) hereby gives the notice required by 10 C.F.R. § 205.199J that it entered into a consent order with Sun Company, Inc. (Sun). The consent order resolves all issues of compliance with the DOE Petroleum and Allocation Regulations, with the exceptions noted below, for the period March 1974 through June 1980. To remedy any overcharges that may have occurred during the period, Sun will undertake $110 million in remedies.

As required by the regulation cited above, OSC will receive comments on the consent order for a period ending November 7, 1980. OSC will consider any comments received before determining whether to make the consent order final. Although the consent order has been signed and accepted by the parties, the OSC may, until the consent order is made effective, withdraw it acceptance to the consent order and attempt to obtain a modification of the consent order or if appropriate, issue the consent order as proposed.

COMMENTS: Comments must be received by 5:00 p.m. (November 7, 1980). Address comments to: Sun Consent Order Comments, Office of Special Counsel, Department of Energy, 1200 Pennsylvania Avenue NW., Mail Stop 4111, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Carl A. Corrallo, Solicitor to the Special Counsel for Compliance, Department of Energy, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461 202-633-8288.

Copies of the consent order may be received free of charge by written request to: Sun Consent Order Request, Office of Special Counsel, Department Of Energy, 1200 Pennsylvania Avenue NW., Mail Stop 4111, Washington, D.C. 20461.

Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW., Room 5B-180.

SUPPLEMENTARY INFORMATION: Sun is one of the 34 major refiners presently subject to audit by the Special Counsel to determine compliance with the DOE Petroleum Price and Allocation Regulations (Regulations). Sun engages in the production, refining and marketing of crude oil and refined petroleum products. The Special Counsel audit included a review of Sun's records relating to compliance with the regulations during the period March 1973 through June 1980 (the audit period). During the audit, questions and issues were raised and enforcement documents were issued. This consent order resolves all issues not previously resolved, with the exceptions noted below, concerning the allocation and sale of covered products during the audit period, whether or not raised in a previous enforcement action.

Conclusion of OSC Audit

The consent order addresses all aspects of Sun's compliance with applicable price and allocation regulations pertaining to the production, refining and marketing of crude oil, motor gasoline, residual fuel oil, No. 2 heating oil, No. 2 diesel fuel, natural gas liquids (NGL), natural gas liquid products (NGLP) and other refined petroleum products. OSC's audit examined all areas of compliance including but not limited to: the sales and certifications of crude oil, including property determinations; the calculation of monthly increased costs of product, including NGL's and NGLP's; nonproduct costs increases; the determination of, and prices charged to different classes of purchaser; and the crude oil transfer pricing, entitlements and mandatory oil import regulations.

One matter in litigation has been excepted from the settlement: an action in Kansas concerning the DOE position, found in Ruling 1974-29, that an injection well is not a producing well for the purposes of determining stripper well properties. An action in Delaware concernig the treatment of interaffiliate transfers of natural gas liquids is resolved for the audit period but without prejudice to the parties' positions for the

period subsequent. OSC and Sun have agreed to resolve all other matters, whether or not in litigation or an enforcement proceeding.

Neither OSC nor Sun have retreated from the positions taken previously on the issues resolved by this consent order and each believes that its position on these issues is meritorious. However, the parties desire to resolve the issues raised without resort to complex, lengthy and expensive compliance actions. OSC believes that the terms and conditions of this consent order provide a satisfactory resolution of disputed issues and conclusion of the audit of Sun and thus, that the consent order is in the best interests of the United States.

Terms and Conditions of the Consent Order

Sun has previously made unilateral adjustments and refunds in excess of $95 million. OSC determined that the remaining issues raised in the audit of Sun could be appropriately resolved by an additional adjustment of $105,442,995. That amount is exclusive of resolution of an action against Sun by payment of $4,756,086, plus interest. The components of these remedies are as follows:

1. Sun will remit $25 million to the United States Treasury to be deposited in the general fund.
2. Sun will make refunds totalling $442,995 to certain purchasers of crude oil.
3. Sun will remove $80 million from its bank of unrecouped increased costs of motor gasoline.
4. In addition to the foregoing, Sun will deposit with the United States Treasury $4,765,086, plus interest, in satisfaction of an action in the District of Columbia concerning the payment of supplemental oil import fees.

The consent order also provides details concerning the conclusion of the audit and procedures concerning enforcement of the provisions of the consent order and prospective compliance with the regulations. Upon becoming final after consideration of public comments, the order will be a final order of DOE to which Sun has waived its right to an administrative or judicial appeal. The consent order does not constitute an admission by Sun or a finding by OSC of a violation of any price and allocation statutes or regulations.

Submission of Written Comments

Interested persons are invited to submit written comments concerning this consent order to the address noted above. All comments received by 5:00 p.m. on [30 days from publication] will be considered by OSC before determining whether to adopt the consent order as a final order. Modifications of the consent order which, in the opinion of OSC, significantly change the terms or impact of the consent order will be published for comment.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures of 10 CFR § 205.9(f).

Issued in Washington, D.C., September 29, 1980.

Paul L. Bloom,

Special Counsel for Compliance.

[FR Doc. 80-31236 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-01-M

Grant of Exclusive License

Notice is hereby given of the grant of an exclusive license under DOE-owned U.S. Patent No. 3,687,804, entitled "Compact and Safe Nuclear Reactor," to Energy Conversion Systems, Inc., of Toronto, Ontario.

The effective date of the license is December 27, 1979. The license grants to Energy Conversion Systems the exclusive right to manufacture, use, and sell the invention in the United States for a period of five (5) years. The license is royalty-bearing and subject to further terms and conditions in accordance with 42 U.S.C. 5908(g).

Signed at Washington, D.C., this 1st day of October 1980.

For the Department of Energy.

Lynn R. Coleman,

General Counsel.

[FR Doc. 80-31341 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. GP80-111]

Amoco Production Co.; Petition for Declaratory Order or Alternatively, Initiation of Rulemaking

September 30, 1980.

Take notice that on August 26, 1980, Amoco Production Company (Amoco) filed a petition with the Federal Energy Regulatory Commission (Commission), pursuant to §§ 1.7(c) and 1.43 of the Commission's Rules of Practice and Procedure, and Section 554(e) of the Administrative Procedure Act, requesting that the Commission declare that "minimum rate gas" is not limited to natural gas "* * * produced from a well the surface drilling of which commenced prior to January 1, 1973 * * *" if (1) the gas is sold under a sales contract commencing delivery prior to January 1, 1973, and (2) that sales contract provides for a fixed rate lower than the applicable higher rates under § 271.402(c) as adjusted by the Commission from time to time.

Alternatively, Amoco's petition requests that the Commission initiate a rulemaking proceeding pursuant to § 1.7(b) of the Commission's Rules of Practice and Procedure Act, and sections 501 (a) and (b) of the Natural Gas Policy Act of 1978 (NGPA) to amend the definition of "minimum rate gas" in § 271.402(b)(9) of the Commission's regulations. Thus, Amoco seeks to establish that "minimum rate gas" be defined by contract date rather than the vintage of its gas.

Any person wishing to be heard or to make any protest to this petition should, on or before October 30, 1980 file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a petition to intervene or a protest in accordance with §§ 1.8 or 1.10 of the Commission's Rules of Practice and Procedure. The Commission will consider all protests filed in determining the appropriate action to be taken, but such filings will not make the protestants parties to the proceeding. Any person wishing to become a party or participate as a party in any hearing must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31217 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Dockets Nos. RP80-83 and RP80-111]

ANR Storage Co.; Drafting Conference

September 30, 1980.

Take notice that on October 28, 1980, at 10:00 a.m. there will be an informal conference of all interested persons for the purpose of concluding discussions on a draft agreement. The meeting places for the conference will be at the offices of the Federal Energy Regulatory Commission, Room 8402, 825 North Capitol Street, N.E., Washington, D.C. 20426. Parties are advised to contact Staff counsel prior to the conference to ascertain whether a drafting conference continues to be necessary.

Customers and other interested persons will be permitted to attend, but if such persons have not previously been permitted to intervene in this matter by order of the Commission, attendance will not be deemed to authorize intervention as a party in these proceedings.

All parties will be expected to come fully prepared to discuss the merits of the issues arising in these proceedings and to make commitments with respect to such issues and to any offers of settlement or stipulation discussed at the conference.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31216 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-790]

Appalachian Power Co.; Proposed Changes in Rates and Charges

October 1, 1980.

The filing Company submits the following:

Take notice that American Electric Power Service Corporation (AEP) on September 22, 1980, tendered for filing on behalf of its affiliate Appalachian Power Company (APCO), Modification No. 9 dated June 26, 1980, to the Interconnection Agreement dated February 28, 1949 between APCO and Duke Power Company designated APCO Rate Schedule FERC No. 18.

Section 1 of Modification No. 9 provides for an increase in the demand charge for Short Term Power from $0.70 to $0.85 per kilowatt per week and Section 3 provides for an increase in the demand charge for Limited Term Power from $3.75 to $4.50 per kilowatt per month. Section 2 of Modification No. 9 provides for an increase in the transmission charge for third party Short Term Power transactions from $0.175 per kilowatt per week to $0.240 per kilowatt per week and Section 4 provides for an increase in the transmission charge for third party Limited Term Transactions from $0.75 per kilowatt per month to $1.00 per kilowatt per month, both changes proposed to become effective July 20, 1980.

Applicant states that since the use of Short Term Power and Limited Term Power Service cannot be accurately estimated, it is impossible to estimate the increase in revenues resulting from the Modification.

Copies of the filing were served upon Duke Power Company, the Public Service Commission of West Virginia, 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 Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 20, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken. 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31186 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-785]

Appalachian Power Co.; Proposed Changes in Rates and Charges

October 1, 1980.

The filing Company submits the following:

Take notice that American Electric Power Service Corporation (AEP) on September 22, 1980 tendered for filing on behalf of its affiliate Appalachian Power Company (APCO) Modification No. 4 dated July 25, 1980 to the Interconnection Agreement dated March 12, 1959, between APCO and Carolina Power & Light Company designated APCO's Rate Schedule FERC No. 24.

Section 1 of Modification No. 3 provides for an increase in the demand charge for Short Term Power from $0.40 to $0.85 per kilowatt per week and Section 3 provides for an increase in the demand charge for Limited Term Power from $2.15 to $4.50 per kilowatt per month. Section 2 of Modification No. 3 provides for an increase in the transmission charge for third party Short Term Power transactions from $0.175 per kilowatt per week to $0.240 per kilowatt per week and Section 4 provides for an increase in the transmission charge for third party Limited Term transactions from $0.55 per kilowatt per month to $1.00 per kilowatt per month, both changes proposed to become effective July 25, 1980.

Applicant states that since the use of Short Term Power and Limited Term Power Service cannot be accurately estimated, it is impossible to estimate the increase in revenues resulting from the Modification.

Copies of the filing were served upon Carolina Power and Light Company, the State Corporation Commission of Virginia and the Public Service Commission of West Virginia.

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 protest should be filed on or before October 20, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken. 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31202 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-780]

Carolina Power & Light Co.; Filing

October 1, 1980.

The filing company submits the following:

Take notice that Carolina Power & Light Company, on September 18, 1980, tendered for filing Contract Amendments to certain Rate Schedules contained in CP&L's Interconnection Agreements with Duke Power Company, South Carolina Electric & Gas Company, South Carolina Public Service Authority, and Virginia Electric & Power Company. CP&L states that the Contract Amendments have been executed by the appropriate officers of the affected utilities. Certificates of Concurrence are also being supplied. These Contract Amendments have been filed for the purpose of complying with FERC Order No. 84 issued on May 6, 1980, in Docket No. RM79-29.

Copies of this filing have been sent to the affected utilities, the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal 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 October 20, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31187 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. G-1760]

Cities Service Gas Co.; Petition To Amend

October 1, 1980.

Take notice that on August 29, 1980,[1] Cities Service Gas Company (Petitioner), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. G-1760 a petition to amend the order issued in the instant docket on February 21, 1952,[2] as amended by order issued March 22, 1956, pursuant to Section 7(c) of the Natural Gas Act so as to authorize an increase in the volumes of gas that it can transport and sell to Kansas Gas and Electric Company (KG&E) during the calendar year 1980 from 13,700,000 Mcf up to a maximum of 16,000,000 Mcf, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that on February 21, 1952, it was authorized to construct and operate certain facilities and to transport and sell on an interruptible basis up to 8,309,179 Mcf of gas per year to KG&E's Gill generating plant in Wichita, Sedgwick County, Kansas.

Petitioner further states that on March 22, 1956, the Commission amended its order of February 21, 1956, so as to authorize an increase in the volumes which could be transported to the Gill plant to 13,700,000 Mcf per year.

By order issued March 10, 1967, in Docket No. CP67-150, Petitioner states that it was authorized to transport a portion of the authorized volumes to KG&E's new Gordon Evans generating plant in Wichita. No increase in the total volumes being transported and sold to KG&E was requested at that time, it is said.

Petitioner further states that due to its improved gas supply situation, it experienced only minor curtailment on its system during the 1979-80 winter heating season, and asserts that this fact, coupled with KG&E's need to run its Gill and Gordon Evans plants at higher than normal rates due to one of its coal plants being down during this period, caused increased gas usage early in the year.

Petitioner further asserts that unusually hot weather this summer has required extended use of all of KG&E's generating capacity and that since the Gill and Gordon Evans plants are its most efficient plants, they picked up most of the higher demands of KG&E's system.

With higher usage experienced during the first seven months of 1980 along with the continuing prospects of high system demand due to normally expected hot weather, Petitioner asserts that it appears certain that the current volumetric limitation would prevent it from supplying gas to these plants during the last two or three months of this year.

In view of the above, KG&E has requested that the volumetric limitation be increased in order to permit the transportation and sale of a total of 16,000,000 Mcf of gas to these plants for the calendar year 1980.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 21, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31205 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[1] The application was initially tendered for filing on August 28, 1980; however, the fee required by Section 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until September 9, 1980; thus the filing was not completed until the latter date.

[2] 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. ER80-782]

Commonwealth Edison Co.; Filing

October 1, 1980.

The filing company submits the following:

Take notice that Commonwealth Edison Company on September 22, 1980 tendered for filing an Agreement dated August 29, 1980 to an Interconnection Agreement dated March 1, 1975 between Commonwealth Edison Company and Wisconsin Power and Light Company.

Commonwealth Edison states that purpose of the Agreement, and its attendant Modifications No. 1 to Service Schedules A, B, D, E and F, is to provide for compliance adjustments pursuant to FERC Order No. 84 in respect of percentage adder rate components. For this reason, the Agreement, with attendant Modifications is proposed to become effective September 1, 1980.

Copies of the filing were served upon the Illinois Commerce Commission, Public Service Commission of Wisconsin and Wisconsin Power and Light Company.

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, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 20, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31203 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA80-65]

Coastal Corp.; Filing of Petition for Review Under 42 U.S.C. 7194

September 30, 1980.

Take notice that Coastal Corporation on July 11, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before October 15, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved

of adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before October 15, 1980, in accordance with the Commission's Rules of Practice and Procedures (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., NE., Washington, D.C. 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31218 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. RP78-51, et al.]

Colorado Interstate Gas Co., et al.; Filing of Pipeline Refund Reports and Refund Plans

September 30, 1980.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before October 14, 1980. Copies of the respective filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

Appendix

Filing date	Company	Docket No.	Type filing
Sept. 20, 1980	Colorado Interstate Gas Company	RP78-51	Plan.
Sept. 22, 1980	Transwestern Pipeline Company	RP75-74	Report.
Sept. 22, 1980	Transwestern Pipeline Company	RP75-74	Report.
Sept. 22, 1980	Transwestern Pipeline Company	RP78-88	Report.

[FR Doc. 80-31219 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ES80-78]

Consumers Power Co.; Application

October 1, 1980.

Take notice that on September 18, 1980, the Consumers Power Company (Applicant) filed an application pursuant to Section 204 of the Federal Power Act with the Federal Energy Regulatory Commission seeking authorization to issue up to $500 million of short-term debt, to be issued from time to time on or before December 31, 1981. The final maturity dates for all short-term notes will be prior to January 1, 1983 and for commercial paper will be prior to October 1, 1982.

Any person desiring to be heard or to make any protest with the reference to said application should on or before October 17, 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). The application is on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31199 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-784]

Edison Sault Electric Co.; Filing

October 1, 1980.

The filing Company submits the following:

Take notice that Edison Sault Electric Company (Edison), on September 22, 1980, tendered for filing a Supplemental Agreement No. 7 between Edison and Cloverland Electric Cooperative, Inc. (Cloverland) dated November 1, 1979, which agreement will supplement an existing Contract for Electric Service, dated January 2, 1952, between the same two parties. The contract between the parties, dated January 2, 1952, has been designated FPC Rate Schedule FPC No. 2 (Docket No. E-7870). The proposed supplemental agreement provides for the tenure of the Agreement of January 2, 1952 to be extended for a period expiring June 30, 2000 and for a change in the rate schedule as provided in the contract, dated January 2, 1952, supplemented, under "Article V, Rates".

Copies of the filing were served upon Cloverland Electric Cooperative, Inc. and the Michigan Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal 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 October 20, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31197 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-781]

Edison Sault Electric Co.; Proposed Supplement to Electric Service Contract

October 1, 1980.

The filing company submits the following:

Take notice that Edison Sault Electric Company (Edison), on September 19, 1980, tendered for filing a Supplemental Agreement No. 4 between Edison and Upper Peninsula Power Company (Upper Peninsula), dated October 1, 1980, which agreement will supplement an existing Contract for Electric Service, dated September 10, 1976, between the same two parties. The contract between the parties, dated September 10, 1976, has been designated FPC Rate Schedule No. 7 (Docket No. ER77-98). The proposed supplemental agreement provides for a change in the rate schedule as provided in the contract, dated September 10, 1976, under section "Increases or Decreases in Rates".

Copies of the filing were served upon Upper Peninsula Power Company and the Michigan Public Service Commission.

Any person desiring to be heard or to protest said agreement, should file a Petition to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital 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 October 20, 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 agreement are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31201 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-536]

Gulf Power Corp.; Order Accepting for Filing and Suspending Proposed Rates, Denying Motion To Reject, Granting Intervention and Establishing Hearing Procedures

September 30, 1980.

On July 21, 1980, Gulf Power Corporation (GPC) tendered for filing a proposed rate increase for firm power service to its cooperative customers (Coops) and Florida Public Utilities Company (FPU). The proposed rates would result in an increase of approximately $5.27 million (33%), for the twelve month period ending September 30, 1981. GPC requests an effective date for its proposed rate increase of October 1, 1980[1]

Intervenors' Positions

Notice of the filing was issued on July 25, 1980, with responses due on or before August 18, 1980. On August 14, 1980, FPU filed a petition to intervene. On August 18, 1980, Alabama Electric Cooperative (AEC), a G&T Cooperative, submitted on behalf of its member distribution cooperatives a petition to intervene, protest, and motion to reject or (to the extent not rejected) for a five month suspension. In its motion, AEC maintains that GPC has failed to adequately support the various components of its filing as required by section 35.13 of the Commission's regulations.[2] In addition, the filing is alleged to improperly assign certain transmission facilities on a direct rather than rolled-in basis, allocate demand costs on a KW basis while using a KVA basis for billing determinants, allocate fuel stock on a demand basis, allocate all FERC regulatory expenses to one year, and utilize a 75% billing demand ratchet in conjunction with a 12 CP demand allocator. Further, AEC alleges that GPC increases its income tax liability through an unexplained "reverse flow-thru," fails to amortize its investment tax credit, fails to comply with Opinion No. 19-A in calculating its cash working capital requirement, and claims an excessive rate of return. AEC requests that the Commission institute phased price squeeze proceedings. Finally, AEC states that it reserves its rights to litigate the issues of allocated income tax savings[3] and tax normalization.

On September 9, 1980, GPC filed a response to the Coops' petition to intervene and protest. GPC maintains that the issues raised by the Coops do not warrant rejection of the filing but should be considered as matters for hearing. GPC further requests that the Commission limit its suspension of the proposed rate for one day.

Discussion

GPC's proposed fuel adjustment clause provides for utilization of average system costs if the actual fuel costs associated with intersystem sales and purchases on other than an economic dispatch basis are not identifiable. We note that this may not comply with § 35.14 of the Commission's regulations. See *Pennsylvania Power and Light Company*, Opinion No. 34, issued January 15, 1979. The fuel adjustment clause, including the question of cost identification, is therefore an issue which should be investigated at hearing.

Implementation of GPC's tax adjustment clause will constitute a change in rate requiring timely filing in accordance with section 35.13 of our regulations.

The other issues raised by AEC do not constitute sufficient grounds to reject GPC's tendered filing but are properly the subject for adjudicatory resolution. Therefore, a hearing shall be held to determine the justness and reasonableness of the proposed rates. The scope of the hearing shall include, *inter alia*, the issues raised in the AEC's petition to intervene.In accordance with Commission policy established in *Arkansas Power and Light Co.*, Docket No. ER79-339, order issued August 6, 1979, we shall phase the price squeeze issue raised by the intervenors. This will allow a decision first to the reached on the cost of service, capitalization and rate of return issues. If, in the view of the intervenors or staff, a price squeeze persists, a second phase of the proceeding may follow.

Our analysis indicates that GPC's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing and suspend them as ordered below.

In a number of suspension orders,[4] we have addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. No such circumstances have been presented here. Accordingly, we shall suspend the rates for a period of five months permitting the rates to take effect subject to refund thereafter on March 1, 1980.

The Commission Orders

(A) AEC's motion to reject the tendered filing is hereby denied.

(B) GPC's proposed rates are hereby accepted for filing subject to Ordering paragraph C and suspended for five months to become effective March 1, 1981.

(C) GPU shall timely file for a change in rate schedule under § 35.13 upon implementation of its tax adjustment clause.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon Federal Energy Regulatory Commission by section 402(a) of the DOE Act and by the Federal Power Act, particularly sections

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[1] See Attachment for rate schedule designations.

[2] AEC contends that GPC inadequately supported such items as O&M expenses, depreciation rates, fuel stock estimates, AFUDC amounts, and operating and investment costs of GPC's joint ownership in Daniel Unit No. 2, scheduled to begin operation in June, 1981.

[3] GPC is included in the consolidated income tax return filed by its parent company, Southern Company Services. The issue of allocation of income tax savings is presently pending judicial review of the Commission's decision in *Columbia Gas Transmission Company*, Opinion No. 47.

[4] *E.g., Boston Edison Co.*, Docket No. ER80-508, (August 29, 1980) (five months suspension); *Alabama Power Co.*, Docket Nos. ER80-506, *et al.* (August 29, 1980) (one day suspension); *Cleveland Electric Illuminating Co.*, Docket No. ER80-488 (August 22, 1980) (one day suspension).

205 and 206, and pursuant to the Commission's Rules of Practice and Procedure and the Regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonablness of the rates proposed and filed with this Commission by GPC.

(E) The petitioning customers are hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission, *Provided, however,* that participation of such intervenors shall be limited to the matters affecting asserted rights and interests specifically set forth in their petitions to intervene, and *Provided, further,* that the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved by any order or orders of the Commission entered in this proceeding.

(F) The Commission staff shall serve top sheets in this proceeding on or before December 22, 1980.

(G) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding to be held within ten (10) days of the service of top sheets in hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedureal dates and to rule on all motions (except motions to consolidate or sever and motions to dismiss), as provided for in the Commission's Rules of Practice and Procedure.

(H) We hereby order initiations of price squeeze procedures and further order that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for a consideration of price squeeze, would be just and reasonable. The presiding judge may order a change in this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(I) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Gulf Power Company

Docket No. ER80-536; Rate Schedule Designations

Filed: July 21, 1980.

Dated: July 18, 1980.

Other parties: Florida Public Utilities Company, Gulf Coast Electric Cooperative, Choctawhatchee Electric Cooperative, West Florida Electric Cooperative Association.

First Revised Sheet Nos. 4, 8, 9, and 10 under FERC Electric Tariff, Second Revised Volume No. 1.

(Supersede Original Sheet Nos. 4, 8, 9, and 10 thereunder)

[FR Doc. 80-31195 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-791]

Indiana & Michigan Electric Co.; Proposed Changes in Rates and Charges

October 1, 1980.

The filing Company submits the following:

Take notice that American Electric Service Corporation (AEP) on September 22, 1980, tendered for filing on behalf of its affiliate Indiana & Michigan Electric Company (I&M), Modification No. 10 dated July 1, 1980 to the Interconnection Agreement dated July 1, 1968, between I&M and Central Illinois Public Service Company, designated I&M's Rate Schedule FERC No. 67.

Section 1 of Modification No. 10 provides for an increase in the demand charge for Short Term Power from $0.70 to $0.85 per kilowatt per week and Section 3 provides for an increase in the demand charge for Limited Term Power from $3.75 to $4.50 per kilowatt per month. Section 2 of Modification No. 10 provides for an increase in the transmission charge for third party Short Term Power transactions from $0.175 and $0.029, wherever they appear, per kilowatt per week to $0.240 and $0.040 per kilowatt per week respectively and Section 4 provides for an increase in the transmission charge for third party Limited Term transactions from $0.75 per kilowatt per month to $1.00 per kilowatt per month, both changes proposed to become effective 60 days after the Commission's acceptance of this filing.

Applicant states that since the use of Short Term Power and Limited Term Power Service cannot be accurately estimated, it is impossible to estimate the increase in revenues resulting from the Modification. Applicant's Exhibit I and II which were included with the filing of this Modification, demonstrate that the increase in revenues, which would have resulted had the modification been in effect during the twelve-month period ending December 1979, would have been Short Term Power $15,000.00 (i.e., from $312,426.14 to $327,426.14).

Copies of the filing were served upon CIPSCO, the Illinois Commerce Commission, the Michigan Public Service Commission and the Public Service Commission of Indiana.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 20, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31188 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER79-64]

Indianapolis Power & Light Co.; Supplemental Application

September 30, 1980.

Take notice that on September 29, 1980, Indianapolis Power & Light Company (Applicant) filing an amendment to its application with the Commission originally filed under Section 204 of the Federal Power Act on September 11, 1979, in Docket No. ES79-64, seeking a supplement of the Order of the Commission rendered October 26, 1979, authorizing Applicant to incur up to $30,000,000 in obligations in the form of short-term unsecured promissory notes, guarantees and other instruments for the purpose of securing the repayment by the Company of borrowings of proceeds of "industrial development bonds" issued by governmental units under Section 103(b) of the Internal Revenue Code.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 10, 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 Procedures (18 CFR 1.8 or 1.10). The application is on file with

the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31220 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-568]

Kanawha Valley Power Co.; Order Accepting Rates for Filing, Suspending Proposed Rates, Granting Waiver of Filing Requirements, and Establishing Hearing Procedures

September 30, 1980.

On July 31, 1980, Kanawha Valley Power Company (Kanawha) [1] filed a proposed increase in rates for the sale of the entire output from its two hydroelectric projects [2] to its parent, Appalachian Power Company (Appalachian). The proposed rates [3] to Appalachian would result in an increase in revenues of approximately $570,498 (87%) for the twelve-month test period ending December 31, 1979. Kanawha requests waiver of the current filing requirements of section 35.13 of the Commission's regulations and permission to use the revised abbreviated filing format which was adopted by Commission Order No. 91, Docket No. RM79-64, issued June 27, 1980. Kanawha requests an effective date of October 1, 1980, for the revised rates. If the rates are suspended, Kanawha further requests that the suspension period be no more than one day.

Notice of the filing was issued on August 6, 1980, with comments, protests, or petitions to intervene due on or before August 25, 1980. No comments, protests, or interventions were filed.

Discussion

In lieu of the full cost of service data presently required to be submitted under our regulations, Kanawha requests that it be allowed to submit abbreviated data under revised section 35.13(a)(2)(B) which will become effective December 27, 1980, pursuant to Order No. 91.[4] Kanawha's filing meets the criteria of the revised filing requirements in that the amount of the rate increase is less than $1 million for Period I and all affected wholesale customers consent. The data submitted by Kanawha complies with the new regulation and is sufficient for the Commission staff to perform its preliminary analysis. Therefore, with the belief that the revised filing rquirements contribute to the goal of more expeditious disposition of wholesale rate cases, we shall grant Kanawha's requested waiver of our present section 35.13 requirement.

Our analysis indicates that Kanawha's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing and suspend them as ordered below.

In a number of suspension orders,[5] we have addressed the considerations underying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspension may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. No such circumstances have been presented here. Accordingly, we shall suspend the rates for a period of five months permitting the rates to take effect subject to refund thereafter on March 1, 1981.

The Commission orders: (A) Kanawha's request for a partial waiver of section 35.13 is hereby granted.

(B) Kanawha's proposed rates are hereby accepted for filing and suspended for five months to become effective March 1, 1981, subject to refund.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly Sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the Regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of the rates proposed in this docket.

(D) The Commission staff shall serve top sheets in this proceeding on or before November 14, 1980.

(E) A presiding administrtive law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding to be held within 15 days after the issuance of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The purpose of the conference is to establish procedureal dates, including the submittal of testimony and exhibits by Kanawha. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to consolidate or sever and motions to dismiss), as provided for in the Commission's Rules of Practice and Procedure.

(F) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment—Kanawha Valley Power Co., Docket No. ER80-568, Rate Schedule Designations

Designation and Description

Supplement No. 3 to Rate Schedule FPC No. 1 (supersedes Supplement No. 2 to FPC No. 1)—Letter Modification to Project No. 1175 Agreement.

Supplement No. 3 to Rate Schedule FPC No. 2 (supersedes Supplement No. 2 to FPC No. 2)—Letter Modification to Project No. 1290 Agreement.

[FR Doc. 80-31198 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ES80-80]

Kansas City Power & Light Co.; Application

September 30, 1980.

Take notice that on September 22, 1980, Kansas City Power & Light Company (Applicant) filed an application seeking authority pursuant to Section 204 of the Federal Power Act to issue up to $150,000,000 principal amount of short-term debt to be issued prior to January 1, 1981, with maturities not later than June 30, 1982.

Any person desiring to be heard or to make any protest with reference to the application should, on or before October 22, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file

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[1] Kanawha is a wholly owned subsidiary of Appalachian Power Company.

[2] Marmet and London hydroelectric plants Project No. 1175 and Winfield hydroelectric plant Project No. 1290.

[3] See Attachment for rate schedule designations.

[4] Issued in Docket No RM79-64, June 27, 1980.

[5] *E.g., Boston Edison Co.*, Docket No. ER80-508 (August 29, 1980) (five month suspension); *Alabama Power Co.*, Docket Nos. ER80-506, *et al.*, (August 29, 1980) (one day suspension); *Cleveland Electric Illuminating Co.*, Docket No. ER80-488 (Ausust 22, 1980) (one day suspension).

with the Commission and is available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31209 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA80-113]

Melrose Park Shell Service; Filing of Petition for Review Under 42 U.S.C. 7194

September 30, 1980.

Take notice that Melrose Park Shell Service on September 10, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before October 15, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before October 15, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W. Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31221 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-786]

Montana Power Co; Agreement for Sale of Nonfirm Energy

October 1, 1980.

The filing company submits the following:

Take notice that The Montana Power Company ("Montana") on *September 23, 1980, tendered for filing in accordance with Section 35 of the Commission's Regulations, a letter agreement dated April 24, 1980, between Montana and City of Glendale ("Glendale") providing for the sale of nonfirm energy.*

Montana states that under the terms of this letter agreement, it will make available to Glendale nonfirm energy.

Montana indicates that the terms of the letter agreement have been agreed to by the parties.

Montana states further that the rate for nonfirm energy sold to Glendale under this letter agreement shall be the cost per kilowatt-hour of purchasing such energy plus costs associated with losses, transmission costs, standby charges, load-factoring and any other miscellaneous costs directly associated with such energy purchase and redelivery plus a service charge of no more than one mill ($0.001) per kilowatt-hour. This rate is essentially the same as that provided in Montana's FERC Electric Tariff M-1.4(b).

An effective date of April 23, 1980, is proposed and waiver of the Commission's notice requirements is therefore requested.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Northeast, 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 *October 20, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31189 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-788]

Montana Power Co.; Agreement for Sale of Nonfirm Energy

October 1, 1980.

The filing Company submits the following:

Take notice that The Montana Power Company ("Montana") on *September 23, 1980,* tendered for filing in accordance with Section 35 of the Commission's Regulations, a Letter Agreement dated April 24, 1980, between Montana and City of Pasadena ("Pasadena") providing for the sale of nonfirm energy.

Montana states that under the terms of this Letter Agreement, it will make available to Pasadena nonfirm energy.

Montana indicates that the terms of the Letter Agreement have been agreed to by the parties.

Montana states further that the rate for nonfirm energy sold to Pasadena under this Letter Agreement shall be the cost per kilowatthour of purchasing such energy plus costs associated with losses, transmission costs, standby charges, load-factoring and any other miscellaneous costs directly associated with such energy purchase and redelivery plus a service charge of no more than one mill ($0.001) per kilowatthour. This rate is essentially the same as that provided in Montana's FERC Electric Tariff M-1.4(b).

An effective date of April 23, 1980, is proposed and waiver of the Commission's notice requirements is therefore requested.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Northeast, 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 *October 20, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31200 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ES80-79]

Montana-Dakota Utilities Co.; Application

October 1, 1980.

Take notice that on September 23, 1980, Montana-Dakota Utilities Co. ("Applicant") filed an Application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking an order disclaiming jurisdiction with respect to, or authorizing Applicant's entry into, an arrangement for the financing of the acquisition and storage of natural gas. Applicant is a corporation organized under the laws of Delaware, and qualified as a foreign corporation to do business in the States of Minnesota, Montana, North Dakota, South Dakota, and Wyoming.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 23, 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 Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31204 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-787]

Montana Power Co; Agreement for Sale of Nonfirm Energy

October 1, 1980.

The filing company submits the following:

Take notice that The Montana Power Company ("Montana") on *September 23, 1980,* tendered for filing in accordance with Section 35 of the Commission's Regulations, a letter agreement dated April 24, 1980, between Montana and City of Burbank ("Burbank") providing for the sale of nonfirm energy.

Montana states that under the terms of this letter agreement, it will make available to Burbank nonfirm energy.

Montana indicates that the terms of the letter agreement have been agreed to by the parties.

Montana states further that the rate for nonfirm energy sold to Burbank under this letter agreement shall be the cost per kilowatthour of purchasing such energy plus costs associated with losses, transmission costs, standby charges, load-factoring and any other miscellaneous costs directly associated with such energy purchase and redelivery plus a service charge of no more than one mill ($0.001) per kilowatthour. This rate is essentially the same as that provided in Montana's FERC Electric Tariff M-1.4[b].

An effective date of April 23, 1980, is proposed and waiver of the Commission's notice requirements is therefore requested.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Northeast, 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 *October 20, 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 the application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31206 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Dockets Nos. ER80-520 and EL80-8]

Montaup Electric Co.; Order Accepting for Filing and Suspending Proposed Rates, Granting Summary Disposition, Granting Interventions, Consolidating Dockets, Granting Permission To Collect Interim Settlement Rates in Lieu of Filed Rates, and Establishing Procedures

September 30, 1980.

On July 11, 1980, Montaup Electric Company (Montaup or Company) tendered for filing a proposed increase in rates to two affiliated [1] and four non-affiliated [2] wholesale customers. The proposed rate, M-5, would result in increased revenues of approximately $10.7 million (6.55%) for the twelve months ending June 30, 1981.[3]

In addition, Montaup has submitted for filing a revision to its Transmission Facilities Rental Agreement with Eastern Edison Company (Eastern Edison),[4] and has also submitted on behalf of Blackstone Valley Electric Company (Blackstone) and Eastern Edison revisions to their Transmission Facilities Rental Agreements with Montaup. The revisions to these agreements provide for increased charges for rented transmission facilities designed to reflect the current cost of capital (including return on common equity) for each company.

The proposed M-5 rates represent not only an increase in rate level, but also a change from Montaup's previous rate designs. The M-5 rates differ from the presently effective M-4 rates in that they reflect a demand allocation methodology based on coincident peak demands and an 80% demand ratchet, whereas the M-4 rates are based on non-coincident peak demands and a 100% demand ratchet. Montaup also proposed a two-tiered energy rate which would separate on-peak and off-peak energy charges. The Company contends that its rate design is intended to encourage more efficient use of facilities.

As a basis for its filing, Montaup cites its poor financial condition, as evidenced by purportedly low bond ratings, market to book ratio, and other financial indicators. Montaup also refers to its relatively thick short-term debt ratio and to its extensive construction program. The Company contends that its existing rate would yield an overall rate of return of 7.44% for the period ending June 30, 1981. Without the tendered increase, the Company contends that its financial difficulties would be exacerbated.

Notice of the filing was issued on July 17, 1980, with comments or protests due on or before August 11, 1980. On August 11, 1980, Newport Electric Corporation (Newport) petitioned to intervene. On August 12, 1980, the Attorney General of the State of Rhode Island, the Rhode Island Division of Public Utilities and

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[1] The two affiliated customers are Blackstone Vallen Electric Company and Eastern Edison Company. Eastern Edison Company was formed when Brockton Edison Company and Fall River Electric Light Company merged on August 1, 1979.

[2] Newport Electric Corporation, Pascoag Fire District, Town of Middleborough, and Narragansett Electric Company.

[3] As discussed *infra,* Montaup previously submitted an application in Docket No. EL80-8 for inclusion of construction work in progress in rate base. The currently proposed rates are not predicated on rate base inclusion of CWIP.

[4] Before the creation of Eastern Edison, the rental agreement was with Fall River Electric Light Company.

Carriers and the Rhode Island Consumer's Council (Rhode Island Governmental Intervenors) filed an untimely petition to intervene, and a motion to reject the proposed rate schedules or to suspend their operation. The Governmental Intervenors contend that Montaup's proposal will adversely affect consumers in Rhode Island and that the rates should be subject to investigation and a full five month suspension, in view of Montaup's failure to show any emergency or exigent need for more rapid rate relief. Neither Newport nor the Governmental Intervenors have identified specific objections to Montaup's submittal.

On August 11, 1980, the Town of Middleborough, Massachusetts, filed a protest, petition to intervene and motion to reject Montaup's filing. In the alternative, Middleborough requests a full five month suspension.[5]

Although Middleborough acknowledges that Montaup may unilaterally propose changes in its rate to Middleborough, it asserts that its contract with Montaup [6] prohibits certain changes in rate design methodology without Middleborough's prior consent. In particular, Middleborough refers to Articles X [7] XIV [8] of its supplemental agreement with Montaup. Middleborough states that Article X of the agreement prevents Montaup from calculating billing determinants for contract demand service on any basis other than use of a 100 percent demand ratchet provision. Moreover, Middleborough asserts that Montaup is precluded from departing from the proviso contained in Article X, absent prior consent by Middleborough as specified in Article XIV of the agreement. Because Middleborough has not manifested such consent, it concludes that Montaup's proposal to change from a non-coincident 100% billing ratchet to coincident 80% ratcheted demands cannot be effectuated with respect to Middleborough, and that the M-5 rates should be rejected as to Middleborough under the *Mobile-Sierra* doctrine.[9]

Montaup originally requested an effective date of September 10, 1980 for its proposed charges. However, by letters dated August 26, 1980, Montaup stated its intention to undertake settlement negotiations with its affected customers. Consequently, Montaup requested a limited deferral of Commission action on its filing and also modified its proposed effective date to September 11, 1980.

On September 9, 1980, a protest and petition to intervene out of time was filed by the U.S. Office of Consumer Affairs (USOCA). In its petition USOCA states that the proposed increase is excessive and that the proposed rate should be suspended for the maximum five month period. In addition, USOCA contends that the matters addressed in this docket will have an impact on Montaup's request for CWIP relief in Docket No. EL80-8. [10]

By letter dated September 9, 1980, Montaup notified the Commission of a settlement agreement in principle reached between the Company and all of its wholesale customers. Montaup states that the parties [11] have agreed to an interim settlement rate to be collected in lieu of its originally proposed rates. The interim rates would reduce the demand charge to $7.32 per kW month from the originally proposed $8.27246 per kW month. In addition, the interim rates are designed based upon a 100% ratcheted coincident billing demand rather than the originally proposed 80% ratchet. Finally, the interim rates would abandon the proposed two-tiered energy rate in favor of a one-part energy rate. In effect, the settlement in principle returns Montaup to the design of its previous rates. The Company requests that the interim settlement rates be made effective for the month of October, 1980, in order to allow the parties to complete negotiations on a final settlement. Montaup states that if final settlement rates are not agreed to in principle by October 31, 1980, Montaup will file revised rates to become effective November 1, 1980, in lieu of the interim settlement rates. The revised rates will reflect the rate level produced by the $8.27246/kW demand charge rate originally filed, but will include 100% ratcheted coincident billing demands and a one-part energy charge. The revised rate would then remain in effect subject to refund until a final rate is established by the Commission after hearing or a final settlement rate is achieved and approved by the Commission.

Discussion

Initially, we find that participation in this proceeding by each of the petitioners may be in the public interest and that good cause exists to permit the Governmental Intervenors and the USOCA to intervene out of time. We shall, therefore, grant the petitions to intervene.

Insofar as the instant submittal applies to Middleborough, we agree that Montaup, in its original filing, exceeded its contractual rights. The terms of the contract between Middleborough and Montaup clearly state that the contract demand rate must be developed based on billing determinants derived under a 100% billing ratchet and that there can be no change in this methodology absent agreement between the parties. Montaup has conceded that its contractual commitment requires its rate for Middleborough to reflect a 100% demand ratchet. The company's August 26, 1980 pleading states that Montaup has no objection to summary disposition of this rate design question. In the event that the originally filed rates subsequently become efffective and in order to ensure that future rates reflect Montaup's contractual commitment, we shall summarily dispose of this issue. We note, however, that the settlement agreement in principle and the proposed interim rates meet the objections of Middleborough and, if approved, will satisfy Montaup's contractual obligations.

Montaup and its customers have requested that the interim settlement rates be collected during the month of October, 1980, in lieu of the Company's originally proposed rate. The parties maintain that collection of the interim rate will allow them to negotiate a final settlement. In an effort to foster settlement, we will accommodate the

[5] Middleborough challenges Montaup's submittal in a number of respects. With the exception of the contract question discussed in this order, the contentions raised by Middleborough are properly the subjects of an evidentiary hearing.

[6] Brockton Edison Company Rate Schedule FPC No. 16, as supplemented September 27, 1974, Montaup Rate Schedule FPC No. 36, as amended by Supplemental Agreement dated January 26, 1977, and accepted by letter order, in Docket No. ER77-192, dated April 11, 1977, with an effective date of January 1, 1976.

[7] Article X, entitled "Billing Determinants for Developing Contract Demand Rate," provides as follows:

It is agreed that contract demand service involves the equivalent of a 100% billing ratchet and that the rate for Contract Demand service at the inception of this Supplemental Agreement is derived on the basis of billing determinants established under a 100% billing ratchet. It is further agreed that *any rate* changes for Contract Demand service under this Supplement Agreement *shall be based on billing determinants established under a 100% billing ratchet.* (Emphasis added).

[8] Article XIV, captioned "Amendments," provides in pertinent part: The terms and conditions of . . . Articles X . . . shall not be subject to change absent the agreement of all parties hereto . . . ."

[9] *United Gas Pipeline Co.* v. *Mobile Gas Service Co.*, 350 U.S. 332 (1956); *FPC* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

[10] USOCA is presently a participant in Docket No. EL80-8.

[11] Certain non-customer parties to the negotiations (The Attorney General of the Commonwealth of Massachusetts, Rhode Island Governmental Intervenors, United States Office of Consumer Affairs and National Consumer Law Center) have not joined in the settlement and reserve their positions. The Attorney General of Massachusetts and the National Consumer Law Center further state that they intend to file for intervenor status in this docket in the near future.

parties by permitting Montaup to collect the interim settlement rate as requested.

Our analysis indicates that Montaup's originally proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates from filing and suspend them as ordered below.

In a number of suspension orders,[12] we have addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances have been presented here. The Commission notes that the parties to this proceeding have been successful in their preliminary settlement discussions. The Company and all of its wholesale customers have jointly requested acceptance of an interim rate to become effective as of October 1, 1980, in order that they might have the time to negotiate a final settlement. Certain non-customer parties to the negotiations have not agreed to the interim settlement and continue to seek a five month suspension.[13] We shall deny their request for a full five month suspension in view of the interim agreement of the parties who are customers and because our preliminary review indicates that the filed rates are not substantially excessive. It is our policy to support agreements, such as the interim settlement here, that nurture and encourage final settlements. We believe that a shortened suspension will advance the settlement negotiations as anticipated by the parties to the interim settlement agreement, while protecting the position of all parties with a refund requirement. Accordingly, we shall exercise our discretion to suspend the rates for the less than the maximum period, permitting the rates to take effect subject to refund on October 1, 1980.

During the month of October, 1980, Montaup will be allowed to collect the interim settlement rate in lieu of its originally proposed M-5 rate.[14] Thereafter, Montaup shall continue to collect the interim rate unless a superseding rate is tendered as contemplated by the interim settlement agreement. This order shall be without prejudice to our subsequent determination on the merits of the proposed rates and settlement. If we should disapprove of the settlement rates, Montaup may thereafter collect its originally proposed rate as summarily modified, or a superseding rate (as discussed above) prospectively only.[15]

Montaup currently has pending before the Commission an application in Docket No. EL80-8, for inclusion of certain construction work in progress (CWIP) in rate base under Section 2.16 of our regulations. By order issued July 11, 1980, we set the CWIP application for hearing and established phased procedures, with phase one designed for expedited consideration of the need for extraordinary CWIP relief and associated rate of return considerations. We find that common questions of law and fact may be presented in the instant proceeding and in Docket No. EL80-8. In particular, we would anticipate similar evidence on the rate of return issue. In order to avoid unnecessary duplication of effort or expenditures of resources, we shall consolidate Docket Nos. ER80-520 and EL80-8.[16]

All questions concerning rate of return shall be considered in phase one and any remaining cost of service issues pertaining to Montaup's non-CWIP rates or subsequently filed CWIP rates shall be the subject of the phase two hearing. CWIP-based rates will become effective, if at all, prospectively only and subject to refund following a final order in phase one. The non-CWIP rates which are accepted for filing by this order shall remain subject to refund pending a final Commission order in the second phase of this case. Subject to the discretion of the presiding administrative law judge with respect to scheduling, initiation of the phase two proceedings need not await a final order in phase one, but may instead proceed concurrently with or immediately following the first phase.

The Commission Orders

(A) The Town of Middleborough's motion to reject is hereby denied.

(B) Summary disposition with respect to the rate design question applicable to Middleborough is hereby ordered as discussed in the body of the order.

(C) The proposed M-5 rate as modified by ordering paragraph B and the revised transmission rates are hereby accepted for filing and suspended to become effective October 1, 1980, subject to refund.

(D) Montaup is hereby authorized to collect its proposed interim settlement rates beginning October 1, 1980 and continuing until new rates are filed pursuant to the terms of the interim settlement agreement and consistent with paragraph B above.

(E) The petitions to intervene are hereby granted subject to the rules and regulations of the Commission; *Provided, however,* that participation by the intervenors shall be limited to matters set forth in their petitions to intervene; and *provided, further,* that the admission of any intervenor shall not be construed as recognition by the Commission that it might be aggreived because of any order or orders by the Commission entered in this proceeding.

(F) Pursuant to the authority contained in, and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the DOE Act, and by the Federal Power Act, particularly Sections 205 and 206 thereof, and pursuant to the Commission's Rules or Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I (1979)), a public hearing shall be held concerning the justness and reasonableness of the proposed rates.

(G) Docket Nos. ER80-520 and EL80-8 are hereby consolidated. With the exception of the rate of return issue, all matters pertaining to the rates submitted in Docket No. ER80-520 shall be considered in phase two of this proceeding.

(H) The administrative law judge designated to preside in Docket No. EL80-8 shall convene a conference in this consolidated proceeding to be held within thirty (30) days of the issuance of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Such conference shall be held for purposes of establishing a procedural schedule, including discovery matters, that most efficiently accommodates the phased

[12] *E.g., Boston Edison Co.,* Docket No. ER80-508 (August 29, 1980) (five month suspension); *Alabama Power Co.,* Docket Nos. ER80-506, *et al.* (August 29, 1980) (one day suspension); *Cleveland Electric Illuminating Co.,* Docket No. ER80-488 (August 22, 1980) (one day suspension).

[13] We note that our acceptance of the interim settlement in no way precludes the non-customer intervenors from opposing any final settlement reached by the other parties.

[14] *See Gulf States Utilities Co.,* Docket No. ER80-57, order issued June 4, 1980; *Upper Peninsula Power Co.,* Docket No. ER80-112, order issued June 4, 1980; *Cincinnati Gas and Electric Co.,* Docket Nos. ER79-528 and ER80-153, order issued May 2, 1980; and *Public Service Company of Oklahoma,* Docket No. ER78-511, order issued December 27, 1978.

[15] See 18 CFR 35.1(e).

[16] This action is consistent with our stated intentions in Docket No. EL80-8. *See* order issued July 11, 1980, mimeo at 8, notes 17 and 19.

consideration of Montaup's CWIP application and the non-CWIP rates submitted in Docket No. ER80-520, as expressed in this order.

(I) The Secretary shall promptly publish this order in the Federal Register.

By the Commission. Commissioner Holden voted no.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31207 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-761]

Nevada Power Co.; Filing

October 1, 1980.

The filing company submits the following:

Take notice that Montana Power Company on September 11, 1980, tendered for filing, in compliance with the Commission's Order issued May 6, 1977, in Docket No. ER76-848, for Nevada Power Company, the following:

(1) Index of Purchasers identified as 5th Revised Sheet No. 10 (Supersedes 4th Revised Sheet No. 10) revised to include the addition of Nevada Power Company;

(2) Fully executed Service Agreement with Nevada Public Service Company.

An effective date of May 24, 1980, is requested for the Agreement.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 20, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31190 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-547]

NGPL-Canyon Compression Co.; Application

September 30, 1980.

Take notice that on September 12, 1980, NGPL-Canyon Compression Company (Applicant), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP80-547 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 compression and other related facilities in the Whitney Canyon area, Uinta County, Wyoming, required for Applicant to receive, compress and redeliver gas to Natural Gas Pipeline Company of America (Natural), Colorado Interstate Gas Company (CIG), Mountain Fuel Supply Company (MFS) and other eventual purchasers of uncommitted gas, 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 been advised by Natural, CIG and MFS that they have contracted to purchase gas in the Whitney Canyon Area, Uinta County, Wyoming, and that some or all of said gas would have to be compressed in order to effectuate the delivery of gas to their respective market areas. Applicant further states that it agrees to provide the necessary compression service to effectuate the delivery of gas.

It is stated that Natural has requested Applicant to provide a compression service of 124,000 Mcf per day to meet its anticipated needs. It is asserted that Natural would purchase such volumes from Amoco Production Company.

Applicant submits that CIG has advised Applicant that it has acquired the interest of Champlin Oil Company in gas production from the Whitney Canyon Area and that CIG would require a compression capacity reservation of 37,000 Mcf per day in order to meet its estimated future requirements from this area. It is further stated that MFS has advised Applicant that it has acquired certain interests of Gulf Oil Corporation and Champlin Petroleum Company in gas production from the Whitney Canyon Area and that MFS would require a compression capacity reservation of 12,000 Mcf per day in order to meet its estimated future requirements from this area.

It is asserted that parties have entered into letters of understanding and agreement in which Applicant has agreed to construct and operate certain compression and other appurtenant facilities with which Applicant would perform a compression service for each of the parties. Said facilities would be immediately adjacent to the Amoco Processing Plant, at the outlet of which the parties would deliver or cause to be delivered to Applicant each party's share of the processed gas, it is said. Applicant states that it would compress and redeliver said gas at a point at or near the compressor station site to a proposed pipeline connection of the proposed Overthrust Pipeline Company's system and/or other pipelines in the area, and that deliveries to the parties would collectively represent 173,000 Mcf per day or 89.6 percent of the total gas available.

Applicant proposes to install 22,000 BHP of compression which it deems to be sufficient to compress the gas currently dedicated and the remaining which is uncommitted at this time.

Applicant states that estimated cost of the proposed facilities is $18,344,000, and further states that it would also install pursuant to Section 2.55(a) of the Commission's Rules under the Natural Gas Act controls, communications and other related facilities at an estimated cost of $318,000. These construction expenses would be financed by short-term bank loans and capital contributions by Natural, an affiliate of Applicant, it is said. it is further stated that short-term loans would be repaid with proceeds from a subsequent permanent financing program consisting of a combination of first mortgage bonds, debentures, and/or term bank loans.

Applicant estimates that during the first year of operations, its annual cost of service would be $9,226,534, given a 13.18 percent overall rate of return and a proposed depreciation rate of 4.5 percent per annual. The depreciation rate is that which Natural, Applicant's parent, has on file in its most recent rate filing at Docket No. RP80-107 for onshore transmission facilities, it is said.

Applicant asserts that Natural, CIG, MFS and others would each pay Applicant a monthly demand and commodity charge. It is asserted that the demand charge would be designed to recover all cost of service items except for a variable portion of the electric power bill and that the demand charge would be based on the capacity reserved by each party in such facilities and would be charged regardless of actual usage of such facilities during the month. The commodity charge, it is asserted, would be designed to allow Applicant to recover on a current basis all variable charges for electric power. Applicant additionally asserts that the commodity charge paid by Natural, CIG, MFS and others would be that portion of the month's variable electric power bill which corresponds to their usage of said facilities during the month.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 22, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31208 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-762]

Public Service Co. of Colorado; Filing

October 1, 1980.

The filing Company submits the following:

Take notice that Montana Power Company on September 11, 1980, tendered for filing, in compliance with the Commission's Order issued May 6, 1977, in Docket No. ER76-848, for Public Service Company of Colorado, the following:

(1) Index of purchasers identified as 5th Revised Sheet No. 10 (Supersedes 4th Revised Sheet No. 10), revised to include the addition of Public Service Company of Colorado;

(2) Fully executed service agreement with the Public Service Company of Colorado.

An effective date of Juae 5, 1980, is requested for this Agreement.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before October 20, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31191 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-778]

Public Service Co. of Colorado; Filing

October 1, 1980.

The filing company submits the following:

Take notice that Public Service Company of Colorado (PSCo), on September 18, 1980, tendered for filing Supplement No. 1 to PSCo's Interconnection Agreement with Platte River Power Authority (Platte River), dated September 14, 1976 (Initial Agreement) on file with the Commission under PSCo's FERC Rate Schedule No. 23.

The Supplement provides for the construction of Platte River's facilities across the Company's property and a license for Platte river to interconnect with the Company's system at the Company's fort St. Vrain Generation Station substation.

PSC' states that copies of the filing were served upon all parties and affected state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure before October 29, 1980. Protests iwll be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the commission and are available for public inspection.

Louis D. Cashell,

Acting Secretary.

[FR Doc. 80-31192 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP80-137]

Raton Natural Gas Co.; Change in Rates

October 1, 1980.

Take notice that Raton Natural Gas Company (Raton) on September 19, 1980, tendered for filing, proposed changes in its FERC Gas Tariff, Volume No. 1, consisting of substitute Twenty-third Revised Sheet No. 3a. The change in rate is for jurisdictional sales and service.

Raton states that the instant change in rates is designed to enable Raton to recover increases in gas purchase cost, operating costs, increased return and related income tax requirements. The proposed rates would increase revenues by $5,870.

Copies of Raton's filing are on file with the Commission and are available for public inspection. In addition, copies have been served on Raton's jurisdictional customer and the New Mexico Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal 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 October 19, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31198 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. QF80-22]

Republic Geothermal Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

September 30, 1980.

On September 9, 1980, Republic Geothermal, Inc., filed with the Federal Energy Regulatory Commission (Commission) an application for

certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be located at a site in the Imperial Valley of California. Republic Geothermal, Inc. states that it will install a two-stage flashed steam and/or binary electric generating plant powered by liquid-dominated geothermal resource to be supplied from lands adjacent to the facility's site in the Imperial Valley of California. The facility will have a power production capacity of no greater than 80 megawatts, and the primary energy source to be used by the facility will be geothermal resource.

Any person desiring to be heard or objecting to the granting of qualifying status 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. All such petitions or protests must be filed on or before November 7, 1980, and must be served on the applicant. 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31222 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RA80-58]

A. T. Smith Mercantile; Filing of Petition for Review

September 30, 1980.

Take notice that A. T. Smith Mercantile on June 30, 1980, filed a Petition for Review under 42 U.S.C. 7149(b) (1977 Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before October 15, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before October 15, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31215 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER79-150]

Southern California Edison; Determination by the Chairman

September 30, 1980.

On September 22, 1980, an appeal was filed in this proceeding by Southern California Edison Company from a ruling by the presiding administrative law judge to permit evidence and testimony to be introduced on the issue of whether certain contracts involving Edison and the California State Department of Water Resources are interrelated. The judge declined to certify his ruling to the Commission.

Chairman Curtis, the designated Commissioner pursuant to § 1.28 of the Commission's rules of practice and procedure, has determined that no extraordinary circumstances had been demonstrated by Edison warranting referral of the appeal to the full Commission and, accordingly, the appeal is denied.

Lois A. Cashell,

Acting Secretary.

[FR Doc. 80-31210 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. EF79-4051]

Southwestern Power Administration; Filings

October 1, 1980.

The filing party submits the following:

Take notice that on July 1, 1980, the Assistant Secretary for Resource Applications of the Department of Energy did confirm and approve, on an interim basis, effective July 1, 1979, Rate Order No. SWPA-3.

Rate Order No. SWPA-3 provides for the extension of Schedule TDC (revised) for transmission and/or displacement of non-federal power and energy over the system of the Southwestern Power Administration, for the period ending June 30, 1980.

The Assistant Secretary did also confirm and approve, on an interim basis, effective July 1, 1980, Rate Order No. SWAP-6. Rate Order No. SWPA-6 provides for the extension of Schedule TDC (revised) for transmission and/or displacement of non-federal power and energy over the system of the Southwestern Power Administration for the period ending December 31, 1980.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before October 14, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31211 Filed 10-7-80; 8:45 a.m.]

BILLING CODE 6450-85-M

[Docket No. CP80-388]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Amendment to Application

October 1, 1980.

Take notice that on September 9, 1980, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP80-388 an amendment to its application for a certificate of public convenience and

necessity pursuant to Section 7(c) of the Natural Gas Act pending in the instant docket so as to reflect the extension of the transportation service for Orange and Rockland Utilities, Inc. (Orange and Rockland), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that it initially proposed to transport up to 50,000 Mcf of natural gas per day for Orange and Rockland purchased by Orange and Rockland from East Tennessee Natural Gas Company (East Tennessee) for use in Orange and Rockland's electric generating stations to displace fuel oil. Applicant states the authorization was requested to extend through August 31, 1980, the then termination date of the fuel shortage emergency period.

It is stated that because the fuel shortage emergency period has now been extended to June 1, 1981, Orange and Rockland desires and has arranged to continue the purchase of up to 50,000 Mcf per day for the duration of the summer period ending October 31, 1980. Accordingly, Applicant herein proposes to extend its transportation service for Orange and Rockland through October 31, 1980, pursuant to a letter agreement of May 30, 1980, between East Tennessee, Orange and Rockland, and Applicant.

Applicant asserts that the extended service would be rendered under the same terms and conditions proposed in Applicant's original application. Assuming transportation would commence on September 10, 1980, Applicant maintains that it would transport up to 2,550,000 Mcf during the period ending October 31, 1980, based on a peak transportation volume of 50,000 Mcf per day.

Applicant states that the gas it would transport would be surplus to its customer market requirements. Applicant also asserts that it has established curtailment period quantity entitlements for its customers, including East Tennessee, during the period and without extending Orange and Rockland's transportation service, there would be no alternative disposition of additional curtailed sales volumes to any customer on Applicant's system. Moreover, it is stated that if the service is not extended, East Tennessee would not sell the gas to Orange and Rockland and if it cannot find another off-system purchaser of the gas, it would back off this volume from Applicant. Since Applicant contends that it knows of no other on or off system markets in which to sell the gas, Applicant states it would be required to back off an equivalent volume on its supply sources.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before October 17, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31193 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-548]

Texas Eastern Transmission Corp.; Application

October 1, 1980.

Take notice that on September 15, 1980, Texas Eastern Transmission Corporation (Applicant), P.O. Box 2521, Houston, Texas 77001, filed in Docket No. CP80-548 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas in interstate commerce for Public Service Electric and Gas Company (Public Service), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to implement the terms of a transportation agreement between it and Public Service dated September 11, 1980, wherein it agreed to transport up to 50,000 dekatherms (dt) equivalent of natural gas in interstate commerce for Public Service for a term ending October 31, 1980.

It is stated that Public Service has arranged to purchase natural gas from East Tennessee Natural Gas Company (East Tennessee) to displace oil for electric generation. Applicant proposes to receive from East Tennessee the subject gas at the existing point of interconnection between Applicant and East Tennessee in Giles County, Tennessee, or other mutually agreeable points and to transport and deliver equivalent quantities to Public Service at an existing point of interconnection with Applicant in Union County, New Jersey, or at other mutually agreeable points.

Applicant proposes to charge Public Service a rate of 20.97 cents per dt equivalent delivered to Public Service; provided, however, for quantities delivered by Applicant which when added to quantities delivered by Applicant to Public Service under Applicant's Rate Schedules TS-1 and SS-II and other transportation agreements exceed the combined total curtailment of gas sales to Public Service under all of Applicant's firm sales rate schedules, the rate would be 24.03 cents per dt equivalent. Applicant asserts that such rates were computed using the same methodology used in Applicant's Rate Schedule TS-1. In addition, it is stated that Applicant would retain for fuel use and shrinkage an amount of gas equal to 3.0 percent of the quantities transported for the period April 16 through November 15 and 6.0 percent for the period November 16 through April 15.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 17, 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 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 31212 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. GP80-116]

Texaco Inc.; Petition for Declaratory Order

September 30, 1980.

Take notice that on September 15, 1980, Texaco Inc., P.O. Box 52332, Houston, Texas 77052 filed a petition for a declaratory order pursuant to § 1.7(c) of the Federal Energy Regulatory Commission's Rule of Practice and Procedure (18 CFR 1.7(c)) relative to the question of whether certain contracts should be classified as "rollover contracts" or "successors to an existing contract" within the meaning of sections 2(12) and 2(14) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301, *et seq.* (NGPA).

Texaco Inc., raises two issues it seeks to have resolved. The first concerns contracts that replace an existing contract by a complete termination of the existing contract prior to the expiration of its fixed term. Texaco Inc. asserts that the second contract is a successor rather than a rollover. The second issue concerns the status of other contracts that replace the foregoing second contract. Texaco Inc. asserts that any third or succeeding contract will always be a rollover if the fixed term of the original existing contract has expired and the parties took some affirmative action to institute the third contract subsequent to November 9, 1978.

Any person desiring to be heard or to make any protest with reference to said petition should on or before October 30, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31223 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. QF80-23]

Union Camp Corp.; Application for Commission Certification of Qualifying Status as a Cogeneration Facility

September 30, 1980.

On September 8, 1980, Union Camp Corporation filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules.

The facility is located in Savannah, Georgia. Union Camp Corporation states that the primary energy sources are spent pulping liquors, bark and woodwaste, natural gas, and a refinery waste stream known as "heavy oil." It further states that the combined nameplate rating of the steam turbine-generators currently in service is 86,000 kilowatts. No percentage of the facility is owned by an electric utility or by a public utility holding company or any combination thereof.

Any person desiring to be heard or objecting to the granting of qualifying status 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. All such petitions or protests must be filed on or before November 7, 1980 and must be served on the applicant. 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-31213 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-567]

Wisconsin Electric Power Co.; Order Accepting for Filing and Suspending Proposed Rates, Denying in Part and Directing in Part Summary Disposition, Granting Interventions, and Establishing Procedures

September 30, 1980.

On July 31, 1980, Wisconsin Electric Power Company (Wisconsin Electric) submitted for filing a proposed increase in rates for service to twenty-one wholesale customers [1] of which four are partial requirements customers.[2] Of the four partial requirements customers, three will be served under the partial requirements rate while one, Kaukauna-Menasha, will be served under an interconnection agreement with the company.[3] The proposed increase to the wholesale customers would be approximately $5,634,592 (15.74%) for the twelve-month period ending December 31, 1980. Wisconsin Electric has also proposed rates for contract demand, interruptible and transmission services not previously made available to the wholesale customers.

In its letter of transmittal, Wisconsin Electric requested an effective date of October 1, 1980, for the proposed rates.[4] However, in a response filed on September 9, 1980, Wisconsin Electric states that portions of the proposed tariff are not to be made effective on October 1, 1980, as to certain wholesale customers whose contracts with Wisconsin Electric have not expired. Specifically, Wisconsin Electric states that with respect to nine total

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[1] *See* Attachment A for designations. Wisconsin Electric serves twenty customers under a uniform rate. The Cities of Kaukauna and Menasha operate a joint municipal electric system and are served under a separate contract demand rate.

[2] Cedarburg, Crystal Falls, Norway, and Kaukauna-Menasha are the partial requirement customers.

[3] In addition to firm power service, Wisconsin Electric provides economy, emergency, maintenance and dump hydro energy services to Kaukauna-Menasha under its present interconnection agreement. The rates for the proposed services would be unchanged by the instant submittal with the exception of (1) the emergency energy rate, for which the minimum charge would be increased from $0.0175/kWh to $0.03/kWh, and (2) the adder applicable when Wisconsin Electric purchases energy to supply emergency service, for which the company would substitute a 1.0 mill/kWh cap plus a 1.32 mill/kWh transmission charge for the existing 10% adder. The limitation on the percentage adder for third party transmission is intended to comply with the Commission's Order No. 84. The 10% adder to Wisconsin Electric's generating costs in determining emergency energy charges remains unchanged.

[4] Wisconsin Electric stated in its transmittal letter that if Kaukauna-Menasha desired an August 1, 1980 effective date for the interconnection agreement, it would be willing to propose such a change. No such proposal has occurred.

requirements customers [5] and one partial requirements customer,[6] only Exhibits A and B of the proposed tariff [7] are intended to become effective as of October 1, 1980. Exhibit C and the general service agreement are to become effective as to these customers only upon expiration of the existing contracts. The company also states that it will refile the remaining tariff provisions for each customer as its existing contract expires. Additionally, with respect to two cooperative customers whose contracts have not been terminated,[8] Wisconsin Electric requests that only Exhibit A of the proposed tariff be made effective immediately, and that the remaining portions of the tariff become effective only upon termination of the existing contracts. The Company has stated once again that it intends to file the remaining portions of the proposed tariff when the applicable contracts expire.

Notice of Wisconsin Electric's filing was issued on August 6, 1980, with comments, protests, or petitions to intervene due on or before August 25, 1980. On August 22, 1980, the Public Service Commission of Wisconsin filed a notice of intervention.

This notice raised no substantive issues. On August 27, 1980, Upper Peninsula Power Company (Upper Peninsula) and Wisconsin Public Power, Inc. (WPPI) [9] filed untimely petitions to intervene. Also on August 27, 1980, all of the affected municipal customers except for Norway and Crystal Falls (Municipals) [10] filed a joint petition to intervene, and a request for five month suspension, summary rejection of certain terms and conditions of service, and an investigation and hearing. Municipals raise a number of cost of service and rate design issues in their pleading, and further contend that eight specific terms and conditions contained in the service agreements are unreasonable, unlawful, or discriminatory and should be summarily rejected. Municipals also allege that a price squeeze is created by the instant filing.

Discussion

Municipals have requested summary rejection of the following proposed terms and conditions:

(1) a provision in the "Measured Demand" section of the service agreements for total requirements, partial requirements, contract demand and interruptible services which would allow the company to change the hours designated as on-peak upon six month's notice. Municipals contend that such changes must be made by a filing under section 205 of the Federal Power Act.

(2) a "Limit on Service Offered for End-Use Load Not Already Served by the Company" provision in the total requirements, partial requirements and contract demand service agreements,[11] which would enable Wisconsin Electric, under certain circumstances, to refuse to provide service for any end-use load not then served by the company. Municipals contend that the restriction is unreasonable, discriminatory and in conflict with the policies of the federal antitrust laws.

(3) a provision imposing charges based on incremental costs for a period of three years if a service change (*e.g.*, partial requirements to total requirements) is not accomplished within the specified conversion period.

(4) a provision in the "General Terms and Conditions for Wholesale Service" and applicable to each type of service offered by Wisconsin Electric which provides that "if the customer's off-peak demand exceeds his on-peak demand to the extent that the installation of additional facilities are required, then the customer shall pay for such additional facilities." Municipals contend that this provision is discriminatory and unreasonably open-ended.

(5) section 205 of the Kaukauna-Menasha interconnection agreement which would permit the municipals' system to interconnect with any other utility only upon 24 months written notice to Wisconsin Electric. Municipals contend that this provision is unreasonable and anticompetitive.

(6) provisions in the Kaukauna-Menasha interconnection agreement, and similar provisions in the partial requirements and contract demand service agreements, which would limit increases in demand to no more than 25% annually. Municipals contend that the 25% limitation is anticompetitive.

(7) a provision in the service agreement for transmission service which would permit the company to terminate transmission service on the giving of specified notice. Municipals contend that this provision is unreasonable and that if the company terminates service, such termination should require a filing pursuant to section 205 of the Federal Power Act.

(8) a provision in the Kaukauna-Menasha interconnection agreement, section 4.07(c), which, according to Municipals, appears to require Kaukauna-Menasha to purchase all of their power and energy requirements over local generation from Wisconsin Electric.

On September 9, 1980, Wisconsin Electric responded to Municipals' requests for summary rejection. With respect to Municipals' first argument, Wisconsin Electric acknowledged that any change in on-peak hours under the "Measured Demand" provision of its agreements would have to be filed with the Commission; therefore, the company stated that "there simply is no difference between the parties." With respect to Municipals' arguments (2)–(6), Wisconsin Electric stated that such provisions were included in the service agreements as a necessary part of the company's power supplying planning. Concerning Municipals' argument (7), Wisconsin Electric asserted that a utility may provide in its tariff reasonable provisions for terminating transmission service. Wisconsin Electric finally noted that there is no dispute concerning Municipals' argument (8) because section 4.07(c) of the interconnection agreement is not intended to require Kaukauna-Menasha to purchase all of their requirements from Wisconsin Electric.

Municipals' requests for summary rejection of the proposed terms and conditions set out above will be denied.[12] The response of Wisconsin Electric has raised sufficient factual questions to preclude our finding that there are no material issues of fact left to be resolved.[13] Municipals will have

[5] Deerfield, Elkhorn, Hartford, Jefferson, Kiel, Lake Mills, Oconomowoc, Slinger, and Waterloo, Wisconsin.

[6] Cedarburg, Wisconsin.

[7] Exhibit A contains the rates for service while Exhibit B contains the terms and conditions of service. Exhibit C pertains to service specifications.

[8] Alger-Delta Cooperative Electric Association and Ontonagon County Rural Electrification Association.

[9] WPPI is a non-profit corporation organized by 38 municipals in Wisconsin, of which 14 are customers of Wisconsin Electric.

[10] Cedarburg, Clintonville, Deerfield, Elkhorn, Florence, Hartford, Jefferson, Kaukauna-Menasha, Kiel, Lake Mills, New London, Oconto Falls, Oconomowoc, Shawano, Slinger, and Waterloo.

[11] The provision, which is identical for all three types of services, reads in pertinent part: The Company shall have the option to decline to provide service under this rate schedule to any applying utility for end-use load not then served by the Company at retail or wholesale if the Company's power supply resources are insufficient to supply such load or if the provision of service for such load would increase the Company's unit cost to serve its existing firm power retail and wholesale customers.

[12] We do, however, agree with Municipals' assertion that Wisconsin Electric must file a notice of termination, under section 35.15 of the Commission's regulations, if it seeks to terminate transmission service to its customers.

[13] *See Municipal Light Boards of Reading and Wakefield, Massachusetts* v. *FPC*, 450 F.2d 1341, 1345 (D.C. Cir. 1971), *cert. denied*, 405 U.S. 989 (1971). We note our particular concern, however, that the "Limit on End-Use Load Not Already Served by the Company" provision may prove to be an unlawful resale restriction. See *Gulf States*

Footnotes continued on next page

full opportunity to litigate these matters as well as the other issues raised in their pleading at the hearing convened pursuant to this order.

Our analysis indicates that Wisconsin Electric's proposed interconnection agreement with Kaukauna-Menasha and the proposed rates and conditions for full requirements, partial requirements, contract demand, interruptible, and transmission services have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates, terms, and conditions for filing and suspend them as ordered below.

In a number of suspension orders,[14] we have addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances are presented here. Although a number of matters raised in this proceeding warrant investigation at hearing, our preliminary analysis reveals that the rates proposed by Wisconsin Electric may not be substantially excessive. In addition, it is desirable to make the interruptible and transmission services available to Wisconsin Electric's customers. A nominal suspension should minimize any adverse affects on the company while ensuring refund protection for its customers. Accordingly, we shall exercise our discretion to suspend the rate schedules for only a day, permitting them to take effect subject to refund thereafter on October 2, 1980, except as expressly limited by ordering paragraph (C) of this order.

According to our analysis, Wisconsin Electric has included Accumulated Deferred Investment Tax Credit (ADITC) amounts as a separate component of its capitalization at its claimed overall rate of return. We have stated on a number of occasions that ADITC must be distributed proportionately through the capital structure or eliminated entirely.[15] Consistent with our prior determinations on this issue, we shall summarily reject Wisconsin Electric's inclusion of ADITC as a separate component of its capitalization. However, since Wisconsin Electric has not synchronized its interest expense deduction for tax allowance purposes to its weighted debt cost, this summary disposition has no immediate effect on the company's claimed cost of service. Accordingly, we shall not require Wisconsin Electric to reflect the summary disposition in revised rates until the conclusion of this proceeding.

The timely notice of intervention filed by the Wisconsin Commission is sufficient to initiate its participation in this proceeding. We find that participation by each of the petitioners may be in the public interest and that good cause exists to grant the untimely requests to intervene filed by Upper Peninsula, WPPI and Municipals. Accordingly, we shall grant the petitions to intervene.

Municipals also allege that the proposed increased rates may create an unlawful price squeeze. In accordance with Commission policy established in *Arkansas Power and Light Company*,[16] we shall phase the price squeeze issue. This will allow a decision to be reached first on issues concerning cost of service, capitalization, rate of return, and terms of service. If in the view of the intervenors or staff, a price squeeze persists, a second phase of the proceeding may follow.

The Commission Orders

(A) The Municipals' requests for summary rejection are hereby denied.

(B) Summary disposition is hereby ordered with respect to Wisconsin Electric's treatment of ADITC. This determination shall be reflected in any rates finally approved in this proceeding.

(C) Wisconsin Electric's submittals are hereby accepted for filing and suspended for one day to become effective, subject to refund, on October 2, 1980; except that: (1) Exhibit C and the general service agreement contained in the proposed total requirements tariff for Deerfield, Elkhorn, Hartford, Jefferson, Kiel, Lake Mills, Oconomowoc, Slinger, and Waterloo, Wisconsin; (2) Exhibit C and the general service agreement contained in the proposed partial requirements tariff for Cedarburg, Wisconsin; and (3) Exhibits B and C and the general service agreement contained in the proposed total requirements tariff for Alger-Delta Cooperative Electric Association and Ontonagon County Rural Electrification Association shall be made effective prospectively only after expiration of the existing contracts, and upon timely refiling of these provisions by Wisconsin Electric.

(D) The petitioners are hereby permitted to intervene in this proceeding; *Provided, however,* that participation by the intervenors shall be limited to matters set forth in their petitions to intervene; and *provided, further,* that the admission of any intervenor shall not be construed as recognition by the Commission that it might be aggrieved because of any order or orders by the Commission entered in this proceeding.

(E) Pursuant to the authority contained in, and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the DOE Act, and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I (1979)), a public hearing shall be held concerning the justness and reasonableness of Wisconsin Electric's proposed rates, terms, and conditions.

(F) The Commission staff shall serve top sheets in this proceeding on or before December 17, 1980.

(G) A presiding administrative law judge to be designated by the Chief Administrative Law Judge for that purpose shall convene a conference in this proceeding to be held within ten (10) days after the service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C.

Footnotes continued from last page
Utilities Co., Docket No. ER76-816, Order Approving Settlement Subject to Condition, issued October 20, 1978, and *Village of Penn Yan, New York*, Docket No. EL78-29, Declaratory Order Modifying Jurisdictional Contracts, issued March 28, 1979. Because the provision indicates that the Company will provide service to the wholesale customer for new load that was previously served at retail by the Company, it does not contain the restrictive effect that the Commission perceived in a recent order concerning an availability clause of a different utility. *Town of Springfield, Vermont v. Central Vermont Public Service Commission*, Docket No. EL80-5, Order Initiating Investigation and Establishing Procedures, Denying Motion for Summary Relief, and Directing to Show Cause, issued August 29, 1980. However, this provision contains a type of resale restriction which may be unduly discriminatory.

[14] *E.g., Boston Edison Co.*, Docket No. ER80-508 (August 29, 1980) (five month suspension); *Alabama Power Co.*, Docket Nos. ER80-506, *et al.* (August 29, 1980) (one day suspension); *Cleveland Electric Illuminating Co.*, Docket No. ER80-468 (August 22, 1980) (one day suspension).

[15] *Public Service Company of New Mexico*, Docket Nos. ER79-478 and ER79-479, order issued December 18, 1979, mimeo at 3; *Carolina Power & Light Co.*, Docket No. ER76-495, Opinion No. 19, issued August 2, 1978, mimeo at 10.

[16] Docket No. ER79-339, order issued August 6, 1979.

20426. The designated law judge is authorized to establish procedural dates and to rule on all motions (except motions to consolidate or sever and motions to dismiss), as provided for in the Commission's Rules of Practice and Procedure.

(H) We hereby order initiation of price squeeze procedures and further order that this proceeding shall be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for a consideration of price squeeze, would be just and reasonable. The presiding judge may order a change in this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in Section 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(I) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Acting Secretary.

Wisconsin Electric Power Co., Docket No. ER80-567 Rate Schedule Designations

Designation	Description
FERC Electric Tariff Original Volume No. I, Original Sheet Nos. 1-72.	General Terms and Conditions, Rates TR-1, PR-1, CD-1, IS-1, and T-1.
Service Agreements under FERC Electric Tariff Original Volume No. I:	

Customer	Superseded rate schedule
City of Clintonville	FERC No. 35, as supplemented.
Upper Peninsula Power Co	FERC No. 36, as supplemented.
City of Crystal Falls	FERC No. 38, as supplemented.
City of Oconto Falls	FERC No. 40, as supplemented.
City of Norway	FERC No. 51, as supplemented.
City of New London	FERC No. 52.
City of Florence	FERC No. 53.
City of Shawano	FERC No. 54.

Designation	Customer	Description
Rate Schedule FERC No. 56 (supersedes FPC No. 44, as supplemented).	Cities of Kaukauna and Menasha.	Interconnection agreement.
Supplement No. 13 to Rate Schedule FPC No. 15 (supersedes Supp. No. 12).	City of Cedarburg	Rate PR-1.
Supplement No. 14 to Rate Schedule FPC No. 15	do	Terms and conditions for purchase of partial requirements service.
Supplement No. 13 to Rate Schedule FPC No. 16 (supersedes Supp. No. 12).	Village of Deerfield	Rate TR-1.
Supplement No. 14 to Rate Schedule FPC No. 16	do	Terms and conditions for purchase of total requirements service.
Supplement No. 13 to Rate Schedule FPC No. 17 (supersedes Supp. No. 12).	City of Elkhorn	Rate TR-1.
Supplement No. 14 to Rate Schedule FPC No. 17	do	Terms and conditions for purchase of total requirements service.
Supplement No. 13 to Rate Schedule FPC No. 18 (supersedes Supp. No. 12).	City of Hartford	Rate TR-1.
Supplement No. 14 to Rate Schedule FPC No. 18	do	Terms and conditions for purchase of total requirements service.
Supplement No. 13 to Rate Schedule FPC No. 19 (supersedes Supp. No. 12).	City of Jefferson	Raje TR-1.
Supplement No. 14 to Rate Schedule FPC No. 19	do	Terms and conditions for purchase of total requirements service.
Supplement No. 13 to Rate Schedule FPC No. 20 (supersedes Supp. No. 12).	City of Lake Mills	Rate TR-1.
Supplement No. 14 to Rate Schedule FPC No. 20	do	Terms and conditions for purchase of total requirements service.
Supplement No. 13 to Rate Schedule FPC No. 21 (supersedes Supp. No. 12).	City of Oconomowoc	Rate TR-1.
Supplement No. 14 to Rate Schedule FPC No. 21	do	Terms and conditions for purchase of total requirements service.
Supplement No. 13 to Rate Schedule FPC No. 22 (supersedes Supp. No. 12).	Village of Slinger	Rate TR-1.
Supplement No. 14 to Rate Schedule FPC No. 22	do	Terms and conditions for purchase of total requirements service.
Supplement No. 13 to Rate Schedule FPC No. 23 (supersedes Supp. No. 12).	City of Waterloo	Rate TR-1.
Supplement No. 14 to Rate Schedule FPC No. 23	do	Terms and conditions for purchase of total requirements service.
Supplement No. 13 to Rate Schedule FPC No. 24 (supersedes Supp. No. 12).	City of Kiel	Rate TR-1.
Supplement No. 14 to Rate Schedule FPC No. 24	do	Terms and conditions for purchase of total requirements service.
Supplement No. 11 to Rate Schedule FERC No. 42 (supersedes Supp. No. 10).	Alger-Delta Cooperative	Rate TR-1.
Supplement No. 10 to Rate Schedule FERC No. 43 (supersedes Supp. No. 9).	Ontonagon County REA	Rate TR-1.

[FR Doc. 80-31214 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. ER80-569 and ER80-570]

Yankee Atomic Electric Co. and Public Service Co. of New Hampshire; Order Accepting for Filing and Suspending Proposed Rates, Consolidating Proceedings, and Establishing Hearing Procedures

September 30, 1980.

On July 31, 1980, the Yankee Atomic Electric Company (Yankee) tendered for filing, in Docket No. ER80-569, amendments to Section 6 of the power contract between Yankee and ten of its eleven owner companies for the sale of the net output of Yankee's 176 megawatt nuclear power plant (Yankee Nuclear Plant) at Rowe, Massachusetts.[1] The net output of the Yankee Nuclear plant is sold to the owner companies in proportion to their percentage shares of Yankee common stock. The proposed amendment to the power contract would increase rates to all owner companies by $17.4 million for the Period II test year ending September 30, 1981. Yankee requests an effective date of October 1, 1980.

On July 31, 1980, Yankee submitted for filing, in Docket No. ER80-570, revisions to paragraph C of Article IV of the power and transmission contract between Public Service Company of New Hampshire (PSNH) and Central Maine Power Company (Central Maine). The proposed revisions to paragraph C reflect the amendments filed by Yankee in Docket No. ER80-569 and provide for the pass-through of 9.5% of Yankee's net output and associated costs to Central Maine with PSNH serving as an intermediary.[2] PSNH requests that the revisions of paragraph C be permitted to become effective simultaneously with the amendments in Docket No. ER80-569.

The proposed amended power contracts between Yankee and its owner companies would require each owner company to pay its proportionate share of monthly operating expenses, including a monthly overall rate of return. The monthly overall rate of return would include a 14.5% return on common equity and a weighted debt cost calculated on a monthly basis. Depreciation expense, computed on a straight line basis, would be revised to reflect a shorter (5 year) remaining life (December 31, 1985) with separate reserve accruals for the immediate dismantlement of the Yankee Nuclear Plant on December 31, 1985.[3] Yankee plans to accrue the reserve and associated decommissioning taxes in a special escrow account until the Internal Revenue Service rules (in response to Yankee's request) that the reserve accruals for decommissioning expenses do not constitute taxable income.[4] Upon a favorable ruling, Yankee proposes to refund all monies collected for associated decommissioning taxes and to place all decommissioning accruals in a final trust with the removal of funds limited to the payment of decommissioning costs.

Notice of the filing was issued on August 6, 1980, with comments, protests and petitions to intervene due on or before August 25, 1980. No responses were received.

Discussion

Because the proposed amendments in Docket No. ER80-570 incorporate the rates reflected in Docket No. ER80-569, consolidation of the two dockets is warranted and will be ordered.

Our analysis indicates that Yankee's proposed rates, in Docket Nos. ER80-569 and ER80-570, have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing and suspend them as ordered below.

In a number of suspension orders,[5] we have addressed the considerations underlying the Commission's policy regarding rate suspensions. For the reasons given there, we have concluded that rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable or that it may run afoul of other statutory standards. We have acknowledged, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. No such circumstances have been presented here. Accordingly, we shall suspend the rates for a period five months permitting the rates to take effect subject to refund thereafter on March 1, 1981.

The Commission Orders

(A) the rate changes reflected in the proposed amendments submitted by Yankee in Docket No. ER80-569 and PSNH in docket No. ER80-570, are hereby accepted for filing and suspended for five months from the proposed effective date to become effective March 1, 1981, subject to refund.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Act and by the Federal Power Act, particularly Sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held to determine the justness and reasonableness of the proposed rates.

(C) Docket Nos. ER80-569 and ER80-570 are hereby consolidated for purposes of hearing and decision.

(D) The Commission staff shall serve top sheets in this proceeding on or before December 19, 1980.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within ten (10) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding administrative law judge is authorized to establish procedural dates and to rule on all motions (except motions to consolidate and sever and motions to dismiss), as provided for in the Commission's Rules of Practice and Procedure.

(F) The Secretary shall promptly publish this order in the **Federal Register.**

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[1] The ten owner companies are: New England Power Company, Connecticut Light & Power Company, Boston Edison Company, Hartford Electric Light Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, Montaup Electric Company, New Bedford Gas and Edison Light Company, Cambridge Electric Company and Central Vermont Public Service Corporation. The eleventh owner company, Central Maine Power Company, cannot purchase power directly from Yankee. (*See* footnote 2, *infra*). For rate schedule designations, see Attachment A.

[2] Yankee was created pursuant to a provision of the Massachusetts Utility Law passed in 1924, providing that utility companies may invest in a joint generating subsidiary located in Massachusetts to serve companies in Massachusetts and adjoining states. Since Central Maine is not located in a state adjacent to Massachusetts, it cannot buy power directly from Yankee.

[3] The present power contract employs a depreciation rate that assumes a remaining useful life of 11 years ending July 1, 1991.

[4] As a one asset company, Yankee does not anticipate having taxable income in the years following plant shutdown when decommissioning expenses will be incurred. Thus, absent the requested ruling, Yankee has asserted that its customers would not receive the benefit of the tax deductibility of the decommissioning expenses. Yankee notes that monies placed into the sinking fund escrow account will not be available for general corporate use.

[5] *E.g., Boston Edison Co.*, Docket No. ER80-508 (August 29, 1980) (five month suspension); *Alabama Power Co.*, Docket Nos. ER80-506, *et al.* (August 29, 1980) (one day suspension); *Cleveland Electric Illuminating Co.*, Docket No. ER80-488 (August 22, 1980) (one day suspension).

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment A

The rate schedule designations are as follows:

(1) Yankee Atomic Electric Company, Supplement No. 2 to FRC No. 2 (supersedes Supplement No. 1 to FPC No. 2)

(2) Public Service Company of New Hampshire, Supplement No. 2 to FRC No. 79 (supersedes Supplement No. 1 to FPC No. 79.

[FR Doc. 80-31194 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-85-M

ENVIRONMENTAL PROTECTION AGENCY

[PF-200; PH-FRL 1628-8]

Certain Pesticide Chemicals; Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that certain companies have filed request with the EPA to establish tolerances for residues of certain pesticide chemicals in or on certain raw agricultural commodities.

ADDRESS: Written comments and inquiries should be directed to the: Designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

Written comments may be submitted while a petition is pending before the Agency. The comments are to be identified by the document control number "[PF-200]" and the specific petition number. All written comments filed pursuant to this notice will be available for public inspection in the Product Manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

SUPPLEMENTARY INFORMATION: EPA gives notice that the following pesticide petitions have been submitted to the Agency to establish tolerances for residues of certain pesticide chemicals in or on certain raw agricultural commodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each specific petition.

PP OF2346. Union Carbide Agricultural Products Co., Inc., 300 Brookside Ave., Ambler, PA 19002. Proposes to amend 40 CFR 180.324 by establishing tolerances for the residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) from the application of its octanoic acid ester in or on the raw agricultural commodities: flax seed; flax straw; meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep; oat grain; oat forage (green); oat straw; rye forage (green); rye straw; and wheat straw at 0.1 part per million (ppm). The proposed analytical method for determining residues is gas chromatography with a Ni electron capture detector. (PM 25, Robert J. Taylor, Rm. E-359, 202-755-2196).

PP OF2389. FMC Corp., 2000 Market St., Philadelphia, PA 19103. Proposes to amend 40 CFR 180.378 by establishing tolerances for residues of the insecticide permethrin ((3-phenoxyphenyl)methyl (±) *cis-trans* 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate) and its metabolites *cis* and *trans* 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylic acid and 3-phenoxybenenzyl alcohol, calculated as permethrin on the raw agricultural commodities: alfalfa (fresh) at 20.0 ppm; alfalfa (hay) at 65 ppm; eggs at 1.0 ppm; meat and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.2 ppm; milk at 0.5 ppm; potatoes at 0.05 ppm; and poultry at 0.1 ppm. The proposed analytical method for determining residues is gas chromatography with multiple ion detector mass spectrometry. (PM 17, Franklin D. R. Gee, Rm. E-341, 202-426-9417).

PP OE2391. American Cyanamid Co., Agricultural Div., P.O. Box 400, Princeton, NJ 08540. Proposes to amend 40 CFR 180.206 by establishing tolerances for the combined residues of the insecticide phorate (*O,O*-diethyl *S*[ethylthio]methyl]phosphorodithioate and its cholinestrase-inhibiting metabolites in or on the raw agricultural commodity green coffee beans at 0.05 ppm. The proposed analytical method for determining residues is gas-liquid chromatographic procedure utilizing an alkali flame ionization detector. (PM 16, William H. Miller, Rm. E-343, 202-426-9458).

(Sec. 408(d)(1), 68 Stat. 512; U.S.C. 135).

Dated: October 2, 1980.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-31328 Filed 10-7-80; 8:45 am]

BILLING CODE 6560-31-M

[A5-FRL 1628-5]

Air Quality; U.S. Gypsum Co., Ottawa County, Ohio; Final Determination

In the matter of the applicability of Title I, Part C of the Clean Air Act (the Act), as amended, 42 U.S.C. 7401 *et seq.*, and the Federal regulations promulgated thereunder at 40 CFR 52.21 (43 FR 26388, June 19, 1978) for Prevention of Significant Deterioration of Air Quality (PSD), to U.S. Gypsum Company, Ottawa County, Ohio.

On August 31, 1979, U.S. Gypsum Company submitted an application to the U.S. Environmental Protection Agency (U.S. EPA), Region V office, for an approval to construct a mineral fiber acoustical tile production facility. The application was submitted pursuant to the regulations for PSD.

On November 5, 1979, U.S. Gypsum was notified that its application was complete and preliminary approval was granted.

On November 19, 1979, U.S. EPA published notice of its decision to grant a preliminary approval to U.S. Gypsum. No comments or requests for a public hearing were received.

After review and analysis of all materials submitted by U.S. Gypsum, the Company was notified on March 11, 1980 that U.S. EPA has determined that the proposed new construction in Ottawa, County, Ohio would be utilizing the best available control technology and that emissions from the facility will not adversely impact air quality, as required by Section 165 of the Act.

This approval to construct does not relieve U.S. Gypsum of the responsibility to comply with the control strategy and all local, State and Federal regulations which are a part of the applicable State Implementation Plan, as well as all other applicable Federal, State and local requirements.

This determination may now be considered final agency action which is locally applicable under Section 307(b)(1) of the Act and therefore a petition for review may be filed in the U.S. Court of Appeals for the Seventh Circuit by any appropriate party. In accordance with Section 307(b)(1), petitions for review must be filed sixty days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Kathy Kline, Acting Chief, Compliance Section, Region V, U.S. EPA, 230 South

Dearborn Street, Chicago, Illinois 60604. (312) 353-2090.

John McGuire,
Regional Administrator, Region V.

Region V—Approval To Construct

[EPA-5-A-80-16]

In the Matter of United States Gypsum Co., Ottawa County, Ohio; Proceeding Pursuant to the Clean Air Act, as amended.

Authority

The approval to construct is issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.* (the Act), and the Federal regulations promulgated thereunder at 40 CFR 52.21 for the Prevention of Significant Deterioration of Air Quality (PSD).

Findings

1. The United States Gypsum Company (U.S. Gypsum) proposes to modify a mineral fiber acoustical tile production facility located in Ottawa County, near Gypsum, Ohio.

2. Ottawa County is a Class II area as determined pursuant to the Act and has been designated as attainment for total suspended particulate (TSP) and sulfur dioxide (SO_2), attainment/unclassifiable for carbon monoxide (CO) and nitrogen dioxide (NO_2), and non-attainment for ozone (O_3) pursuant to Section 107 of the Act.

3. The proposed modification is subject to the requirements of 40 CFR 52.21 and the applicable sections of the Act.

4. The coke-fired cupola, auxiliary fiber production and handling system, natural gas-fired drying kiln, solid waste processing and recycling system, and tile mould cleaning system were determined to be subject to a partial PSD review for TSP and SO_2 and a full PSD review for CO.

5. U.S. Gypsum submitted a PSD application to the U.S. Environmental Protection Agency (U.S. EPA) on August 31, 1979. On September 24, 1979, U.S. Gypsum submitted more information for review. On November 5, 1979, the application was determined to be complete and preliminary approval was granted.

6. On November 19, 1979, notice was published in *The Blade*. The notice sought written comments from the public on U.S. Gypsum's application and the U.S. EPA's preliminary approval of the proposed modification. There were no public comments and no requests for a public hearing.

7. The emissions from the cupola will be controlled by an afterburner, drop out box and baghouse.

8. The fiberization operation is to be controlled by two cyclones in series to collect the fiber with both vented to an existing scrubber.

9. The solid waste reclaim system is designed to collect all saw and planing dust from the tile finishing operation with baghouses. A baghouse will also be used to control the emissions from the mould cleaning process.

10. After review and analysis of the material submitted by U.S. Gypsum, U.S. EPA has determined that the source will be using best available control technology (BACT), and the emissions from the modification will not violate the National Ambient Air Quality Standards nor will it violate the air quality increments.

Conditions

11. The emissions from the cupola system shall be:

a. 1.6 pounds of SO_2 per ton of process weight and a maximum of 9.6 pounds of SO_2 per hour.

b. 5.35 pounds of CO per ton of process weight and a maximum of 32 pounds of CO per hour.

12. The TSP emissions to the existing scrubber from both of the fiberizing cyclones shall be 0.52 grains per cubic foot or the equivalent of 179 pounds per hour. The existing scrubber shall maintain a removal efficiency of 97.8 percent.

13. The TSP emissions from the cupola control system shall be 0.15 pounds of TSP per ton of process weight and a maximum of 0.90 pounds of TSP per hour.

Conditions 11 through 13 represent the application of BACT as required by Section 165 of the Act.

14. U.S. Gypsum must construct and operate the acoustical tile production facility in accordance with the descriptions presented in their final application for approval to construct. Any change in the design or operation might alter U.S. EPA's conclusions and therefore, any changes must receive the prior written authorization of U.S. EPA.

Approval

15. Approval to construct the acoustical tile production facility is hereby granted to U.S. Gypsum Company subject to the conditions expressed herein and consistent with the materials and data included in the application filed by the Company. Any departure from the conditions of this approval or the terms expressed in the application must receive the prior written authorization of U.S. EPA.

16. The United States Court of Appeals for the D.C. Circuit has issued a ruling in the case of *Alabama Power Co.* v. *Douglas M. Costle* (78-1006 and consolidated cases) which has significant impact on the EPA prevention of significant deterioration (PSD) program and approvals issued thereunder. It is possible that the final decision will require modification of the PSD regulations and could affect approvals issued under the existing program. The applicant is hereby advised that this approval may be subject to reevaluation as a result of the final court decision and its ultimate effect.

17. This approval to construct does not relieve U.S. Gypsum of the responsibility to comply with the control strategy and all local, State, and Federal regulations which are part of the State Implementation Plan, as well as all other applicable Federal, State, and local requirements.

18. This approval is effective immediately. This approval to construct shall become invalid, if construction or expansion is not commenced within 18 months after receipt of this approval or if expansion is discontinued for a period of 18 months or more. The Administrator may extend such time period upon a satisfactory showing that an extension is justified. Notification shall be made to U.S. EPA 5 days after construction is commenced.

19. A copy of this approval has been forwarded to the Ida Rupp Public Library, 310 Madison Street, Port Clinton, Ohio, for public inspection.

Dated: March 11, 1980.

John McGuire,
Regional Administrator.

[FR Doc. 80-31322 Filed 10-7-80; 8:45 am]
BILLING CODE 6560-26-M

[OPP-40007A; PH-FRL 1628-3]

Pesticide Applicator Certification; Department of Agriculture Federal Agency Plan; Approval for Restricted Use Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with terms of the **Federal Register** notice of August 19, 1977 (42 FR 41907), the U.S. Department of Agriculture (USDA) has submitted a Federal Agency Plan for the certification of its employees to apply restricted use pesticides in the performance of their duties. The Administrator has reviewed this plan and finds that it complies with the terms of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as amended and the August 19, 1977 **Federal Register** notice. Accordingly, the

Administrator has approved the USDA plan.

DATE: Approval of this plan becomes effective on October 8, 1980.

ADDRESS: The entire plan, together with attachments and comments, will be available for the examination during business hours at the following locations:

U.S. Department of Agriculture, Office of General Counsel, South Agriculture Bldg., Room 2421, 14th Street and Independence Ave., S.W., Washington, D.C. 20250;

U.S. Environmental Protection Agency, Office of Pesticide Programs, (TS-770-M), 3rd Floor, Marfair Building, 499 South Capital Street, S.W., Washington, D.C. 20460;

U.S. Environmental Protection Agency, Region I, John F. Kennedy Bldg., Boston, MA 02203;

U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, NY 10007;

U.S. Environmental Protection Agency, Region III, Curtis Building, 6th and Walnut Streets, Philadephia, PA 19106;

U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, GA 30308;

U.S. Environmental Protection Agency, Region V, Federal Office Building, 230 South Dearborn Street, Chicago, IL 60604;

U.S. Environmental Protection Agency, Region VI, 1201 Elm Street, 1st International Building, Dallas, TX 75270;

U.S. Environmental Protection Agency, Region VII, 324 East 11th Street, Kansas City, MO 64106;

U.S. Environmental Protection Agency, Region VIII, 1860 Lincoln Street, Suite 900, Denver, CO 80295;

U.S. Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, CA 94150; and

U.S. Environmental Protection Agency, Region X, 1200 6th Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: John MacDonald, U.S. Environmental Protection Agency, Office of Pesticide Programs, (TS-770-M), 499 South Captiol St., SW., 3rd Floor, Marfair Bldg., Washington, D.C. 20460, (202) 472-9407.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 2, 1980 (45 FR 21703), EPA published a notice of its intent to approve the USDA plan for certification of employees who apply restricted use pesticides under section 4 of FIFRA in accordance with EPA's August 19, 1977, statement of policy on Federal Agency certification plans. The public was invited to comment on this notice of intent.

Public comments on the notice of intent were received from three persons. Those comments pertinent to the approval of the USDA plan are discussed below.

One commentor questioned the necessity for a USDA certification program, given the availibility of State or EPA certification programs in every State in which USDA employees operate. Although the Agency has no reason to question the validity of USDA's need to implement its own program, it should be noted that a showing of need is not required of any State or Federal agency seeking EPA approval of a certification plan under section 4 of FIFRA. In every case it is assumed that the decision to develop a plan is made by the State or Federal agency with due regard to its own policies, administrative resources, and other uniquely relevant factors. This decision can be made only by the State or agency involved, not by EPA.

A second commenter stated that USDA should require their applicators to be recertified every two years rather than every three years, as provided in the plan. In support of this position the commenter notes that recertification every two years is required of commercial applicators certified by EPA in Nebraska and Colorado. EPA disagrees with this comment. With the exception of Nebraska and Colorado, the individual States conduct their own certification program and many of these States require recertification of commercial applicators at periods of three years or longer. In addition, a recertification period of three years for applicators certified under the Department of Defense (DOD) certification plan was approved by EPA in 1978. The Agency sees no reason why USDA should not have the same discretion with respect to recertification as is accorded to the States and DOD.

A third commenter expressed concern that approval of the USDA plan would place USDA employee applicators certified under the plan outside the enforcement jurisdiction of States, even though they might be applying pesticides on non-Federal property. The commenter suggested that since the States would have no authority to suspend or revoke a USDA applicator certificate, the States with primary use enforcement authority under FIFRA would be denied the opportunity to exercise primacy with respect to those applicators.

Although the Agency recognizes these concerns it disagrees with the commenter's assessment of the scope and impact of the situation. Although States clearly have no authority to affect Federal agency certification directly, they still retain authority under State law to impose other sanctions on individuals who violate State law e.g., by misusing pesticides, while applying pesticieds on property over which the State has exclusive or concurrent jurisdiction. This authority is the essential part of State primary use enforcement authority under FIFRA, not the authority to suspend or revoke certification. USDA has expressly recognized the authority of States to impose civil or criminal penalties on Department employees who misuse pesticides on non-Federal lands in letters dated July 3, and August 7, 1980, from Barry Flamm (Director, USDA, Office of Environmental Quality) to John MacDonald of EPA. These letters have been incorporated in the official USDA plan files and are available for inspection at the locations listed above.

In additon to recognition of the State authority to penalize USDA employees in certain circumstances, the USDA letters reaffirm the Department's intent to comply with State substantive standards more stringent than its own, and to cooperate with the States in enforcement matters.

Accordingly, it has been determined by EPA that the USDA plan satisfies the requirements of section 4(a)(1) of the amended FIFRA and the **Federal Register** notice of August 19, 1977. Accordingly, the USDA plan is approved.

Pursuant to section 4(d) fo the Administrative Procedure Act, 5 U.S.C 553(d), the Agency finds that there is good cause for providing that the approval granted herein to the USDA Federal Agency Plan shall be effective immediately. This Agency's approval of the USDA Federal Agency Plan creates no direct or immediate obligations on USDA employees or other persons using restricted use persticides in the conduct of official USDA activities. Any delay in carrying out the work necessary to implement the plan, as might be occasioned by providing some later effective date for this approval, is inconsistent with the public interest. Accordingly, this approval shall become effective immediately.

Dated: October 1, 1980.

Douglas M. Costle,

Administrator.

[FR Doc. 80-31324 Filed 10-7-80; 8:45 am]

BILLING CODE 6560-32-M

FEDERAL COMMUNICATIONS COMMISSION

[BC Docket Nos. 80-550, 80-551, and 80-552; File Nos. BPH-790627AD, BPH-791114AE, and BPH-791114AG]

CLW Communications Group, et al.; Hearing Designation Order

In the matter of applications of CLW Communications Group, Rome, New York, Req: 102.5 MHz, Channel 273 50 kW (H&V) 404 feet (BC Docket No. 80-550, File No. BPH-790627AD), Tillis Communications of New York, Inc. Rome, New York, Req: 102.5 MHz, Channel 273 50 kW (H&V) 414 feet (BC Docket No. 80-551, File No. BPH-791114AE) and Promedia Communications, Inc. Rome, New York, Req: 102.5 MHz, Channel 273 50 kW, (H&V) 462 feet (BC Docket No. 80-552, File No. BPH-791114AG) for construction permit for a new FM station.

Adopted: September 10, 1980.

Released: October 3, 1980.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications of CLW Communications Group (CLW); Tillis Communications of New York, Inc. (Tillis); and Promedia Communications, Inc. (Promedia).

2. *Tillis.* Analysis of the financial portion of Tillis' application, reveals that Tillis will require $160,139.19 to construct its proposed facility and operate for three months, without revenue, itemized as follows:

Equipment down payment	$46,575.00
Equipment payments (three months)	12,225.94
Loan Repayments (five months)	16,475.00
Building	10,000.00
Miscellaneous	15,000.00
Three Months Operating Expenses	59,863.25
	160,139.19

To meet these requirements Tillis intends to rely on a bank loan of $150,000 and existing capital in the amount of $100.00. As a result, only $150,100 is available to meet a requirement of $160,139.19. Accordingly, a limited financial issue will be specified.

3. Tillis' ascertainment of Rome, New York is not in substantial compliance with the *Primer on Ascertainment of Community Leaders by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971). Tillis failed to supply a racial/minority breakdown of the city of license in compliance with Question and Answer 9. Accordingly, a limited ascertainment issue will be specified.

4. Data submitted by the applicants indicate that there would be no significant difference in the size of the areas which would receive service from the proposals. However, there is a significant difference in the estimated populations to be served. CLW says its signal would serve 509,825 persons, while Tillis says its signal would serve 440,165 persons and Promedia says its signal would serve 448,888 persons. An analysis of the three contours shows that they cover nearly identical areas; therefore either an error in the estimation of population was made or the parties based their estimates on different figures. Consequently, for the purpose of comparison, the populations which would receive FM service of 1 mV/m or greater strength, together with the availability of other primary aural services in such areas will be considered under the standard comparative issue only if necessary after resolution of the afore-mentioned discrepancy.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Tillis has available funds in excess of the $150,100 indicated, and in light thereof, whether it is financially qualified to construct and operate the proposed station.

2. To determine whether Tillis has complied with Question and Answer 9 of the *Primer* with respect to the racial/minority breakdown of the city of license.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if any, of the applications should be granted.

7. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

8. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594(g) of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcast Facilities Division.

[FR Doc. 80-31287 Filed 10-7-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 80-482, etc.; File No. BPCT-4992, etc]

Houma Broadcasters, Inc.; Hearing Designation Order

In the matter of applications of: Houma Broadcasters, Inc., Houma, Louisiana (BC Docket No. 80-482, File No. BPCT-4992), Communications Corporation of the South, Inc., Houma, Louisiana, (BC Docket No. 80-483, File No. BPCT-5006), GACO Communications Corporation, Houma, Louisiana, (BC Docket No. 80-484, File No. BPCT-5047), Guaranty Broadcasting Corporation, Houma, Louisiana, (BC Docket No. 80-485), File No. BPCT-5045), Greater New Orleans Educational Television Foundation, Houma, Louisiana (BC Docket No. 80-486, File No. BPCT-5043) and The Way of Life Television Network, Inc. Houma, Louisiana (BC Docket No. 80-487, File No. BPCT-790622KE) for Construction permit for new television station.

Adopted: September 10, 1980.

Released: September 30, 1980.

By the Commission:

1. The Commission has before it for consideration the above captioned applications, each requesting a construction permit for a new television station to operate on channel 11, Houma, Louisiana. These applications are mutually exclusive and a comparative hearing is, therefore, required.

2. The *cable television objections.* Houma Cablevision, Inc., operator of a cable television system serving Houma, Louisiana, and surrounding area, filed pleadings entitled "Petition to Deny" against all of the above-captioned applications except that of The Way of Life. The petitions are not supported by the affidavits required by Section 309(d)

of the Communications Act of 1934, as amended, and therefore, the petitions will be considered as informal objections filed pursuant to Section 73.3587 of the Commission's Rules.

3. The objector operates a 12-channel capacity system which carries the following signals:

WAFB–TV (CBS); WBRZ(TV) (ABC); and WRBT(TV) (NBC), all Baton Rouge, Louisiana; KFLY–TV (CBS), Lafayette, Lousiana; WDSU–TV (NBC); WGNO–TV (Ind); WVUE(TV) (ABC); WWL–TV (CBS); and WYES–TV (ETV), all New Orleans, Louisiana; WTCG(TV) (Ind), Atlanta, Georgia, via satellite; WYAH–TV (Ind), Portsmouth, Virginia and KATC(TV) (ABC), Lafayette, Louisiana.

The objector claims that the applicants will bring no new or different programming to the Houma area and that grant of any of the Houma applications would require the system to delete a station it is now carrying in order to accommodate the "must carry" in Houma. In effect, the objector opposes the authorization of any television station in Houma. The public interest determination that there was a need for a television station in Houma was made when the channnel was allocated to Houma. If this is to be altered, it must be done through an appropriate rules making proceeding, not in the context of a comparative hearing. The objections will be denied.

4. *The AMST objections.* The Association of Maximum Service Telecasters (AMST) filed informal objections to all of the applications except those of Guaranty Broadcasting and Greater New Orleans ETV Foundation, on the grounds that each was short-spaced to the site of adjacent channel Station WYES–TV, channel 12, New Orleans. The history of the channel 12 assignment to New Orleans and the channel 11 assignment to Houma is long and involved, having endured for over 20 years.[1] There is no need to review that story at this juncture. It is sufficient, for the purposes of this proceeding, to observe that the separation requirements were waived to authorized Station KHMA(TV) in Houma years ago. The fact that KHMA(TV) no longer exists does not alter the reasons which the Commission then believed warranted authorization of the short-spaced operation. In the normal situation, the Commission would be disposed to agree with AMST because no reasons (other than historical) have been offered to support the waiver requests, but the Commission need not ignore those historical reasons. The Commission finds that, in the event that one of the short-spaced applicants is granted a construction permit in this proceeding, a waiver of Section 73.610 of the Rules would be warranted.

5. *Houma Broadcasters.* Houma Broadcasters in controlled (51%) by Texoma Broadcasters, Inc., licensee of Station KLFY–TV, Lafayette, Louisiana. Houma Broadcasters proposes to operate the Houma station as "primarily a satellite" of KLFY–TV and there will be overlap of the Grade B contours of KLFY–TV and the proposed Houma station. For this reason, Acadian Television Corporation, licensee of Station KATC(TV), Lafayette, Louisiana, filed a petition to deny, pursuant to Section 309(d) of the Communications Act.[2] Note 9 to Section 73.636(a)(1) of the Rules ("duopoly") provides that such cases will be considered on an *ad hoc* basis. Petitioner claims standing as a "party in interest" within the meaning of Section 309(d) of the Communications Act. Petitioner asserts that there is an area within the Grade B contours of both KATC and the proposed Houma station where there would be competition for audience and advertising revenues. On this basis, we find that the petitioner has standing. *Federal Communications Commission* v. *Sanders Brothers Radio Station*, 309 U.S. 470, 60 S. Ct. 693, 9 RR 2008 (1940).

6. The essence of the petition to deny is a claim of unfair competition. Petitioner states that it now competes with Texoma's Station KLFY–TV in Lafayette on a "one-on-one" basis, but that authorization of a satellite would alter the situation to a "two-on-one" basis. Petitioner has not shown how this situation would adversely affect the public interest. Nevertheless, because a hearing is mandated in any event, and an issue must be specified with respect to the need for a satellite operation,[3] we will make Acadian a party respondent with respect to the Houma Broadcasters application.

7. Houma Broadcasters proposes to locate its main studio at its transmitter site, outside the city limits of Houma. It has neither sought the Commission's consent to this location nor has it made an effort to show that such operation would be consonant with the public interest, as required by Section 73.613 of the Rules. An appropriate issue will be specified.

8. *Communications Corporation of the South.* CCSI originally proposed to operate the Houma station as a "satellite" of its commonly-owned Station WGNO–TV, New Orleans, Louisiana, with no main studio for the satellite. In May 1978, WGNO–TV was sold and the assignment was consummated in August. The Applicant, however, did not propose a main studio nor indicate a location. An issue will be specified, therefore, to determine the location of the main studio and whether such location would be consistent with Section 73.613 of the Commission's Rules.

"We shall require all applicants proposing [satellite] operations to make a showing as to why the satellite form of operation is necessary for the community for which they are applying." *Multiple Ownership*, Docket No. 14711, 3 RR 2d 1554 (1964). The issue to be specified as to whether circumstances exist which make the "satellite" form of operation necessary in Houma will be a qualifying issue, for if it is resolved in the negative, those applications proposing a satellite operation could not be granted.

9. *Guaranty Broadcasting.* Guaranty Broadcasting proposes to operate the Houma station as "primarily a satellite" of commonly-owned Station WAFB–TV, Baton Rouge, Louisiana, with which there would be Grade B overlap. An issue will be specified with respect to justification for a satellite mode of operation. See footnote 2, *supra*. In addition, Guaranty is the licensee of Station WAFB–FM, Baton Rouge, the predicted 1 mV/m contour of which encompasses Houma. The application, therefore, raises a "one-to-a-market" problem under Section 73.636(a)(1) of the Commission's Rules. The applicant, however, has represented that, in the event of a grant of its television application, it would divest the aural facility prior to the commencement of operation of the television station. We will provide for such a condition in the event of a grant of the Guaranty application.

10. *Greater New Orleans ETV Foundation (GNO).* Channel 11 is the only television channel allocated to Houma. Of the six competing applicants, only GNO proposes noncommercial educational programming. GNO is the licensee of noncommercial educational station WYES (TV), channel 12, New Orleans, Louisiana, and Houma is wholly within the predicted Grade B contour of that station. Most of New Orleans would be within the predicted Grade B contour of the Houma station

[1] See *St. Anthony Television Corp.*, 2 RR 2d 348 (1964); *St. Anthony Television Corp. (KHMA–TV)*, 10 RR 2d 38 (1967); *New Orleans Deintermixture Case*, 15 RR 1603 (1957); *New Orleans Television Corp.*, 23 RR 1113 (1962).

[2] The applicant filed a reply on July 29, 1977; petitioner filed no response.

[3] Since most of the applicants do not propose satellite operations, it follows that those who do must justify the need for a satellite. *Newhouse Broadcasting Corporation*, FCC 80–157, released April 22, 1980.

GNO proposes. A threshold question arises, therefore, as to whether there is a greater need for commercial programming as proposed by five applicants or for educational programming as proposed by GNO. If it is determined that there is a greater need for noncommercial educational programming, a selection can be made without reliance on the standard comparative evaluation; if it is determined that there is a greater need for commercial programming, a selection among those applicants proposing commercial programming can be made under the standard comparative issue. If no determination can be made with respect to whether there is a greater need for one or another of these types of programming, all of the applicants will be evaluated under the standard comparative issue.

11. Although GNO has nowhere stated specifically that it plans to operate the proposed Houma station as a "satellite," it has stated that it will originate locally not more than 5½ hours out of a total of 110 hours per week, or 5%. We cannot determine whether this means that the station would originate locally precisely 5%, in which case it would not be considered to be "primarily a satellite," or less than 5%, in which case it would be "primarily a satellite"; we do not know the source of the station's non-locally originated programming, [4] and whether there would be Grade B overlap with the originating station if the station is not to be "primarily a satellite." These facts assume importance both from the necessity for us to know how the applicant plans to operate the proposed station and, particularly, because of the pendency of the rule making proceeding in BC Docket No. 78–165, *Amendment of the Commission's Multiple Ownership Rules to Include Educational FM and TV Stations*, FCC 78–387, released July 14, 1978. If it is planned to operate the station in a fashion other than as a full service station, an issue would also need to be specified as to the justification for that type of operation (footnote 2, *supra*). Accordingly, appropriate issues will be specified in an effort to elicit these facts.

12. GNO proposes to located its main studio in New Orleans, presumably in conjunction with the main studio of WYES–TV, but there has been no request for Commission consent to this location nor any showing that operation from a main studio in New Orleans would be consistent with the public interest as required by Section 73.613 of the Rules. An appropriate issue will be specified.

13. On July 1, 1977, CCSI filed a "Motion to Dismiss" against the GNO application on the grounds that the GNO application had been filed on FCC Form 301 (which is used for commercial stations) rather than on FCC Form 340 (which is designated for use by noncommerical educational applicants). [5] In a covering letter dated May 19, 1977, transmitting the GNO application for filing, counsel for GNO called attention to the use of the Form 301 and explained that it was being done because the Commission had recently required educational applicants to ascertain community problems and needs and the Form 340 had not been revised to provide a place for the ascertainment information. [6] While GNO probably should have filed on Form 340, we perceive no injury to GNO or anyone else on this account. GNO's transgression, if such it is, is clearly not of a magnitude to warrant dismissal of its application in a mutually exclusive situation. Under the circumstances, we do not believe that a waiver request was necessary (particularly since the situation which gave rise to the event will not longer arise). The motion to dismiss will be denied.

14. Papers filed with the Commission by a competing applicant in this proceeding indicate that William S. Hart, President and General Manager of GNO's Station WYES–TV, has been charged in a civil complaint with obtaining through fraudulent means, various items of "surplus" property from the Louisiana Federal Property Assistance Agency, intended for use by Station WYES–TV, but converted to his own personal use. The civil complaint filed January 11, 1980, entitled *State of Louisiana ex rel William J. Guste, Jr., Attorney General* v. *William S. Hart* in the Civil District Court of the Parish of Orleans, Division A, Case No. 80–547, charges that Hart wrongfully and unlawfully converted to his own use and to that of third parties the property of the State of Louisiana in the amount of approximately $16,000. The case has not yet gone to trial so far as we know.

15. Although the civil suit mentioned in the preceding paragraph was filed in January 1980, the application was never amended to report this development. Since an adverse decision could affect the applicant's basic qualifications, a question arises as to whether the applicant has complied with the requirements of Section 1.65 of the Commission's Rules, relating to the need to keep applications current and accurate. An appropriate issue will be specified. We will also provide that, in the event of a grant of the GNO application, it shall be made subject to such action as the Commission shall deem appropriate as the result of the outcome of the civil complaint.

16. *The Way of Life Television Network*. Way of Life proposes predominantly religious programming, but has not stated an intention to provide a "fair break" to others who do not share the same precepts as the applicant. Consequently, a limited issue as to programming policy will be specified. *Noe* v. *Federal Communications Commission*, 260 F. 2d 739, 104 U.S. App. D.C. 221 (1958); *Young People's Association for the Propagation of the Gospel*, 6 FCC 178 (1938); *David Livingstone Missionary Foundation*, BC Docket No. 80–80, released February 28, 1980.

17. Way of Life proposes to locate its main studio outside of Houma, its proposed city of license, and has furnished a statement in justification as required by Section 73.613 of the Commission's Rules. The applicant, however, has not described the location of the main studio so that it is not possible to know how far outside of Houma it is to be located. A limited issue will be specified to determine the exact location of the studio site and whether, in the light of that information, operation from that site would be consistent with the public interest.

18. Except as indicated by the issues specified below, we find the applicants qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that grant of the applications would serve the public interest, convenience and necessity and the applications must, therefore, be designated for comparative hearing.

19. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications are designated for hearing in a consolidated proceeding, at a time and place and before an Administrative Law Judge to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a greater need for noncommerical educational programming or for commercial programming in Houma,

[4] Because the applicant is also the licensee of noncommerical educational Station WYES–TV, it is reasonable to assume that WYES–TV would be the primary source of the Houma station's programming, but we ought not to have to speculate as to what an applicant proposes.

[5] GNO filed a response on July 11, 1977, and CCSI replied on July 14, 1977.

[6] Section 73.3533 of the Rules provides that an application for a construction permit for a noncommercial educational broadcast station shall be filed on Form 340.

Louisiana, and the surrounding area to be served;

2. To determine whether circumstances exist which would make operations as a "satellite" or "primarily a satellite" necessary for Houma, Louisiana;

3. To determine, with respect to the application of Houma Broadcasters, whether operation of the proposed station from a main studio outside the city limits of Houma would be consistent with the public interest;

4. To determine, with respect to the application of Communications Corporation of the South, the location of the proposed main studio and if the same is to be outside the city limits of Houma, whether operation from such location would be consistent with the public interest;

5. To determine, with respect to the application of Greater New Orleans ETV Foundation:

(a) Whether the applicant proposes to operate the Houma station as a "satellite" or as "primarily a satellite" and, if so, the identity of the originating station and, if not, whether there would be overlap of predicted Grade B contours of the Houma station and the originating station;

(b) Whether operation of the proposed station from a main studio located in New Orleans, Louisiana, would be consistent with the public interest;

(c) Whether the applicant complied with Section 1.65 of the Commission's Rules with respect to reporting the filing of a civil complaint against William S. Hart, and, if not, the effect of such failure on the applicant's comparative or basic qualifications.

6. To determine with respect to the application of The Way of Life Television Network:

(a) Whether the applicant will adopt and implement a policy of providing reasonable opportunities by representatives of religious faiths which do not share the religious beliefs of the applicant to express opposing or diverse religious views on the proposed Houma station;

(b) The location of the proposed main studio and whether operation of the station from such location outside the city limits of Houma would be consistent with the public interest.

7. To determine, on a comparative basis, which of the applications would best serve the public interest, convenience and necessity.

8. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

20. It if further ordered, That the petitions to deny filed herein by Houma Cablevision, Inc. are dismissed, and, considered as informal objections filed pursuant to Section 73.3587 of the Commission's Rules, are denied.

21. It if further ordered, That the informal objections filed herein by Association of Maximum Service Telecasters are denied, and the requested of Communications Corporation of the South, Houma Broadcasters, Way of Life Television Network, and GACO Communications for waiver of Section 73.610 of the Commissions Rules are granted.

22. It if further ordered, That the petition to deny filed herein by Acadian Television Corporation against the application of Houma Broadcasters is granted to the extent indicated and otherwise is denied.

23. It if further ordered, That the "Motion to Dismiss" filed herein by Communications Corporation of the South against the application of Greater New Orleans ETV Foundation, is denied.

24. It if further ordered, That the event of a grant of the application of Greater New Orleans ETV Foundation, such grant shall be made subject to the outcome of the rule making proceeding in BC Docket No. 78-165, relating to multiple ownership of noncommerical educational broadcast facilities.

25. It if further ordered, That, in the event of a grant of the application of Greater New Orleans ETV Foundation, such grant shall be made without prejudice to such action as the Commission may deem appropriate as a result of the outcome of the civil complaint filed on behalf of the State of Louisiana against William S. Hart.

26. It if further ordered, That Acadian Television Corporation is made a party respondent herein with respect to the application of Houma Broadcasters.

27. It if further ordered, That, in the event of grant of the application of Guaranty Broadcasting, such grant shall be made subject to the condition that, prior to the commencement of operation of the television station, the applicant shall divest itself of all interest in, and connection with, Station WAFB-FM, Baton Rouge, Louisiana.

28. It if further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, shall, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

29. It if further ordered, That the applicants herein, pursuant to Section 311(a)(2) of the Communication Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, shall give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-31288 Filed 10-7-80; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1250]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

October 1, 1980.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to 47 C.F.R. 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Assignments, FM Broadcast Stations. (Lockhart, Texas) (BC Docket No. 79-256, RM-3118)

Filed By: Stanley S. Neustadt & Richard A. Helmick, Attorneys for Entertainment Communications, Inc., Texas (KLEF-FM) on 9-8-80.

Subject: Amendment of Part 94 of the Commission's Rules and Regulations to facilitate operation of low power, limited coverage systems in the 22.0-23.6 GHz band. (PR Docket No. 79-337, RM03241)

Filed By: John G. Puente, Senior Vice President, Leonard Golding, Staff Vice President, Jeffrey Krauss, Director, Regulatory Policies & Jay E. Ricks, William S. Reyner, Jr. & Paul Glist, Attorneys for M/A COM, Incorporated on 9-18-80.

Joseph M. Kittner & Lawrence J. Movshin, Attorneys for General Electric Company on 9-22-80.

Subject: Amendment of Section 73.202(b), Table of Assignments, FM Broadcast Stations. (Westover and Grafton, West Virginia) (BC Docket No. 80-47, RM-3260)

Filed By: A. L. Stein, Attorney for Craig L. Falkenstine on 9-17-80.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-31290 Filed 10-7-80; 8:45 am]

BILLING CODE 6712-01-M

[Report No. A-17]

TV Broadcast Applications Accepted for Filing and Notification of Cutoff Date

Cut-Off Date: November 21, 1980; Released: October 7, 1980.

Notice is hereby given that the applications listed in the attached appendix are accepted for filing. They will be considered to be ready and available for processing after November 21, 1980. An application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on November 21, 1980 which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and tendered for filing at the offices of the Commission in Washington, D.C., no later than November 21, 1980.

Petitions to deny any application on this list must be on file with the Commission not later than the close of business on November 21, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

BPCT-800327KI (New Major Amendment), Fayetteville, North Carolina, Fayetteville-Cumberland Telecasters, Inc., Channel 62, ERP: Vis. 2547 kW; HAAT: 704 feet.

BPCT-800826KF (New), Montgomery, Alabama, Christian Life Broadcasting, Inc., Channel 45, ERP: Vis. 703 kW; HAAT: 518 feet.

BPCT-800811KJ (New), Key West, Florida, Key West Television, Incorporated, Channel 16, ERP: Vis. 565 kW; HAAT: 355 feet.

BPCT-800815KF (New), Suring, Wisconsin, Northeastern Wisconsin Christian Television, Inc., Channel 14, ERP: Vis. 200 kW; HAAT: 622 feet.

BPCT-800828KE (New), St. Cloud, Minnesota, L.E.O. Broadcasting, Inc., Channel 41, ERP: Vis. 3845 kW; HAAT: 1,522 feet.

BPCT-800815KG (New), Hollywood, Florida, Whitco Broadcasters, Inc., Channel 69, ERP: Vis. 4787 kW; HAAT: 1,015 feet.

BPCT-800829KE (New), Cheyenne, Wyoming, The Chrysostom Corporation, Channel 27, ERP: Vis. 4270 kW; HAAT: 760 feet.

BPCT-800619KH (New), Glenwood Springs, Colorado, Western Slope Communications, Ltd., Channel 3, ERP: Vis. 100 kW; HAAT: 1,834 feet.

BPCT-800820KE (New), Glenwood Springs, Colorado, High Country Television, Inc., Channel 3, ERP: Vis. 100 kW; HAAT: 1,830 feet.

BPCT-800818KH (New), Vancouver, Washington, KLRK Broadcasting Corporation, Channel 49, ERP: Vis. 1000 kW; HAAT: 1,577 feet.

BPCT-800602LE (New Major Amendment), Lansing, Michigan, Benko Broadcasting Company, Channel 53, ERP: Vis. 1417 kW; HAAT: 979 feet.

BPCT-800905KE (New), Tucson, Arizona, Tucson Telecasting, Inc., Channel 18, ERP: Vis. 692 kW; HAAT: 2020 feet.

[FR Doc. 80-31289 Filed 10-7-80; 8:45 am]

BILLING CODE 6712-01-M

Radio Technical Commission for Marine Services; Meetings

In accordance with Pub. L. 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Special Committee No. 75 Drafting Subcommittee, "MPS—Automatic Coordinate Conversion Systems," Notice of 1st Meeting, Tuesday, October 14, 1980—9:30 a.m., Conference Room 8438, Nassif (DOT) Building, 400 Seventh Street, S.W. (at D Street), Washington, D.C.

Agenda

1. Call to Order; Chairman's Report.
2. Work group to draft Minimum Performance Specifications for Automatic Coordinate Converters.
3. Adjournment.

Mortimer Rogoff, Chairman, SC-75, 4201 Cathedral Avenue, N.W., Apartment 914W, Washington, D.C. 20016.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: (202) 632-6490).

Federal Communications Commission.

William J. Tricarico,

Secretary.

Justification for less than two weeks notice in **Federal Register:**

This meeting is for a drafting subcommittee of RTCM Special Committee No. 75. SC-75 last met on September 30, 1980 and plans to meet again on October 29, 1980. In order for the October 29th meeting to be productive it must have before it a draft of the Minimum Performance Specifications which is being undertaken by the drafting subcommittee.

[FR Doc. 80-31286 Filed 10-7-80; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. 80-614]

Statement on Advertising of NOW Accounts Prior to December 31, 1980

September 30, 1980

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Board adopts the position of the Federal Financial Institutions Examination Council regarding the advertising of NOW accounts prior to the effective date of nationwide NOW account authority. All associations are reminded to adhere to the advertising requirements applicable to all interest or dividend earning accounts when marketing NOW accounts.

EFFECTIVE DATE: SEPTEMBER 30, 1980.

FOR FURTHER INFORMATION CONTACT: James C. Stewart, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW, Washington, D.C. 20552. Telephone: (202) 377-6457.

SUPPLEMENTARY INFORMATION: On September 12, 1980, the Federal Financial Institution Examination Council voted unanimously to recommend that the Federal Reserve Board, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board, and the Comptroller of the Currency adopt the following policy statement regarding depository institution advertising of NOW accounts prior to the effective date of nationwide NOW account authority. The policy statement is designed to remind institutions of existing regulations concerning the accuracy of account advertising and to emphasize that NOW account services may not be offered (except by institutions in the six New England states, New York, and New Jersey) until December 31, 1980.

The Board hereby adopts the policy statement recommended by the Federal Financial Institutions Examination Council.

Policy Statement on NOW Account Advertising Prior to December 31, 1980

The Federal Home Loan Bank Board wishes to remind thrift institutions under its jurisdiction that any such institution offering or preparing to offer negotiable order of withdrawal (NOW) accounts must adhere to the advertising requirements applicable to all interest or dividend earning accounts when marketing NOW accounts. These basic advertising requirements appear in Section 526.6 of the Board's Regulations for the federal Home Loan Bank System

(12 CFR 526.6) and § 563.27 of the Federal Savings and Loan Insurance Corporation's Regulations (12 CFR 563.27) with respect to all savings institutions that are chartered by the Board, have accounts insured by the Federal Savings and Loan Insurance Corporation, or are otherwise members of the Federal Home Loan Bank System.

The Board recognizes that those institutions receiving NOW account authority for the first time on December 31, 1980,[1] may engage in advance NOW account promotional programs and may offer accounts that will be converted to NOW accounts on December 31, 1980. In this connection, the Board draws special attention to the regulatory requirement that no representation (e.g. any advertisement, announcement, solicitation) made with respect to an interest or dividend earning account, such as a NOW account, may be inaccurate or misleading or misrepresent the account contract or service being offered. Consistent with these regulatory requirements, any advertisements or promotional materials issued before December 31, 1980, for NOW accounts or accounts that will be converted to NOW accounts should prominently indicate that, under Federal law, NOW account services are not available before December 31, 1980.

Institutions receiving NOW account authority on December 31, 1980, should ensure that all advertisements or promotional materials accurately describe the nature of the service to be offered on or after December 31, 1980. In this regard, accounts that will be converted to NOW accounts should not be characterized, prior to their conversion, as NOW accounts or described in such a way as to imply that the accounts are interest-bearing accounts upon which negotiable or transferable orders of withdrawal may be drawn.

Institutions also are reminded that, if a specific rate of interest (or dividends) to be paid on a NOW account is advertised, such advertisements must comply with the provisions of the Board's regulations regarding the advertising of interest on deposits. In addition, if conditions or charges will be imposed on the account, that fact should be disclosed in the advertisement or promotional material. Consistent with the Board's regulations, an institution should inform its customer not later than the time a NOW account is opened, or an existing account is converted to a NOW account, of the method that will be used in computing and paying interest on the account, including conditions that must be satisfied to earn a stated return and charges that may be assessed against the account.

By the Federal Home Loan Bank Board,

Robert D. Linder,

Acting Secretary.

[FR Doc. 80-31332 Filed 10-7-80; 8:45 am]

BILLING CODE 6720-01-M

[1] NOW accounts are currently authorized only in the six New England states and in New York and New Jersey. Title III of the Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. No. 96-221, 94 Stat. 146) provides nationwide NOW account authority, effective December 31, 1980.

[Res. No. 80-617]

Consumer Program

AGENCY: Federal Home Loan Bank Board (FHLBB).

ACTION: Notice of consumer program.

SUMMARY: In accordance with Executive Order 12160, FHLBB sets forth a draft of its Consumer Program which outlines the procedures for dealing with its consumer affairs perspective, consumer participation, information materials, education and training, complaint handling and general oversight.

DATES: Comments must be received on or before December 8, 1980.

ADDRESS: Comments and requests for further information should be addressed to Cynthia N. Graae, Assistant Director for Consumer and Civil Rights, Office of Examinations and Supervision, Federal Home Loan Bank Board, Washington, DC 20552 (202/377-6237).

Executive Order 12160, issued by President Carter on September 26, 1979, establishes criteria for improving the management, coordination, and effectiveness of Federal consumer affairs activities. The FHLBB programs are presented as they relate to the five elements of the Executive Order.

I. Consumer Affairs Perspective

The Department of Consumer and Civil Rights (DCCR) was established in January 1980 within the Office of Examinations and Supervision to assist OES in fulfilling its short- and long-term goals of administering and enforcing the civil rights and consumer protection laws and regulations applicable to thrift institutions regulated by the FHLBB. The Department maintains its own budget within the Office of Examinations and Supervision.

DCCR consists of an Assistant Director for Consumer and Civil Rights, two Consumer/Civil Rights Officers, three Consumer/Civil Rights Specialists and two clerical personnel. Each staff member has special expertise in various aspects of consumer credit and civil rights laws.

DCCR has assumed the responsibilities listed under Section 1-4 of Executive Order 12160. The staff participates in the development and review of all agency regulations, rules, policies, programs and legislative proposals which have potential consumer impact. While DCCR coordinates the consumer affairs policy functions under the Order, the other FHLBB offices play integral parts in their implementation. The Federal Home Loan Bank Board District offices examine associations to ensure compliance with FHLBB rules and regulations including consumer statutes. Further, the FHLBB relies on the Supervisory Agents in the twelve Federal Home Loan Banks to carry out policies established by the Board. The Supervisory Agents Banks implement the Board's directives.

The FHLBB monitors and enforces compliance with the following consumer and civil rights statutes through the regular examination of savings and loan associations: Truth in Lending Act, the Civil Rights Acts of 1964 and 1968 including the Fair Housing Act and the Equal Employment Opportunity Act, Fair Credit Billing Act, Consumer Leasing Act, Equal Credit Opportunity Act, Home Mortgage Disclosure Act, Community Reinvestment Act, Federal Trade Commission Improvement Act, Real Estate Settlement Procedures Act, Fair Credit Reporting Act, Fair Debt Collection Practices Act, the Electronic Fund Transfer Act, and other laws, regulations, and policy statements affecting consumers. DCCR recommends policy direction for examiners. Additionally, the Department participates in training and general education on consumer and civil rights laws and regulations to examiners and staff.

DCCR, in coordination with the Office of the General Counsel, assists in the preparation of testimony for Board members when they are called upon to testify on proposed consumer legislation before Congress, or submit comments on proposed regulations before the Federal Reserve Board, the Federal Trade Commission and other agencies. In addition, it reviews formal comments prepared by other FHLBB offices to assure that the comments take into consideration the consumer impact of the proposed action. DCCR comments on the consumer impact of FHLBB proposed rules and regulations before they are acted on by the Board and published in the **Federal Register**. In addition, DCCR reviews all proposed

general policies and programs for consumer impact before they are submitted to the Board.

II Consumer Participation

The Board generally conducts its business at open meetings. Except in rare cases involving sensitive financial matters, all meetings are open to the public pursuant to the Government in the Sunshine Act. The public is invited to attend these meetings which are announced in the **Federal Register.**

The Board holds hearings on proposals when appropriate, which are announced in the **Federal Register** and news releases. The public is invited to testify or present written comment. Transcripts of the public hearings are part of the public record and are used by the Board with staff assistance to formulate policy.

The public may also participate when a rule or regulation has been proposed for public comment. The Board has established procedures pursuant to 5 U.S.C. 553(b), to promote public participation in the rulemaking process. Announcements are made in the **Federal Register** and also by news releases. The public is generally given 60 days to comment on proposed regulations. The name and telephone number of the staff member handling the proposal appears in the **Federal Register** and in the news release. In addition, in making recommendations for policy changes to the Board, DCCR includes ideas or suggestions for policies, programs and regulations which private citizens send to DCCR.

DCCR maintains liaison with both consumer and civil rights groups to expand the scope of contact with consumers and encourage their participation in FHLBB activities. Furthermore, DCCR participates in numerous consumer seminars and conferences around the country by providing speakers and attendees.

Consumers often state views on policy issues when filing complaints. These views are taken into account when changes in the relevant subjects are being considered by the Board.

Further, the supervisory staff is encouraged to contact the consumer during the investigation or review of complaints. Where the complainant alleges discrimination, FHLBB procedures require contact with the complainant. Such contact reinforces consumer participation. The complaint process is explained in further detail in Section V, Complaint Handling.

The Community Reinvestment Act (CRA) requires this agency to take into account the record of a savings and loan association in helping to meet the credit needs of its community, including low- and moderate-income neighborhoods, in its evaluations of any application by that association for a charter, deposit insurance, branch or other deposit facility, office relocation, merger, or acquisition of another association and in connection with savings and loan holding company acquisitions. The public is invited and encouraged to state its views on such applications. The appropriate Federal Home Loan Bank holds hearings when material objections are raised so that community groups and individual consumers may state their views on the proposal. Absent formal applications, individuals can state their views about an association to that association and the Federal Home Loan Bank pursuant to CRA. In this way, consumers can participate in our supervisory process. The FHLBB also uses the CRA mailing lists of the twelve Federal Home Loan Banks to disseminate information to consumers.

III Informational Materials

The FHLBB has developed two brochures for consumers thus far. One is entitled "FSLIC-SAFETY" and explains the protections of the Federal Savings and Loan Insurance Corporation. The second, entitled "There Ought to Be a Law * * * There Is," explains the general Consumer Credit Protection Act protections and other consumer rights in an easy-to-read, concise pamphlet and attaches a consumer complaint/inquiry form, so that the agency may receive complaints and information from consumers. These publications are available in quantity for consumer groups and savings and loan associations for distribution in their lobbies. Availability has been announced by news releases. The FHLBB also publishes frequent news releases and fact sheets on current topics of interest to consumers.

FHLBB regulations require supervised associations to provide consumers with useful information about themselves. Specifically, consumers can obtain copies of an association's written underwriting standards upon request. The underwriting standards explain the bases upon which the association makes decisions on whether to grant particular loans. Associations also must publish a CRA statement that explains where in an area an association will lend and the types of loans it makes.

The FHLBB publishes *The Journal* which provides information to the industry and consumers and the FHLBB provides a number of other publications regarding the operations and financial statistics on savings and loan associations and their operations vis-a-vis other mortgage lenders in the country. Consumers having an interest in these publications should contact the FHLBB's Office of Communications, FHLBB, Washington, DC 20552.

The FHLBB has developed two films on compliance with the Equal Credit Opportunity Act and counseling. These films provide the savings and loan industry and consumers with information in these subject areas. The films are available from the Office of Communications as well.

IV Education and Training

DCCR is responsible for participating in the education of staff members about Executive Order 12160. The Executive Order has been disseminated to the staff.

DCCR also assists in the training of examiners with respect to consumer and civil rights issues. It provides lecturers at training sessions and is involved in the development of the curricula. FHLBB is also currently participating with the Federal Reserve Board, Comptroller of the Currently, the Federal Deposit Insurance Corporation, and the National Credit Union Administration in the development of an interagency school for the training of examiners. This school will enhance the training provided by this agency. DCCR also furnishes information to examiners on relevent subject areas on a regular basis.

DCCR furnishes technical information and comments on consumer matters to consumer groups, other agencies and Congress whenever such assistance is requested.

In addition, staff members may participate in examinations and investigations in the field. Staff are also members of consumer professional organizations which allow them to maintain expertise about current issues and to associate with other professionals in the field.

V Complaint Handling

The FHLBB accepts complaints against savings and loan associations within its supervisory jurisdiction. DCCR managers the FHLBB's complaint processing system which uses computer entry and retrieval of information. The complaint system includes record maintenance, investigation, and resolution of complaints. The FLBB reviews and evaluates complaints and uses information gained from complaint categories in the development of policy.

DCCR has a standardized system for logging complaints, inquires, and comments from consumers. This standardized data collection method permits tracking of cases and flexibility

in analyzing results for management purposes. Complainants who telephone or walk in are encouraged to file written complaints.

Office procedures ensure proper referrals, while the tracking system indicates the status of cases and any unusual delays in processing. Procedures also exist for investigations, types of responses, and appropriate follow-up action.

Complaints are generally investigated by the FHLBB's supervisory agent in the appropriate Federal Home Loan Bank in which the association is located. Written procedures delineate the type and extent of investigation and complainants may be interviewed if necessary to obtain additional information. In special cases complaints with extensive impact will be investigated directly by FHLBB examiners. The Board will take actions it deems necessary to correct conditions resulting from violations of FHLBB regulatons and Federal statutes.

DCCR generates Statistical reports on consumer complaints to highlight patterns and provide input for agency policymaking. DCCR provides reports to the twelve Federal Home Loan Banks for use in their administration of complaint handling and for use in individual investigations of savings and loan associations. It also furnishes reports to key agency officials for policy formulation.

The Department monitors the complaint handling system on a sample basis to ensure the proper resolution of individual cases. It evaluates data frequently to determine the operating efficiency of the system and for patterns which suggest management action.

Dated: September 30, 1980.

By the Federal Home Loan Bank Board.

Robert D. Linder,

Acting Secretary.

[FR Doc. 80-31365 Filed 10-7-80; 8:45 am]

BILLING CODE 6720-02-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before October 16, 1980. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: 10320-4.

Filing Party: Roy G. Bowman, Esquire, Sullivan & Beauregard, 1800 M Street, N.W., Washington, D.C. 20036.

Summary: Agreement No. 10320-4, among the members of the Brazil/U.S. Gulf Ports Pool, modifies the pool agreement to provide for the membership of Transportacion Maritima Mexicana, S.A., adjusts pool shares and minimum sailings to reflect the above, sets forth procedures for future accessions to membership, extends the term of the pool agreement through December 31, 1983, and provides for an effective date subsequent to governmental approval.

Agreement No.: 10382-2.

Filing Party: Roy G. Bowman, Esquire, Sullivan & Beauregard, 1800 M Street, N.W., Washington, D.C. 20036.

Summary: Agreement No. 10382-2, among the members of the Argentina/U.S. Gulf Ports Pool, takes note of the withdrawal of Navimex S.A. de C.V., records the argeement of Transportacion Maritima Mexicana to participate in the pool and redefines the pool shares of member lines in consequence of the above changes. The basic agreement, as amended, is the subject of Docket No. 80-45.

By Order of the Federal Maritime Commission.

Dated: October 3, 1980.

Francis C. Hurney,

Secretary.

[FR Doc. 80-31329 Filed 10-7-80; 8:45 am]

BILLING CODE 6730-01-M

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefore at the Washington Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before October 26, 1980. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: T-3921.

Filing Party: Antonio Zapater Cajigas, 50 Isabel Street, P.O. Box 1350, Ponce, Puerto Rico 00731.

Summary: Agreement No. T-3921, between the Administrative Board of the Municipal Piers of Ponce (Administrative Board) and Seahorse Marine Supplies, Inc. (Lessee), provides for the lease of 2720.0420 square meters of land, including a one story concrete structure, at Ponce Playa near the port zone of Ponce, to be utilized for the maintenance or repair of ships, machinery or parts belonging thereto, a gas service station, and for the sale of merchandise which are commonly sold at gas stations. The Lessee will pay the Administrative Board a total monthly rental of $500 per month for the first 5 years of the lease, and the rental thereafter shall be mutually agreed upon by the parties involved. The lease will run for 20 years.

Agreement No.: T-3926.

Filing Party: J. Robert Bray, Executive Director, Virginia Port Authority, 1600 Maritime Tower, Norfolk, Virginia 23510.

Summary: Agreement No. T-3926, between the Virginia Port Authority (VPA) and Port Authority Terminals, Inc. (PAT), provides that VPA will lease to PAT the Newport News Marine Terminal to be operated by PAT as a public marine facility. PAT will compensate VPA according to a mutually agreed formula as set forth in the agreement. The term of the lease is 5 years with provisions for extension periods.

Agreement No.: T-3927.

Filing Party: Frank Wagner, Deputy City Attorney, Office of City Attorney, Harbor Division, P.O. Box 151, San Pedro, California 90733.

Summary: Agreement No. T-3927, between the City of Los Angeles (City) and Overseas Terminal Company, Inc. (Overseas), provides for the nonexclusive preferential assignment by City to Overseas of Berths 228-230 at Los Angeles Harbor. As compensation, Overseas will pay City a minimum of $705,700 per annum, as well as a percentage of annual tariff charges in excess of $705,700. The term of the agreement is for 5 years. The agreement further provides that Overseas shall not solicit and serve any customer which is a tenant or is regularly served by a tenant of the Port of Los Angeles without the prior approval of the City's Port General Manager.

Agreement No.: 8120-22.

Filing Party: Nathan J. Bayer, Esquire, Brauner Baron Rosenzweig Kligler Sparber & Bauman, (The Firm of Herman Goldman), Attorneys at Law, 120 Broadway, New York, New York 10271.

Summary: Agreement No. 8120-22 modifies Article 3(e) of the United States Atlantic & Gulf/Haiti Conference Agreement to provide that, except by unanimous agreement and appropriate inclusion in conference tariff(s), members will not equalize or absorb inland charges to or from any port.

Agreement No.: 9848-10.

Filing Party: Roy G. Bowman, Esquire, Sullivan & Beauregard, 1800 M Street, N.W., Washington, D.C. 20036.

Summary: Agreement No. 9848-10, among the member lines of the U.S. Gulf Ports/Brazil Pool, extends the term of the Pool Agreement through December 31, 1983, restates the listing of excepted items, makes adjustments in the manner of calculating minimum sailing requirements and provides for the effective date of the modification subsequent to governmental approval.

Agreement No.: 9873-4.

Filing Party: Roy G. Bowman, Esquire, Sullivan & Beauregard, 1800 M Street, N.W., Washington, D.C. 20036.

Summary: Agreement No. 9873-4, among the members of the U.S. Pacific Coast/Brazil Pool, extends the term of the Pool through December 31, 1983, eliminates Rio Grande as a pool port, changes the pool accounting period to 12 months and further defines accounting procedures, restates the listing of excepted commodities, restates the minimum sailing requirements and the procedures for calculation, provides for payments by members according to the proportion the payment bears to its pool share and provides for the modification to become effective subsequent to governmental approval.

Agreement No.: 10330-1.

Filing Party: Roy G. Bowman, Esquire, Sullivan & Beauregard, 1800 M Street, N.W., Washington, D.C. 20036.

Summary: Agreement No. 10330-1, among the members of the Brazil/U.S. Pacific Coast Pool, extends the terms of the pool agreement through December 31, 1983, eliminates Rio Grande as a pool port, modifies the listing of excepted articles, changes annual sailing minimums and specifies the effective date of the modification subsequent to government approval.

Agreement No.: 10402.

Filing Party: Elmer C. Maddy, Esquire, Kirlin, Campbell & Keating, One Twenty Broadway, New York, New York 10271.

Summary: Agreement No. 10402, between The Bank Line Limited (BLL) and Shaw Savill and Albion Co., Ltd. (Shaw), provides for a joint venture to be known as The Bank and Savill Line Limited (B&S). BLL and Shaw, as shareholders in B&S, wish B&S to engage as a common carrier in the trades between Australasia, the Pacific Islands and Gulf ports and inland points in the United States and between ports and points in Australasia, the Pacific Islands and ports and inland points in the Caribbean. BLL and Shaw each contributed 50 percent of the capital of B&S, each holds 50 percent of the stock and voting control in B&S, and although they will not share in B&S's profits and losses, each will receive stock dividends as shareholders. B&S shall not employ more than three container vessels with a capacity of up to 800 TEU's each, and up to four composite breakbulk vessels or the equivalent in charter tonnage, each vessel having an average overall capacity of up to 750,000 cubic feet bale space included in which up to 400 TEU's can be accommodated. B&S's vessels are to be acquired by purchase or charter from the parties to the agreement, or chartered from other sources. B&S will issue its own bill of lading, will act as a single party in any conference or other agreement it may join, and shall file its own tariff in trades covered by this agreement where rates are not prescribed by a conference. The agreement is proposed to become effective when approved by the Commission, and to continue for an initial period of 5 years and thereafter until terminated by one party giving at least 12 months' written notice to the other.

Agreement No.: 10403.

Filing Party: Abraham A. Diamond, Abraham A. Diamond, Ltd., Suite 454 Barristers Building, Twenty-Nine South LaSalle Street, Chicago, Illinois 60603.

Summary: Agreement No. 10403, between C. S. Greene and Company, Inc. (an Illinois Corporation) (Greene), a Port IV Freight Forwarder (an affiliate of C. S. Greene and Company, Inc., a New York Corporation holding an independent ocean freight forwarder license (FMC No. 927)), and Carolina Puerto Rico, Inc. (CPR), a Non-Vessel Operating Common Carrier, provides that Greene will furnish inland transportation on cargo from United States Mid-West points to Jacksonville, Florida, where it is turned over to CPR for water movement to Puerto Rico. The thru-service is to be called "The Florida Express." Each party will bill the shipper or consignee at the applicable rates. Greene will stuff all containers for CPR at agreed upon rates. The agreement established the limited agency arrangements between the parties.

By Order of the Federal Maritime Commission.

Dated: October 2, 1980.

Joseph C. Polking,

Assistant Secretary.

[FR Doc. 80-31330 Filed 10-7-80; 8:45 pm]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Le Roy C. Darby, Inc.; Proposed Continuation of Lending Activities

Le Roy C. Darby, Inc., Monona, Iowa, 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)(2) of the Board's Regulation Y (12 CFR § 225.4(b)(2)), for permission to continue to engage in lending activities commenced *de novo.*

Applicant states that the activities include making and servicing of loans which may or may not be insider transactions, i.e. Farm and City Real Estate Loans, Commercial and Industrial Loans, single payment and installment loans for personal expenses, including purchased paper. These activities would be performed from offices of Applicant in Monona, Iowa, and the geographic areas to be served are the town of Monona and surrounding area. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce 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 interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than October 27, 1980.

Board of Governors of the Federal Reserve System, September 25, 1980.

Cathy L. Petryshyn,

Assistant Secretary of the Board.

[FR Doc. 80-30656 Filed 10-7-80; 8:45 am]

BILLING CODE 6210-01-M

Clara City Bancorporation, Inc.; Formation of Bank Holding Company

Clara City Bancorporation, Inc., Clara City, Minnesota, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 96.0 percent or more of the voting shares of Clara City State Bank, Clara City, Minnesota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 1, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 2, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-31343 Filed 10-7-80; 8:45 am]

BILLING CODE 6210-01-M

Farmers Bancshares, Inc.; Formation of Bank Holding Company

Farmers Bancshares, Inc., Nebraska City, Nebraska, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 99.8 per cent or more of the voting shares of Farmers Bank, Nebraska City, Neraska. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 30, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 3, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-31346 Filed 10-7-80; 8:45 am]

BILLING CODE 6210-01-M

Hopkins Financial Corp.; Formation of Bank Holding Company

Hopkins Financial Corporation, Mitchell, South Dakota, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of Live Stock State Bank, Mitchell, South Dakota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 30, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 3, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-31345 Filed 10-7-80; 8:45 am]

BILLING CODE 6210-01-M

McPherson County Bancorp., Inc.; Formation of Bank Holding Company

McPherson County Bancorp., Inc., Canton, Kansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The Farmers State Bank & Trust Company, Canton, Kansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 1, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 2, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-31342 Filed 10-7-80; 8:45 am]

BILLING CODE 6210-01-M

Western Development, Inc.; Formation of Bank Holding Company

Western Development, Inc., Bozeman, Montana, has applied for the Board's approval under section 3 (a) (1) of the Bank Holding Company Act (12 U.S.C. 1842(a) (1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Western Bank of Bozeman, Bozeman, Montana. The factors that are considered in acting on the application are set forth in section 3 (c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than October 30, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 3, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-31344 Filed 10-7-80; 8:45 am]

BILLING CODE 6210-01-M

Shawmut International Corp.; Change in Location of Principal Office

Shawmut International Corporation, Boston, Massachusetts, a corporation organized under section 25(a) of the Federal Reserve Act, has applied for the Board's approval to change the location of its principal office to Miami, Florida. Shawmut International Corporation operates as a subsidiary of Shawmut

Bank of Boston, N.A., Boston, Massachusetts.

The factors that are to be considered in acting on this application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Boston. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than October 20, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 3, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-31435 Filed 10-7-80; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR E-191]

Supply and Procurement; Code of Ethics for Government Service Poster, Availability

Subject: Code of Ethics for Government Service poster

1. *Purpose.* This bulletin announces the availability of a poster displaying the Code of Ethics for Government Service.

2. *Expiration date.* This bulletin expires June 30, 1981.

3. *Background.*

a. Public Law 96-303, enacted July 3, 1980, requires that ". . . under such regulations as the Administrator shall prescribe, each agency shall display in appropriate areas of Federal buildings, copies of the Code of Ethics for Government Service." The law defines an "agency" as "an Executive agency (as defined by section 105 of title 5, United States Code), the United States Postal Service, and the Postal Rate Commission." Further, the law defines "Federal building" as "any building in which at least 20 individuals are regularly employed by an agency as civilian employees." The law is effective October 1, 1980.

b. The Code of Ethics for Government Service, which is available as a 15-inch by 21-inch laminated poster, is now in stock and may be requisitioned from GSA using the FEDSTRIP system.

c. Federal Property Management Regulations will be issued soon mandating the display of the poster in appropriate areas of Federal buildings.

4. *Availability.* Agencies may obtain copies of the Code of Ethics for Government Service poster by submitting a requisition in FEDSTRIP format to the GSA regional office providing support to the requisitioning agency. Ordering information for the poster is as follows: national stock number (NSW) 7690-01-099-8167; unit of issue—ea; and unit price—50 cents to cover shipping and handling.

R. G. Freeman III,

Administrator of General Services.

[FR Doc. 80-31232 Filed 10-7-80; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

White House Conference on Aging, Technical Committee on Creating an Age Integrated Society; Meeting

The White House Conference on Aging Technical Committee was established to provide scientific and technical advice and recommendations to the National Advisory Committee of the 1981 White House Conference on Aging and to the Executive Director of the 1981 White House Conference on Aging in developing issues to be considered and to produce technical documents to be used by the Conference.

Notice is hereby given pursuant to the Federal Advisory Committee Act, (Pub. L. 95-463, 5 U.S.C. App. 1, sec. 10, 1976) that the Technical Committee on Creating an Age Integrated Society—Implications for the Economy will hold a meeting on Tuesday, October 21, 1980, from 9:00 AM to 4:00 PM at 1660 L Street, N.W., Suite 1100, Washington, D.C. 20036.

At this meeting the committee will review findings of Phase I descriptive studies task and decide on the policy options for research and analysis during Phase II.

Further information on the Technical Committee meeting may be obtained from Mr. Jerome R. Waldie, Executive Director, White House Comference on Aging, Room 4059, 330 Independence Avenue, S.W., Washington, D.C. 20201, telephone (202) 245-1914. Technical Committee meetings are open for public observation.

This announcement is being published with less than 15 days advance notice because of difficulties in securing federal meeting space.

Dated: October 2, 1980.

Mamie Welborne,

HDS Committee Management.

[FR Doc. 80-31285 Filed 10-7-80; 8:45 am]

BILLING CODE 4110-92-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Arizona—Intensive Inventory for BLM Lands in the Safford District Contiguous to the Coronado National Forest; Final Decision in Effect

The final decisions on the intensive inventory of approximately 13,533 acres of public land contiguous to the Coronado National Forest, announced in the **Federal Register** on July 11, 1980, (45 FR 46913) became effective on August 18, 1980. The decisions are final and in effect for Inventory Units AZ-4-66, 70, 72, 73, 79, 80, 81 in the Safford District. No protests against any of these decisions were received.

Clair M. Whitlock,

State Director.

September 29, 1980.

[FR Doc. 80-31300 Filed 10-7-80; 8:45 am]

BILLING CODE 4310-84-M

[S 1251]

California; Order Providing for Opening of Public Lands

September 30, 1980.

1. In an exchange of lands made under the provisions of Section 8 of the Act of June 28, 1934, 48 Stat. 1269, 1272, as amended and supplemented, 43 U.S.C. 315g (1964), the following land has been reconveyed to the United States:

Mount Diablo Meridian

T. 24 N., R. 17 W.,

Sec. 25, SW¼NE¼ and W½SE¼.

The area aggregates 120 acres in Mendocino County, California.

2. The land shall be open to operation of the public land laws generally at 10 a.m. on November 10, 1980, subject to valid existing rights, the provision of existing withdrawals, and provisions of the Bureau of Land Management classification for multiple use management. The land has been and continues to be open to the mining laws (30 U.S.C., Ch. 2) and the mineral leasing laws.

3. Inquiries concerning the land should be addressed to the Bureau of Land Management, Department of the

Interior, Room E-2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

Harold R. Dietz,

Acting Chief, Lands Section, Branch of Lands and Minerals Operation.

[FR Doc. 80-31304 Filed 10-7-80; 8:45 am]

BILLING CODE 4310-84-M

[Colorado 11565 WR]

Classification of Public Lands: Revocation

September 26, 1980.

Effective November 20, 1970, the following public lands were classified for disposal under the Act of September 19, 1964 (43 U.S.C. 1411-18), and one or more of the following public land laws: Section 8, Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315g); Section 2455 of the Revised Statutes (43 U.S.C. 1171); Act of September 26, 1968 (82 Stat. 870); and Act of June 14, 1926, as amended (43 U.S.C. 869; 869-A).

New Mexico Principal Meridian

T. 46 N., R. 7 W.,
Sec. 19 SE¼SW¼, Lot 4;
Sec. 30 NE¼NW¼, Lot 1;
Sec. 32 NW¼SE¼.
T. 44 N., R. 8 W.,
Sec. 13 Lots 28, 30;
Sec. 14, E½SE¼.
T. 45 N., R. 8 W.,
Sec. 3, Lot 3;
Sec. 8, SE¼SW¼;
Sec. 23, Lot 2;
Sec. 35, portion of W½SW¼NW¼NW¼ west of highway.
T. 46 N., R. 8 W.,
Sec. 23, NE¼SE¼;
Sec. 24, SW¼NE¼, SE¼NW¼, N½SW¼, SE¼SW¼,SE¼;
Sec. 25, NE¼NE¼.
T. 45 N., R. 9 W.,
Sec. 14, SW¼SE¼;
Sec. 23, E½NW¼;
Sec. 24, NE¼SW¼, NW¼SE¼;
Sec. 27, SE¼NE¼.
T. 46 N., R. 9 W.,
Sec. 15, NE¼NE¼;
Sec. 23, SE¼NW¼.
T. 47 N., R. 9 W.,
Sec. 24, NE¼SE¼.
Containing approximately 1,248 acres.

This classification segregated the lands from disposal under certain public land laws and from location and entry under the general mining laws, but not from leasing under the mineral leasing laws.

The classification has been reviewed under Section 204(1), Federal Land Policy and Management Act of 1976 (90 Stat. 2754). All of the cited statutes, except the Act of June 14, 1926, were repealed by FLPMA (2786-2794) or have expired by their own terms. There are no plans for disposal of the lands under the Act of June 24, 1926.

The classification no longer serves a useful purpose and is hereby revoked. At 7:45 a.m. on November 7, 1980, the lands will be open to operation of the public land laws, including the general mining laws, subject to valid existing rights and the requirements of applicable law. Inquiries concerning the lands may be addressed to the Bureau of Land Management, Colorado State Bank Building, 1600 Broadway, Room 700, Denver, CO 80202.

Charles W. Luscher,

Acting State Director.

[FR Doc. 80-31256 Filed 10-7-80; 8:45 am]

BILLING CODE 4310-84-M

[Colorado 30190-PS]

Conveyance of Public Lands; Gunnison and Hinsdale Counties, Colo.

Notice is hereby given that; pursuant to the Act of October 21, 1976 (90 Stat. 2743, 2750; 43 U.S.C. 1701, 1713), Joseph Youmans, Powderhorn, Colorado 81243, has purchased by noncompetitive sale public lands in Gunnison and Hinsdale Counties described as:

New Mexico Principal Meridian, Colorado

T. 45 N., R. 2 W.,
Sec. 13: Lot 13.

The lot contains 6.3 acres, the county boundary line being indefinite, the exact acreage in each county cannot be determined by this agency. The purpose of this Notice is to inform the public and interested state and local governmental officials of the issuance of conveyance documents to Mr. Youmans.

Ronald J. Cole,

Chief, Division of Technical Services.

September 29, 1980.

[FR Doc. 80-31239 Filed 10-7-80; 8:45 am]

BILLING CODE 4310-84-M

[Colorado 2702 WR]

Multiple Use Classification: Partial Revocation and Partial Continuation

September 26, 1980.

Effective January 4, 1968, the following public lands were classified for multiple use management in accordance with the Act of September 19, 1964, (43 U.S.C. 1411-18) under serial number Colorado 2702.

Sixth Principal Meridian

T. 12 S., R. 101 W.,
Sec. 28, W½NW¼, Lots 2, 3, 4, 5;
Sec. 29, Lots 1, 8, 9.
T. 12 S., R. 103 W.,
Sec. 26, SW¼SE¼, (now lot 3);
Sec. 35, W½NE¼, SE¼NW¼, E½SW¼ (now lots 2, 3, 4, 8, 9).
T. 13 S., R. 102 W.,
Sec. 24, W½SE¼ (now lots 4, 5);
Sec. 25, E½NW¼ (now lots 2, 3).
Containing approximately 694 acres.

This classification segregated the lands from appropriation under certain public land laws, and from location and entry under the general mining laws but not from leasing under the mineral leasing laws.

The classification has been reviewed under the Federal Land Policy and Management Act of 1976 (90 Stat. 2754). The results of this review follow.

The lands in T. 12 S., R. 101 W. are traversed by a a public road running generally southeast to northwest. All of these tracts lying north and east of the road were included in the revised boundaries of the Colorado National Monument in 1978. Lots 4 and 5, Section 28, and Lot 9, Section 29, were reconveyed to the United States in exchange for other public lands in 1943. These lands were not reopened to entry after the reconveyance. The classification no longer serves a useful purpose insofar as these lands are concerned, and it is hereby revoked.

At 7:45 a.m. on November 7, 1980, the lands, including those reconveyed to the United States, will be open to operation of the public land laws, including the general mining laws, subject to valid existing rights and the requirements of applicable laws. The portions of these tracts lying outside the Colorado National Monument total approximately 85 acres.

All of the described lands in T. 12 S., R. 103 W., and T. 13 S., R. 102 W., totaling approximately 609 acres, are occupied by developed Bureau of Land Management public recreation sites which should remain protected from location and entry under the general mining laws. The classification of these lands is therefore serving a useful purpose and is continued for 20 years, unless earlier terminated by proper authority, at which time it will be reviewed to determine whether it should be continued further.

Inquiries concerning the opened lands may be addressed to the Bureau of Land Management, 1600 Broadway, Room 700, Denver, CO 80202.

Charles W. Luscher,

Acting State Director.

[FR Doc. 80-31257 Filed 10-7-80; 8:45 am]

BILLING CODE 4310-84-M

Salt Lake District; Off-Road Vehicle Designation Decisions

Notice is hereby given relating to the use of off-road vehicles on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in

43 CFR 8340. The following described lands under administration of the Bureau of Land Management are designated as open, limited or closed to off-road motorized vehicle use.

The 170,583 acre area affected by the designations is known as the Randolph Planning Unit, which includes all public lands in Rich County, Utah. These designations are a result of land use decisions made in the 1980 Randolph Management Framework Plan and the final Randolph Planning Unit Grazing Management Environmental Statement. Public comments were solicited during two workshops, scoping meeting and individual contacts, and were included in the designation decision making process. These designations are published as final today. Under 43 CFR 4.21, an appeal may be filed within 30 days with Interior Board of Land Appeals.

A. Open Designation

The areas open to motorized vehicles year round encompass approximately 81,233 acres including those areas which are open subject to permission of private landowners who control access. Open designation was determined to be appropriate since use conflicts do not exist and off-road vehicle activity is an important recreational and work function.

Area Description

Beginning in the southeast corner of the Crawford Mountains; from the Wyoming border west to the base of the mountains, north to Warner Hollow and south to the main road.

Scattered parcels south of Laketown Canyon to Old Canyon road and west to the Forest Service boundary.

South from Big Creek road, west to the forest boundary along Lewis Ridge and east to the base of Limestone Peak.

North of Sixmile Reservoir, east to State Highway 16 and west to the north fork of Sixmile Creek.

Open With Private Landowners Permission

Includes all the small scattered public land parcels both north and south of south Eden Canyon.

Scattered parcels south of State Highway 16 to lands surrounding Neoponset Reservoir.

B. Limited Designation

Areas designated "limited" are interspersed with "open" and "closed" areas throughout Rich County. Breakdown of the limited areas are as follows:

1. Limited due to unstable watershed—47,800 acres. Area is closed to all motorized wheeled vehicles when wet in spring until June 1 except on designated roads. The area is open to travel the remainder of the year.

Area Description

From Sage Creek Junction north to Sixmile Reservoir, northwest to the north fork of Sixmile Creek, west to Pine Canyon, then directly south to Laketown Canyon Road.

From one-half mile west of Little Creek Reservoir, east to Utah State Highway 16 and north to Otter Creek.

Directly west of Randolph following the Old Canyon Road, then south, passing Dry Canyon to Big Creek Junction, then east, returning to Randolph by way of the Big Creek Road.

South from Valley Ridge to Crawford Canyon and west towards the forest boundary, then east up Crawford Canyon, including the Big Creek Enclosure.

From Lewis Ridge south to Birch Creek Reservoir, to the Walton Canyon Road, east to the Dry Basin Reservoir and west to Cutoff Canyon.

2. Limited due to critical wildlife range—Approximately 25,130 acres.

Area is closed to all motorized wheeled vehicles and over the snow machines from November 15 to May 1 except on designated roads.

Area Description

Most of the Crawford Mountains to the Wyoming border, excluding the southeast corner north to Warner Hollow.

Public Lands north of Utah State Highway 39 to public lands surrounding Limestone Peak.

3. Limited due to critical deer, elk and moose winter range—Approximately 10,240 acres.

Area is closed to all motorized wheeled vehicles and over the snow machines from November 15 to May 1. The area is open the remainder of the year subject to permission of the landowner who controls access.

Area Description

Scattered public land parcels intermingled with the private lands in the Home Canyon area.

4. Limited due to natural and scenic values (Areas of Critical Environmental Concern)—Approximately 2,660 acres. Motorized vehicles permitted only on designated roads.

Area Description

All the public land surrounding the Laketown Canyon area which has been identified as an Area of Critical Environmental Concern (ACEC).

C. Closed Designation

Approximately 3,520 acres of public land have been closed to all ORV use including over the snow machines. Travel is restricted to established roads and trails within the indicated boundaries.

Area Description

North of Otter Creek, which includes the public land surrounding Last Spring.

The public lands located between the middle branch of Otter Creek and Otter Creek itself.

Identified riparian areas closed to all wheeled vehicles and over the snow machines 50 feet on either side of the stream, except where designated roads are marked.

Travel is restricted to established roads into campgrounds and reservoir; all other roads and trails are closed within indicated boundaries.

These designations become effective upon publication in the **Federal Register** and will remain in effect until rescinded or modified by the authorized officer. An environmental assessment describing the impact of these designations is available for inspection at the office listed below.

Any additional information about these designations may be obtained from Area Manager, Bear River Resource Area, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119.

Dated: September 26, 1980.

Frank W. Snell,

District Manager.

[FR Doc. 80-31185 Filed 10-7-80; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Mitigation Policy Comment Period

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of 32-day extension of the comment period of the draft mitigation policy.

SUMMARY: Requests have been received from some State fish and wildlife agencies and other parties including the Edison Electric Institute and the law firm of Duncan, Weinberg and Miller for a time extension for preparation of comments. In the interest of providing full opportunity for public review the Department of Interior is extending the public comment period on the Fish and Wildlife Service's draft mitigation policy for 32 additional days.

DATES: The new deadline for written comments is November 10, 1980. The

draft policy was published September 9, 1980 (45 FR 59486).

ADDRESS: As before, comments should be sent to: Associate Director-Environment, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, Attention: John Christian.

FOR FURTHER INFORMATION CONTACT: John Christian, Program Development Staff—Environment, Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, (202) 343-7151.

Dated: October 2, 1980.

James D. Webb,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 80-31350 Filed 10-7-80; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: This Notice announces that Exxon Company, U.S.A., Unit Operator of the High Island Block A-280 Federal Unit Agreement No. 14-08-0001-16942, submitted on September 19, 1980, a proposed Initial Plan of Development/Operations describing the activities it proposes to conduct on the High Island Block A-280 Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 837-4720, ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: September 25, 1980.

J. Courtney Reed,

Staff Assistant for Resource Evaluation.

[FR Doc. 80-31254 Filed 10-7-80; 8:45 am]

BILLING CODE 4310-31-M

U.S. Board on Geographic Names; Domestic Names Committee; Meetings

Announcement is made of the following two meetings of the Committee:

Name: U.S. Board on Geographic Names, Domestic Names Committee.
Date: November 5, 1980.
Place: Room B20, Federal Building, Salt Lake City, Utah.
Time: 0930-1130: 1300-1700.
Date: November 14, 1980.
Place: Room 7000 A & B, U.S. Department of the Interior, Main Building, 18th & C Streets, N.W., Washington, D.C.
Time: 0930-1130: 1300-1700.

Purpose of meetings: A proposal to change the name of Mt. McKinley in Alaska to the Indian name "Denali" will be discussed. Interested parties may express their views on the proposal prior to a decision on the matter by the entire U.S. Board on Geographic Names and the Secretary of the Interior.

The meetings of the Domestic Names Committee are open to the public. Parties wishing to make oral statements at the meeting(s) are asked to notify the Committee at least 5 days prior to meeting(s) which they plan to attend in order that time may be reserved for their presentations.

Any member of the public may file a written statement with the Committee, before, during, or immediately after each meeting. To the extent that time permits, the Committee Chairman may allow public presentations of oral statements at the meeting(s) from individuals who have not pre-registered with the Committee.

All communications regarding either meeting should be addressed to: Mr. Donald J. Orth, Executive Secretary, Domestic Names Committee, U.S. Board on Geographic Names, 523 National Center, Reston, Virginia 22092.

Dated: September 30, 1980.

Donald J. Orth,

Executive Secretary, Domestic Names Committee, U.S. Board on Geographic Names.

[FR Doc. 80-31168 Filed 10-7-80; 8:45 am]

BILLING CODE 4310-31-M

Water and Power Resources Service

Proposed Contracts With Holders of Miscellaneous Present Perfected Rights in the Lower Colorado River Basin; Intent To Enter Into Contracts With and Availability of Proposed Contracts for Holders of Miscellaneous Present Perfected Rights

The Department of the Interior, through the Water and Power Resources Service, intends to enter into contracts for delivery of water from storage in Lake Mead with holders of "Miscellaneous Present Perfected Rights," pursuant to the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1957), which became effective by Presidential proclamation on June 25, 1929. That act requires that a contract must be executed between the United States and water users before releases from Lake Mead can be made for irrigation and domestic uses in the States of Arizona, California, and Nevada.

The Supreme Court decree of *Arizona v. California*, entered June 3, 1963 (376 U.S. 340), as amended by decree entered February 28, 1966 (383 U.S. 268), and as supplemented by decree entered January 9, 1979 (439 U.S. 419), describes 49 specific land areas and two cities that have "Miscellaneous Present Perfected Rights" established with Arizona and California.

The purpose of this notice is to alert owners of those land areas and the cities of Parker and Yuma, Arizona, that a contract with the United States, through the Water and Power Resources Service, will be required in the future for diversion of Colorado River water released from Lake Mead. Further, the notice is to announce to the water users with "Miscellaneous Present Perfected Rights" that a draft contract is available for public review and comment for a 90-day period following the date of this publication.

The holders of these rights and the public at large are invited to write to the Regional Director, Lower Colorado Region, Water and Power Resources Service, P.O. Box 427, Boulder City, Nevada 89005, for a copy of the draft contract and instructions for obtaining an executed contract. Telephone requests may be made by calling Mr. George Blake or Mr. LeGrande Neilsen at (702) 293-8536.

As drafted, the proposed contract provides in perpetuity for delivery of water from Lake Mead by the United States in return for metering.

maintaining diversion records, and reporting the quantity of water diverted to the contracting officer without repayment or water service charges. The final terms and conditions of the proposed contract are dependent upon the approval of the proposed contract form by the Secretary of the Interior.

Any meetings scheduled by Water and Power Resources Service with potential contractors to discuss terms and conditions of the proposed contract shall be open to the general public as observers. Advance notice of such meetings will be furnished to those parties requesting such notice from the office identified above. All written correspondence concerning the proposed contracts will be made available to the general public pursuant to the terms and conditions of the Freedom of Information Act (80 Stat. 383), as amended.

Dated: October 1, 1980.

J. D. Ellingboe,

Acting Assistant Commissioner of Water and Power Resources.

[FR Doc. 80-31267 Filed 10-7-80; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Finance Applications

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

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.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

By the Commission, Review Board Number 5, The Motor Carrier Board, Members Krock, William, and Taylor.

MC-FC-78491. By decision of May 1, 1980, issued under 49 U.S.C. 10931 or 10932 and the transfer rules at 49 CFR 1132, The Motor Carrier Board approved the transfer of Josh, Inc., of Fort Worth, TX, of Certificate of Registration No. MC-121340 (Sub-No. 1) issued November 4, 1968, to L&A Transportation, Inc., of Houston, TX, evidencing a right to engage in transportation in interstate commerce corresponding in scope to Certificate No. 5858, dated February 12, 1962 issued by the Railroad Commission of TX, authorizing livestock, livestock feedstuff, farm machinery and grain, from Houston to points in Texas, and return; oilfield equipment, pipe machinery, and various other named commodities, between points in Texas. Applicant's representative is: A. William Brackett, 1108 Continental Life Bldg., Fort Worth, TX 76102. TA lease is sought. Transferee holds no authority.

MC-FC-78581. By decision of May 15, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132 The Motor Carrier Board approved the transfer to Sans Transport Co., Inc., of Chicago, IL, of Certificate No. MC-142685 issued February 7, 1979 to John R. Verdino, d.b.a. J&S Motor Service, of Chicago, IL, authorizing the transportation of *packaging materials and supplies,* used in butcher shops, from the facilities of Kraft Paper Sales Co., located at Harvey, IL to Goshen, Portage, and Valparaiso, IN. Applicant's representative is: Stephen H. Loeb, Suite 2027, 33 N. LaSalle St., Chicago, IL 60602. Transferee is not a carrier. An application seeking temporary authority has not been filed.

MC-FC-78588. By decision of August 25, 1980, on reconsideration, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132 Review Board Number 5 approved the transfer to Perry R. Meek Trucking Co., Inc. of Indianapolis, IN of certificate No. MC-100659 Sub-No. 1 issued 11-5-79 to Chapman Trucking, Inc., of Wanatah, IN, authorizing the transporation of coal, (1) between points in Illinois, Indiana, and Kentucky, (2) from points in Indiana and Kentucky, to points in Ohio and (3) from points in West Virginia to Richmond, IN, subject to transferor retained authority in MC-100659 (Sub-No. 1) be restricted against the transportaion of coal. Applicant's representative is: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 47240, Alki E. Scopelitis, 1301 Merchants Plaza, Indianapolis, IN 46204, TA application has not been filed.

MC-FC-78640. By decision of August 28, 1980, issued under 49 U.S.C. 10926 and the transferrules at 49 CFR Part 1132, The Motor Carrier Board approved the transfer to Glosson Enterprises, Inc. of Lexington, NC of Permit/Certificate No. MC-41255 in part (Sub-Nos. 6 (in part), 19, 29, 40, and 78 (in part) issued September 16, 1971, July 25, 1946, March 14, 1966, August 11, 1960, August 13, 1964 and June 14, 1976, to Charles E. Herbert, Trustee, Glosson Motor Lines, Inc., of Lexington, NC, authorizing the transportation of *New furniture,* from points in that part of NC on, east and south of a line beginning at the Virginia-North Carolina State line and extending along U.S. Highway 29 to Reidsville, NC, thence along U.S. Highway 158 to Mocksville, NC, thence along U.S. Highway 64 to Statesville, NC, thence along U.S. Highway 21 to Charlotte, NC, and thence along U.S. Highway 29 to the North Carolina-South Carolina State line, to points in DC; *Sewing machines,* and *materials, supplies,* and *equipment* used or useful in sewing, from Salisbury, NC, to Philadelphia, PA, and New York, NY; *Petroleum products,* in containers, and *service-station equipment,* from Roanoke and Richmond, VA, to Charolette, NC; *Chemicals,* from Whelan, TN, to Salisbury, NC; *Empty pasteboard containers and supplies and equipment used in the manufacture and packing of textiles, and textile products,* between Salisbury, NC, on the one hand, and, on the other, Poulan, GA; *Empty glass containers,* from Elmira, NY to points and places in NC; *Empty glass containers,* from Elmira NY to points in VA; *Frozen fruits,* from Lexington, NC to Pittsburgh, PA, and Albany, NY; *New furniture,* crated, and *New furniture,* uncrated, as described in Appendix II to the report in *Descriptions in Motor Carrier Certificates, 61 M.C.C. 209,* from points in Alamance, Beaufort, Chatham, Davie, Surry, and Wayne Counties, NC, to points in Arkansas, Louisiana, Mississippi, Texas, and Oklahoma.

Restriction: New furniture, uncrated, moving to points in OK and TX shall be transported only in mixed leads with new furniture, crated; *New furniture,* from point in NC east of Transylvania; Haywood, Madison, Yancey, Mitchell, Avery, Watagua, Ashe, and Alleghany Counties, to points in Georgia, Florida, Alabama, Arkansas, Louisiana, Oklahoma, Texas, and Mississippi; Petroleum products, in containers, and service station equipment, from Roanoke, and Richmond, VA, to points in North Carolina.

Note.—Review Board Number 5 denied the request to transfer new furniture from a defined portion of NC to points in GA, FL, and AL found in the first paragraph of No. MC-41255, as that authority was previously sold in MC-F-13399 to Roy Stone Transfer Corp.

MC-FC-78709. By decision of August 21, 1980, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132 Review Board Number 5 approved the transfer to William D. Clifton, d/b/a Clifton Movers, of Rantoul, IL, of certificate No. MC-129436 issued 3-25-70 to Carl Combest, d/b/a Combest Moving & Storage, of Rantoul, IL, authorizing the transportation of used household goods, between points in Ford, Vermilion, and Champaign Counties, IL. Applicant's representative is: Robert T. Lawley, 300 Reisch Bldg, Springfield, IL, 62701. Transferee is not a carrier. TA lease is not sought.

MC-FC-78710. By decision of August 21, 1980, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132 Review Board Number 5 approved the transfer to HDW Enterprises, Inc. of Maryville, MO, of certificate No. MC-11748 (Sub-Nos. 10 and 13), issued 4-19-79 and 5/8/79 to Western Refrigerated Express, Inc., of Raytown, MD, (formerly Williams Moving and Storage Co., Inc.), authorizing the transportations of meats and similar commodities, from the facilities of MBPXL Corp., at or near Phelps City, MO to points in the United States (with exceptions), and from MBPXL Corp. near Friora, TX, to Phelps City, MO. Applicant's representative is: Frank W. Taylor, Jr., 1221 Baltimore, Suite 600, Kansas City, MO 64105.Transferee holds no authority. TA lease not sought.

MC-FC-78711. By decision of August 25, 1980, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132 Review Board Number 5 approved the transfer to Jerry H. Sills, of Alexandria, VA, of certificate No. MC-36900 and subs thereunder, issued to Astro Van Lines, Inc., of Alexandria, VA, authorizing the transportation of household goods, between points in various named states including most of the United States. Applicant's representative is: Martin R. Martino, 333 S. Glebe Rd., Arlington, VA 22204. Transferee holds no authority. TA lease not sought.

MC-FC-78712. By decision of August 25, 1980, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132 Review Board Number 5 approved the transfer to Apache Express, Ltd, of Lannon, WI, of certificate No. MC-126159 (Sub-Nos. 1, 3, 6, 7, and 9) and Permit No. MC-126159 (Sub-No. 11) issued to Roc-Salt Transport, Inc., of Waukesha, WI. authorizing the transportation of salt and salt products, from and to named points in IL, WI, MI, OH, IN, IA, and MN. Applicant's representative is: Richard C. Alexander, 710 N. Plankinton Ave., Milwaukee, WI 53203. Transferee holds no authority. TA lease not sought.

MC-FC 78721. By decision of August 22, 1980, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132 Review Board Number 5 approved the transfer to Central Wyoming Transportation Company, Inc., of Casper, WY, f certificate No. MC-133048 (Sub-No. 2) issued 11/24/69, acquired by Dickerson J. Smith, d/b/a Central Wyoming Transportation Company, of Casper, WY, in No. MC-FC-76741, authorizing the transportation of passengers & their baggage, and express and newspapers when moving in the same vehicle with passengers, between Casper and Rawlins, WY serving all intermediate points: From Casper over WI Highway 220 to Jct U.S. Highway 287 at Three Furks (Muddy Gap), WY return over the same route. Between Casper and Medicine Bow, WY, serving all intermediate points: From Casper over WY Highway 220 to Jct WY Highway 487, thence over WY Highway 487 to Medicine Bow, and return over the same route. Passengers and their baggage in charter operations. Beginning and ending at points in Carbon & Natrona Counties, WY and extending to points in the United States including Alaska. Applicant's representative: Hartley Hageness, P.O. Box 2355 Casper, WY 82602 Transferee holds no authority. TA lease is not sought.

MC-FC-78722. By decision of August 29, 1980, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 5 approved the transfer to EDGAR J. GAUER, an individual, of Terre Haute, IN, of Certificate No. NC-116131 (Sub-No. 3) issued September 15, 1978 to BAUERMEISTER HEGEMAN, INC., of Terre Haute, IN, authorizing the transportation of *trailers and trailer chassis* (other than those designed to be drawn by passenger automobiles), and *parts and accessories* for trailers and trailer chassis, in initial movements, from the facilities of Great Dane Trailers Indiana, Inc., at or near Brazil, IN to points in Indiana, Kentucky, Illinois, Ohio, Michigan, Missouri, Wisconsin, Alabama, Tennessee, Iowa, Louisiana, Minnesota, Nebraska, New York, Pennsylvania, Texas, West Virginia, and Arkansas. Applicants' representative is: W.H. Grosbach, 711 E. Jackson Street, Brazil, IN 47834. Transferee presently holds no authority from the Commission. TA application has not been filed.

MC-FC-78725. By decision of August 25, 1980, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1132 Review Board Number 5 approved the transfer to Jerry L. Jensen of Kimballton, IA, of certificate No. MC-91927 issued 7/10/41, acquired by B. Polson (Maxene Olson, Exec), of Elk Horn, IA, authorizing the transportation of livestock, from Elk Horn, IA, to Omaha, NE, from Elk Horn over Iowa Highway 173 to junction Iowa Highway 64, thence over Iowa Highway 64 to Council Bluffa, IA and thence across the Missouri River to Omaha; and hay, feed, livestock, agricultural implements, and parts, petroleum, in containers, furniture, lumber, building materials, iron and steel articles, and roofing and fencing materials, from Omaha over the above-specified route, to Elk Horn. TA applicant has not been filed. Transferee holds no authority.

MC-FC-78727. By decision of August 28, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132 Review Board Number 5 approved the transfer to Watler Brothers Trucking, Incorporated, of Chambersburg, PA, of (1) certificate No. MC-123314 (Sub-No. 14), issued March 22, 1972, to John F. Walter, Inc., authorizing the transportation, over irregular routes of foodstuffs and pet foods (except frozen foods and commodities in bulk), and advertising matter, displays and premiums in mixed loads with foodstuffs or pet food, from the plantsite and storage facilities of The Quaker Oats Company, at or near Shiremanstown, Pennsylvania, to Florence, Burlington County, New Jersey, with no transportation for compensation or return, except as otherwise authorized. (2) certificate No. MC-123314 (Sub-No. 24), issued July 15, 1980, to John F. Walter, Inc., authorizating the transportation, over irregular routes, of *such commodities* as are dealt in by grocery and feed business houses (except commodities in bulk), from the facilities of Ralston Purina Company, at

or near Mechanicsburg, PA, to points in New Jersey and those in New York on and south of Interstate Hwy 84, restricted against tacking or joinder with any other irregular route authority held by carrier unless specifically authorized. (3) Certificate No. MC-123314 (Sub-No. 27), issued July 21, 1980, to John F. Walter, Inc., authorizing the transportation, over irregular routes of (1) *such merchandise* as is dealt in by grocery and feed business houses, and (2) *materials, ingredients, and supplies* used in the manufacture, manufacture, and distribution of the products in (1) above, between the facilities used by Ralston Purina Company, at or near Hampden Township, Cumberland County, PA, on the one hand, and, on the other, the facilities used by Ralston Purina Company, at or near Dunkirk and Buffalo, NY, restricted to the transportation of traffic originating at the named origins and destined to the named destination. Applicant's representative is: Christian V. Graf, Esq. 407 North Front Street, Harrisburg, PA 17101.

MC-FC-78731. By decision of August 28, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 5 approved the transfer to Merchants Home Delivery Service of Texas, Inc., of Oxnard, CA, of Certificate No. MC-143503 issued March 30, 1978, to Merchants Home Delivery Service, Inc., of Oxnard, CA, authorizing the transportation of *new furniture, new home furnishings, and accessories,* between the facilities of Englander Triangle, Inc., at or near Detroit, MI, on the one hand, and, on the other, points in William, Fulton, Lucas, Ottawa, Sandusky, Wood, Henry, and Defiance Counties, OH. Applicants' representative: David B. Schneider, P.O. Box 1540, Edmond, OK 73034.

Notes.—(1) TA has not been filed. (2) Transferee holds temporary authority in MC-145782 (Sub-No. 3TA).,(3) In MC-F-14352F, filed concurrently with this application, Transferor seeks authority to control through management Transferee. (4) Ths application was originally docketed as MC-F-14351F.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-31260 Filed 10-7-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications

The following operating rights applications, filed on or after March 1, 1979, are filed in connection with pending finance applications under 49 U.S.C. 10926, 11343 or 11344. The applications are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things, that a petition to intervene either with or without leave must be filed with the Commission within 30 days after the date of publication in the **Federal Register** with a copy being furnished the applicant. Protests to these applications 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). In deciding whether to grant leave to intervene, the Commission considers, among other things, whether petitioner has (a) solicited the traffic or business of those persons 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. Another factor considered is the effects of any decision on petitioner's interests.

Samples of petitions and the text and explanation of the intervention rules can be found at 43 FR 50908, as modified at 43 FR 60277. Petitions not in reasonable compliance with these rules may be rejected. Note that Rule 247(e), where not inconsistent with the intervention rules, still applies. Especially refer to Rule 247(e) for requirements as to supplying a copy of conflicting authority, serving the petition on applicant's representative, and oral hearing requests.

Section 247(f) provides that an applicant which does not intent timely to 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.

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 administratively 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 exceptions of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service is either (a) required by the public convenience and necessity, or, (b) 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 the Commission's regulations. 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 protestant, that the proposed dual operations are consistent with the public interest and the national transportation policy subject to the right of the Commission, which is expressly reserved, to impose such conditions as it finds necessary to insure that applicant's operations shall conform to the provision of 49 U.S.C. 10930.

In the absence of legally sufficient protests as to the finance application *or* the following operating rights applications directly related thereto filed within 30 days of publication of this decision-notice (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 this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice by effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: September 19, 1980.

By the Commission, Review Board Number 5, Members Krock, Taylor, and Williams.

MC-144078 (Sub-1) (Republication). By decision of September 9, 1980, Review Board Number 5 granted in part

Molloy Bros. Trucking, Inc.'s petition for modification filed August 15, 1980, and authorized the following service in addition to that granted in its decision of July 8, 1980, published in the FR issue of July 30, 1980: *Household goods* as defined by the Commission, (1) Between New York, NY, and points on Long Island, on the one hand, and, on the other, points in North Carolina, Georgia, Florida, Ohio, Illinois, Michigan; and (2) Between points in South Carolina, on the one hand, and, on the other, points in New York. Review Board Number 5 denied those parts of the petition which would create duplicating authority. Interested parties should file a petition for reconsideration within 20 days of this FR notice. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123. MC-FC-78534, published July 20, 1980, is directly related.

MC 147784. By decision of July 1, 1980, on reconsideration, the Commission, Commissioner Alexis, as a matter directly related to the transactions approved February 21, 1980, in Nos. MC-FC-78361 and MC-FC-78362 (published in the **Federal Register** issue of March 21, 1980), approved the elimination of the gateway of Lawrence, NJ, to enable Trans-Way, Inc. to provide through service in the transportation of *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 New York, NY, on the one hand, and, on the other, Philadelphia, PA; and *floor covering* and *materials, supplies* and *equipment* used or useful in the installation of floor covering, from New York, NY to Camden, NJ, Wilmington, DE, and Baltimore, MD. Except as modified, the decision of February 21, 1980, remains in full force and effect. Applicants' representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-31261 Filed 10-7-80; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication 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.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where 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 the absence of legally sufficient protests in the form of verified statements filed by November 24, 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 notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP3-031

Decided: September 30, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 52464 (Sub-13F), filed September 15, 1980. Applicant: EVANS TRUCKING CO., 2773 Darlington Rd., Beaver Falls, PA 15010. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. Transporting (1) *general commodities* (except household goods as defined by the Commission, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S., and (2) *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 98184 (Sub-9F), filed September 16, 1980. Applicant: LARAMIE, INC., 14800 Castleton, Detroit, MI 48227. Representative: Martin J. Leavitt, 22375 Haggerty Rd., P.O. Box 400, Northville, MI 48167. Transportating *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 140315 (Sub-11F), filed September 16, 1980. Applicant: DEES TRANSPORTATION, INC., P.O. Box 446, Worland, WY 82401. Representative: Bruce W. Shand, 430 Judge Bldg., Salt Lake City, UT 84111. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 145375 (Sub-6F), files September 15, 1980. Applicant: H. D. EDGAR TRUCKING COMPANY, INC., Route 1, Box 48, Opp, AL 36467. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St., NW., Washington, DC 20005. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 145875 (Sub-9F), filed September 15, 1980. Applicant: SWAIN AND SONS TRANSPORTS, INC., 208 Poplar Ave., Memphis, TN 38103. Representative: William R. Swain, Jr. (same address as applicant). Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 146754 (Sub-4F), filed September 16, 1980. Applicant: TENNANT TRUCK LINES, INC., R.R. 1, P.O. Box 233, Orion, IL 61273. Representative: Joseph Winter, 29 S. LaSalle St., Chicago, IL 60603. Transporting *general commodities*

(except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 146974 (Sub-10F), filed September 16, 1980. Applicant: WILLIAM V. THOMAS, P.O. Box 10238, Albuquerque, NM 87184. Representative: Randall R. Sain (same address as applicant). Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 147725 (Sub-2F), filed September 17, 1980. Applicant: J. M. SUAREZ d.b.a. SUAREZ SYSTEM, 1212 Melville Drive Las Vegas, NV 89102. Representative: J. M. Suarez (same address as applicant). Transporting *food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs), intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers*, if such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations, between points in the U.S.

MC 151865F, filed September 16, 1980. Applicant: COURIER UNLIMITED, INC., 2622 Audubon Rd., Audubon, PA 19407. Representative: Raymond A. Thistle, Jr., Five Cottman Court, Homestead Rd. & Cottman St., Jenkintown, PA 19046. Transporting *shipments weighing 100 pounds or less*, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 151884F, filed September 15, 1980. Applicant: ROBERT M. WETZEL d.b.a. WETZEL EXPRESS, 455 Hanover Rd., York, PA 17404. Representative: Norman T. Petow, 43 North Duke St., York, PA 17401. Transporting *general commodities* (except used household goods as defined by the Commission, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

Volume No. OP4–073

Decided: September. 30, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton and Liberman.

MC 46737 (Sub-57F), filed September 22, 1980. Applicant: GEO. F. ALGER COMPANY, 26380 Van Born Road, Dearborn Heights, MI 48125. Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. Transporting *general commodities* (except used household goods, hazardous or secret materials, sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 78947 (Sub-21F), filed September 22, 1980. Applicant: ELLIOTT BROS. TRUCK LINE, INC., P.O. Box 310, Dysart, IA 52224. Representative: Stanley C. Olsen, Jr., 7400 Metro Blvd., Suite 411, Edina, MN 55435. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 129086 (Sub-31F), filed September 22, 1980. Applicant: SPENCER TRUCKING CORP., Rt. 2, P.O. Box 254A, Keyser, WV 26726. Representative: Dwight L. Koerber, Jr., P.O. Box 1320, 110 N. 2nd St., Clearfield, PA 16830. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 131036F, filed September 22, 1980. Applicant: SHAMROCK VAN LINES, INC., P.O. Box 15306, Austin, TX 78761. Representative: Lawrence S. Burstein, Suite 2373, One World Trade Center, New York, NY 10048. As a *broker* to arrange for the transportation of *household goods* as defined by the Commission, between points in the U.S., including AK and HI.

MC 131037F, filed September 22, 1980. Applicant: EUGENE F. ELLIOTT, P.O. Box 310, Dysart, IA 52224. Representative: Stanley C. Olsen, Jr., 7400 Metro Blvd., Suite 411, Edina, MN 55435. As a *broker* to arrange for the transportation of *general commodities* (except household goods), between points in the U.S.

Volume No. OP5–023

Decided: September 29, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton and Liberman.

MC 18088 (Sub-66F), filed September 17, 1980. Applicant: FLOYD & BEASLEY TRANSFER COMPANY, INC., P.O. Drawer 8, Sycamore, AL 35149. Representative: Charles Ephraim, Suite 406, 918 16th St., NW., Washington, DC 20006. Transporting *shipments* weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds between points in the U.S.

MC 93318 (Sub-19F), filed September 17, 1980. Applicant: JOE D. HUGHES, INC., P.O. Box 96496, Houston, TX 77013. Representative: J. Marshall Forsyth (same as applicant). Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the U.S. Government, between points in the U.S.

MC 113398 (Sub-16F), filed September 18, 1980. Applicant: RUSSELL TRANSPORT, INC., P.O. Box 4, Fort Collins, CO 80522. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds between points in the U.S.

MC 113678 (Sub-895F), filed September 19, 1980. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Representative: Roger M. Shaner (same as applicant). Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government between points in the U.S.

MC 131028F, filed September 17, 1980. Applicant: FREIGHT MANAGEMENT SYSTEMS INC., 1000 Connecticut Ave.,—Suite 1200, Washington, DC 20036. Representative: Jack Pearce (same address as applicant). To arrange for the transportation of *general commodities*, (except household goods), between points in the U.S.

MC 139379 (Sub-7F), filed September 18, 1980. Applicant: LES MATHRE TRUCKING, INC., 417—8th Street, Story City, IA 50248. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the U.S. Government, between points in the U.S.

MC 151868F, filed September 12, 1980. Applicant: WILLIAM G. RAY, JR., P.O. Box 3366, Gwynn, VA 23066. Representative: Blair P. Wakefield, Suite 1001 First and Merchants National, Bank Bldg., Norfolk, VA 23510. Transporting *food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers*, if such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations, between points in the U.S.

MC 151888F, filed September 16, 1980. Applicant: DAVID D. GREER, Rt. 2, Hickory Flat, MS 38633. Representative:

J. E. Boone, 100 Main Bldg., New Albany, MS 38652. Transporting *food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers,* if such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations, between points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-31259 Filed 10-7-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decision; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication 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.gs., unresolved common control, fitness, water carrier dual operations, or jurisidictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where 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 the absence of legally sufficient protests in the form of verified statements filed within 45 days of publication of this decision-notice (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 notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

Volume No. OPI-044

Decided: September 30, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

FF 53OF, filed September 23, 1980. Applicant: SAMUEL SHAPIRO & COMPANY, INC., World Trade Center, Suite 525, Baltimore, MD 21202. Representative: Morris Edward Horwitz (same address as applicant). *As a freight forwarder,* in connection with the transportation of *general commodities* (expect classes A and B explosives), and household goods as defined by the Commission, between Baltimore, MD, on the one hand, and, on the other, points in the U.S.

FF 531, filed September 22, 1980. Applicant: SECURITY HOUSEHOLD GOODS FORWARDING, INC., 100 West Airline Highway, Kenner, LA 70063. Representative: Alan F. Wohstetter, 1700 K Street NW., Washington, DC 20006. *As a freight forwarder,* in connection with the transporation of (a) *used household goods and unaccompanied baggage,* and (b) *used automobilies,* between points in the U.S. (including HI, but excluding AK), restricted in (b) above to the transportation of import-export traffic.

MC 531 (Sub-45F), filed September 25, 1980. Applicant: YOUNGER BROTHERS, INC., 4904 Griggs Road, P.O. Box 14048, Houston, TX 77021. Representative: Wray E. Hughes (same address as applicant). Transportating *chemicals,* between points in the U.S., restricted to traffic originating at or destined to the facilities used by Texaco Chemical Company.

MC 2900 (Sub-434F), filed September 25, 1980. Applicant: RYDER TRUCK LINES, INC., 2050 Kings Rd., P.O. Box 2408, Jacksonville, FL 32203. Representative: S. E. Somers, Jr. (same address as applicant). Transporting (1) *canopies, awnings, carports, and boat covers,* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, between the facilities of Fashion, Inc., at or near Kansas City, KS, on the one hand, and, on the other, points in the U.S.

MC 2900 (Sub-435F), filed September 25, 1980. Applicant: RYDER TRUCK LINES, INC., 2050 Kings Rd., P.O. Box 2408-R, Jacksonville, FL 32203. Representative: S. E. Somers, Jr. (same address as applicant). Transporting *machinery and supplies,* as described in Item (35) of the Standard Transportation Commoditiy Code Tariff, between points in Gibson County, TN, on the one hand, and, on the other, points in the U.S.

MC 47171 (Sub-184F), filed September 26, 1980. Applicant: COOPER MOTOR LINES, INC., P.O. Box 2820, Greenville, SC 29602. Representative: Harris G. Andrews (same address as applicant). 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 points in MD (except Baltimore and Cumberland), on the one hand, and, on the other, points in GA, NC, and SC.

MC 59150 (Sub-183F), filed September 26, 1980. Applicant: PLOOF TRUCK LINES, INC., 1414 Lindrose St., Jacksonville, FL 32206. Representative: Martin Sack, Jr., 203 Marine National Bank Bldg., 311 W. Duval St., Jacksonville, FL 32202. 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 points in the U.S., restricted to traffic originating at or destined to the facilities of the United States Gypsum Company.

MC 75840 (Sub-137F), filed September 23, 1980. Applicant: MALONE FREIGHT LINES, INC., P.O. Box 11103, Birmingham, AL 35202. Representative: Raymond Hamilton, 3400 Third Ave., South, Birmingham, AL 35222. Transporting *clay, mining and bagging equipment, and paper bags,* between points in Thomas County, GA, on the one hand, and, on the other, points in FL.

MC 77061 (Sub-37F), filed September 23, 1980. Applicant: SHERMAN BROS., INC., 29534 Airport Road, P.O. Box 706, Eugene, OR 97440. Representative: Russell M. Allen, 1200 Jackson Tower, Portland, OR 97205. Transporting (1) *iron and steel articles,* (2) *lumber, composition board and wood products* and (3) *construction materials* (except commodities in bulk, iron and steel

articles, lumber, composition board and wood products), between points in OR, WA, CA, ID, UT, NV, and MT.

MC 107960 (Sub-9F), filed September 25, 1980. Applicant: SUMMERFORD TRUCK LINE, INC., 206 Broadway, Ashford, AL 36312. Representative: Robert J. Corber, 1250 Connecticut Ave., NW., Washington, DC 20036. Transporting (1) *charcoal, charcoal briquettes, wood chips, sawdust, and wax impregnated logs,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between Dothan, AL, on the one hand, and, on the other, points in AR, FL, GA, LA, MS, NC, SC, TN, and TX.

MC 107960 (Sub-10F), filed September 25, 1980. Applicant: SUMMERFORD TRUCK LINE, INC., 206 Broadway, Ashford, AL 36312. Representative: Robert J. Corber, 1250 Connecticut Avenue, Washington, DC 20036. Transporting *such commodities* as are dealt in or used by wholesale and retail houses, between the facilities of the Clorox Company, at Atlanta, GA, on the one hand, and, on the other, points in AL, MS, AR, TN, KY, and FL.

MC 111231 (Sub-313F), filed September 22, 1980. Applicant: JONES TRUCK LINES, INC., 610 East Emma Avenue, Springdale, AR 72902. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood Avenue, Fort Smith, AR 72902. Transporting (1) *aluminum and aluminum articles* 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 Hot Springs, Pope and Saline Counties, AR, on the one hand, and, on the other, points in AL, CO, CT, DC, DE, FL, GA, IA, ID, LA, MD, ME, MS, MT, NC, ND, NE, NH, NJ, OK, OR, SC, SD, VT, VA, WV, and WY.

MC 111231 (Sub-314F), filed September 22, 1980. Applicant: JONES TRUCK LINES, INC., 610 East Emma Avenue, Springdale, AR 72764. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood Avenue, Fort Smith, AR 72902. Transporting *roofing and roofing materials* (except commodities in bulk), bewteen points in Phillips County, KA, on the one hand, and, on the other, points in CO, NE, ND, SD, IA, MN, WI, OK, MO, WY, NM, and IL.

MC 111401 (Sub-604F), filed September 25, 1980. Applicant: GROENDYKE TRANSPORT, INC., P.O. Box 632, 2510 Rock Island Blvd., Enid, OK 73701. Representative: Victor R. Comstock (same address as applicant). Transporting *feed and feed ingredients,* in bulk, between points in LA, and those in Jackson County, MS, and Harris County, TX, on the one hand, and, on the other, points in KS, OK, and TX.

MC 118831 (Sub-195F), filed September 23, 1980. Applicant: CENTRAL TRANSPORT, INCORPORATED, P.O. Box 7007, High Point, NC 27264. Representative: E. Stephen Heisley, 666 Eleventh St., NW., No. 805, Washington, DC 20001. Transporting *commodities,* in bulk, between points in AL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 124821 (Sub-101F), filed September 25, 1980. Applicant: GILCHRIST TRUCKING, INC., 105 N. Keyser Ave., Old Forge, PA 18518. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between Evansville and Mt. Vernon, IN, and Springfield, MO, on the one hand, and, on the other, points in CT, MD, MA, NJ, NY, PA, and VA.

MC 124821 (Sub-103F), filed September 26, 1980. Applicant: GILCHRIST TRUCKING, INC., 105 N. Keyser Ave., Old Forge, PA 18518. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Rd., Camp Hill, PA 17011. *Over regular routes,* transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between Scranton, PA, and Washington, DC, from Scranton over U.S. Hwy 11 to junction Interstate Hwy 83, then over Interstate Hwy 83 to junction U.S. Hwy 1, then over U.S. Hwy 1 to Washington, and return over the same route, serving all intermediate points in MD, and points in Luzerne, Lackawanna, Pike, and Wayne Counties, PA, as off-route points.

MC 124821 (Sub-104F), filed September 26, 1980. Applicant: GILCHRIST TRUCKING, INC., 105 N. Keyser Ave., Old Forge, PA 18518. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Rd., Camp Hill, PA 17011. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in Luzerne, Lakawanna, Pike, and Wayne Counties, PA, on the one hand, and, on the other, points in CT, MA, ME, and RI.

MC 127651 (Sub-65F), filed September 22, 1980. Applicant: EVERETT G. ROEHL, INC., East 29th St., Box 7, Marshfield, WI 54449. Representative: Richard A. Westley, 4506 Regent St., Suite 100, Madison, WI 53705. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in Wood and Clark Counties, WI, on the one hand, and, on the other, points in the U.S. Condition: Issuance of a certificate in this proceeding is subject to the coincidental cancellation, at applicant's written request, of its permits or portions in MC–127651 and Subs 6, 8, 9, 11, 22, 25, 29, 33, 48, 50, and 59.

MC 131040F, filed September 24, 1980. Applicant: INTERMODAL BROKERAGE SERVICES, INC., 407 West Duarte Road, No. 8, Arcadia, CA 91006. Representative: Douglas H. Wright (same address as applicant). As a *Broker,* in arranging for the transportation of *general commodities* (except houshold goods), between points in the U.S.

MC 135070 (Sub-171F), filed September 26, 1980. Applicant: JAY LINES, INC., Box 61467, DFW Airport, TX 75261. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. Transporting (1) *soap products, and cleaning, scouring, and washing compounds,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, betweeen Rapides County, LA, on the one hand, and, on the other, points in AR, CO, IA, KS, KY, MI, MN, MO, ND, NE, OH, OK, SD, TN, TX, and WI.

MC 135410 (Sub-106F), filed September 26, 1980. Applicant: COURTNEY J. MUNSON, d.b.a. MUNSON TRUCKING, P.O. Box 266, North Sixth St. Rd., Monmouth, IL 61462. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. Transporting *iron and steel articles* between the facilities of Interpace, Inc., at (a) Solon, OH, (b) South Beloit, IL, and (c) Kansas City, KS.

MC 136981 (Sub-14F), filed September 25, 1980. Applicant: BLAIR CARTAGE, INC., 13658 Auburn Rd., P.O. Box 252, Newbury, OH 44065. Representative: Lewis S. Witherspoon, 88 E. Broad St., Columbus, OH 43215. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and those requiring the use of special equipment), between points in the U.S., under continuing contract(s) with the General Electric Company of Cleveland, OH. Condition: Issuance of a permit in this proceeding is subject to the coincidental cancellation, at applicant's written request, of its permits in MC 136891 Sub-5F, 8F, and 11F.

MC 136981 (Sub-15F), filed September 25, 1980. Applicant: BLAIR CARTAGE, INC., 13658 Auburn Road, P.O. Box 252, Newbury, OH 44065. Representative: Lewis S. Witherspoon, 88 E. Broad Street, Columbus, OH 43215. Transporting (1) *corregated fiberboard boxes*, and (2) *pulpboard*, between points in the U.S. ynder continuing contract(s) with Macmillan-Bloedel Containers, Div. of Macmillan-Bloedel, Inc., of Cleveland, OH.

MC 145431 (Sub-1F), filed September 22, 1980. Applicant: DAN'S TRUCKING & LEASING, INC., P.O. Box 93, Allen Park, MI 48101. Representative: Dan A. Young (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in MI, on the one hand, and, on the other, points in the U.S.

MC 147491 (Sub-3F), filed September 26, 1980. Applicant: TAB TRUCKING, INC., 4342 Janitrol Road, Columbus, OH 43228. Representative: Brian S. Stern, 5411–D Backlick Road, Springfield, VA 22151. Transporting *cooling or freezing machines*, from Montgomery, AL, to Delaware, OH.

MC 148490 (Sub-8F), filed September 23, 1980. Applicant: C. & N. EVANS TRUCKING COMPANY, INC., RFD 2, Box 39E, Stoneville, NC 27048. Representative: Clarence B. Evans (same address as applicant). Transporting (1) *malt beverages* and (2) *materials, equipment and supplies* used in the manufacture and distribution of malt beverages, between points in MN, IA, MO, KA, NE, OK, LA, AR, and TX and those points in the U.S. on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, thence northward along the western boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the U.S. and Canada.

MC 150221 (Sub-5F), filed September 2, 1980. Applicant: CENTRAL SOUTHERN, INC., P.O. Box 375, Drayton, SC 29333. Representative: George W. Clapp, P.O. Box 836, Taylors, SC 29687. Transporting *synthetic staple fiber, synthetic fiber yarns, nonwoven fabrics, and textile waste products*, between points in the U.S., under continuing contract(s) with Phillips Fibers Corporation, of Startex, SC.

MC 150650 (Sub-1F), filed September 25, 1980. Applicant: THE LAKE SHORE MOTOR FREIGHT COMPANY, 1200 South State St., P.O. Box 358, Girard, OH 44420. Representative: Edmund P. Riek (same address as applicant). Transporting *iron and steel articles*, between points in the U.S., under continuing contract(s) with United Steel Service, Incorporated of Brookfield, OH.

MC 151810 (Sub-1F), filed September 24, 1980. Applicant: TRIPLE D TRANSPORT, INC., 3611 Acapulco Drive, Miramar, FL 33023. Representative: Robert L. Cope, 1730 M Street, NW., Suite 501, Washington, DC 20036. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of recreational equipment, between points in the U.S., under continuing contract(s) with Ebonite Billiards Corporation of Miami Lakes, FL.

Volume No. OP3–032

Decided: September 30, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 15975 (Sub-36F), filed September 17, 1980. Applicant: BUSKE LINES, INC., 123 W. Tyler Ave., Litchfield, IL 62056. Representative: Howard H. Buske (same address as applicant). Transporting *alcoholic beverages*, in containers, and *materials, equipment and supplies* used in the production and distribution of alcoholic beverages (except commodities in bulk and those requiring the use of special equipment), between Detroit, MI, on the one hand, and, on the other, points in the U.S., restricted to traffic originating at or destined to the facilities of Mohawk Liquer Corporation.

MC 111274 (Sub-62F), filed September 15, 1980. Applicant: SCHMIDGALL TRANSFER INC., P.O. Box 351, Morton, IL 61550. Representative: Frederick C. Schmidgall, Box 351, Morton, IL 61550. Transporting *lumber and lumber mill products* and *insulation sheeting*, between points in the U.S., under continuing contract(s) with Lumbermens Service Inc., of Madison, WI.

MC 112304 (Sub-247F), filed September 8, 1980. Applicant: ACE DORAN HAULING & RIGGING CO., a Corporation, 1601 Blue Rock St., Cincinnati, OH 45223. Representative: James M. Burtch, 100 E. Broad St., Columbus, OH 43215. Transporting (1) *highway maintenance machinery*, (2) *parts and accessories* for highway maintenance machinery, and (3) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above, between points in Guadalupe County, TX, on the one hand, and, on the other, points in the U.S., (except HI).

MC 116045 (Sub-54F), filed September 12, 1980. Applicant: NEUMAN TRANSIT CO., INC., P.O. Box 38, Rawlings, WY 82301. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. Transporting *explosives*, between points in WY, on the one hand, and, on the other, points in AZ, CO, ID, MT, NE, NV, NM, SD, and UT.

Note.—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.

MC 123255 (Sub-221F), filed September 16, 1980. Applicant: B & L MOTOR FREIGHT, INC., 1984 Coffman Rd., Newark, OH 43055. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. Transporting *paper* and *paper products*, between points in the U.S.

MC 131025F, filed September 15, 1980. applicant: McKENZIE MOVING & STORAGE, INC., 3501 West Marginal Way SW., Seattle, WA 98106. Representative: George H. Hart, 1100 IBM Bldg., Seattle, WA 98101. *Broker* in arranging for the transportation of *general commodities* (except household goods) between points in the U.S.

MC 138635 (Sub-115F), filed September 15, 1980. Applicant: CAROLINA WESTERN EXPRESS, INC., P.O. Box 3995, Gastonia, NC 28052. Representative: W. C. Sutton (same address as applicant). Transporting (1) *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, (2) *foodstuffs* (except those embraced in (1) above, and (3) *such commodities* as are dealt in by chain grocery and food business houses (except those embraced in (1) and (2) above, and except commodities in bulk, in tank vehicles), between points in the U.S.

MC 138635 (Sub-117F), filed September 15, 1980. Applicant: CAROLINA WESTERN EXPRESS, INC., P.O. Box 3995, Gastonia, NC 28052. Representative: W. C. Sutton (same address as applicant). Transporting (1) *confectionery* and (2) *materials, equipment, and supplies* used in the manufacture, and distribution of the confectionery (except in bulk), between points in the U.S.

MC 142114 (Sub-12F), filed September 15, 1980. Applicant: RETAIL EXPRESS, INC., 9 Stuart Rd., Chelmsford, MA 01824. Representative: Frank M. Cushman, 36 South Main St., Sharon, MA 02067. Transporting *such commodities*, as are dealt in by retail department stores (except commodities in bulk), between points in the U.S.,

under a continuing contract(s) with Jamesway Corporation, of Secaucus, NJ.

MC 142835 (Sub-9F), filed September 9, 1980. Applicant: CARSON MOTOR LINES, INC., P.O. Box 337, Auburndale, FL 33823. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. Transporting *food or kindred products*, as described in Item 20 of the Standard Transportation Commodity Code, between points in Shelby County, TN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 143754 (Sub-10F), filed September 18, 1980. Applicant: MACZUK INDUSTRIES, INC., Route 2, New Haven, MO 63068. Representative: James C. Swearengen, P.O. Box 456, Jefferson City, MO 65102. Transporting *feed* and *feed ingredients*, in bulk, in tank vehicles, between Atchison, KS, on the one hand, and, on the other, points in CO, IA, NE, MO, and OK.

MC 149534 (Sub-1F), filed September 17, 1980. Applicant: STEPHEN J. GROVE, d.b.a. GROVE TRUCKING, 7297 Village Parkway, Dublin, CA 94566. Representative: Eldon M. Johnson, 650 California St., Suite 2808, San Francisco, CA 94108. Transporting *food or kindred products*, as described in Item 20 of the Standard Transportation Commodity Code, between points in the U.S. under continuing contract(s) with Dreyers Grand Ice Cream, Inc., of Oakland, CA.

Volume No. OP3-033

Decided: October 1, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 10914 (Sub-11F), filed September 16, 1980. Applicant: THE O'BRIEN & NYE CARTAGE CO., INC., 308 Central Viaduct, Cleveland, OH 44115. Representative: Donald J. O'Connor, Attorney at Law, 114 Engineers Building, Cleveland, OH 44114. Transporting *general commodities* from Cleveland, OH, to points in OH.

Note.—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.

MC 30844 (Sub-700F), filed September 19, 1980. Applicant: KROBLIN REFRIGERATED XPRESS, INC., P.O. Box 21222, 4616 East 67th St., Tulsa, OK 74121. Representative: Thomas J. Beener, 67 Wall St., New York, NY 10005. Transporting *textiles*, between points in DE, MD, WV, KY, VA, TN, NC, SC, AR, MS, LA, GA, and FL, on the one hand, and, on the other, points in Polk County, MO.

MC 30844 (Sub-701F), filed September 19, 1980. Applicant: KROBLIN REFRIGERATED XPRESS, INC., P.O. Box 21222, 4616 East 67th St., Tulsa, OK 74121. Representative: Thomas J. Beener, 67 Wall St., New York, NY 10005. Transporting *medical supplies*, between points in Platte, Phelps and Auster Counties, NE, Sumter County, SC, Bergen and Morris Counties, NJ, Salt Lake County, UT, Santa Clara and Ventura Counties, CA, Fairfield County, CT, Marion County, FL, Delaware County, NY, and Coshocton County, OH, on the one hand, and, on the other, points in the U.S.

MC 62824 (Sub-5F), filed September 22, 1980. Applicant: SPARTAN EXPRESS, INC., P.O. Box 1089, Greer, SC 29651. Representative: Edward G. Villalon, 1032 Pennsylvania Bldg., Pennsylvania Ave. & 13th St., NW., Washington, DC 20004. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in GA, NC, SC and points in Pittsylvania County, VA.

Note.—Issuance of a certificate is subject to prior or coincidental cancellation of MC 62824, at applicant written request.

MC 106674 (Sub-506F), filed September 23, 1980. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). Transporting (1) *pulp, paper or allied products*, as described in Item 26 of the Standard Transportation Commodity Code; and (2) *materials, supplies and equipment* used in the manufacture, processing, and distribution of the commodities in (1), between points in the U.S., restricted to traffic originating at or destined to the facilities of Manville Forest Products Corporation.

MC 107295 (Sub-993F), filed September 9, 1980. Applicant: PRE-FAB TRANSIT CO., a Corporation, P.O. Box 146, Farmer City, IL 61842. Representative: Duane Zehr (same address as applicant). Transporting (1) *furniture parts*, and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between points in the U.S., restricted to traffic originating at or destined to the facilities owned, operated or subsidiaries of Leggett and Platt, Inc.

MC 124624 (Sub-7F), filed September 19, 1980. Applicant: EXPRESSWAY, INC., 1105 St. Louis Ave., Louisville, KY 40210. Representative: Robert H. Kinker, 314 West Main St., P.O. Box 464, Frankfort, KY 40602. Transporting *general commodities* (except articles of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Louisville, KY, on the one hand, and, on the other, points in KY, those in IN on and south of a line beginning at the junction of IN Hwy 46 and the IN–OH State line over IN Hwy 46 to junction Interstate Hwy 70, and then over Interstate Hwy 70 to the IN–IL State line, and those in IL on and south of U.S. Hwy 50.

MC 131024F, filed September 12, 1980. Applicant: NORBERT G. SHIRLEY, d.b.a. BUS TERMINAL TOURS, 219 N. Lamar St., Jackson, MS 39201. Representative: Norbert G. Shirley (same address as applicant). *Broker*, at Jackson, MS, in arranging for the transportation of *passengers and their baggage*, in special and charter operations, between points in MS, on the one hand, and, on the other, points in the U.S. (including AK and HI).

MC 146504 (Sub-6F), filed September 10, 1980. Applicant: LEO TRUCKING CO., INC., P.O. Drawer F, Poteau, OK 74953. Representative: Greg E. Summy, P.O. Box 1540, Edmond, OK 73034. Transporting *cement*, from points in Little River County, AR, to points in Haskell, LeFlore, and Sequoyah Counties, OK.

MC 150284F, filed September 8, 1890. Applicant: DAWN'S-WAY, INC., 507 San Sebastian Prado, Altamonte Springs, FL 32701. Representative: Elbert Brown, Jr., P.O. Box 1378, Altamonte Springs, FL 32701. Transporting (1) *bathroom fixtures, putty, cleaning compounds, and compressed gas*, and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Go-Jo Industries, Inc., of Akron, OH.

Note.—To the extent the permit granted in this proceeding authorizes the transportation of compressed gases it will expire 5 years from the date of issuance.

MC 151204F, filed September 15, 1980. Applicant: 321 EQUIPMENT LEASING CO., a Corporation, 712 W. Airline Ave., Gastonia, NC 28052. Representative: Rebecca P. Dalton, (same address as applicant). Transporting (1) *textiles* and *textile products* and (2) *supplies and equipment* used in the manufacture and distribution of the commodities in (1) above, between points in AL, AR, CT, DE, FL, GA, IL, IN, KY, LA, ME, MD, MA, MS, NH, NJ, NY, NC, MO, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, WI, and DC.

MC 151874F, filed September 15, 1980. Applicant: J. L. MACK, d.b.a. WALL LAKE TRANSFER, Wall Lake, IA 51466.Representative: Joseph J. Heidenreich, 100 Main St., Odebolt, IA

51458. Transporting *weed and tree killing compounds*, from Des Moines, IA, to points in SD, ND, MN, IL, MO, KS, NE, CO, WI, and IN.

MC 151875, filed September 15, 1980. Applicant: EAST COAST TRUCKING, INC., 130 Sunview Drive, Beaver Falls, PA 15010. Representative: John A. Vuono, 2310 Grant Bldg., Pittsburgh, PA 15219. Transporting (1) *iron and steel articles*, and (2) *machinery, equipment, and supplies* used in the manufacture, sale, and distribution of the commodities in (1) above, between points in Beaver County, PA, on the one hand, and, on the other, points in the U.S. (except HI).

MC 151885F, filed September 12, 1980. Applicant: ROLAND A. PIEGON, RD Route 128, Westford, VT 05494. Representative: Carl H. Lisman, 191 College St., Burlington, VT 05401. Transporting *passengers and their baggage*, in the same vehicle with passengers, in charter operations, beginning and ending at points in Chittenden, Franklin, and Lamoille Counties, VT, and extending to points in VI, ME, NH, MA, NY, and DC.

MC 151914 (Sub-1F), filed September 18, 1980. Applicant: RUSSELL STOVER CANDIES, INC., 1004 Baltimore Ave., Kansas City, MO 64105. Representative: Thomas P. G. Franklin (same address as applicant). Transporting (1) *pulp, paper or allied products*, as described in Item 26, of Standard Transportation Commodity Code, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Ward Paper Box Company, of Kansas City, KS.

MC 151915 (Sub-1F), filed September 17, 1980. Applicant: KELWORTH TRUCKING COMPANY, INC., Highway 59 South, Hodgen, OK 74939. Representative: Don A. Smith, P.O. Box 43, Fort Smith, AR 72902. Transporting *coal*, between points in Conway, Crawford, Faulkner, Franklin, Johnson, Logan, Perry, Pope Sebastian, Scott, and Yell Counties, AR, and Cherokee, Coal, Craig, Creek, Haskell, Hughes, Latimer, LeFlore, Mays, McIntosh, Muskogee, Nowata, Okfuskee, Okmulgee, Pittsburg, Pushmatha, Rogers, Sequoyah, and Wagoner Counties, OK, on the one hand, and, on the other, points in AR, KS, LA, MS, MO, OK, and TX.

MC 151974 (Sub-1F), filed September 23, 1980. Applicant: LOREL TRANSPORT, INC., 1507 Aldrin Way, Placentia, CA 92670. Representative: William J. Boyd, 2021 Midwest Road, Suite 205, Oak Brook, IL 60521. Transporting *bananas*, from Wilmington, CA, to points in AZ, AR, CA, CO, ID, IL, IA, KS, LA, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, and WY.

MC 151975 (Sub-1F), filed September 22, 1980. Applicant: DIRECT DELIVERY, INC., 1239 Willingham Drive, East Point, GA 30344. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Boulevard, Atlanta, GA 30349. Transporting (1) *paper and paper products* and (2) *materials, equipment and supplies* used in the manufacture of paper and paper products, between Stockbridge and East Point, GA, on the one hand, and, on the other, points in AL, FL, GA, NC, SC, MS, LA, TN, and KY.

Volume No. OP4–072

Decided: September 30, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton and Liberman.

MC 1017 (Sub-1F), filed September 25, 1980. Applicant: SWAN TRUCKING CORPORATION, INC., 3433 Holyoke Rd., Philadelphia, PA 19114. Representative: Francis W. Doyle, 323 Maple Ave., Southampton, PA 18966. Transporting *paper and printed matter*, between points in the U.S., under continuing contract(s) with Lehigh Press Lithographers, of Pennsauken, NJ, International Graphics, of Bensalem, PA, Pyramid Graphics, Inc., of Croydon, PA, Braceland Bros., Inc., Penn Lithographers Company, Pomco Graphics, Inc., and Printing Service, Inc., all of Philadelphia, PA.

MC 29886 (Sub-376F), filed September 24, 1980. Applicant: DALLAS & MAVIS FORWARDING CO., INC., 4314–39th Ave., Kenosha, WI 53142. Representative: Fred C. Milloy (same address as applicant). Transporting *motor vehicle chassis*, in initial movements, in truckaway service, *motor vehicle bodies, and parts and accessories* for motor vehicles, between points in San Bernardino County, CA, Marion County, IN, and Multnomah County, OR, on the one hand, and, on the other, points in the U.S.

MC 30837 (Sub-499F), filed September 25, 1980. Applicant: KENOSHA AUTO TRANSPORT CORP., 4314–39th Ave., Kenosha, WI 53142. Representative: Paul F. Sullivan, 711 Washington Bldg., Washington, DC 20005. Transporting *motor vehicles* (except automobiles and trailers), from Hampton, VA, Englewood, NJ, Jacksonville, FL, and Houston, TX, to points in the U.S., restricted to traffic originating at the facilities of Mercedes-Benz of North America, Inc.

MC 32166 (Sub-17F), filed September 23, 1980. Applicant: BRONAUGH MOTOR EXPRESS, INC., 1025 Nandino Blvd., Lexington, KY 40511. Representative: John W. Bronaugh (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 Louisville, KY, and Nashville, TN, over U.S. Hwys 31W and 31E, serving all intermediate points, and (2) between Nashville, and Columbia, TN, over U.S. Hwy 31, serving all intermediate points,

Note.—Applicant intends to tack this authority with its existing regular route authority.

MC 57257 (Sub-4F), filed September 22, 1980. Applicant: CARR TRUCK SERVICE, INC., 1400 East Napoleon Street, Sulphur, LA 70663. Representative: C. W. Ferebee, 720 North Post Oak, Suite 230, Houston, TX 77024. Transporting (1) *machinery, equipment, materials and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, and (2) *earth drilling machinery and equipment, and machinery, equipment, materials, supplies and pipe* incidental to, used in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage and transmission of commodities resulting from drilling operations at well or hole sites, and (d) the injection or removal of commodities into or from holes or wells, between points in AL, AR, FL, LA, MS, and TX.

MC 60066 (Sub-21F), filed September 23, 1980. Applicant: BEE LINE MOTOR FREIGHT, INC., 1804 Paul St., Omaha, NE 68102. Representative: Donald L. Stern, Suite 610, 7171 Mercy Rd., Omaha, NE 68106. Transporting *shock absoorbers*, and *materials, equipment, and supplies* used in the manufacture of shock absorbers, between points in Dawson County, NE, on the one hand, and, on the other, points in the U.S. (except NE, AK, and HI).

MC 78786 (Sub-281F), filed September 22, 1980. Applicant: PACIFIC MOTOR TRUCKING COMPANY, a Corporation, 1766 El Camino Real, Burlingame, CA 94010. Representative: John MacDonald Smith, Southern Pacific Bldg., Rm. 813, One Market Plaza, San Francisco, CA 94105. Transporting *general commodities* (except classes A and B

explosives, and household goods as defined by the Commission), between points in the U.S.

MC 103826 (Sub-7F), filed September 24, 1980. Applicant: R. O. HARRELL, INC., P.O. Box 97, South Boston, VA 24592. Representative: Dwight L. Koerber, Jr., P.O. Box 1320, 110 N. 2nd St., Clearfield, PA 16830. Transporting *commodities in bulk*, between points in WV, VA, MD, NC, SC, and DC.

MC 106707 (Sub-24F),filed Sepetmber 25, 1980. Applicant: ADAMS TRUCKING, INC, 1711 West Second St., Webster City, IA 50595. Representative: Ronald D. Adams (same address as applicant). Transporting *such commodities* as are used in the manufacture, sale, and distribution of agricultural and industrial equipment, between points in the U.S.

MC 109397 (Sub-524F), filed September 23, 1980. Applicant: TRI-STATE MOTOR TRANIST CO., A Corporation, P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). Transportating *metal products*, between points in Harrison County, MS, on the one hand, and, on the other, points in the U.S.

MC 119917 (Sub-65F), filed September 22, 1980. Applicant: DUDLEY TRUCKING COMPANY, INC., 724 Memorial Dr., S.C., Atlanta, GA 30316. Representative: William F. Dudley (same address as applicant). Transporting *foodstuffs*, and *materials, equipment, and supplies* used in the manufacture and distribution of foodstuffs, between points in IL, NY, and MA, on the one hand, and, on the other points in the U.S.

MC 120737 (Sub-71F), filed September 22, 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 *such commodities* as are dealt in or used by manufacturers and distributors of (a) agricultural equipment, (b) industrial equipment, and (c) lawn and leisure products (expect commodities in bulk), from the Port of Kenosha, WI, to points in the U.S.

MC 127337 (Sub-24F), filed September 22, 1980. Applicant: CHET'S TRANSPORT, INC., Charlotte, ME 04660. Representative: Lawrence E. Lindeman, 425–13th., NW., Suite 1032, Washington, DC 20004. In foreign commerce only, transporting *malt beverages*, from points in MA, and the ports of entry on the international boundary line between the U.S. and Canada located in ME, to points in ME, NH, VT, MA, RI, CT, NY, NJ, PA, DE, MD, and DC.

MC 138157 (Sub-252F), filed September 23, 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 *general commodities* (except articles of unusual value, household goods as defined by the Commission, classes A and B explosives, commodites in bulk, and those requiring special equiment), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of United States Gypsum Company.

MC 139906 (Sub-128F), filed September 25, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 30303, Salt Lake City, UT 84127. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. Transporting *chemicals*, between points in Hillsboro County, FL, on the one hand, and, on the other, points in the U.S.

MC 139906 (Sub-129F), filed September 25, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 30303, Salt Lake City, UT 84127. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. Transporting *such commodities* as are dealt in or used by manufacturers of kidney dialysis equipment, between points in Contra Costa County, CA, and Dade County, FL, on the one hand, and, on the other, points in the U.S.

MC 142976 (Sub-3F), filed September 23, 1980. Applicant: JOHN A. PERFETTI, R.D. #4, Box 265C, Blairsville, PA 15717. Representative: Eugene A. Waszkiewicz, P.O. Box 8315, Pittsburgh, PA 15218. Transporting *iron and steel articles, used railway track materials, and salvage materials*, between points in the U.S., under continuing contract(s) with Kovalchick Salvage Company, of Indiana, PA.

MC 143776 (Sub-7F), filed September 23, 1980. Applicant: C.D.B., INCORPORATED, 155 Spaulding, S.E., Grand Rapids, MI 49506. Representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, MI 48933. Transporting *bananas*, from Charleston, SC, Gulfport, MS, Mobile, AL, Tampa, FL, Newark, NJ, Wilmington, DE, Albany, NY, and points in Kings County, NY, to Grand Rapids, MI.

MC 146226 (Sub-4F), filed September 22, 1980. Applicant: J&P TRUCKING CO., INC., P.O. Box 457, Lincolnton, NC 28092. Representative: Dwight L. Koerber, Jr., P.O. Box 1320, 110 N. 2nd St., Clearfield, PA 16830. Transporting *paper and paper products*, and *materials and supplies* used in the manufacture and distribution of paper and paper products, between Gastonia, NC, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 146336 (Sub-14F), filed September 24, 1980. Applicant: WESTERN TRANSPORTATION SYSTEMS, INC., 1609–109th St., Grand Prairie, TX 75050. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. Transporting *electronic visual systems*, and *component parts* for flight simulators, between points in the U.S., under continuing contract(s) with Redifon Sinulation, Inc., of Arlington, TX.

MC 146646 (Sub-114F), filed September 23, 1980. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355 A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). Transporting *new furniture, and materials, equipment, and supplies* used in the manufacture and distribution of new furniture, between the facilities of S.K. Products, Corp., at or near (a) Houston, TX, (b) Chicago, IL, (c) Clifton, NJ, and (d) Atlanta, GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146646 (Sub-15F), filed September 23, 1980. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355 A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). Transporting *clay products, brick products*, and *tile products*, from points in the U.S. (except AK and HI) to points in WI.

MC 146646 (Sub-116F), filed September 23, 1980. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355 A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). Transporting (1) *air-conditioning and heating equipment*, and (2) *parts* for the commodities in (1) above, between the facilities of Martin Industries, at or near Americus, GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146646 (Sub-117F), filed September 23, 1980. Applicant: BRISTOW TRUCKING CO., INC., P.O. Box 6355 A, Birmingham, AL 35217. Representative: James W. Segrest (same address as applicant). Transporting (1) *animal and poultry feed and feed ingredients*, (2) *foodstuffs*, and (3) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) and (2) above, between points in

the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of ConAgra, Inc.

MC 147876 (Sub-3F), filed September 25, 1980. Applicant: SHAY COMPANY, INC., P.O. Box 2081, Clarksville, IN 47130. Representative: K. Edward Wolcott, P.O. Box 872, Atlanta, GA 30301. Transporting *such commodities* as are dealt in or used by a manufacturer of stoves, fireplaces, chimney systems, and refractory products, between points in the U.S. (except AK and HI), under continuing contract(s) with Pacific Fireplace Company, or Corona, CA.

MC 148727 (Sub-2F), filed September 22, 1980. Applicant: EAGLE CONTRACT CARRIER CORPORATION, P.O. Box 2367, Winchester, VA 22601. Representative: Lawrence E. Lindeman, 425 13th St., NW., Suite 1032, Washington, DC 20004. Transporting *general commodities* (except used household goods and classes A and B explosives), between points in the U.S., under continuing contract(s) with United Drug Service, of Washington, DC.

MC 149026 (Sub-16F), filed September 25, 1980. Applicant: TRANS-STATES LINES, INC., 633 Main St., Van Buren, AR 72956. Representative: Larry C. Price, P.O. Box 1486, Van Buren, AR 72956. Transporting (1) *stoves, and heating and air conditioning equipment*, and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, between Wichita, KS, Chattanooga, TN, and Ft. Smith, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 151697 (Sub-1F), filed September 22, 1980. Applicant: HILL & HORAN TRUCKING, INC., 17400 North Dallas Parkway, Suite 112, Dallas, TX 75252. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. Transporting (1) *machinery, equipment, materials, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, and (2) *machinery, materials, equipment, and supplies* used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipe lines, including the stringing and pickup thereof, between points in TX, on the one hand, and, on the other, points in ND, CO, LA, OK, NM, UT, MT, and WY, restricted to traffic originating at or destined to the facilities of The Western Company of North America.

MC 151946F, filed September 19, 1980. Applicant: BIG LAKE TRANSPORT, INC., P.O. Box 98, Charleston, MO 63834. Representative: Edward P. Bocko, 1689 Warner Ct., Mineral Ridge, OH 44440. Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives, and commodities requiring special equipment), between points in the U.S., under continuing contract(s) with Kendall Company, of Boston, MA.

MC 151947F, filed September 19, 1980. Applicant: BARLUP TRASNPORT, INC., 901 West Main St., Waynesboro, PA 17268. Representative: William B. Shew (same address as applicant). Transporting (1) *paper, paper products, and printed matter*, and (2) *materials, equipment and supplies* used in the manufacture of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Arnold Graphic Industries, Inc., of Chambersburg, PA.

Volume No. OP5-024

Decided: September 29, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton and Liberman.

MC 908 (Sub-18F), filed September 18, 1980. Applicant: CONSOLIDATED CARTAGE COMPANY, INC., P.O. Box 171, Argo, IL 60501. Representative: Eugene L. Cohn, One North LaSalle St., Chicago, IL 60602. Transporting *plastic and plastic articles*, and *materials, equipment and supplies* used in the manufacture and distribution of plastic and plastic articles, between Indianapolis, IN, on the one hand, and, on the other, St. Louis, MO, and points in IL, KY, MI, OH, and WI.

MC 908 (Sub-19F), filed September 18, 1980. Applicant: CONSOLIDATED, CARTAGE COMPANY, INC., P.O. Box 171, Argo, IL 60501. Representative: Eugene L. Cohn, One North LaSalle St., Chicago, IL 60602. Transporting (1) *televisions and electronic equipment*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), between Chicago, IL, on the one hand, and, on the other, Aurora, MO, Bryan, OH, and Beaver Dam, WI.

MC 2228 (Sub-73F), filed September 19, 1980. Applicant: MERCHANTS FAST MOTOR LINES, INC., P.O. Drawer 591, Abilene, TX 79604. Representative: Jerry Prestridge, P.O. Box 1148, Austin, TX 78767. 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 Seminole and El Paso, TX, over U.S. Hwy 180, serving all intermediate points.

Note.—Applicant intends to tack with existing authority.

MC 5888 (Sub-53F), filed September 17, 1980. Applicant: MID-AMERICAN LINES, INC., 127 West Tenth St., Kansas City, MO 64105. Representative: Tom Zaun (same address as applicant). Transporting *chains, belting, and argicultural implement parts*, from Dolton, IL, to points in KS and MO.

MC 8028 (Sub-6F), filed September 18, 1980. Applicant: BARRIEAU EXPRESS, INC., 301 Murphy Rd., Hartford, CT 06114. Representative: Gerald A. Joseloff, P.O. Box 3258, Hartford, CT 06103. Transporting *aircraft engines, and equipment, materials, and supplies* used in the manufacture and distribution of aircraft engines, between points in CT, on the one hand, and, on the other, points in the U.S. (including AK but excluding HI).

MC 8958 (Sub-45F), filed September 19, 1980. Applicant: THE YOUNGSTOWN CARTAGE CO., INC., 825 W. Federal St., Youngstown, OH 44501. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. Transporting (1) *iron and steel articles*, 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 Albany County, NY and New Haven County, CT, on the one hand, and, on the other, points in ME, NH, and VT.

MC 33298 (Sub-5F), filed September 19, 1980. Applicant: SCHOCK TRANSFER & WAREHOUSE CO., INC., 45 Osage Ave., Kansas City, KS 66618. Representative: Clyde N. Christey, Kansas Credit Union Bldg., 1010 Tylder Suite 110L, Topeka, KS 66612. Transporting *paper; paper products, and wallboard* from Kansas City, MO, to points in KS, AR, MO, and OK, restricted to traffic having an immediately prior movement by rail.

MC-36918 (Sub-14F), filed September 18, 1980. Applicant: FASTWAY TRANSPORTATION, INC., P.O. Box 383, Matawan, NJ 07747. Representative: Michael R. Werner, 167 Fairfield Rd., P.O. Box 1409, Fairfield, NJ 07006. Transporting (1) *containers, container closures, and packaging products*, and (2) *materials, equipment and supplies* used in the manufacture, sale and distribution of the commodities in (1) between points in the U.S.

MC 40978 (Sub-77F), filed September 22, 1980. Applicant: CHAIR CITY MOTOR EXPRESS COMPANY, a corporation, 3321 South Business Drive,

Sheboygan, WI 53081. Representative: Richard C. Alexander, 710 N. Plankinton Avenue, Milwaukee, WI 53203. Transporting *such commodities* as are dealt in by retail department stores (except foodstuffs and furniture) from Chicago, IL to Milwaukee, WI.

MC 40978 (Sub-78F), filed September 22, 1980. Applicant: CHAIR CITY MOTOR EXPRESS COMPANY, a corporation, 3321 South Business Drive, Sheboygan, WI 53081. Representative: Richard C. Alexander, 710 N. Plankinton Ave., Milwaukee, WI 53203. Transporting (1) *urethane foam products* from the facilities of Reiss Industries, Inc., at Watertown, WI, to those points in the U.S. in and east of MN, IA, MO, AR, and LA, and (2) *materials and supplies* used in the manufacture and distribution of urethane foam products (except commodities in bulk), in the reverse direction.

MC 84098 (Sub-4F), filed September 19, 1980. Applicant: SHELDON TRANSFER & STORAGE COMPANY, INC., 170 Main St., Holyoke, MA 01040. Representative: James M. Burns, 1383 Main St., Springfield, MA 01103. 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 Holyoke, MA and Milwaukee, WI, from Holyoke over Interstate Hwy 90 to junction Interstate Hwy 94, then over Interstate Hwy 94 to Milwaukee, and return over the same route, serving all intermediate points, restricted to traffic moving on bills of lading of Freight Forwarders as defined in 49 U.S.C. § 10102(8).

MC 107409 (Sub-39F), filed September 18, 1980. Applicant: RATLIFF & RATLIFF, INC., P.O. Box 1573, Lexington, NC 27292. Representative: Elisabeth A. DeVine, P.O. Box 737, Moline, IL 61265. Transporting *lumber and lumber products*, between Evansville, IN, and points in AR, IL, IA, KS, KY, MO, NE, OK, TN, TX, and WI, restricted to traffic originating at or destined to the facilities used by C. L. Krug Lumber Company.

MC 107478 (Sub-76F), filed September 19, 1980. Applicant: OLD DOMINION FREIGHT LINE, INC., 1791 Westchester Drive, P.O. Box 2006, High Point, NC 27261. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Transporting *plastic articles and materials, equipment, and supplies* used in the manufacture, sale, and distribution of plastic articles between points in Richmond County, GA, and Aikens and Spartanburg Counties, SC, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 107478 (Sub-77F), filed September 19, 1980. Applicant: OLD DOMINION FREIGHT LINE, INC., 1791 Westchester Drive, Post Office Box 2006, Highpoint, NC 27261. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Transporting *dog food*, between points in Auglaize County, OH, on the one hand, and, on the other, points in NC and SC.

MC 113678 (Sub-896F), filed September 20, 1980. Applicant: CURTIS, INC., 4810 Pontiac St., Commerce City, CO 80022. Representative: Roger M. Shaner (same address as applicant). Transporting (1) *printed matter*, (2) *pulp, paper, or allied products*, as described in Items 27 and 26, respectively, of the Standard Transportation Commodity Code Tariff, and (3) *materials and supplies* used in the manufacture of the commodities in (1) and (2), between points in Maricopa and Prima Counties, AZ, Contra Costa County, CA, Denver, El Paso, Jefferson, Larimer, and Pueblo Counties, CO, Ada County, ID, Douglas County, KS, Clark County, NV, Bernalillo County, NM, El Paso and Tarrant Counties, TX, and Salt Lake County, UT.

MC 113678 (Sub-897F), filed September 22, 1980. Applicant: CURTIS, INC., 4810 Pontiac St., Commerce City, CO 80022. Representative: Roger M. Shaner (same address as applicant). Transporting *such commodities* as are dealt in by food business houses, between points in the U.S.

MC 113678 (Sub-898F), filed September 22, 1980. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Representative: Roger M. Shaner (same address as applicant). Transporting *chemicals or allied products*, as described in Item 28 of the Standard Transportation Commodity Code Tariff, between points in AZ, CA, CO, ID, MT, NV, NM, OR, TX, UT, and WA.

MC 114569 (Sub-376F), filed September 16, 1980. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same address as applicant). Transporting *such commodities* as are dealt in or used by food business houses, between points in the U.S.

MC 118318 (Sub-56F), filed September 19, 1980. Applicant: IDA-CAL FREIGHT LINES, INC., P.O. Drawer M, Nampa, ID 83651. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Transporting *meat, 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, between points in Walla Walla County, WA, on the one hand, and, on the other, points in OR and AZ. Condition: The person or persons which appear to be in common control of applicant and another regulated carrier 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.

MC 118989 (Sub-235F), filed September 19, 1980. Applicant: CONTAINER TRANSIT, INC., 5223 South 9th St., Milwaukee, WI 53221. Representative: Albert A. Andrin, 180 North LaSalle St., Chicago, IL 60601. Transporting *general commodities* (except in bulk), (1) between points in IL, IN, WI, MO, ND, SD, NE, MN, KY, TN, OH, MI, KS and IA, and (2) between points in (1) above, on the one hand, and, on the other, points in the U.S. Condition: Any certificate issued in this proceeding to the extent it authorizes the transportation of classes A and B explosives shall be limited in point of time to a period expiring 5 years from the date of issuance of said certificate.

MC 121598 (Sub-9F), filed September 15, 1980. Applicant: SHELBYVILLE EXPRESS, INC., P.O. Box 187, Shelbyville, TN 37160. Representative: James G. Caldwell, P.O. Box 100906, Nashville, TN 37210. 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 Nashville and Lewisburg, TN, serving all intermediate points, over U.S. Hwy. 31A (2) between Nashville and Lewisburg, TN, serving all intermediate points, from Nashville over Interstate Hwy. 65 to junction TN Hwy. 50, then over TN Hwy. 50 to Lewisburg, and return over the same routes, (3) between Shelbyville and Lewisburg, TN, serving all intermediate points, from Shelbyville over TN Hwy. 64 to junction U.S. Hwy. 31A, then over U.S. Hwy. 31A to Lewisburg, and return over the same routes, (4) between Lewisburg and Ardmore, TN, serving all intermediate points, from Lewisburg over U.S. Hwy. 31A to junction Interstate Hwy. 65, then over Interstate Hwy. 65 to junction U.S. Hwy. 31, then over U.S. Hwy. 31 to Ardmore, and return over the same routes.

Note.—Applicant intends to tack with its existing authority.

MC 121699 (Sub-11F), filed September 17, 1980. Applicant: VOLUNTEER EXPRESS, INC., 2720 Faydur Court, Nashville, TN 37210. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between points in Weakly, Obion, Carroll, Henry, Shelby, and Davidson Counties, TN, on the one hand, and, on the other, points in NY, NJ, and PA.

MC 125368 (Sub-119F), filed September 22, 1980. Applicant: CONTINENTAL COAST TRUCKING CO., INC., P.O. Box 26, Holly Ridge, NC 28445. Representative: Roland M. Lowell, 618 United American Bank Bldg., Nashville, TN 37219. Transporting *refrigeration and air conditioning coils, and temperature control products,* between the facilities of Singer Company, Coil Division, at or near Wilmington, NC, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 127349 (Sub-5F), filed September 2, 1980. Applicant: DAVIS TRANSPORT, INC., P.O. Box 8058, Missoula, MT 59807. Representative: W. E. Seliski (same address as applicant). Transporting (1) *salt and salt products,* and (2) *material, equipment, and supplies* used in the manufacture and distribution of salt and salt products, between points in the U.S., under continuing contract(s) with Great Salt Lake Minerals & Chemicals Corporation, of West Ogden, UT.

MC 135689 (Sub-2F), filed September 17, 1980. Applicant: EUGENE MEYER, 509 Fairview Ave., Versailles, OH 45380. Representative: Richard H. Brandon, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017. Transporting *lime and limestone products,* between points in the U.S., under continuing contract(s) with Armco, Inc., of Middletown, OH.

MC 136818 (Sub-113F), filed September 22, 1980. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 West Elwood Rd., P.O. Box 3902, Phoenix, AZ 85030. Representative: Donald E. Fernaays, 4040 East McDowell Rd., Suite 320, Phoenix, AZ 85008. Transporting *cheese and cheese products,* and *materials, equipment, and supplies* used in the manufacture of cheese, from points in Cache County, UT to points in AZ, CA, and CO.

MC 136989 (Sub-21F), filed September 22, 1980. Applicant: R. F. BOX, INC., 1110 Reservoir St., Pomona, CA 91766. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. Transporting *such commodities* as are dealt in or used by a manufacturer of chemicals, plastics, and fibers, between points in the U.S., under continuing contract(s) with Fibers and Plastics Company, a division of Allied Chemical Corporation of New York, NY.

MC 140839 (Sub-89F), filed September 12, 1980. Applicant: OSBORN TRANSPORTATION, INC., P.O. Box 1830, Gadsden, AL 35902. Representative: Clayton R. Byrd, P.O. Box 304, Conley, GA 30027. Transporting *rugs, carpeting, and textile products,* from points in NC and SC to points in CA, CO, ID, NV, MT, OR, UT, WA and WY.

MC 140498 (Sub-3F), filed September 17, 1980. Applicant: BECHEM TRANSPORT, INC., 46 River St., New Haven, CT 06513. Representative: Fritz R. Kahn, 1660 L St., NW., Suite 1100, Washington, DC 20036. Contract carrier, transporting (1) *chemicals and chemical waste,* in bulk, under continuing contract(s) with E. I. DuPont de Nemours & Company, Inc., of Wilmington, DE, (2) *methanol,* in bulk, under continuing contract(s) with Houghton Chemical Corporation of Allston, MA, and (3) *spent sulfite liquor,* in bulk, under continuing contract(s) with C. H. Dexter Division of The Dexter Corporation, of Windsor Locks, CT, between points in the U.S.

MC 140998 (Sub-3F), filed September 22, 1980. Applicant: DALE OSBURN, INC., 5850 Pardee, Taylor, MI 48180. Representative: Edwin M. Snyder, 22375 Haggerty Rd., P.O. Box 400, Northville, MI 48167. Transporting *iron and steel articles,* between points in Chippewa County, MI, on the one hand, and, on the other, points in MI.

MC 142508 (Sub-162F), filed September 18, 1980. Applicant: NATIONAL TRANSPORTATION, INC., P.O. Box 37465, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. Transporting *meats, meat products, meat by-products, and articles distributed by meat-packing houses* as described in section 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 Iowa Beef Processors, Inc., at or near Holcomb, KS to points in the U.S.

MC 142548 (Sub-9F), filed September 19, 1980. Applicant: STALEY EXPRESS, INC., 2501 North Bruch College Rd., Decatur, IL 62526. Representative: Charles Carnahan, Jr., (same address as applicant). Transporting *such commodities* as are dealt in by automotive supply stores (except in bulk), between the facilities of The Firestone Tire & Rubber Company at Chicago, IL, on the one hand, and, on the other, points in IL, IN, IA, and MI, under continuing contract(s) with The Firestone Tire & Rubber Company of Akron, OH.

MC 144578 (Sub-5F), filed September 18, 1980. Applicant: LIME, INC., 3969 Wyoming Ave., Dearborn, MI 48126. Representative: Miss Wilhelmina Boersma, 1600 First Federal Bldg., Detroit, MI 48226. Transporting *clay, concrete, glass or stone products,* as described in Item 32 of the Standard Transportation Commodity Code Tariff, between points in Wayne County, MI, Erie, Seneca and Wyandot Counties, OH, and Sequoyah County, OK, on the one hand, and, on the other, points in the U.S. Condition: Issuance of a certificate in this proceeding is conditioned upon prior or coincidental cancellation of certificate MC 144578F and Subs-1 and 2

MC 144828 (Sub-7F), filed September 19, 1980. Applicant: FEPCO TRUCKING, INC., 3458 Moreland Ave., Conley, GA 30027. Representative: Archie B. Culbreth, 2200 Century Parkway, Suite, 202, Atlanta, GA 30345. Transporting *such commodities* as are dealt in or used by food manufacturers, processors, or distributors, between Rome, GA, and Marseilles, IL, on the one hand, and, on the other, points in the U.S.

MC 145219 (Sub-15F), filed September 18, 1980. Applicant: BUILDERS TRANSPORT, INC., P.O. Box 2726, Savannah, GA 31402. Representative: William P. Sullivan, 818 Connecticut, Ave., NW., Washington, D.C. 20006. Transporting (1) *lumber and wood products* (except furniture), and (2) materials, equipment, and supplies used in the manufacture, distribution and installation of the commodities in (1) above, between points in Warren County, MS and Shelby County, TN, on the one hand, and, on the other, points in and east of MN, IA, NE, KS, OK, and TX.

MC 146079 (Sub-9F), filed September 19, 1980. Applicant: JACKSON TRANSPORTATION, INC., R.R. 1, Box, 410–A, Clayton, IN 46118. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting (1) *pulp, paper, and paper products,* and (2) *materials, equipment, and supplies,* used in the manufacture and distribution of the commodities in (1), between points in Marion County, IN, on the one hand, and, on the other, points in the U.S.

MC 146689 (Sub-5F), filed September 22, 1980. Applicant: RONALD DINNOCENTI, ANGELINE DINNOCENTI, ROBERT L. LIST, AND CHARLES W. YETTER, III, d.b.a. LARK

LEASING COMPANY, a partnership, 261 Maplewood Drive, Pottstown, PA 19464. Representative: Christian V. Graf, 407 N. Front St., Harrisburg, PA 17101. Transporting *sanitary paper products, pads, padding, and toilet preparations,* from Milltown, NJ, to points in ME, NH, VT, MA, CT, RI, NY, PA, DE, MD, VA, NC, and SC, under continuing contract(s) with Personal Products Company of Milltown, NJ.

MC 146718 (Sub-2F), filed September 16, 1980. Applicant: MILNE ENTERPRISES, INC., 72 Littleworth, Rd., Dover, NH 03820. Representative: David E. McCabe, Route 1, By-Pass, P.O. Box 402, Kittery, ME 03904. Transporting *coal, petroleum products, lubricants and solvents,* in bulk, in tank vehicles, between points in CT, ME, MA, NH, NJ, NY, RI, and VT.

MC 147199 (Sub-4F), filed September 19, 1980. Applicant: MWM TRUCKING, INC., 1400 Chestnut St., P.O. Box 736, Ottawa, IL 61350. Representative: Edward D. McNamara, Jr., 907 South Fourth St., Springfield, IL 62703. Transporting *fertilizer,* from Streator, IL and points in LaSalle County, IL to points in IN, IA, and WS.

MC 149538F, filed September 17, 1980. Applicant: ENGLES TRUCK SERVICE, INC., RR 3 Box 58, Worthington, MN 56187. Representative: A. J. Swanson, The Van Brunt Bldg.—Suite 210, 226 North Phillips Ave., P.O. Box 1103, Sioux Falls, SD 57101. Transporting *such commodities* as are dealt in by food and grocery business houses, between points in the U.S., under continuing contract(s) with American Fruit & Produce Company of St. Paul, MN.

MC 150259 (Sub-2F), filed September 22, 1980. Applicant: CLARK TANK LINES COMPANY, 1450 Beck St., P.O. Box 1895, Salt Lake City, UT 84110. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110. Transporting (1) *ammonium nitrate,* (2) *sodium perchlorate and di nitro tolulene,* in bulk, between points in the U.S., under continuing contract(s) with Cook Associates, Inc., d.b.a. Cook Slurry Company, of Salt Lake City, UT.

MC 151728 (Sub-1F), filed September 9, 1980. Applicant: DAVID MOSER, d.b.a. D. M. INTERNATIONAL ENTERPRISES CO., INC., 5178 North Lovers Lane, Apt. No. 1, Milwaukee, WI 53225. Representative: Theodore C. Seraphim, 407 West Silver Spring Dr., Milwaukee, WI 53217. Transporting *magazines, books, catalogs, periodicals and newspaper inserts,* between points in the U.S., under continuing contract(s) with Wisconsin Cuneo Press, Inc., of Milwaukee, WI.

MC 151878F, filed September 11, 1980. Applicant: THREE WAY CORPORATION, 1120 Karlstad Drive, Sunnyvale, CA 94086. Representative: Joseph G. Bonino (same address as applicant) and Charles H. White, Jr., 1019 19th St., NW., Washington, DC 20036. Transporting *those commodities* described in parts (2) and (3) of the definition of *household goods* set forth in 49 CFR § 1056.1(a), between points in the U.S. except AL and HI).

MC 151889F, filed September 16, 1980. Applicant: DAVID LATHAM, Route 2, Box 385, Somerset, KY 42501. Representative: Robert H. Kinker, 314 West Main St., Frankfort, KY 40602. Transporting (1) *charcoal, charcoal briquettes, vermiculite, hickory chips, fireplace logs, lighter fluid, and spices and sauces* used in outdoor cooking, and (2) *materials, equipment, and supplies* used in the manufacture, processing and distribution of the products in (1) above, between points in the U.S. (except AL and HI), restricted to traffic originating at or destined to the facilities of The Kingsford Company.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-31263 Filed 10-7-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Decided: September 30, 1980.

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 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.gs., 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 the Commission's regulation. Exept 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 within 30 days of publication of this decision-notice (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 within 30 days after publication, or the application shall stand denied.

By the Commission, Review Board Number 2. Members Chandler, Eaton and Liberman.

Agatha L. Mergenovich,

Secretary.

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.

MC 128607 (Sub-13F), filed May 19, 1980. Applicant: BOYD TRUCKING CO., a Corporation, Gas Point Rd., P.O. Drawer T, Cottonwood, CA 96022. Representative: Marvin Handler, 100 Pine St., Suite 2550, San Francisco, CA 94111. Transporting *wood residuals*, from Anderson, CA, to Dillard, OR.

[FR Doc. 80-31262 Filed 10-7-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register.** One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-63

The following applications were filed in Region 3. Send protests to ICC, Regional Authority Center, P.O. Box 7600, Atlanta, GA 30357.

MC 151953 (Sub-3-1TA), filed September 22, 1980. Applicant: MOTOR CARRIER SERVICES, INC., Suite 89, 5311 Seventy-Seven Center Drive, Charlotte, NC 28210. Representative: A. Doyle Cloud, Jr., 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. Contract carrier, irregular, *Food and drink products, and materials, equipment, and supplies utilized in the manufacture, processing and distribution of such products* between Columbus, MS, on the one hand, and, on the other, points in the U.S. under continuing contract(s) with Universal Industries Corporation. Supporting shipper: Universal Industries Corporation, P.O. Box 192, Columbus, MS 39701.

MC 121654 (Sub-3-5TA), filed September 17, 1980. Applicant: COASTAL TRANSPORT & TRADING CO., P.O. Box 7438, Savannah, GA 31408. Representative: Bruce E. Mitchell, Alan E. Serby, 3390 Peachtree Rd., NE., 5th Floor-Lenox Towers South, Atlanta, GA 30326. *Iron and Steel Articles and Materials, Equipment and Supplies used in the Production and Distribution of Outdoor Advertising Signs* between the facilities of Formetco, Inc. at or near Duluth, GA, on the one hand, and, on the other, points in and east of TX, OK, KS, NE, SD, and ND. Supporting shipper: Formetco, Inc., 2963 Pleasant Hill Road, Duluth, GA 30136.

MC 115841, (Sub-3-25TA), filed September 18, 1980. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., McBride Lane, P.O. Box 22168 Knoxville, TN 37922. Representative: Michelene Good (same address as applicant). *Foodstuffs (except commodities in bulk),* from Memphis, TN to points in the U.S. (except AK and HI). Supporting shipper: Adams Packing Association, Inc., P.O. Box 37, Auburndale, FL 33823.

MC 147318 (Sub-3-2TA), filed September 18, 1980. Applicant: DEEP SOUTH TRUCKING, INC., Hwy 11 North, P.O. Box 304, Purvis, MS 39475. Representative: Kent F. Hudson, 202 Main St., P.O. Box 696, Purvis, MS 39475. *Taitanium dioxide, except in bulk in tank vehicles,* between points in Harrison County, MS, on the one hand, and, on the other, points in Panama, FL. Restricted to traffic having a prior or subsequent movement by water. Supporting shipper: E. I. Dupont DeNemours and Company, Wilmington DE 19898.

MC 127834 (Sub-3-1 TA), filed September 18, 1980. Applicant: CHEROKEE HAULING & RIGGING, INC., Highway 85-East, Madisonville, KY 42431. Representative: Carl U. Hurst,

P.O. Drawer "L", Madisonville, KY 42431. *(1) Ores, chemicals, non-metalic minerals, and metal products and, (2) Materials, equipment and supplies used in the production or distribution of (1) above, (except commodities in bulk),* between the facilities of Foote Mineral Company at or near Frazer, PA and Kings Mountain, NC and points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NY, ND, OH, OK, RI, SC, SD, TN, TX, VT, VA, WV, WI and D.C. Supporting shipper: Foote Mineral Company, Route 100, Exton, PA 19341.

MC 61403 (Sub-3-5TA), filed September 18, 1980. Applicant: THE MASON AND DIXON TANK LINES, INC., P.O. Box 969, Kingsport, TN 37662. Representative: James P. Ray (same address as applicant). *Liquid and Dry Commodities, in bulk,* from Greenville, Spartanburg & Laurens Counties, SC, to points in the U.S. in and east of ND, SD, NE, CO, OK and TX. Supporting shippers: Emery Industries, Inc., P.O. Box 628, Maulding, SC 29662; Chemax, Inc., P.O. Box 6067, Station B, Greenville, SC 29606; Para-Chem Southern, Inc., Box 127, Simpsonville, SC 29681; Ora Corporation, Highway 221, Ora, SC; and Milliken & Company, P.O. Box 4396, Spartanburg, SC 29303.

MC 123872 (Sub-3-6TA), filed September 20, 1980. Applicant: W & L MOTOR LINES, INC., P.O. Box 3467, Hickory, NC 28601. Representative: Timothy C. Miller, Suite 301, 1307 Dolley Madison Boulevard. McLean, VA 22101. *Textile piece goods and griege goods* from the commercial zone in Los Angeles, CA to points in NC and VA. Supporting shipper: Koval Stone, Inc., 5164 Alcoa Avenue, P.O. Box 58606, Los Angeles, CA 90058.

MC 144503 (Sub-3-3TA), filed September 18, 1980. Applicant: ADAMS REFRIGERATED EXPRESS, INC., P.O. Box F, Forest Park, GA 30050. Representative: Virgil H. Smith, Suite 12, 1587 Phoneix Boulevard, Alanta, GA 30349. *Chemicals, cleaning and sanitation materials, equipment and supplies (except in bulk),* between the facilities of Zep Manufacturing Co. at Atlanta and Smyrna, GA on the one hand, and, on the other, points in the U.S., except AK and HI. Supporting Shipper: Zep Manufacturing Co., 1310 Seaboard Ind Blvd., NW, Alanta GA 30318.

MC 151380 (Sub-3-1TA), filed September 17, 1980. Applicant: RICLYN ENTERPRISES, INC., 4300 S.W. 6th Street, Plantation, FL 33317. Representative: Richard Mendenhall (address same as applicant). *General commodities in containers having a prior or subsequent movement by water* between Ports of Miami, Port Everglades, and West Palm Beach on the one hand, and, on the other, Dade, Broward, and Palm Beach Counties, FL. Included are the commercial zones and terminal areas of the port cities in Miami, Port Everglades (Fort Lauderdale), and Palm Beach, FL. Supporting shipper: Strachan Shipping Co., P.O. Box 13131, Port Everglades, Ft. Lauderdale, FL 33316.

MC 121654 (Sub-3-7TA), filed September 17, 1980. Applicant: COASTAL TRANSPORT & TRADING CO., P.O. BOX 7438, Savannah, GA 31408. Representative: Alan E. Serby, Esq., 3390 Peachtree Rd., N.E. 5th Floor—Lenox Towers South, Atlanta, GA 30326. *Iron and Steel, and Iron and Steel Articles* from facilities of Atlantic Steel Co. located at or near Atlanta, Cartersville and Tallapoosa, GA to points in FL, AL, NC, TN, SC, MS, LA, OH, VA, PA, WV, NJ, NY, MD, DE, TX, CT, MA and RI. Supporting shipper: Atlantic Steel Co., P. O. Box 1714, Atlanta, GA 30301.

MC 85970 (Sub-3-11TA), filed September 23, 1980. Applicant: Sartain Truck Line., Inc., 1625 Hornbrook Street, Dyersburg, TN 38024. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Avenue Memphis, TN 38137. *General commodities (except Classes A and B explosives, household goods as defined by Commission, those of unusual value, and articles requiring special equipment)* between Memphis, TN and Covington, TN, on the one hand, and, on on the other, points in the states of KY, OH, AL, GA, WV, PA, IL, IN, MS, TX, LA, AR, MO, KS, MI, and TN. Supporting shipper: Signode Corporation, 3610 W. Lake Avenue, Glenview, IL.

MC 148238 (Sub-3-2TA), filed September 23, 1980. Applicant: COMMERCIAL BROADLOOMS, INC., Worley Rd., and Arcadia Dr., Greenville, SC 29608. Representative: Clyde W. Carver, P. O. Box 720434, Atlanta, GA 30328. *Contract* carrier: irregular: *Textiles and textile products* between all pts. in the U.S. (execpt AK and HI). Supporting shippers: Buck Creek Industries, Inc.; Chattanooga, TN; Rossville Yarn Processing Corp., Rossville, GA; Texture-Tex, Inc., Dalton, GA.

MC 148822 (Sub-3-4TA), filed September 17, 1980. Applicant: SUPER TRUCKERS, INC., 3900 Commerce Avenue, Fairfied, AL 35064. Representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210. *Contract;* irregular routes. *Steel pipe and iron and steel articles,* between points in the U.S. in and east of ND, SD, NE, KS, OK and TX. Restriction: Restricted to the transportation of shipments under a continuing contract or contracts with Pyramid Steel Incorporated. Supporting shipper: Pyramid Steel Incorporated, Route 2, Box 46, Billings, MO 65610.

MC 115162 (Sub-3-13TA), filed September 18, 1980. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Representative: Robert E. Tate (same address as applicant). *Carbonated beverages, drinks, containers, and materials, equipment and supplies used in the manufacture, sale and distribution of carbonated beverages, drinks, and containers,* between points in the states of AL, FL, GA, LA, MS, SC, TN, and TX. Supporting shipper: Hygeia Coca-Cola Bottling Company and Associating Companies; P.O. Drawer 12630; Pensacola, FL 32574.

MC 115654, (Sub-3-24TA), filed September 19, 1980. Applicant: TENNESSEE CARTAGE CO., INC., P.O. BOX 23193, Nashville, Tennessee 37202. Representative: Jackie Hastings (same address as applicant). *Chemicals, toilet preparations, personal care items, buffing and polishing compounds, and foodstuffs (except in bulk),* between the facilities of Alberto-Culver Co. at Chicago, IL and its commercial zone, Atlanta, GA and its commercial zone, and Memphis, TN and its commercial zone on the one hand and points in OH, IN, AL, AR, GA, KY. LA, MS and TN on the other. Supporting Shipper: Alberto-Culver Co., 2525 Armitage Ave., Melrose Park, IL 60160.

MC 128555 (Sub-3-6TA), filed September 18, 1980. Applicant: MEAT DISPATCH, INC., P.O. Box 1058, Palmetto, Florida 33561. Representative: William L Beasley (same as above). *Contract: Irregular: Air conditioners, heaters, heating and cooling equipment, parts, materials, supplies and equipment used in the manufacture of heating and cooling equipment,* between the plant sites of Addison Product Company its division and its subsidiary and points in the U.S. (except AK and HI), under continuing contract(s) with Addison Products Company of Addison, Mich., its division and its subsidiary. Supporting shipper: Addison Products Company, Addison, Michigan 49920.

MC 136234 (Sub-3-1TA), filed September 16, 1980. Applicant: BURKHART ENTERPRISES, INC., P.O. Box 6131, Knoxville, TN 37914. Representative: Jess D. Campbell, 205 Clinch Avenue, Knoxville, TN 37902. *Salt and salt products* from Knoxville, TN to points in NC, Points in VA on and

west of U.S. Hwy 21 and points in KY on and east of U.S. Hwy 127 and on and south of U.S. Hwy 60. Supporting shipper: Cargill, Incorporated, P.O. Box 9300, Minneapolis, MN 55440.

MC 11220 (Sub-3-TA), filed September 23, 1980. Applicant: GORDONS TRANSPORTS, INC., 185 West McLemore Avenue, Memphis, TN 38101. Representative: James J. Emigh, P.O. Box 59, Memphis, TN 38101. *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 Malvern, OH as an off-route point in connection with carrier's authorized regular route operations. Applicant intends to tack with its existing authority and to interline with other carriers. Supporting shipper: Col For, Inc., P.O. Box 485, Malvern, OH.

MC 150883 (Sub-3-2TA), filed September 17, 1980. Applicant: PDR TRUCKING, INC., P.O. Box 609, Gastonia, NC 28052. Representative: Eric Meierhoefer, Suite 423, 1511 K Street, NW, Washington, DC 20005. *Nonexempt food or kindred products,* (1) between points in Lucas and Sandusky Counties, OH; Allegheny County, PA; Muscatine and Johnson Counties, IA; and Ottawa County, MI, on the one hand, and, on the other, points in TX, SC, and FL; and (2) between points in Muscatine and Johnson Counties, IA; and Ottawa County, MI, on the one hand, and, on the other, points in NJ and PA. Supporting shipper: Heinz USA, Division of H. J. Heinz Company, P.O. Box 57, Pittsburgh, PA 15230.

MC 138157, (Sub-3-27TA), filed September 17, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 South Market Street, Chattanooga, TN 37410. Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. *Kitchen and household items and materials, equipment, and supplies used in the manufacture, sale, and distribution of Kitchen and household items (except commodities in bulk),* from San diego, CA to points in the U.S. in and east of ND, SD, NE, KS, OK and TX. Restrictions: Restricted to traffic originating at the facilities of Sanyo Electric, Inc. Supporting shipper: Sanyo Electric, Inc., 1200 West Artesia Boulevard, Compton, CA, 90220.

MC 115841, (Sub-3-23TA), filed September 22, 1980. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., McBride Lane, P.O. Box 22168, Knoxville, TN 37922. Representative: Michelene Good, McBride Lane, P.O. Box 22168, Knoxville, TN 37922. *Buticite Sheeting* from Nashville, TN to Selma, AL. Supporting shipper: E. I. Du Pont De Nemours & Co., Inc. 1007 Market Street, Wilmington, DE 19898.

MC 140389, (Sub-3-18TA), filed September 23, 1980. Applicant: OSBORN TRANSPORTATION, INC., P.O. Box 1830, Gadsden, AL 35902. Representative: Clayton R. Byrd, P.O. Box 304, Conley, GA 30027. *Carpets,* from the facilities of Karastan Rug Mill at or near Eden and Laurel Hill, NC, to points in CA. Supporting shipper(s): Karastan Rug Mill, P.O. Box 130, Eden, NC 27288.

MC 151952 (Sub-3-1TA), filed September 19, 1980. Applicant: DOUGHTY MOVING & STORAGE, INC., P.O. Box 1502, Natchez, MS 39120. Representative: Robert L. McArty, P.O. Box 22628, Jackson, MS 39205. *Electrical steel* from Natchez, MS to Nacogdoches, TX. Supporting shipper: Power Systems Division, McGraw-Edison Company, P.O. Box 2850, Pittsburgh, PA 15230.

MC 121664 (Sub-3-25TA), filed September 23, 1980. Applicant: HORNADY TRUCK LINE, INC., P.O. Box 846, Monroeville, AL 35460. Representative: William E. Grant, 1702 1st Avenue South, Birmingham, AL 35233. *Forest products, lumber or wood products* between Davidson County, TN, on the one hand, and, on the other, AL, GA, MS, KY, IN, IL, MO, OH, AR, WI, MI, and PA—Supporting Shipper: Norvell Wood Products, Inc., 6311 Centennial Blvd., Nashville, TN 37209.

MC 151901 (Sub-3-1TA), filed September 23, 1980. Applicant: T & M TRANSPORT, INC., 1320 Stirling Rd., Dania, FL 33004. Representative: Frank J. Hathaway, 7615 Biscayne Blvd., Miami, FL 33138. *General commodities (except those of unusual value; Classes A & B explosives; household goods as defined by the Commission; commodities in bulk; and those requiring special equipment)* between Belle Glade, FL, on the one hand, and, on the other, all points in the counties of Collier, Hendry, Lee, Charlotte, Glades, Sarasota, De Soto, Highlands and Okeechobee, FL. Supporting shipper: Piggyback Shippers Assn. of Florida, Inc., Hialeah, FL 33011.

MC 124887 (Sub-3-7TA), filed September 23, 1980. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *General Commodities,* between Calhoun County, FL on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, KS, OK and TX. Supporting shippers: Goodson's Manufacturing Co., Inc., P.O. Box 504, Blountstown, FL 32424.

MC 151896 (Sub-3-1TA), filed September 23, 1980. Applicant: JENKO TRANSPORTATION, INC., Rural Route 5, Box 117, Winchester, KY 40391. Representative: George M. Catlett, Suite 708, McClure Building, Frankfort, KY 40601. *General commodities (except commodities in bulk, classes A and B explosives, household goods as defined by the Commission, commodities of unusual value and those requiring special equipment),* between points in Clark County, KY, on the one hand, and, on the other, points in IL, IN, MI, OH, and Mt. Holly, NC, and its commercial zone. Restricted to shipments originating at or destined to the facilities of Rockwell International Corporation. Supporting shippers: Freightliner Corporation, P.O. Box 3849, Portland, OR 97208; Kenworth Truck Company, 65 Kenworth Road, Chillicothe, OH 45601; Kenworth Truck Company, 8801 E. Marginal Way S., Seattle, WA 98108; and Peterbilt Motors Company, 38801 Cherry Street, Newark, CA 94560.

MC 149218 (Sub-3-12TA), filed September 22, 1980. Applicant: SUNBELT EXPRESS INC., U.S. Hwy. 78, W., Bremen, GA 30110. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. *Malt Beverages* from Perry, GA to Louisville, KY. Supporting Shipper: Dixie Beer Distributors, Inc., 4703 Allmond Ave., Louisville, KY 40221.

MC 119777 (Sub-3-17TA), filed September 23, 1980. Applicant: LIGON SPECIALIZED HAULER, INC., Highway 85—East, Madisonville, KY 42431. Representative: Carl U. Hurst, P.O. Drawer "L", Madisonville, KY 42431. *Mud additives and treating compounds (except in bulk),* between Madison, IL and points in TX, WY, UT, LA and MS. Supporting shipper: Ironite Products Company, 7777 Bonhomme Avenue, Suite 1402, St. Louis, MO 63105.

MC 142835 (Sub-III-6TA), filed September 22, 1980. Applicant: CARSON MOTOR LINES, INC., P.O. Box 337, Auburndale, FL 33823. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. *Non-exempt food or kindred products,* from the facilities of Nabisco, Inc. at (1) Atlanta, GA to points in AL, CT, FL, LA, ME, MD, MA, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VT and VA, (2) Houston, TX to points in CT, FL, LA, ME, MD, MA, NJ, NY, OH, PA, RI and VA, (3) Fair Lawn, NJ and Philadelphia, PA to points in FL, ME, TX and VT, (4) Pittsburgh, PA to points in FL and TX, and (5) Richmond, VA to points in TX, MD and LA, for 270 days. Supporting shipper: Nabisco, Inc., East Hanover, NJ 07936.

MC 149218 (Sub-3-11TA), filed September 17, 1980. Applicant: SUNBELT EXPRESS INC., U.S. Hwy. 78, W., Bremen, GA 30110. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. (1) *Filters*, from Henderson, NC to pts. in AL, AR, GA, IL, IN, KY, LA, MS, MO, OH, SC, PA, TN, VA and WV; and (2) *material, equipment and supplies used in the manufacture and distribution of filters* from destination States named in (1) above to Henderson, NC. Supporting shipper: General Products, Division of Facet Enterprises, Inc., P.O. Box 1637, U.S. Hwy. No. 1 By-Pass, Henderson, NC 27536.

MC 105813 (Sub-3-4TA), filed September 17, 1980. Applicant: BELFORD TRUCKING CO., INC., 1759 S.W. 12th Street, P.O. Box 270, Ocala, FL 32670. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. *Foodstuffs* from Memphis, TN to points in the U.S. except AK and HI. Supporting shipper: Adams Packing Association, Inc., P.O. Box 37, Auburndale, FL 33823.

Applicant: READY TRUCKING, INC., 2717 Campbell Blvd., Ellenwood, GA 30049. Representative: Lavern R. Holdeman, P.O. Box 81849, Lincoln, NE 68501. *(1) Such commodities as are dealt in and are distributed by grocery, hardware and drug stores; (2) cleaning and building maintenance materials and supplies; (3) swimming pool, spa and hot tub products; (4) chemicals; and (5) materials, equipment, and supplies used in the manufacture, sale and distribution of commodities in parts (1) through (4)* between Minneapolis and St. Paul, MN; Omaha, NE; Dallas and Houston, TX; New Orleans, LA; St. Louis, MO; Chicago, IL; Toledo and Columbus, OH; Atlanta, GA; Auburndale and Tampa, FL; Bristol, PA; Brockport, NY; Boston, MA; Paterson, NJ; and Salem, VA, and points in their respective commercial zones, restricted to traffic originating at or destined to the facilities of the Purex Corporation, its divisions and subsidiaries, and further restricted against the transportation of commodities in bulk. Supporting shipper: Purex Corporation, 24600 South Main Street, Carson, CA 90749.

MC 121654 (Sub-3-6TA), filed September 17, 1980. Applicant: COASTAL TRANSPORT & TRADING CO., P.O. Box 7438, Savannah, GA 31408. Representative: Alan E. Serby, Esq., 3390 Peachtree Rd., NE., 5th Floor-Lenox Towers South, Atlanta, GA 30326. *Tobacco and Tobacco Products* from Richmond and Chester, VA and points in their commercial zones to Montgomery, AL; Atlanta, GA; and Columbia, SC and points within their commercial zones. Supporting shipper: Philip Morris USA, P.O. Box 26603, Richmond, VA 23261.

MC 121654 (Sub-3-8TA), filed September 17, 1980. Applicant: COASTAL TRANSPORT & TRADING CO., P.O. Box 7438, Savannah, GA 31408. Representative: Alan E. Serby, Esq., 3390 Peachtree Road, NE., 5th Floor-Lenox Towers South, Atlanta, GA 30326. *Medical and Health Care Products* from facilities of Parke Davis Co. at Greenwood, SC to points in the US (except AD and HI). Supporting shipper: Parke Davis Co., P.O. Box 368, Greenwood, SC 29646.

MC 121654 (Sub-3-9TA), filed September 19, 1980. Applicant: COASTAL TRANSPORT & TRADING CO., P.O. Box 7438, Savannah, GA 31408. Representative: Alan E. Serby, Esq., 3390 Peachtree Road, NE., 5th Floor-Lenox Towers South, Atlanta, GA 30326. *Paper and paper products* from the facilities of Union Camp Corporation at Savannah, GA to points in NY, PA, VA, MD and DE. Supporting shipping: Union Camp Corporation, 1600 Valley Road, Wayne, NJ 07470.

MC 75840 (Sub-3-11TA), filed September 16, 1980. Applicant: MALONE FREIGHT LINES, INC., P.O. Box 11103, Birmingham, AL 35202. Representative: Mr. Raymond Hamilton, Malone Freight Lines, Inc., 3400 Third Avenue South, Birmingham, AL 35222. *Pressure Treated Forest Products, lumber, poles, posts, timbers, and plywood*, between Richmond, VA, on the one hand, and, on the other, points in MD, PA, NJ, NY, DE, OH, WV, AND KY. Supporting shipper: Rentokil, Inc., Virginia Wood Preserving Division, P.O. Box 9610, Oalview & Peyton Street, Richmond, VA 23228.

MC 138635 (Sub-3-10TA), filed September 18, 1980. Applicant: CAROLINA WESTERN EXPRESS, INC., P.O. Box 3995, Gastonia, NC 28052. Representative: W. C. Sutton (same address as applicant). *(1) Candy and (2) Supplies, materials and equipment used in the manufacture, sale and distribution of the commodities in (1) above (except in bulk)*, between points in the U.S. Supporting shipper: Osogud Candies, Inc., 1211 Azusa Canyon Road, W. Covina, CA.

MC 151822 (Sub-3-1TA), filed September 17, 1980. Applicant: FREIGHT DIRECT, INC., P.O. Box 10707, Atlanta, GA 30310. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Boulevard, Atlanta, GA 30349. *Office products and office supplies*, from Atlanta, GA to points in the U.S. except AK and HI. Supporting shipper: Boise Cascade Corporation, P.O. Box 7747, Boise ID 83707.

MC 115841, (Sub-3-24TA), filed September 18, 1980. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., McBride Lane, Supporting P.O. Box 22168, Knoxville, TN 37922. Representative: Michelene Good (same address as applicant). *Foodstuffs (except commodities in bulk)*, between the facilities utilized by Hunt-Wesson Foods, Inc., located at or near Humboldt, TN on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Hunt-Wesson Foods, Inc., 1645 Valencia Drive, Fullerton, CA 92634.

MC 143059 (Sub-3-17TA), filed September 17, 1980. Applicant: MERCER TRANSPORTATION COMPANY, 12th and Main Streets, P.O. Box 35610, Louisville, KY 40232. Representative: Edward G. Villalon, 1032 Pennsylvania Buiding, Pennsylvania Ave. & 13th St., NW., Washington, D.C. 20423. *Pipe, pipe fittings and pipe accessories*, between points in AL, AZ, AR, CA, CO, CT, FL, GA, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, NV, NJ, NM, NY, NC, OH, OK, OR, PA, SC, TN, TX, UT, VA, WA and WI. Restricted against the stringing or picking up of pipe in connection with main or trunk pipelines. There are 43 supporting shippers.

MC 47171 (Sub-3-9TA), filed September 22, 1980. Applicant: COOPER MOTOR LINES, INC., P.O. Box 2820, Greenville, SC 29602. Representative: Harris G. Andrews (same address as applicant). *Chemicals, NOI, vegetable pills, and articles used in the manufacture and distribution thereof (except commodities in bulk)* from Greensboro, NC to Newark, NJ and New York, NY, including points in the commercial zones thereof. Supporting shipper: Crest Chemical Corporation, 225-235 Emmet Street, Newark, NJ 07114.

MC 151685 (Sub-3-2TA), filed September 16, 1980. Applicant: W. D. P. TRANSPORTATION, INC., 453 Versailles Road, Frankfort, Kentucky 40601. Representative: George M. Catlett, Suite 708, McClure Building, Frankfort, Kentucky 40601. *Contract carrier:* irregular: *general commodities with the usual exceptions.* (1) between points in Shelby County, KY, on the one hand, and, on the other, points in the U.S. (except AK and HI) under continuing contract with Curtis Industries, Inc.; and (2) between Milwaukee, WI, on the one hand, and, on the other, points in Scott County, KY, under continuing contract with Johnson Controls, Inc. Supporting shippers:

Curtis Industries, Inc., P.O. Box 366, Industrial Park, Shelbyville, KY 40065; Johnson Controls, Inc., 507 E. Michigan Ave., Milwaukee, WI.

MC 151936 (Sub-3–1TA), filed September 16, 1980. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, Florida 33802. Representative: Paul E. Weaver (same address as applicant). *Contract Carrier:* Irregular Route: *Such commodities as are dealt in by wholesale, retail and chain grocery and food business houses and materials, equipment and supplies used or useful in the manufacture, sale and distribution of such commodities (except commodities in bulk);* between points in the U.S. (except AK and HI), under continuing contract with General Foods Corporation, White Plains, NY. Supporting shipper: General Foods Corp., 250 N. St., White Plains, NY 10625.

MC 105457 (Sub-3–2TA), filed September 16, 1980. Applicant: THURSTON MOTOR LINES, INC., 600 Johnston Road, Charlotte, NC 28206. Representative: John V. Luckadoo (same as above). *Common carrier, regular routes, General Commodities, except household goods as defined by the Commission.* (1) Between Memphis, TN and Ft. Worth, TX, and points in its commercial zone, from Memphis over Interstate Hwy 40 to junction Interstate Hwy 30 at or near Little Rock, AR, then over Interstate Hwy 30 to Ft. Worth and return over the same route (2) Between Atlanta, GA and Ft. Worth, TX and points in its commercial zone, over Interstate Hwy 20, serving Dallas, TX and points in its commercial zone, as an intermediate point in connection with the routes sought in (1) and (2) above. Applicant intends to tack with existing authority and interchange with connecting carriers at Ft. Worth and Dallas, TX; Memphis, TN; and Atlanta, GA. Supporting shippers: There are 147 supporting shippers whose statements can be viewed at the Regional Authority Center, Atlanta, GA.

MC 151873 (Sub-3–1TA), filed September 17, 1980. Applicant: PRIDE CARGO CARRIERS, INC., 1920 West First Street, Winston-Salem, NC 27104. Representative: Francis W. McInerny, 1000 16 Street, N.W., Washington, DC 20036. *General commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, and commodities in bulk),* between points in the U.S. Supporting shippers: There are 70 statements in support attached to this application which may be examined at the ICC Regional Office at Atlanta, Georgia.

Note.—Common control may be involved.

MC 151594 (Sub-3–1TA), filed September 18, 1980. Applicant: SHILOH TRANSPORTATION, INC., 143 Pickwick Road, Savannah, TN 38372. Representative: Robert L. Baker, Sixth Floor, United American Bank Bldg., Nashville, TN 37219. *Common Carrier, regular routes, general commodities (except household goods as defined by the Commission and classes A and B explosives.)* (1) Between Nashville, TN, and its commercial zone and Savannah, TN, and its commercial zone. (a) From Nashville over US Hwy 31, to junction with US Hwy 43, then over US Hwy 43 to junction with TN Hwy 20, then over TN Hwy 20 to junction with an unnumbered highway known as the Summertown Pike, then over said Summertown Pike to junction with US Hwy 64, then over US Hwy 64 to Savannah and return over the same route serving all intermediate points in Hardin and Wayne Counties, TN, and serving all other points in Hardin and Wayne Counties, TN, and Deerfield, TN as off-route points. (b) From Nashville over I–65 to junction with TN Hwy 99, then over TN Hwy 99 to junction with US Hwy 31, then over US Hwy 31 to junction with US Hwy 43, then over US Hwy 43 to junction with US Hwy 64, then over US Hwy 64 to Savannah and return over the same route, as an alternate route for operating convenience. (c) From Nashville over TN Hwy 100 to junction with TN Hwy 69, then over TN Hwy 69 to junction with TN Hwy 114, then over TN Hwy 114 to junction with TN Hwy 128, then over TN Hwy 128 to Savannah and return over the same route as an alternate route for operating convenience. (d) From Nashville over I–40 to junction with TN Hwy 69, then over TN Hwy 69 to US Hwy 64, then over US Hwy 64 to Savannah and return over the same route as an alternate route for operating convenience. (2) Between Memphis, TN, and its commercial zone, and Selmer, TN, and its commercial zone. From Memphis over US Hwy 64 to Selmer and return over the same route, serving all intermediate points in McNairy County, TN, and serving all other points in McNairy County as off-route points. (3) Between Nashville, TN and its commercial zone and Selmer, TN, and its commercial zone. (a) From Nashville over I–40 to junction with US Hwy 45, then over US Hwy 45 to Selmer and return over the same route, serving all intermediate points in McNairy County, TN, and serving all other points in McNairy County as off-route points. (b) From Nashville over TN Hwy 100 to junction with US Hwy 45, then over US Hwy 45 to Selmer, and return over the same route as an alternate route for operating convenience. (4) Between Selmer, TN, and its commercial zone and Savannah, TN, and its commercial zone. (a) From Selmer over US Hwy 64 to Savannah and return over the same route, serving all intermediate points, and serving all points in Hardin and McNairy Counties, TN, as off-route points. (b) From Selmer over US Hwy 45 to junction with US Hwy 72, then over US Hwy 72 to junction with MS Hwy 25, then over MS Hwy 25 to TN Hwy 57, then over TN Hwy 57 to junction with TN Hwy 128, then over TN Hwy 128 to Savannah and return over the same route serving all intermediate points, and their commercial zones. (5) Between Memphis, TN, and its commercial zone and Savannah, TN, and its commercial zone. From Memphis over US Hwy 72 to junction with US Hwy 45, then North over US Hwy 45 to junction with MS Hwy 2, then over MS Hwy 2 to junction with TN Hwy 22, then over TN Hwy 22 to junction with US Hwy 64, then over US Hwy 64 to Savannah and return over the same route serving all intermediate points in Hardin and McNairy Counties, TN. (6) Between Nashville, TN, and its commercial zone and Waynesboro, TN, and its commercial zone. (a) From Nashville over TN Hwy 100 to junction with TN Hwy 13, then over TN Hwy 13 to Waynesboro and return over the same route, serving all intermediate points in Wayne County, TN, and serving all other points in Wayne County as off-route points. (b) From Nashville over I–40 to junction with TN Hwy 13, then over TN Hwy 13 to Waynesboro and return over the same route as an alternate route for operating convenience. (7) Between Savannah, TN and the Yellow Creek State Inland Port Authority and Industrial Park, MS. From Savannah over TN Hwy 128 to junction with TN Hwy 57, then over TN Hwy 57, to junction with MS Hwy 25, then over MS Hwy 25 to the Yellow Creek State Inland Port Authority and Industrial Park and return over the same route, serving all intermediate points and serving the Yellow Creek Nuclear Plant as an off-route point. Supporting shippers: There are approximately 10 supporting shipper affidavits attached to this application. Applicant proposes to interline at Nashville and Memphis, TN.

MC 71772 (Sub-3–2TA), filed September 12, 1980. Applicant: MT. PLEASANT TRANSFER, INC., P.O. Box 267, Mt. Pleasant, TN 38474. Representative: George M. Boles, 727

Frank Nelson Bldg., Birmingham, AL 35203. *Common Carrier:* Regular: *general commodities,* (1) between Mt. Pleasant and Lawrenceburg, TN, from Mt. Pleasant over U.S. Hwy 43 to Lawrenceburg; (2) between Mt. Pleasant and Pulaski, TN, from Mt. Pleasant over unnumbered County Hwy via Southport, TN, to its intersection with U.S. Hwy 31 at or near Stiverville, TN, then over U.S. Hwy 31 to Pulaski; (3) between Mt. Pleasant, TN, and Ardmore, TN–AL, from Mt. Pleasant over U.S. Hwy 43 to its intersection with U.S. Hwy 64 at or near Lawrenceburg, TN, then over U.S. Hwy 64 to its intersection with U.S. Hwy 31 at or near Pulaski, TN, then over U.S. Hwy 31 to its intersection with TN State Hwy 110 at or near Elkton, TN, then over TN State Hwy 110 to Ardmore, TN–AL; (4) between Pulaski and Chattanooga, TN, as an alternate route for operating convenience only, from Pulaski over U.S. Hwy 64 to its intersection with U.S. I–24 at or near Monteagle, TN, then over U.S. Hwy 64 and also over I–24 to Chattanooga, TN; (5) between Pulaski and Nashville, TN as an alternate route for operating convenience only, from Pulaski over U.S. Hwy Alternate 31 to its intersection with U.S. I–65, then over U.S. I–65 to Nashville, TN, serving as off-route points, in conjunction with Routes 1 through 5 above, all points in Giles and Lawrence Counties, TN. There are thirty-three supporting shippers statements which may be examined at the ICC Regional Office in Atlanta, GA.

Note.—Applicant proposes to tack with existing authority under MC–71772 and to interline with other carriers at Chattanooga, Nashville, Mt. Pleasant, Columbia, Lawrenceburg and Pulaski, TN.

MC 94201 (Sub-3–5TA), filed September 17, 1980. Applicant: BOWMAN TRANSPORTATION, INC., P.O. Box 17744, Atlanta, GA 30316. Representative: Sam Cerniglia (same address as applicant). *Common, Regular, General Commodities (except household goods as defined by the Commission, and Classes A and B explosives),* (Route 1) Between Memphis, TN and Oklahoma City, OK: (a) Over Interstate Hwy 40. (b) From Memphis over U.S. Hwy 64 to its junction with U.S. Hwy 266, then over U.S. Hwy 266 to its junction with U.S. Hwy 62, then over U.S. Hwy 62 to Oklahoma City, and return over the same route, serving all intermediate points. (Route 2) Between Memphis, TN and Wichita, KS: From Memphis over U.S. Hwy 64 to its junction with U.S. Hwy 177, at or near Perry, OK, then over U.S. Hwy 177 to Wichita, KS, and return over the same route, serving all intermediate points. (Route 3) Between Memphis, TN and San Antonio, TX: (a) From Memphis over U.S. Hwy 70 to Little Rock, AR, then over U.S. Hwy 67 and/or Interstate Hwy 30 to Dallas, TX, then over U.S. Hwy 81 and/or Intermediate Hwy 35 to San Antonio, and return over the same route, serving all intermediate points. (b) From Memphis over U.S. Hwy 70 to Little Rock, AR, then over U.S. Hwy 67 to Texarkana, then over U.S. Hwy 59 to Houston, TX, then over U.S. Hwy 90 to San Antonio, and return over the same route, serving all intermediate points. (Route 4) Between Oklahoma City, OK and Dallas, TX: From Oklahoma City, OK, over Interstate Hwy 35 and 35E and/or U.S. Hwy 77 to Dallas, and return over the same route, serving all intermediate points. There are forty-six (46) supporting shipper statements.

MC 94201 (Sub-3–6TA), filed September 17, 1980. Applicant: BOWMAN TRANSPORTATION, INC., P.O. Box 17744, Atlanta, GA 30316. Representative: Sam Cerniglia (same address as applicant). *Common, Irregular, General Commodities (except household goods as defined by the Commission and Classes A and B explosives),* (1) Between points in WV, PA and NY. (2) Between points in WV, PA and NY, on the one hand, and, on the other, Knoxville, TN; Charlotte, NC; Cincinnati, Columbus and Akron, OH; Philadelphia, PA; Elizabeth, NJ; Baltimore, MD; Atlanta, GA; Richmond, VA and Louisville, KY. There are fifty-five (55) supporting shipper statements which may be examined at the Interstate Commerce Commission Regional Office, Atlanta, GA. Applicant intends to tack at the above named points with its existing authority to provide service to points it is authorized to serve unde MC 94201 and subs in the States of MA, RI, CT, NY, NJ, PA, MD, DE, DC, VA, OH, IN, IL, NC, SC, GA, FL, AL, TN, MS, LA, TX, AR, MO and KS.

MC 94201 (Sub-3–7TA), filed September 17, 1980. Applicant: BOWMAN TRANSPORTATION, INC., P.O. Box 17744, Atlanta, GA 30316. Representative: Sam Cerniglia (same address as applicant). *Common, Regular, General Commodities (except household goods as defined by the Commission and Classes A and B explosives),* between Chicago, IL and Milwaukee, WI. (a) Over Interstate Hwy 94. (b) From Chicago over IL Hwy 42 to its junction with WI Hwy 32 at the IL/WI State line, then over WI Hwy 32 to Milwaukee, and return over the same route serving all intermediate points. (c) Over U.S. Hwy 41. There are thirty-one (31) supporting shipper statements which may be examined at the Interstate Commerce Commission Regional Office, Atlanta, GA. Applicant intends to tack at the above named points with its existing authority to provide service to points it is authorized to serve under MC 94201 and subs in the States of MA, RI, CT, NY, NJ, PA, MD, DE, DC, VA, OH, IN, IL, NC, SC, GA, FL, AL, TN, MS, LA, TX, AR, KS, and MO.*

The following protests were filed in Region 4. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, 219 South Dearborn Street, Room 1304, Chicago, IL 60604.

MC 151960 (Sub-4–1TA) filed September 24, 1980. Applicant: BERTRAND MOLTER, Route No. 1, Box 299, Eau Claire, MI 49111. Representative: Jack H. Blanshan, 205 West Touhy Avenue, Suite 200, Park Ridge, IL 60068. Contract irregular *Juices,* (except commodities in bulk), between Chicago, IL and points in its commercial zone, on the one hand, and on the other, points in MI, under a continuing contract with California Products, Div. of Beatrice Foods Co. Supporting shipper: California Products, Inc., Div. of Beatrice Foods Co., 3300 West Peterson, Chicago IL 60659.

MC 151982 (Sub-4–1TA), filed September 25, 1980. Applicant: AMERICAN EAGLE LINES, INC., P.O. Box 9177, Wyoming, MI 49509. Representative: Mark V. Palazzolo, P.O. Box 9177, Wyoming, MI 49509. *Contract* irregular *Containers and display racks, wooden and material and supplies used in the manufacture there of:* From To or Between Kent County Michigan to CO, CT, GA, IL, IN, KY, MO, NJ, NY, OH, PA, and TX, under continuing contract with National Box Corporation. Supporting shipper: National Box Corporation, 503 Grandville Ave., Grand Rapids, MI 49503. An underlying ETA Seeks 120 days authority.

MC 147783 (Sub-4–1TA), filed September 29, 1980. Applicant: B. L. CARTAGE COMPANY, 10735 So. Cicero Ave., Oak Lawn, IL 60453. Representative: Leonard R. Kofkin, 39 So LaSalle St., Chicago, IL 60603. *Contract, Irregular: Petroleum and petroleum products, in bulk,* between points in Lake County, IN and Cook County, IL on the one hand, and, on the other, points in MI, IN, IL, and WI. Supporting shipper: Amoco Oil Company, 200 East Randolph Street, Chicago, IL 60606.

MC 152005 (Sub-4–1TA), filed September 26, 1980. Applicant: TRANSCONTINENTAL FREIGHT SYSTEMS, INC., 2559 South Archer, Chicago, IL 60608. Representative: Rex Eames, 900 Guardian Building, Detroit, MI 48226. *Contract irregular, beverages,*

in containers, and materials , equipment and supplies used in the manufacturing or production of beverages between all points in the U.S. An underlying application for emergency temporary authority has been filed. Supporting shipper: Faygo Beverages, Inc., 3579 Gratiot, Detriot, MI 48207.

MC 70557 (Sub-4–4TA), filed September 26, 1980. Applicant: NIELSEN BROS. CARTAGE CO., INC., 4619 West Homer St. Chicago, IL 60639. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603. Paper and paper products and products produced or distributed by manufacturers and converters of paper and paper products; and (2) Materials and supplies used in the manufacture and distribution of the commodities in (1) above (Except commodities in bulk and commodities which because of size or weight require the use of special equipment) between the plant sites of St. Regis Paper Co., Southland Division, at or near Herty and Sheldon, TX, on the one hand, and, on the other, points in AL, AR, FL, GA, KY, LA, OK, MS, MO, NC, SC, TN, VA and WV. Supporting shipper: St. Regis Paper Co., 150 E. 42nd St., New York N.Y. 10017.

MC 152001 (Sub-4–1TA), filed September 26, 1980. Applicant: HALL SPECIALTIES, INC., R.R. 1, Laotto, IN 46763. Representative: Berton W. O'Bryan, Five East Market Street, Indianapolis, IN 46204. *Anhydrous Ammonia and Liquid and Dry Fertilizer,* between points in IN, on and North U.S Hwy 50; MI, on and South of Interstate Hwy 94; and OH. Supporting shippers: Amoco Oil Company, P.O. Box 6110–a, Chicago, IL 60680, Bay Chemical Company, Suite 409, 1111 North Westshore Boulevard, Tampa, FL 33607.

MC 151995 (Sub-4–1TA), filed September 26, 1980. Applicant: CHARLES POCH, INC., Route 1, St. Cloud, WI 53079. Representative: James A. Spiegel, Esq., Olde Towne Office Park, 6425 Odana Road, Madison, WI 53719. *Contract;* irregular; *Condensed milk* from Germantown, WI, to Atlanta, GA. Restriction: restricted to transportation performed under continuing contract(s) with Gehl's Guernsey Farms, Inc. An underlying ETA seeks 120 days authority. Supporting shipper: Gehl's Guernsey Farms, Inc., N116W15970 Main Street, Germantown, WI 53022.

MC 126555 (Sub-4–21TA), filed: September 26, 1980. Applicant: Universal Transport, Inc., P.O. Box 3000, Rapid City, SD 57709. Representative: Stockton & Lewis, The 1650 Grant Street Building, Denver, CO 80203. *Steel and steel articles:* From Chicago, IL to points in SD. Supporting shipper: Egger's Steel, 909 S. Seventh Avenue, Sioux Falls, SD 57101.

MC 119704 (Sub-4–6TA), filed September 26, 1980. Applicant: R. A. HARRIS & SONS, INC., 3501—22nd St., Menominee, MI 49858. Representative: Dennis R. Harris (same as applicant). (1) Alcoholic liquors (except in bulk or tank vehicles) and (2) materials and supplies use in distribution of the commodities from KY, IL, NJ, OH, NY and CA. Back to Oconomowoc, WI restricted to traffic for Bonded Spirits Corporation named above with continuing contract. Supporting shipper: Bonded Spirits Corporation, 124 E. Wiseonsin Avenue, Oconomowoc, WI.

MC 145654 (Sub-4—1TA), filed September 26, 1980. Applicant: TOTELR TEE TRANSPORTE, INC., P.O. Box 107, Kingsbury, IN 46435. Representative: Philip A. Lee, 120 W. Madison Street, Suite 618, Chicago, IL 60602. *Iron and steel products and related items used in the manufacture and processing of steel* from, to, or between IL, IN, OH, PA, NY, and W. VA. Supporting shipper: Roll Coater, Inc., Division of Arvin Ind., Hupp Road, Kingsbury, IN 46535.

MC 143857 (Sub-4–2TA), filed September 23, 1980. Applicant: VAN DE HOGEN CARTAGE LIMITED, 2590 Dougall Avenue, Windsor, Ontario, Canada N8X 1T7. Representative: William J. Hirsch, 43 Court Street, Buffalo, N.Y. 14202. *Brick and stone* from MI, OH, PA, WV, TN, and GA, to ports of entry on the international boundary line between the US and CD, located in MI and NY. Supporting shippers: Betz Cut Stone Limited, Agincourt, Ont. J. N. Harvey Building Products Ltd. London, Ont.

MC 142715 (Sub-4–10TA), filed September 26, 1980. Applicant: LENERTZ, INC., P.O. Box 479, South St. Paul, MN 55075. Representative: K. O. Petrick (same address as applicant). *Foodstuffs,* (except commodities in bulk) from Albert Lea, MN to Ironwood, MI. Restricted to shipments destined to the facilities of Armour Food Co., Ironwood, MI. Supporting shipper: Armour Food Co., Ironwood, MI 49938.

MC 151984 (Sub-4–1TA), filed September 26, 1980. Applicant: William Sparks d.b.a. SPARKS TRUCKING, P.O. Box 96, Calvin, ND 58323. Representative: David C. Britton, 1425 Cottonwood Street, Grand Forks, ND 58201. *Foodstuffs, (including in bulk)* from Towner County, ND to points in the U.S.

MC 148647 (Sub-4–2TA), filed September 26, 1980. Applicant: HI-CUBE CONTRACT CARRIER CORP., 7005 South Pulaski Rd., Chicago, IL 60629. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. *Contract;* Irregular. *Such commodities as are dealt in by wholesale, retail and chain grocery and food business houses and materials, equipment and supplies used or useful in the manufacture, sale and distribution of such commodities,* between the facilities owned or used by General Foods Corporation located in the contiguous 48 states on the one hand, and on the other, all points in the U.S. (except AK and HI) under continuing contract with General Foods Corporation, White Plains, NY. Restricted against shipments in bulk. Supporting shipper: General Foods Corporation, 250 North Street, White Plains, NY 10626.

MC 115651 (Sub-4–10). filed September 26, 1980. Applicant: KANEY TRANSPORTATION, INC., 7222 Cunningham Road, P.O. Box 39, Rockford, Il. 61105. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street, N.W., Washington, D.C. 20001. *Liquid fertilizer,* in bulk, from Clinton, IA to points in IL. Supporting shipper: Agrico Chemical Company, P.O. Box 3166, Tulsa, OK 74101.

MC 151151 (Sub-4–2TA) filed: September 24, 1980. Applicant: LA VONNE R. JAHN, 417 So. Hokah St., Caledonia, MN. 55921. Representative: Joseph E. Ludden, 324 Exchange Building, La Crosse, WI. 54601. *General commodities,* (except those of unusual value high explosives, household goods, when transported as a separate and distinct service in connection with so-called "household movings." Commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading) over irregular routes between La Crosse County, WI. on the one hand and on the other, Alamakee County, IA., Winneshiek County, IA., and Howard County, IA. An underlying ETA seeks 120 days authority. There are six (6) supporting shippers.

MC 134551 (Sub-4–4TA), filed September 25, 1980. Applicant: LANTER REFRIGERATED DISTRIBUTING CO., No. 3 Caine Drive, Madison, IL 62060. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. *Non-exempt food or kindred products and such commodities as are dealt in by wholesale and retail chain food and grocery stores,* between points in NE, KS, IA, MO, WI, IL, AR, TN, IN, and OH. Supporting shipper: Swift & Company, 115 West Jackson, Chicago, IL 60604.

MC 151422 (Sub-4–2TA), filed September 26, 1980. Applicant: MINN-

DAK TRANSPORT, INC., P.O. Box 98, Audubon, MN 56511. Representative: Thomas J. Van Osdel, 502 First National Bank Bldg., Fargo, ND 58126. *Agricultural chemicals* (herbicides and insecticides) in packages, bags, pails, barrels, and containers in boxes, from points in AL, CO, GA, ID, IL, IN, IA, KS, MI, MO, NE, NC, TN, TX, WI, and WY to points in MN and ND. An underlying ETA seeks 120 days authority. Supporting shipper: Ostlund Chemical Co., 123 N.W. 40th St., Fargo, ND 58102.

MC 146846 (Sub-4–2TA), filed September 26, 1980. Applicant: LOUIS J. LANE, Box 148, Trego, WI 54888. Representative: Nancy J. Johnson, 103 East Washington St., Crandon, WI 54520. *Paper and paper products* from Rhinelander, WI to points OR, CA, ID and NV. Supporting shipper: Rhinelander Paper Co., Rhinelander, WI.

MC 134369 (Sub-4–3TA), filed September 25, 1980. Applicant: CARLSON TRANSPORT, INC., P.O. Box R, Byron, IL 61010. Applicant's representative: Allan C. Zuckerman, 39 South LaSalle Street, Chicago, IL 60603. *Foundry compound and premix*, from Chicago, IL, to points in IN, WI, and the Lower Peninsula of MI. An underlying ETA seeks 120 days authority. Supporting shipper: The Hill and Griffith Co., 4606–10 West 16th Street, Chicago, IL 60650.

MC 143853 (Sub-4–7TA), filed September 26, 1980. 1980. Applicant: S.M.E. EXPRESS, INC., 101 East Washington Street, P.O. Box 509, Upland, IN 46989. Representative: John F. Wickes, Jr., 1301 Merchants Plaza, Indianapolis, IN 46204. Contract; irregular; *Printed matter and materials, equipment and supplies* used in the manufacture and distribution of printed matter (except in bulk), between points in the U.S. under continuing contract(s) with the National Geographic Society. An underlying ETA seeks 120 days authority. Supporting shipper: National Geographic Society, 17th & M Streets, N.W., Washington, D.C.

MC 151979 (Sub-4–1), filed September 25, 1980. Applicant: RONALD V. BOLLINGER d.b.a., BOLLINGER TRUCKING, P.O. Box 238, Route 1, Eleva, WI 54738. Representative: Lyle J. Black, 310 Water Street, Eau Claire, WI 54701. *Contract;* regular: *Lumber, building materials, carpeting and fixtures*, from Minneapolis, MN to Eau Claire, WI (not including AK and HI, under a continuing contract or contracts with Plywood Minnesota, located at Eau Claire, WI. Supporting shipper: Plywood Minnesota, 3235 E. Hamilton Ave., Eau Claire, WI 54701.

MC 105501 (Sub-4–3TA), filed September 25, 1980. Applicant: TERMINAL WAREHOUSE COMPANY, 1851 Raddison Rd. N.E., Blaine, MN. Representative: Joseph J. Dudley, W-1260 First National Bank Bldg., St. Paul, MN. *Salt and salt products, except in bulk*, from Hutchinson, KS to Minneapolis and St. Paul, MN, Chicago, IL and Waukesha, WI. Supporting shipper: Cargill, Inc. P.O. Box 9300, Minneapolis, MN 55420.

MC 151965 (Sub-4–1TA), filed September 23, 1980. Applicant: STAR DELIVERY & TRANSFER, INC., P.O. Box 39, Canton, IL 61520, Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. *Contract* irregular: *Lumber and lumber mill products* between points in AL, AR, CA, CO, FL, GA, ID, IL, IN, IA, KY, LA, MI, MN, MS, MO, MT, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, VA, WV, WA, WI and WY, under a continuing contract or contracts with Midwest Lumber Associates. An underlying ETA seeks 120 days authority. Supporting shipper: Midwest Lumber Associates, P.O. Box 187, 1150 W. Main St., Sun Prairie, WI 53590.

MC 127651 (Sub-4–2TA), filed September 23, 1980. Applicant: EVERETT G. ROEHL, INC., East 29th St., Box 7, Marshfield, WI 54449. Representative: Richard A. Westley, 4506 Regent St., Suite 100, Madison, WI 53705. *Canned and preserved foodstuffs, and materials, equipment and supplies used in the production and distribution thereof*, between the facilities of Marshfield Canning Co. at or near Marshfield, WI on the one hand and, on the other, points in AR, IL, IN, IA, KS, KY, MI, MN, MO, and OH, excluding points in IL and IN which are within the Chicago, IL Commercial Zone. Supporting shipper: Marshfield Canning Co., 1616 South Central Ave., Marshfield, WI 54449.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-61265 Filed 10-7-80; 8:45 am]

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[Volume No. 31]

Motor Carriers; Petitions, Applications, Alternate Route Deviations, Intrastate Applications, Gateways, and Pack & Crate

Petitions for Modification, Interpretation or Reinstatement of Motor Carrier Operation Rights Authority

The following petitions seek modification or interpretation of existing motor carrier operating rights authority, or reinstatement of terminated motor carrier operating rights authority.

All pleadings and documents must clearly specify the suffix number; (e.g., M1 F, M2 F) where the docket is so identified in this notice.

The following petitions, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's General Rules of Practice (49 CFR 1100.247). These rules provide, among other things that a *petition to intervene either with or without leave* must be filed with the Commission within 30 days after the date of publication in the **Federal Register** with a copy being furnished the applicant. Protests to these applications will be *rejected*.

A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that if (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(1). In deciding whether to grant leave to intervene, the Commission considers, among other things, whether petitioner has (a) solicited the traffic or business of those persons 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. Another factor considered is the effects of any decision on petitioner's interests.

Samples of petitions and the text and explanation of the intervention rules can be found at 43 FR 50908, as modified at 43 FR 60277. Petitions not in reasonable compliance with these rules may be rejected. Note that Rule 247(e), where not inconsistent with the intervention rules, still applies. Especially refer to Rule 247(e) for requirements as to supplying a copy of conflicting authority, serving the petition on applicant's representative, and oral hearing requests.

MC 108313 (Sub-14(M1F)) (notice of filing of petition to modify permit), filed April 25, 1980. Petitioner: CALEDONIA LINES, INC., 100 Sunny Sol Blvd., P.O. Box 8, Caledonia, NY 14423.

Representative: Stephen J. Habash (same as applicant). Petitioner holds a motor *contract carrier* Permit in MC-108313 Sub 14, issued September 17, 1980, authorizing transportation in interstate or foreign commerce, over irregular routes, transporting (1) *compressed gases and liquid chemicals*, in bulk (except liquified petroleum gases), (a) from Houston, TX; Moundsville, Charleston and Natrium, WV; Lake Charles, Geismar and Gramercy, and Tampa, FL; Charlestown; TN; and Edgemoor, DE, to Charlotte, NC; Festus, MO; Reserve, LA; Milford, VA; Mobile, AL; St. Petersburg, Jacksonville, and Ft. Lauderdale, FL: and (b) from Edgemoor, DE, to Beech Grove and Hammond, IN; Orrington, ME; Wyandotte, Montague, Midland and Ludington, MI; Merrimack, NH; Newark, Bayonne, and Linden, NJ; Niagara Falls, Syracuse, Buffalo, Warwick, Caledonia, Utica, Friendship, and Vestal, NY; Ashtabula, South Point, Barberton, and Columbiana, OH; and Erie, PA, and (2) *chemicals, cleaners, detergents, waxes*, in containers, and *empty containers for those commodities*, between Mobile and Evans City, AL; Denver, CO; Edgemoor, DE; St. Petersburg, Fort Lauderdale, Jacksonville, and Tampa, FL; Augusta and Brunswick, GA; Danville, IL; Beechgrove and Hammond, IN; Calvert City and Louisville, KY; Lake Charles, Plaquemine, Gramercy, Geismar, Baton Rouge, Taft, and Reserve, LA; Orrington, ME; Curtis Bay, MD; Wyandotte, Montague, Midland, and Ludington, MI; Festus, MO; Merrimack, NH; Newark, Bayonne, and Linden, NJ; Niagara Falls, Syracuse, Buffalo, Warwick, Caledonia, Utica, Friendship, and Vestal, NY; Charlotte and Acme, NC; Ashtabula, South Point, Barberton and Columbiana, OH; Erie, PA; Charleston, TN; Houston, TX; Milford, Hopewell, and Norfolk, VA; Natrium, Moundsville, and Charleston, WV; Hudson, Milwaukee, and Port Edwards, WI, under a continuing contract or contract(s) with Jones Chemicals, Inc., Caledonia, NY. By the instant petition, petitioner seeks to modify the above authority as follows: (1) *Compressed gases and liquid chemicals*, in bulk (except liquified petroleum gases), (a) from points in AL, DE, FL, GA. KY, LA, NC, TN, TX, and WV, to points in AL, FL, LA, MO, NC, and VA; and (b) from points in DE, to points in IN, ME, MI, NH, NJ,NY, OH and PA; (2) *chemicals, cleaners, detergents and waxes*, in containers and *empty containers for those commodities* between points in AL, CO, DE, FL, GA, IN, IL, KY, LA, ME, MD, MI, MO, NH, NJ, NC, OH, PA, TN, TX, VA, WV, WI; under continuing contract(s) with Jones Chemicals, Inc. of Caledonia, NY.

Republications of Grants of Operating Rights Authority Prior to Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the **Federal Register.**

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission within 30 days after the date of this **Federal Register** notice. Such pleading shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 76 (Sub-24F) (republication), filed October 9, 1979, published in the FR issue of March 14, 1980, and republished this issue. Applicant: MAWSON & MAWSON, INC., P.O. Box 248, Langhorne, PA 19047. Representative: Paul F. Sullivan, 711 Washington Bldg., Washington, DC 20005. A Decision of the Commission, Division 2, Acting as an Appellate Division, decided August 19, 1980 and finds that the present and future public convenience and necessity require operations by applicant as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over *irregular routes*, transporting (1)(a) *iron and steel articles*, from the facilities of R. C. Stanhope, Inc., located at or near Pittsburgh, PA, to points in Connecticut, Delaware, Illinois, Indiana, Maryland, Massachusetts, New Jersey, New York, Ohio, Rhode Island, Virginia, and West Virginia, and those points in Michigan in and south of Oceana, Newaygo, Mecosta, Isabella, Midland, and Bay Counties; (b) *materials, equipment, and supplies* (except commodities in bulk), from the destinations in (1)(a) to the origin in (1)(a); (2)(a) *iron and steel articles*, from the facilities of R. C. Stanhope, Inc., located at or near Old Bridge, NJ, to points in Delaware, Illinois, Indiana, Maryland, New York, Pennsylvania, Ohio, Virginia, and West Virginia, and those points in Michigan in and south of Oceana, Newaygo, Mecosta, Isabella, Midland, and Bay Counties; and (b) *materials, equipment, and supplies* (except commodities in bulk), from the destinations in (2)(a) to the origin in (2)(a).

MC 32166 (Sub-14F) (republication), filed May 2, 1979, published in the FR issue of December 11, 1979, and republished this issue. Applicant: BRONAUGH MOTOR EXPRESS, INC., 1025 Nandino Blvd., Lexington, KY 40511. Representative: Francis W. McInermy, 1000 16th Street, NW., Washington, DC 20005. A Decision of the Commission, Review Board 1, Acting as an Appellate Division, decided August 7, 1980 and finds that the present and future public convenience and necessity require operations by the applicant as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over *regular routes*, transporting *general commodities* (except household goods as defined by the Commission, articles of unusual value, classes A and B explosives, commodities in bulk, and those requiring special equipment), (1) between Lexington, KY, and Nashville, TN, from Lexington over U.S. Hwy 60 to its junction with Blue Grass Parkway, then over Blue Grass Parkway to its junction with Interstate Hwy 65, then over Interstate Hwy 65 to Nashville, and return over the same route, serving all intermediate points east and north of the Anderson-Washington, KY, County line, (2) between the junction of U.S. Hwy 150 and the Boyle-Washington County line and Nashville, TN, from the junction of U.S. Hwy 150 with the Boyle-Washington County line over U.S. Hwy 150 to its junction with Blue Grass Parkway, then over Blue Grass Parkway to its junction with Interstate Hwy 65, then over Interstate Hwy 65 to Nashville, and return over the same route, serving no intermediate points and serving the intersection of U.S. Hwy 150 with the Boyle-Washington, KY, County line for joinder only, (3) between the junction of Kentucky Hwy 80 and the Laurel-Rockcastle, KY County line and Nashville, TN, from the junction of Kentucky Hwy 80 with the Laurel-Rockcastle, KY, County line over Kentucky Hwy 80 to its junction with Cumberland Parkway, then over Cumberland Parkway to its junction with Interstate Hwy 65 and then over Interstate Hwy 65 to Nashville, serving no intermediate points and serving the junction of Kentucky Hwy 80 with the Laurel-Rockcastle, KY, County line for joinder only, and (4) between Louisville, KY, and Cincinnati, OH, over Interstate Hwy 71, serving no intermediate points. Applicant is permitted to tack or join

this authority with its other regular-route authority.

MC 59856 (Sub-72F) (republication), filed January 21, 1977, published in the FR issue of March 3, 1977, and republished this issue. Applicant: SALT CREEK FREIGHTWAYS, 3333 West Yellowstone, Casper, WY 82601. Representative: John R. Davidson, Room 805, Midland Bank Bldg., Billings, MT 59101. A Decision of the Commission, Division 2, Acting as an Appellate Division, decided May 20, 1980 and finds that the present and future public convenience and necessity require operations by the applicant 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 commodities requiring the use of special equipment), between Missoula, MT, and Spokane, WA, over U.S. Hwy 10, serving the intermediate points of Mullan, Wallace, Kellogg, and Coeur d'Alene, ID, on westbound shipments only, serving no intermediate points on eastbound shipments.

MC 120007 (Sub-2) (republication), filed June 26, 1980, published in the **Federal Register** issue of October 3, 1979, as New York Docket No. T-384, and republished this issue. A Decision of the Commission, Review Board Number 4, decided August 7, 1980, finds that the applicant may conduct operations in interstate or foreign commerce within limits which do not exceed the scope of the intrastate operations for which applicant holds Certificate No. 610 dated June 11, 1980, issued by the New York Department of Transportation: A. General commodities, as defined in Section 800.1 of Title 17 of the Official Compilation of Codes, *Rules and Regulations of the State of New York:* Between all points in a territory comprised of the Counties of Albany, Rensselaer, Schenectady, Saratoga, Fulton, Montogmery, Herkimer, Oneida, Lewis, Clinton, Essex, Warren and Washington. B. *Shoddy, rags, waste and burlap:* Between all points in a territory comprised of Oneida, Herkimer, Fulton, Montgomery, Warren, Washington, Saratoga, Schenectady, Albany, Columbia, Orange, Rensselaer and Broome Counties.

MC 121597 (Sub-6F), (republication), filed January 19, 1979, published in the **Federal Register** issue of June 6, 1979, and republished this issue. Applicant: CHICKASAW MOTOR LINE, INC., 531 Woodycrest Ave., Nashville, TN 37311. Representative: James Clarence Evans, 1800 Third National Bank Bldg., Nashville, TN 37219. A Decision of the Commission, Review Board 2, Acting as an Appellate Division, decided April 1, 1980 and finds that the present and future public convenience and necessity require operations by the applicant 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), between Nashville and Memphis, TN; from Nashville over Tennessee Hwy 100 to junction U.S. Hwy 64 near Whiteville, TN, then over U.S. Hwy 64 to Memphis, and return over the same route, serving no intermediate points.

MC 140846 (Sub-10F), (republication), filed March 7, 1979, published in the **Federal Register** issue of August 21, 1979, and republished this issue. Applicant: CENTRAL DELIVERY SERVICE OF MASSACHUSETTS, INC., 125 Magazine Street, Boston, MA 02119. Representative: Jeremy Kahn, Suite 733, Investment Bldg., 1511 K Street, Washington, DC 20005. A Decision of the Commission, Review Board 2, Acting as an Apellate Division, decided March 11, 1980 and finds that the present and future public convenience and necessity require operations by the applicant as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over *irregular routes*, transporting advertising matter, from the facilities of First National Supermarkets, Inc., at or near Windsor Locke, CT, to Westerly, RI, and Catskill, Poughkeepsie, West Hampton, Mt. Kisco, and New York, NY, under continuing contract(s) with First National Supermarkets, Inc., of Windsor Locke, CT.

MC 146796 (Sub-2F) (republication), filed July 11, 1979, published in the **Federal Register** issue of March 6, 1980, and republished this issue. Applicant: ROBERT HANSEN, d.b.a. HANSEN TRUCKING, 121 West Fourth Street, Danville, IL 61832. Representative: Robert Hansen (same address as applicant). A Decision of the Commission, Review Board 1, Acting as an Appellate Division, decided July 25, 1980 and finds that the present and future public convenience and necessity require operations by the applicant as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over *irregular routes*, transporting *general commodities* (except those of unusual value, classes A and B explosives, houshold goods as defined by the Commission, commodities in bulk, and those requiring special equipment), in trailers or containers, having an immediately prior or subsequent movement by rail, between points in Illinois, Indiana, Ohio, Kentucky, Missouri, and Wisconsin.

MC 146957 (Sub-2F), (republication), filed April 24, 1979, published in the **Federal Register** issue of October 4, 1979, and republished this issue. Applicant: DACIANO A. SANTOS, d.b.a. CONNECTICUT AIRPORT SERVICE, 17 Fairfield Ave., Danbury, CT 06810. Representative: John E. Fay, 630 Oakwood Ave., West Hartford, CT 06110. A Decision of the Commission, Review Board 3, Acting as an Appellate Division, decided May 6, 1980 and finds that the present and future public convenience and necessity require operations by the applicant as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over *irregular routes*, transporting *passengers and their baggage*, in the same vehicle with passengers, between Bethel, Bridgewater, Brookfield, Hartford, New Fairfield, Newtown, Redding, Ridgefield, Weston, Danbury, Naugatuck, Waterbury, and Bridgeport, CT, on the one hand, and, on the other, LaGuardia and John F. Kennedy Airports, NY, and Newark International Airport, NJ.

Permanent Authority Decisions Volume Decision-Notice

Decided: September 25, 1980.

The following broker, freight forwarder or water carrier applications 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 protest to the granting of an application must be filed with the Commission within 30 days after the date notice of the applications is published in the **Federal Register**. Failure to file a protest within 30 days will be considered as a waiver of opposition to the application. (A protest under these rules shall comply with Rule 247(e)(3) of the Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding, as specifically noted below), and specify with particularity the facts, matters, and things relied upon. The protest shall not include issues or allegations phrased generally. A protestant shall include a copy of the specific portion of its authority which it believes to be in conflict with that sought in the application, and describe in detail the method—whether by joinder, interline, or other means—by which protestant

would use this authority to provide all or part of the service proposed. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission. A copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named. If the protest includes a request for oral hearing, the request shall meet the requirements of section 247(e)(4) of the special rules and shall include the certification required in that section.

Section 247(f) provides, in part, that an applicant which does not intend timely to 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.

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 administratively 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 exceptions of those applications involving duly noted problem (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each applicant has demonstrated that its proposed service is either (a) required by the public convenience and necessity, or, (b) 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 the Commission's regulations. 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 the absence of legally sufficient protests, filed within 30 days of publication of this decision-notice (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 this decision notice. To the extent that the authority sought below may duplicate an applicant's existing authority, such duplication shall not be construed as conferring more than a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill. Member Hill not participating.

MC 130332 (Sub-1F), filed July 31, 1979. Applicant: TRAVEL-TOURS, INC., 221 East Cherokee, P.O. Box 40, Wagoner, OK 74467. Representative: George F. Saunders, 610 Nat'l Foundation West Bldg., 3555 N.W. 58 St., Oklahoma City, OK 73112. As a *broker* at Tulsa and Muskogee, OK, Fort Smith, AR, and Springfield, MO, to arrange for the transportation of *passengers and their baggage* in special and charter operations, in round-trip tours beginning and ending at points in Muskogee and Tulsa Counties, OK, Sebastian County, AR, and Green County, MO, and extending to points in the U.S. (including AK, but excluding HI).

MC 130342 (Sub-1F), filed June 30, 1980. Applicant: CONSOLIDATED TOURS, INC., 2111 University Avenue, St. Paul, MN 55114. Representative: Andrew R. Clark, 1000 First National Bank Bldg., Minneapolis, MN 55402. To engage in operations, in interstate or foreign commerce, as a *broker*, at St. Paul, MN, in arranging for the transportation, by motor vehicle, of *passengers and their baggage in the same vehicle with passengers*, in round-trip special and charter operations, beginning and ending at St. Paul, MN, and extending to points in the U.S. (including AK but excluding HI).

MC 130883F, filed May 6, 1980. Applicant: AFARI TRAVEL, INC., 1120 New York Avenue, Alamogordo, NM 88310. Representative: Carol Burroughs, (same as applicant). To engage in operations, in interstate or foreign commerce, as a *broker*, at Alamogordo, NM, in arranging for the transportation by motor vehicle, of *passengers and their baggage, in the same vehicle with passengers*, in round-trip, special and charger operations, beginning and ending at points in Otero Lincoln, Socorro, Dona Ana, Luna, Grant, and Sierra Counties, NM, and El Paso County, TX, and extending to points in the U.S., (including AK and HI).

MC 130923F, filed May 27, 1980. Applicant: SCENIC TOURS OF TEJAS, INC., P.O. Box 360, San Antonio, TX 78292. Representative: Kenneth R. Robb (same as applicant). To engage in operations, in interstate or foreign commerce, as a *broker*, at San Antonio, TX, in arranging for the transportation, by motor vehicle, of *passengers and their baggage* in the same vehicle with passengers, in round-trip special and charter operations, beginning and ending at points in Bexar County, TX, and extending to points in the U.S., including AK and HI.

MC 130952F, filed June 10, 1980. Applicant: LYMAN AND VIRGIE HOLMAN, d.b.a. FOOTHILL TRAVEL, 19764 Rawhide Rd., Sonora, CA 95370. Representative: Lyman Holman (same as applicant). To engage in operations, in interstate or foreign commerce, as a *broker*, at Sonora, CA, in arranging for transportation, by motor vehicle, of *passengers and their baggage* in the same vehicle with passengers, in round-trip, special and charter operations, beginning and ending at points in Tuolumne County, CA, and extending to points in CA, and NV, (including AK and HI).

Motor Carrier Alternate Route Deviations

The following letter-notices to operate over deviaton routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Property (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed on or before November 7, 1980.

Each applicant states that there will be no significant effect on either the quality of the human environment or energy policy and conservation.

Motor Carriers of Property

No. MC 11220 (Deviation No. 57), GORDONS TRANSPORTS, INC., 185 West McLemore Avenue, Memphis, TN 38101, filed September 3, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: from North Little Rock, AR over Interstate Highway 40 to Conway, AR, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: from North Little Rock, AR over U.S. Highway 65 to Conway, AR, then over

U.S. Highway 64 to Russellville, AR, then over AR Highway 7 to Dardanelle, AR, then over AR Highway 22 to Fort Smith, AR, then over U.S. Highway 71 to Alma, AR, then over U.S. Highway 64 to Conway, AR, and return over the same route.

MC 11220 (Deviation No. 58), GORDONS TRANSPORTS, INC., 185 W. McLemore Ave., Memphis, TN 38101, filed September 16, 1980. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Kansas City, MO, over Interstate Hwy 70 to St. Louis, MO, and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Kansas City, MO over U.S. Hwy 71 to junction U.S. Hwy 62, then over U.S. Hwy 62 to Gateway , AR, then over AR Hwy 47 to the Arkansas–Missouri State line, then over MO Hwy 37 to Monett, MO, then over U.S. Hwy 60 to Springfield, MO, then over U.S. Hwy 66 to St. Louis, MO, and return over the same route.

Motor Carrier Intrastate Application(s)

The following application(s) for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interestate of foreign commerce within the limits of the intrastate authority south, pursuant to Section 10931 (formerly Section) 206(a)(6)) of the Interstate Commerce Act. These applications are governed by Special Rule 245 of the Commission's *General Rules of Practice* (49 CFR 1100.245), which provides, among other things, that protests and requests for imformation concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall *not* be addressed to or filed with the Interstate Commerce Commission.

California Docket No. A 59669 filed September 15, 1980. Applicant: COMMERCIAL TRANSFER, INC., 3475 West Franklin Avenue Fresno, CA. Representative: John Paul Fischer, 256 Montgomery Street, San Francisco, CA 94104. Certificate of Public Convenience and Necessity south to operate a freight service, as follows: Transportation of: General commodities, except that pursuant to the grant of authority, carrier shall not transport any shipments: (a) To, from or between points in Siskiyou County, CA, and (b) of the following commodities: (1) Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in salesmen's hand sample cases, suitcases, overnight or boston bags, briefcases, hat boxes, valises, traveling bags, trunks, lift vans, barrels, boxes, cartons, crates, cases, baskets, pails, kits, tubs, drums, bags (jute, cotton, burlap or gunny) or bundles (completely wrapped in jute, cotton, burlap, gunny, fibreboard, or straw matting). (2) Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis, freight automobiles, automobile chassis, truck, trucks chassis, truck trailers, trucks and trailers combined, buses and bus chassis. (3) Livestock, viz.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine or wethers. (4) Liquids, compressed gases, commodities in semiplastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles. (5) Commodities when transported in bulk in dump-type trucks or trailers or in hopper-type truks or trailers. (6) Commodities when transported in motor vehicles equipped for mechanical mixing in transit. (7) Portland or similar cements, in bulk or packages, when loaded substantially to capacity of motor vehicle. (8) Logs. (9) Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper. (10) Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment. (11) Explosives subject to U.S. Department of Transportation Regulations governing the transportation of Hazardous Materials. (12) Articles of extraordinary value. In performing the service herein authorized carrier may make use of any and all streets, roads, highways and bridges necessary or convenient for performance or said service. Intrastate, interstate and foreign commerce authority sought. Hearing: Date, time and place not yet fixed. Requests for procedural information should be addressed to California Public Utilities Commission, State Building, Civic Center, San Francisco, CA 94102, and should not be directecd to the Interstate Commerce Commission.

Montana Docket T–5195, filed August 5, 1980. Applicant: MICHAEL L. & KAREN E. GORDON d.b.a. M.L. GORDON FREIGHTLINES, P.O. Box 1328, Dillon, MT 59725. Representative: Thomas C. Honzel, P.O. Box 1721, Helena, MT 59601. Certificate of Public Convenience and Necessity sought to operate a freight service, as follows: Transportation of: Class A—General Freight (excluding high explosives, livestock, coins, and currency, and mail), between Butte, MT, and Whitehall, Mt. over Interstate 90 serving the off-route point of Waterloo. Intrastate, interstate and foreign commerce authority sought. HEARING: Date, time and place not yet fixed. Requests for precedural information should be addressed to Montana Public Service Commission, Transportation Division, 1227 11th Avenue, Helena, MT 59601, and should not be directed to the Interstate Commerce Commission.

Permanent Authority Notices
Substitution Applications: Single-Line Service for Existing Joint-Line Service

The following applications, filed on or after April 1, 1979, are governed by the special procedures set forth in Part 1062.2 of Title 49 of the Code of Federal Regulations (49 CFR 1062.2). These proposals are published as "service sought", (as opposed to decision-notices), because in each case it appears questionable as to whether all or part of the authority sought should be issued, weighing applicant's evidence under 49 CFR 1062.2. (For example, questions may be raised relating to applicant's contentions concerning why the involved joint-line service has been cancelled or is in a state of deterioration which warrant a decision on the merits, regardless of whether the application is opposed.)

The rules provide, in part, that carriers may file petitions with this Commission for the purpose of seeking intervention in these proceedings. Such petitions may seek intervention either with or without leave as discussed below. However, all such petitions must be filed in the form of verified statements, and contain all of the information offered by the submitting party in opposition. Petitions must be filed with the Commission within 30 days of publication of this decision-notice.

Petitions for intervention without leave (i.e., automatic intervention), may be filed only by carriers which are, or have been, participating in the joint-line service sought to be replaced by applicant's single-line proposal, and then only if such participation has occurred within the one-year period

immediately proceeding the application's filing. Only carriers which fall within this filing category can base their opposition upon the issue of the public need for the proposed service.

Petitions for intervention with leave may be filed by any carrier. The nature of the opposition, howevever, must be limited to issues other than the public need for the proposed service. The appropriate basis for opposition, i.e., applicant's fitness, may include challenges concerning the veracity of the applicant's supporting information, and the bona-fides of the joint-line service sought bo be replaced (including the issue of its substantiality). Petitions containing only unsupported and undocumented allegations will be rejected.

Petitions not in reasonable compliance with the requirements of the rules may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendment will not be accepted after the date of this publication.*

MC 59488 (Sub-48F), filed May 19, 1980. Applicant: SOUTHWESTERN TRANSPORTATION COMPANY, 1766 El Camino Real, P.O. Box 990, Burlingame, CA 94010. Representatives: Lloyd M. Roach, 7600 South Central Expressway, P.O. Box 226187, Dallas TX 75266. John MacDonald Smith, 813 Southern Pacific Building, San Francisco, CA 94105. Authority sought 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 St. Louis, MO, and Louisville, KY: from St. Louis over U.S. Hwy 50 to Junction U.S. Hwy 150 at Vincennes, IN, then over U.S. Hwy 150 to Louisville and return over same route, (2) between St. Louis, MO, and Indianapolis, IN, over U.S. Hwy 40; (3) between Evansville and Hammond, IN, over U.S. Hwy 41; (4) between Vincennnes and Indianapolis, IN, over IN Hwy 67; (5) between Owensboro, KY, and Lafayette, IN: over U.S. Hwy 231; (6) between Lafayette and Fort Wayne, IN; from Lafayette over IN Hwy. 25 to Junction U.S. Hwy 24 at Logansport, IN, then over U.S. Hwy 24 to Fort Wayne and return over same route, (7) between Paoli and Indianapolis, IN over IN Hwy 37; (8) between Louisville, KY, and South Bend, IN, over U.S. Hwy 31; (9) between Hammond and Elkhart, IN, over U.S. Hwy 20; (10) between Elkhart and Fort Wayne, IN, over U.S. Hwy 33; (11) between Indianapolis and Fort Wayne, IN: from Indianapolis over IN Hwy 67 to Junction IN Hwy 3, then over IN Hwy 3 to Fort Wayne and return over same route, (12) between Fort Wayne, IN, and Pittsburgh, PA; from Fort Wayne over U.S. Hwy 30 to Junction U.S. Hwy 62 at Canton, OH, then over U.S. Hwy 62 to Junction OH Hwy 14 at Salem, OH, then over OH Hwy 14 to Junction PA Hwy 51 at the OH–PA State Line then over PA Hwy 51 to juncton PA Hwy 65 at Rochester, PA, then over PA Hwy 65 to Pittsburgh and return over same route, serving the off route points of Erie, Latrobe, New Castle, PA; Wheeling, Weirton, WV; Akron, Cleveland, Columbus, Lima, Toledo, Xenia, Youngstown, OH, and serving all intermediate points on routes (1) through (12).

Note No. 1.—Applicant intends to tack with existing authority at St. Louis, MO. and to interline with other carriers at a major junction points. An underlying ETA seeks 90 days authority and Regular TA seeks 180 days authority.

Note No. 2.—The purpose of this application is to substitute single-line for joint-line operations.

MC 110988 (Sub-425F), filed April 30, 1980. Applicant: SCHNEIDER TANK LINES, INC., 4321 W. College Ave., Appleton, WI 54911. Representative: Patrick M. Byrne, P.O. Box 2298, Green Bay, WI 54306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals* from the Indiana portion of the Chicago commercial zone and that part of Illinois north of a line beginning at the Illinois-Missouri state line from a point directly west of Springfield, IL and extending through Springfield to the Illinois-Indiana state line to points in AL, AR, CO, IN, IA, KS, KY, LA, MI, MN, MS, MO, NE, ND, NJ, NY, OH, OK, PA, SD, TN, TX, WV, WI, and WY.

Note.—The sole purpose of the application is to substitute single line for joint line operations.

Permanent Authority Decisions; Decision-Notice; Substitution Applications: Single-Line Service for Existing Joint-Line Service

Decided: September 18, 1980.

The following applications, filed on or after April 1, 1979, are governed by the special procedures set forth in Part 1062.2 of Title 49 of the Code of Federal Regulations (49 CFR 1062.2).

The rules provide, in part, that carriers may file petitions with this Commission for the purpose of seeking intervention in these proceedings. Such petitions may seek intervention either with or without leave as discussed below. However, all such petitions must be filed in the form of verified statements, and contain all of the information offered by the submitting party in opposition. Petitions must be filed with the Commission on or before November 7, 1980.

Petitions for intervention without leave (i.e. automatic intervention), may be filed only by carriers which are, or have been, participating in the joint-line service sought to be replaced by applicant's single-line proposal, and then only if such participation has occurred within the one-year period immediately proceeding the application's filing. Only carriers which fall within this filing category can base their opposition upon the issue of the public need for the proposed service.

Petitions for intervention with leave may be filed by any carrier. The nature of the opposition, however, must be limited to issues other than the public need for the proposed service. The appropriate basis for opposition, i.e. applicant's fitness, may include challenges concerning the veracity of the applicant's supporting information, and the bona-fides of the joint-line service sought to be replaced (including the issue of its substantiality). Petitions containing only unsupported and undocumented allegations will be rejected.

Petitions not in reasonable compliance with the requirements of the rules may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

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 administratively 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 applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity. 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 the Commission's regulations. 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 within 30 days of publication of this decision-notice (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 grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 4, Members Fitzpatrick, Fisher, and Dowell.

MC 29910 (Sub-262F), filed May 5, 1980. Applicant: ARKANSAS-BEST FREIGHT SYSTEM, INC., 301 South 11th Street, Fort Smith, AR 72901. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood Ave., Fort Smith, AR 72902. Authority sought to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over (A) regular routes, transporting *general commodities* (except those of unusual value, commodities in bulk, household goods as defined by the Commission, and those requiring special equipment), (1) between Shreveport, LA, and the LA–TX state line, over LA Hwy 8, serving no intermediate points: (2) between Shreveport and Vivian, LA, over New LA Hwy 8, serving no intermediate points; (3) between the LA–TX state line and Shreveport, LA, from the LA–TX state line over U.S. Hwy 84 to junction LA Hwy 38, then over LA Hwy 38 to junction U.S. Hwy 171, and then over U.S. Hwy 171 to Shreveport, and return over the same route, serving all intermediate points; (4) between the LA–TX state line, and Shreveport, LA, over U.S. Hwy 79, serving all intermediate points; (5) between the LA–TX state line, and Greenwood, LA, over U.S. Hwy 80, serving no intermediate points; (6) between Shreveport and Bossier City, LA, over U.S. Hwy 80, serving no intermediate points; (7) between the LA–TX state line and Shreveport, LA, from the LA–TX state line over LA Hwy 202 to junction LA Hwy 8, then over LA Hwy 8 to Shreveport, and return over the same route, serving all intermediate points, and the off-route point of Vivian, LA; (8) between Shreveport and Rodessa, LA, from Shreveport over U.S. Hwy 71 to Ida, LA, then over LA Hwy 168 to Rodessa, and return over the same route, serving the intermediate points of

Cash Point, Dixie, Belcher, Gilliam, Hosston, Mira, and Ida, LA; (9) between Haynesville and Bernice, LA, over LA Hwy 70, serving all intermediate points; (10) between Homer, LA and the LA–AR state line, over LA Hwy 9, serving all intermediate points; (11) between Dubach and Junction City, LA, over U.S. Hwy 167, serving all intermediate points; (12) between Dubach and Homer, LA over LA Hwy 11, serving all intermediate points; (13) between Bernice, LA and junction LA Hwys 489 and 11, over LA Hwy 489, serving all intermediate points; (14) between Dubach, LA and the site of the California Corporation plant (located approximately 7 miles southwest of Dubach), over unnumbered highway, serving all intermediate points; (15) between Shreveport, LA and LA–AR state line, from Shreveport over U.S. Hwy 80 to Minden, then over U.S. Hwy 79 to Haynesville, then over LA Hwy 70 to Gordon, then over an unnumbered Hwy to the LA–AR state line, and return over the same route, serving all intermediate points, restricted in (15) above to the following conditions: No freight shall be picked up at Shreveport destined to Minden or to points between Shreveport and Minden. No freight shall be picked up at Minden destined to Shreveport or to points between Minden and Shreveport; (16) between Bernice and Monroe, LA, (a) from Bernice over LA Hwy 2 to junction LA Hwy 143, then over LA Hwy 143 to junction Interstate Hwy 20 and U.S. Hwy 80, then over Interstate Hwy 20 to Monroe, and (b) from junction Interstate Hwy 20 and U.S. Hwy 80 over U.S. Hwy 80 to Monroe, and return over the same routes, serving all intermediate points; (17) between junction LA Hwys 2 and 143 (west of Sterlington, LA), and Sterlington, LA, over LA Hwy 2, serving no intermediate points; (18) between Sterlington and Monroe, LA, from Sterlington over LA Hwy 2 to junction U.S. Hwy 165, and then over U.S. Hwy 165 to Monroe, and return over the same route, serving all intermediate points, (except those on U.S. Hwy 165); (19) between the LA–AR state line and Marion, LA, (a) from the LA–AR state line over LA Hwy 558 to junction LA Hwy 15 then over LA Hwy 15 to Farmerville, and then over LA Hwy 33 to Marion, and return over the same route, and (b) from the LA–AR state line over LA Hwy 33, to Marion, and return over the same route, serving all intermediate points; (20) between Marion, LA and junction LA Hwys 143 and 2, over LA Hwy 143, serving all intermediate points; (21) between Monroe and West Monroe, LA, (a) over Interstate Hwy 20, and (b) over U.S. Hwy 80, and return over the same routes, serving all intermediate points; (22) Serving all off-route points within 5 miles of LA Hwy 1 between Port Allen and Donaldsonville, LA, and LA Hwy 18 between Donaldsonville and Ama, LA in connection with carrier's regular route operations, restricted against tacking or joining with any other authority held be carrier for the purpose of providing through service between Memphis, TN, and Hew Orleans; (23) serving the facilities of the United Gas Pipe Line Company at a point approximnately 5 miles southwest of Effie, LA, as off-route points in connection with carrier's regular route operations authorized between Alexandria and Bunkie, LA; (24) serving the site of the Alexandria, LA Air Force Base, and Alexandria, LA Municipal Airport, near Alexandria, as off-route points in connection with carrier's regular-route operations authorized to and from Alexandria, LA; (25) serving Belle Chasse, LA as an off-route in connection with carrier's regular-route operations authorized to and from New Orleans, LA; (26) between Minden, LA and the LA–AR state line, over U.S. Hwy 79, serving no intermediate points and serving the off-route point of Lisbon,

LA; (27) between Baton Rouge, LA and junction LA Hwy 433 and U.S. Hwy 90, from Baton Rouge over U.S. Hwy 190 to junction U.S. Hwy 11, then over U.S. Hwy 11 to Slidell, LA, then over LA Hwy 433 to junction U.S. Hwy 90, and return over the same route, serving all off-route points within 10 miles of the route described immediately above; (28) between Slidell, LA and junction U.S. Hwy 190 and U.S. Hwy 90, from Slidell over U.S. Hwy 11 to junction U.S. Hwy 190, then over U.S. Hwy 190 to junction U.S. Hwy 90, and return over the same route, serving all off-route points within 10 miles of the route described immediately above; (29) between New Orleans, LA and the LA–MS state line, over U.S. Hwy 90, serving all intermediate points; (30) between Alexandria and Ferriday, LA, from Alexandria over U.S. Hwy 165 to Pollack, then over LA Hwy 8 to Trout, then over U.S. Hwy 84 to Ferriday, and return over the same route, serving all intermediate points (except Pollack, LA) and the off-route point of Camp Livingston, LA; (31) between the AR–LA state line and West Monroe, LA, from the AR–LA state line over LA Hwy 142 to junction LA Hwy 139, then over LA Hwy 139 to Bastrop, LA, then over U.S. Hwy 165 to Monroe, then over U.S. Hwy 80 to West Monroe, and return over the same route, serving all intermediate points of Bastrop and Monroe, LA, and off-route points within 3 miles of West Monroe, LA; (32) between Alexandria and Monroe, LA, over U.S. Hwy 165, serving no intermediate points; (33) between Natchitoches and Boyce, LA, over LA Hwy 1, serving all intermediate points; (34) between Ville Platte and Bunkie, LA over LA Hwy 29, serving all intermediate points: (35) between Lecompte, LA and a point on LA Hwy 112, five miles from Lecompte, LA, over LA Hwy 112, serving all intermediate points; (36) between Leesville and Camp Polk, LA, from Leesville over U.S. Hwy 171 to junction unnumbered Hwy, then over unnumber Hwy to Camp Polk, and return over the same route, serving no intermediate points; (37) between New Orleans and Monroe, LA, from New Orleans over U.S. Hwy 61 to Natchez , MS, then over U.S. Hwy 65 via Ferriday, LA, to junction LA Hwy 15, then over LA Hwy 15 to Monroe, and return over the same route, serving all intermediate points, and the off-route points of Angola, Extension, Harrisonbutg, and Fort Necessity, LA, those on LA Hwy 17 between Winnsboro and Delhi, LA, points on those portions of LA Hwys 4 and 128 between Winnsoboro and St. Joseph, LA; points on LA Hwy 137 between Archibald and Rayville, LA, and off-route points within 5 miles of the route described immediately above; (38) between Ferriday and Tallulah, LA from Ferriday over U.S. Hwy 65 to junction LA Hwy 128 west of St. Joseph, then over LA Hwy 128 to St. Joseph, then over LA Hwy 605 via Osceola, Lake Bruin, Newellton, and Balmoral, to junction U.S. Hwy 65 at or near Somerset, then over U.S. Hwy 65 to Tallulah, and return over the same route, serving all intermediate points, and the off-route points of Newlight, LA, points on LA Hwy 4 between Newlight and Newellton LA (including Newellton), and all other off-route points within 5 miles of the route described immediately above; (39) between the LA–MS state line and Scotlandville, LA, over LA Hwy 19, serving all intermediate points, and the off-route points within 5 miles of the above described route;

(40) between the LA–MS state line and Shreveport, LA, over U.S. Hwy 80, serving all intermediate points; (41) between Shreveport and Monroe, LA, (a) from Shreveport over U.S. Hwy 71 to junction LA Hwy 4, then over LA Hwy 4 via Ringgold, Castor, and Lucky, to junction LA Hwy 155 (also from Lucky over LA Hwy 9 to junction LA Hwy 155), then over LA Hwy 155 to junction LA Hwy 4, then over LA Hwy 4 via Friendship and Jonesboro to Chatham, then over LA Hwy 34 to junction LA Hwy 144, then over LA Hwy 144 to junction U.S. Hwy 80, then over U.S. Hwy 80 to Monroe (also from LA Hwy 144 to LA Hwy 34, over LA Hwy 34 to Monroe), and return over the same route, and (b) from Shreveport over U.S. Hwy 71 to Clarence, then over U.S. Hwy 84 to Winnfield, then over U.S. Hwy 167 to Jonesboro, then to Monroe, as specified immediately above, and return over the same route, serving all intermediate points; (42) between Lucky and Arcadia, LA, over LA Hwy 9, serving all intermediate points; (43) between Jonesboro and Ruston, LA, over U.S. Hwy 167, serving all intermediate points; (44) between Shreveport and Cloutierville, LA, over LA Hwy 1, serving all intermediate points; (45) between Shreveport and Leesville, LA (a) over U.S. Hwy 171; (b) from Shreveport over U.S. Hwy 171 to Mansfield, then over LA Hwy 175 to Pleasant Hill, then over unnumbered Hwy to Converse, then over U.S. Hwy 171 to Leesville, and return over the same route, serving all intermediate points (except points between Shreveport and Gloster, LA); (46) between Natchitoches and Many, LA, over LA Hwy 6, serving all intermediate points; (47) between Hanna and Many, LA, from Hanna over LA Hwy 1 to junction LA Hwy 174, then over LA Hwy 174 to Ajax, then over LA Hwy 487 to Marthaville, then over LA Hwy 120 to Belmont, then over LA Hwy 175 to Many, and return over the same route, serving all intermediate points; (48) between Ajax and Belmont, LA, from Ajax over LA Hwy 174 to Pleasant Hill, then over LA Hwy 175 to Belmont, and return over the same route, serving all intermediate points; (49) between Marthaville, and Cloutierville, LA, from Marthaville over LA Hwy 120 to Robeline, then over unnumbered Hwy via Cypress to junction LA Hwy 1, then over LA Hwy 1 to Cloutierville, and return over the same route, serving all intermediate points; (50) between Natchez and Cypress, LA, from Natchez over LA Hwy 1 to junction unnumbered Hwy, then over unnumbered Hwy to Cypress, and return over the same route, serving all intermediate points; (51) between Gayles and Mansfield, LA, over LA Hwy 175, serving all intermediate points; (52) between junction LA Hwy 175 and 512, and Benson, LA, over LA Hwy 512, serving, all intermediate points; (53) between Monroe, LA and the LA–AR state line, from Monroe over U.S. Hwy 165 to Bastrop, LA, (also, from Monroe over U.S. Hwy 80 to junction LA Hwy 139, then over LA Hwy 139 to Bastrop), then over U.S. Hwy 165 to the LA–AR state line, and return over the same route; also return from the LA–AR state line over U.S. Hwy 165 to Bonita, LA, then over LA Hwy 140 to Bastrop, LA, then to Monroe as specified immediately above, serving all intermediate points, and off-route points of Swartz, Sterlington, Fowler and Fairbanks, LA; (54) between Oak Grove and Tallulah, LA, from Oak Grove over LA Hwy 2 to junction U.S. Hwy 65, then over U.S. Hwy 65 to Tallulah, and return over the same route, serving all intermediate points; (55) between Oak Grove and Delhi, LA, over LA Hwy 17, serving all intermediate points; (56) between Alexandria and Winnfield, LA OVER U.S. Hwy 167, serving all intermediate points; (57) between junction U.S. Hwy 80 and LA Hwy 7, west of Minden, LA, and Springhill, LA, over LA Hwy 7, serving all intermediate points; (58) between Shreveport and New Orleans, LA, from Shreveport over U.S. Hwy 71 to junction U.S. Hwy 190, then over U.S. Hwy 190 to Baton Rouge, then over U.S. Hwy 61 to New Orleans, and return over the same route, serving all intermediate points; (59) between Shreveport and Clarence, LA, from Shreveport over LA Hwy 1 to Natchitoches, then over LA Hwy 6 to Clarence, and return over the

same route, serving all intermediate points; (60) between Alexandria and Colfax, LA, from Alexandria over LA Hwy 1 to Boyce, then over LA Hwy 8 to Colfax, and return over the same route, serving all intermediate points; (61) between Meeker and Crowley, LA from Meeker over U.S. Hwy 167 to Turkey Creek, then over LA Hwy 13 to Crowley, and return over the same route, serving all intermediate points; (62) between Turkey Creek and Krotz Springs, LA, from Turkey Creek over U.S. Hwy 167 to Opelousas, then over U.S. Hwy 190 to Krotz Springs, and return over the same route, serving all intermediate points; (63) between Lebeau LA, and junction LA Hwy 10 and U.S. Hwy 167 north of Opelousas, LA, over LA Hwy 10, serving all intermediate points; (64) between Alexandria and Bunkie, LA, from Alexandria over LA Hwy 1 to Marksville, then over LA Hwy 115 to Bunkie, and return over the same route, serving all intermediate points; (65) between Echo and Mansura, LA, from Echo over LA Hwy 1 to junction LA Hwy 114, then over LA Hwy 114 to Mansura, and return over the same route, serving all intermediate points; (66) between Marksville and Long Bridge, LA, over unnumbered Hwy, serving all intermediate points; (67) between Bunkie, LA, and junction LA Hwy 1 and U.S. Hwy 190 near Erwinville, LA, from Bunkie over LA Hwy 29 to junction LA Hwy 1, then over LA Hwy 1 to junction U.S. Hwy 190 and return over the same route, serving all intermediate points; (68) between Port Allen and New Orleans, LA, from Port Allen over LA Hwy 1 to Donaldsonville, then over LA Hwy 18 to New Orleans, and return over the same route, serving all intermediate points; (69) between Sterlington, LA, and junction LA Hwy 553 and U.S. Hwy 165, over LA Hwy 553, serving all intermediate points; (70) between Sarepta, and Bossier City, La, from Sarepta over LA Hwy 2 to Plain Dealing, then over LA Hwy 3 to Bossier City, and return over the same route, as an alternate route for operating convenience only in connection with carrier's regular-route operations authorized herein; (71) between Anacoco, LA and the LA-TX state line over LA Hwy 111, serving the intermediate point of Toledo Bend Dam and Powerhouse; (72) between the LA-TX state line and Anacoco, LA, from the LA-X state line over LA Hwy 8 to junction U.S. Hwy 171, then over U.S. Hwy 171 to Anacoco, and return over the same route, serving the intermediate point of Toledo Bend Dam and Powerhouse, restricted to the transportation of shipments originating at or destined to the site of the Toledo Bend Dam and Powerhouse; (73) between Haynesville and Sarepta, LA, from Haynesville over alternate LA Hwy 2 to junction LA Hwy 2, then over LA Hwy 2 to Sarepta, and return over the same route, serving the intermediate point of Shongaloo, LA; (74) between Ruston and Dubach, LA, over U.S. Hwy 167, serving all intermediate points; (75) between the LA-TX state line, and New Orleans, LA, over Interstate Hwy 10, serving all intermediate points; (76) between Lafayette and Opelousas, LA, (a) over U.S. Hwy 167, and (b) over LA Hwy 182, serving all intermediate points; (77) between Opelousas and New Orleans, LA, from Opelousas over U.S. Hwy 190 to

Baton Rouge, then over U.S. Hwy 61 to New Orleans, and return over the same route, serving all intermediate points; (78) between Baton Rouge and New Orleans, LA, over Interstate Hwy 10, serving all intermediate points; (79) between Iowa and Opelousas, LA, from Lowa over U.S. Hwy 165 to Kinder, then over U.S. Hwy 190 to Opelousas, and return over the same route; (80) between Kinder and Alexandria, LA, over U.S. Hwy 165, serving all intermediate points; (81) between Leesville and Alexandria, LA, over LA Hwy 28, serving all intermediate points; (82) between Leesville and Lake Charles, LA, over U.S. Hwy 171, serving all intermediate points; (83) between the LA-TX state line and De Ridder, LA, over U.S. Hwy 190, serving the intermediate point of Merryville, LA; (84) between Alexandria and Monroe, LA, over U.S. Hwy 165, serving all intermediate points and the off-route point of Fort Polk, LA; (85) serving the facilities of Pineville Kraft Corporation, near Pineville, LA, as an off-route point in connection with carrier's regular-route operations from and to Alexandria, LA; (86) serving the facilities of Geigy Chemical Corporation near St. Gabriel, LA, as an off-route point in connection with carrier's authorized regular-route operations, restricted against the transportation of traffic moving between the said facilities of Geigy Chemical Corporation and New Orleans, LA; (87) serving the facilities of Boise Southern Company near De Ridder, LA, as an off-route point in connection with carrier's otherwise authorized regular-route operations; (88) serving Elizabeth, LA, as an off-route point in connection with carrier's regular-route operations authorized herein for pickup only, restricted to the transportation of shipments of wrapping paper, paper bags, and machinery parts originating at Elizabeth, LA; and (B) irregular routes, transporting *general commodities* (except those of unusual value, commodities in bulk, household goods as defined by the Commission, and those requiring special equipment), (1) from points on the regular routes specified in (A) above, to Elizabeth, LA; (2) from points on the regular routes specified in (A) above (except New Orleans and Baton Rouge, LA, to Hammond and Covington, LA; (3) from points on the regular routes specified in (A) above (except Shreveport and Alexandria, LA), to Haynesville, Homer, Jonesboro, Ruston, and Winnfield, LA; (4) from points on the regular routes specified in (A) above (except New Orleans, Baton Rouge, and Lake Charles, LA), to Franklin, Houma, Jeanrette, Lafayette, Morgan City, New Iberia, Paterson, St. Martinville, Thibodaux, and Welsh, LA, (5) from points on U.S. Hwy 190 between Kinder and Eunice, LA, to the irregular-route destination points specified above.

Note.—Part (A) and (B) of the authority granted herein shall not be severable by sale or otherwise. Applicant intends to tack the rights sought to its existing authority. The purpose of this application is to substitute single-line for joint-line operations. Condition: To the extent that the certificate in this proceeding authorized the transportation of classes A and explosives, it will expire 5 years from the date of issuance.

MC 55891 (Sub-6F), filed June 19, 1980. Applicant: JIM MARRS d.b.a. JIM MARRS TRUCKING CO., A Corporation, P.O. Box 632, Drumright, OK 74030. Representative: Charles D. Watson, Jr., 153 East Broadway, P.O. Box 647, Drumright, OK 74030. To operate as a *common carrier*, by motor vehicle in interstate or foreign commerce, over irregular routes, transporting (1) *Machinery, equipment, materials, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, and (2) *machinery, materials, equipment and supplies* used in, or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipe lines, including the stringing and picking up thereof, between points in AR, CO, LA, MO, MS, NM, UT, and WY.

Note.—Applicant intends to take this authority with its existing authority. The purpose of this application is to substitute single-line for joint-line operations.

MC 105501 (Sub-44F), filed March 3, 1980. Applicant: TERMINAL WAREHOUSE COMPANY, a corporation, 1851 Radisson Road, NE., Blaine, MN 55434. Representative: Samuel Rubenstein, P.O. Box 5,

Minneapolis, MN 55440. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce over irregular routes, transporting (1) *liquor*, and (2) *materials and supplies* used in the distribution of liquor, between the facilities of Ed Phillips & Sons, at Minneapolis, MN, on the one hand, and, on the other, Fargo and Bismarck, ND.

Note.—The sole purpose of this application is to substitute single-line operations for joint-line operations.

MC 110420 (Sub-849F), filed February 25, 1980. Applicant: QUALITY CARRIERS, INC., 100 Waukegan Road, P.O. Box 1000, Lake Bluff, IL 60044. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425—13th Street, NW., Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *liquid chemicals*, in bulk, in tank vehicles, from Mapleton, and points in Cook, Grundy, Lake, and Will Counties, IL, to points in AL, AR, CO, CT, DE, FL, GA, IN, IA, KS, KY, LA, MA, MD, MI, MS, MN, MO, NJ, NY, NC, ND, NE, OH, OK, PA, RI, SC, TN; TX, VA, WV, WY, and WI.

Note.—The purpose of this application is to substitute single-line for joint-line operations.

MC 119750 (Sub-4F), filed May 20, 1980. Applicant: PERKINS MOTOR TRANSPORT, INC., P.O. Box 218, Savage, MN 55378. Representative: Neil Perkins (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *commodities*, the transportation of which because of size or weight require the use of special equipment; and (2) *building contractors' tools and supplies*, between points in IL, IA, KS, MN, MO, NE, SD and WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—The purpose of this application is to substitute single-line for joint-line operations.

MC 120181 (Sub-21F), filed June 27, 1980. Applicant: MAIN LINE HAULING CO., INC., P.O. Box C, St. Clair, MO 63077. Representative: William H. Shawn, Suite 501, 1730 M Street, NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, 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 the use of special equipment), between Bourbon, St. Clair, and St. Louis, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—The purpose of this application is to substitute single-line for joint-line operations.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-31264 Filed 10-7-80; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29430]

NWS Enterprises, Inc.—Control—Norfolk & Western Railway Co. and Southern Railway Co.

October 1, 1980.

AGENCY: Interstate Commerce Commission.

ACTION: Waiver and clarification of procedural regulations and filing requirements.

SUMMARY: Petitioner's requests for waiver of specific filing requirements of the existing regulations regarding railroad consolidations, 49 CFR Part 1111, and railroad construction and operation, 49 CFR Part 1120, are granted subject to stated qualifications. The Commission reserves its right under 49 CFR 1111.4(c)(2)(v) to require additional imformation.

SUPPLEMENTARY IMFORMATION: On July 24, 190, the Norfolk and Western Railway Company (NW) and the Southern Railway Company (SRC) filed a petition seeking waiver and clarification of our railroad consolidation regulations, 49, CFR Part 1111.

The waiver petition was filed in anticipation of petitioners submitting a consolidation application under 49 U.S.C. § § 11343 and 11344 later this year. Petitioners expect to file their application on or about December 1, 1980. The application will seek Commission approval for a new holding company, NWS Enterprises, Inc. (NWS), to acquire control of NW and SRC and of the Delaware and Hudson Railway Company (D&H), whose stock is held by Dereco, Inc., a wholly-owned subsidiary of NW.

Specifically, petitioners seek:

(1) application of the existing regulations at 49 CFR Part 1111 to the application;

(2) waiver or clarification of the following sections of the regulations to permit filing (a) on a consolidated system basis where information is so maintained; (b) individually for NW and D&H (which normally do not maintain this information on a consolidated basis) and not for their subsidiaries; and (c) on a consolidated basis for the new holding company where applicable:

- § 1111.1(d)(5)
- § 1111.1(d)(7)
- § 1111.2(a)(8)
- § 1111.2(a)(10)
- § 1111.2(a)(11–12), formerly § 1111.2(a)(12–13)
- § 1111.2(b)(1–2)
- § 1111.2(b)(3)(i–vii)
- § 1111.2(b)(4–6);

(3) clarification of the term "applicant" in § 1111.3, formerly § 1111.1;

(4) waiver of clarification of the information or format required by the following sections:

- § 1111.2(b)(1)(i)
- § 1111.2(b)(1)(ii)
- § 1111.4(c)(2)(iv), formerly 1111.4(a)(3)
- § 1111.2(b)(2)
- § 1111.2(a)(10)(vi)
- § 1111.2(b)(3)
- § 1111.2(b)(5)
- § 1111.2(b)(6)

(5) waiver of the following sections of 49 CFR Part 1120 governing applications for construction and operation of a rail line:

- § 1120.1(c)
- § 1120.2(c-d)
- § 1120.6(1)
- § 1120.6(3–4)
- § 1120.6(12–13)
- § 1120.6(15–22)
- § 1120.6(24–25)
- § 1120.6(29–31)
- § 1120.6(35)
- § 1120.7(E-G)

A supplemental petition was filed on September 10, 1980 seeking application of the procedural regulations adopted in Ex Parte 282 (Sub-No. 3) *Railroad Consolidation Procedures* (served August 25, 1980), 45 FR 62991 and 63012, September 23, 1980 363 I.C.C. 201 (1980), in lieu of the procedural regulations requested in the original petition.

(1) *Appropriate Regulations.*

Petitioners request that their application be handled under the regulations as codified at 49 CFR Part 1111 (1979) *Railroad Acquisition, Control, Merger, Consolidation Project, Trackage Rights and Lease Procedures* as modified in Ex Parte 282 (Sub-No. 3), *Railroad Consolidation Procedures* (served August 25, 1980) 45 FR 62991 and 63012, September 23, 1980 363 I.C.C. 201 (1980). These regulations, including the recent procedural modification, are the most current approved version of our consolidation regulations. In order to prepare and file an application, petitioners must be certain of the rules which will govern the proceeding. Use of these regulations incorporates the innovations of the new procedural rules

while creating the certainty of using approved regulations.

The substantive aspects of the regulations remain unchanged at this time but are the subject of ongoing discussion. *See Railroad Consolidation Procedures, supra* (the "1980 propose regulations"); *see also* the decision in that proceeding served November 8, 1979, 44 FR 66626 (November 26, 1979) (the "1979 proposed regulation"). We note that the 1980 proposed regulations would make significant changes in the information requirements imposed on merger applicants. By obtaining the waivers set forth in this decision, petitioners are not forclosed for seeking further waivers. Finance Docket No. 30000, *Union Pacific Corporation and Union Pacific Railroad Company-Control Missouri Pacific Corporation and Missouri Paci-fic Railroad*, (not printed), served August 25, 1980.

Finally, we reserve the right to require additional information at anytime, 49CFR 1111.4(c)(2)(v), formerly § 1111.4(a)(4).

(2) *Entities Required to Submit Data:* Numerous provisions of the regulations require submission of information by applicants, formerly defined to be "all carriers with properties directly involved," 49 CFR 1111.1(a), fn. 1 (1979). This footnote was deleted by the new regulations, in which "applicant" is defined as "the parties initiating the transaction," 49 CFR 1111.3(a) (1980). Petitioners seek clarification of this definition or waiver to allow SRC to file its information on a consolidated system basis and for NW and D&H to file information individually as the only significant carriers in their systems.

SRC is a Class I railroad which controls a number of rail and non-rail subsidiaries as set forth in Appendix A. SRC and each of its consolidated companies are separate corporate entities, but the transportation functions of the companies are under common management, and in most instances required reports to the Commission and other regulatory agencies are submitted on a system basis.

The Commission has long accepted system reporting and accounting by SRC and its consolidated companies, *Southern Ry. Co. Purchase*, 275 I.C.C. 724, 732 (1950), and that practice will be continued in this proceeding.

NW, also a Class I railroad, controls a number of rail subsidiaries as shown in Appendix B. As with SRC, each of these comanies is a separate corporate entity, but the rail operations are effectively controlled by NW. For the year 1979, the gross operating revenues and expenses of all NW subsidiary companies constituted no more than 1.26 and 1.36 percent, respectively, of NW's gross operating revenue and expenses on a consolidated basis. The 1979 income from railway operations and total assets of the subsidiaries amount to 0.89 and 3.67 percent, respectively, of NW system totals, Other statistics regarding the subsidiaries are similarly minimal and are not readily retrievable.

D&H will also be an applicant in this proceeding due to its relationship to NW. However, the operations of D&H are not effectively controlled by NW, nor will NW, SRC or NWS exercise operational control over D&H. D&H system data is kept by D&H, not NW, and information regarding D&H will be submitted separately. D&H controls two Class III railroads which, as with NW, form a negligible part of its system. In 1979 the gross operating revenues and expenses of D&H's subsidiary railroads equalled 1.86 and 1.68 percent, respectively, of D&H system totals.

We believe that the benefit, if any, of obtaining detailed information regarding NW and D&H subsidiaries is outweighed by the difficulty in obtaining it. Information may be filed for NW and D&H individually in this proceeding, or on a consolidated basis if available.

(3) *Clarification of Term "Applicant".* Petitioners request clarification of the term "applicant", as it is used in our previous regulations at 49 CFR 1111.1, to apply only to the initiating parties in the control transaction—NW, SRC, and the new holding company,—and to D&H as a separately operated subsidiary of NW. NW and SRC allege that compiling and submitting the required data for all their numerous subsidiary carriers as initiating parties would be a considerable burden. Petitioners' interpretation is consistent with the revised definition of "applicant" adopted in Ex Parte No. 282 (Sub.-3). We accept the definition of applicant as including the NW, D&H, the consolidated SRC and the new holding company. In lieu of filing extensive information regarding the subsidiaries, corporate charts should be filed for SRC, NW, D&H and the new holding company, as described in section 1111.2 (B)(1)(f) of the 1979 proposed regulations.

In addition to the consolidated system companies of NW, SRC and D&H, both NW and SRC have interests in other railroad companies which are operated independently of the NW or SRC systems. NW and SRC hold 50 percent or less of the stock of such companies, do not now exercise control over such companies, and have no intention of exercising control over these companies if the proposed transaction is approved. The records of these companies are maintained separate and apart from NW and SRC consolidated system data.

We believe it would serve no useful purpose to produce detailed information for these companies (other than identifying them as required by 49 C.F.R. 1111.1(c)(8) which may be done on the corporate charts). We agree with petitioners that the term "applicant", as used in our regulations, does not encompass such non-controlled carriers.

(4) *Waiver or Clarification.*

Section 1111.2(b)(1)(i), Exhibit A-14(i). Exhibit 14(i) requires submission of a density map showing principal lines, yards, terminals, station and common names, desity in each direction by segment, and mileage by segment. Section 1111.2 (b)(1)(i) requires all this data to be placed on the face of the chart. Petitioners request a waiver to permit filing of Exhibit 14(i) in the form of density maps showing graphically the density in each direction on various line segments accompanied by an explanatory list containing the additional information for each segment. We agree with petitioners that inclusion of all the required data on the face of the map can result in an illegible product. This waiver will be granted to allow the use of appropriate explanatory lists.

Section 1111.2(b)(1)(ii), Exhibit A-14(ii). Section 1111.2(b)(1)(ii) requires submission of detailed revenue carload interchange data in a prescribed form. Gateways are to be submitted by geographic sequence from east to west.

The existing NW, SRC and D&H systems extend westward from the Atlantic coast to Omaha, NE, and northward from Florida and the Gulf coast into Canada. Petitioners note that an east to west description of gateways would not be useful and would be difficult to generate and time consuming. To avoid this burden and provide a simple and more useful product, petitioners propose to sequence gateways in Exhibit A-14(ii) alphabetically by state and alphabetically by gateways within each state. The waiver will be granted.

Section 1111.4(c)(2)(iv), Formerly 1111.4(a)(13), Exhibit A-14(ii), Table B. Section 1111.4(c)(2)(iv) requires that all applications filed with the Commission or served upon parties contain all exhibits. Petitioners seek waiver of this requirement to permit filing of only two copies of Exhibit >A-14(ii), Table B, with the Commission and to permit deletion of Exhibit A-14(ii), Table B, from all service and other copies of the application. NW, SRC and D&H will make copies of this exhibit available upon request at each of their

corporate headquarters. Section 1111.4(c)(2)(vii)(A) excepts Exhibit A-14, Table A, from the general service requirement. Due to the considerable size of Exhibit A-14(ii), Table B, and the expense involved in producing and serving multiple copies of the exhibit, we believe the waiver is warranted. Petitioners are required to maintain appropriate copies at their respective corporate headquarters. Additionally, to ease the Commission's burden of dealing with this exhibit we request that, if practicable, petitioners provide one copy of a machine readable tape containing only the data required in Table B. Upon reconsideration, we do not believe the exception for Table A is justified. Table A will be a relatively brief document. Its inclusion in each copy of the application will not unduly burden applicants but will greatly facilitate evaluation of the application. See Finance Docket 30000, served August 25, 1980, *supra*.

Section 1111.2(b)(2), Exhibit A-15 and Section 1111.2(a)(10)(vi), Exhibit A-10(vi).

Exhibit 15 requires submission of certain historical equipment and traffic data for 10 calendar years prior to the filing of an application. The counterparts of Exhibit A-15 in the 1979 proposed regulations (Exhibits 21, 22, 23 and 24) recognized this as a burdensome requirement and would have reduced the necessary data to that of the first, fifth and tenth years preceeding filing.

Petitioners argue that the 10 year data requirement of Section 1111.2(b)(2) results in preparation of an enormous amount of data which is rarely used. On the other hand, first, fifth and tenth year data cannot provide a useful basis for evaluating present trends or the future effects of a proposed control transaction. Petitioners suggest that more current historical data is a more realistic basis upon which to project future impacts.

Similarly, petitioners allege, the requirement of 6 years of employee attrition data for Exhibit A-10 (vi) is excessive.

Petitioners request that Exhibits 15 and 10(vi) be based on data for calendar years 1976, 1977, 1978, and 1979. This 4 year period will be sufficient for our analysis. The waiver will be granted.

Section 1111.2(b)(3), Exhibit A-16.

Section 1111.2(b)(3) sets forth in detail our requirements for a rail traffic study, Exhibit A-16. Petitioners have begun their studies but require clarification or waiver of a number of specific requirements.

A. *Clarification of Assumptions.*

Petitioners seek clarification that Section 1111.2(b)(3) permits applicants sufficient flexibility to recognize, in making their traffic diversion estimates, structural and regulatory developments subsequent to the calendar year of their data bases and to carry the effects forward into their operating plan.

Section 1111.2(b)(3) does not describe the particular diversion assumptions appropriate to a traffic study; the choice of assumptions is left to applicants. However, any assumption used by the traffic evaluators should be reasonable and may be subject to cross-examination during the course of a proceeding.

The results of a traffic study should reflect, as nearly as possible, current circumstances. In order for all traffic studies submitted in this proceeding to be comparable, the assumptions regarding the structure of the railroad industry which applicants intend to employ should be made available to all parties for their consideration in conducting their own studies.

B. *Deletions from Traffic Study Data Base.*

Petitioners seek clarification that § 1111.2(b)(3) will permit deletion of the following from the traffic data base prior to sampling: (1) shipments for which the study carrier served only as a switching carrier; (2) shipments which were local to NW, SRC or D&H system lines; (3) shipments which were interlined only among NW, D&H and SRC system lines. In light of the fact that complete data is not readily available for switched traffic and that traffic entirely local to applicants or interlined among applicants will not be affected by the transaction, we believe their request should be granted. However, to permit effective analysis of petitioners' traffic studies by both the Commission and protestants, the study carriers should clearly indicate in their instructions regarding selection of the sample that these shipments are to be excluded from the study.

In addition, NW and SRC request clarification that § 1111.2(b)(3) permits exclusion, following sampling and prior to the evaluation process, of complete study movement sheets for U.S. Postal Service traffic and for traffic which can be identified by computer as geographically irrelevant to the consolidation. NW and SRC would prepare and have available for inspection a computer printout summarizing such omitted movements.[1] Because these printouts will enable any interested party to test the validity of the evaluator's judgment of non-divertibility, we approve this clarification. However, we require that two copies of these printouts be filed with the Commission.

C. *Expanded Gain on Loss.*

Section 1111.2(b)(3) does not prescribe the format or contents for the Study Movement Sheets to be prepared and submitted for each sample movement. However, proposed § 1111.2(H)(3) and Appendix C to the 1979 proposed regulations did set forth a proposed format. Petitioners are prepared to follow that proposed format with one exception. In lieu of entering the expanded revenue on each Study Movement Sheet, petitioners request that they be allowed to present the present revenue and an expansion factor for each movement. We will accept this format. It will save petitioners unnecessary effort and provision of the expansion factor will give any interested party the opportunity to determine the expanded revenue gain or loss on each diverted movement.

D. *Provision of Costs and Net Revenue Gains or Losses Only for NW, SRC and D&H.*

Petitioners seek clarification that § 1111.2(b)(3) (viii) requires costing and submission of net revenues only for NW, SRC and D&H. Petitioners do not possess the data necessary to determine the costs or to make the net revenue calculations of other railroads. The waiver will be granted.

E. *Filing with Commission of Only Study Movement Sheets.*

Petitioners seek waiver of the requirement in § 1111.2(b)(3)(ii), that they file with the Commission two copies of an abstract containing all Study Movement Sheets and other information upon which diversion evaluations were based. Petitioners request that they be allowed to comply with § 1111.3(H)(3) of the 1979 proposed regulations. Under that proposal only the Study Movement Sheets must be filed with the Commission, while all other material relied upon in the evaluation process is to be kept by applicants as work papers. The waiver will reduce the burden of filing and handling the application while preserving all underlying data for examination by interested parties. Therefore it will be granted.

Sections 1111.2(b)(5-6), Exhibits 18 and 19.

Petitioners request several waivers regarding the financial information required by § 1111.2(b)(5-6). First, petitioners seek waiver to file income statements and balance sheets for NW, SRC and D&H each on a consolidated

[1] The printouts will show car initial and number, waybill date and number, origin and destination, origin and destination road, STCC code, off-junction and connecting road, and on-junction and connecting road.

system basis rather than the corporate entity basis required by the regulations. Otherwise petitioners allege they would be required to prepare more than 85 separate balance sheets and 255 separate income statements. Petitioners will file a balance sheet and income statement for NWS on a corporate entity basis as of the date of its formation.

Second, petitioners seek clarification and confirmation that the *pro forma* income statements and balance sheets required by §§ 1111.2(b)(5)(vii) and 1111.2(b)(6)(vii) are not required in this proceeding because it is a control transaction.

Finally, petitioners seek waiver of the requirement in § 1111.2(b)(6)(viii) that they submit *pro forma* statements of sources and applications of funds. This information is derived from the *pro forma* balance sheets and income statements which are not required in control transactions. Petitioners suggest that the omission of the control exception from section 1111.2(b)(6)(viii) is inconsistent with § 1111.2(b)(6)(vii).

Petitioners' requests are reasonable and will be granted. The preparation of numerous financial statements would greatly expand the application without concomitant benefit to the Commission's analysis. We note, however, that one of our primary considerations in evaluating a rail consolidation proposal is the financial viability of the resulting entity. While *pro forma* financial statements are not required, it behooves applicants to provide as much *pro forma* or other data as is necessary to demonstrate financial viability.

(5) *Partial Waiver of Construction and Operation of Railroad Lines Regulations, 49 CFR Part 1120.*

Petitioners' early studies indicate that one or more projects necessary to implement their operating plan for the commonly controlled carriers may require applications under 49 U.S.C. 10901 for authority to construct or operate certain rail lines. If such related applications are necessary, 49 CFR 1111.4(a)(5) requires they be concurrently filed with the control application. Some of the regulations regarding construction and operation are inconsistent with the policy reflected in the consolidation regulations and petitioners seek the following waivers of 49 CFR Part 1120.

A. *Incorporation by Reference of Data in the Control Application.*

Much of the information required under Part 1120 will be submitted, in identical or similar form, in the control application. Petitioners request that the following sections of Part 1120 be waived to permit incorporation by reference of substantially similar data in the control application:

- § 1120.1(c)—incorporation
- § 1120.6(i)—incorporation
- § 1120.6(3)—control
- § 1120.6(4)—common control
- § 1120.7(E)—related costs
- § 1120.7(F)—financial statements
- § 1120.7(G)—opinion of counsel

The waiver reduces the burden upon applicants without depriving the Commission of necessary data and will be granted. However, we note that this waiver is effective only to the extent that the information required by the specific sections of Part 1120 is included in the control application.

B. *Deletion of Certain Data Required by Part 1120.*

The projects contemplated by NW and SRC are not extensions of rail lines to allow these carriers to serve new markets or customers, but instead are projects which permit more efficient connection between NW and SRC's existing operations. These changes will be explained in the operating plan, Exhibit A-17 of the control application. For this reason petitioners allege certain requirements of Part 1120 are irrelevant as well as burdensome. Petitioners request that the following requirements be completely waived:

- § 1120.6(12)—nearby but unrelated municipalities
- § 1120.6(13)—rail service to nearby unrelated municipalities
- § 1120.6(15)—motor carrier service
- § 1120.6(16)—character of adjacent territory
- § 1120.6(17)—use of adjacent territory
- § 1120.6(18)—nearby industries
- § 1120.6(19)—facts about nearby industries
- § 1120.6(20)—service to nearby industries
- § 1120.6(21)—chief support of track to be constructed
- § 1120.6(22)—beneficiaries of tack to be constructed
- § 1120.6(24)—volume and enconomies of interchange
- § 1120.6(25)—service for existing interchange traffic.
- § 1120.6(29)—character and volume of anticipated traffic
- § 1120.6(30)—revenues and expenses related to anticipated traffic
- § 1120.6(31)—diversion estimates
- § 1120.6(35)—increase in charges to road and equipment accounts
- § 1120.7(F)—income statements

Petitioner's request is reasonable and will be granted.

C. *Procedural Requirements of Part 120.*

To permit filing complete construction applications and supporting testimony concurrently with the control application, petitioners request two procedural waivers.

First, with regard to the notice required by § 1120.2(c), petitioners request that the Commission staff be allowed to approve the notice of filing prior to filing of the application. NW and SRC will then serve the notice and the construction applications upon the necessary State officials at the time the contruction application is filed with the Commission. The notice will provide State officials the same time in which to advise of their intent to participate in the construction applications as is provided in the control application.

Second, petitioners request that the Return to Questionaire required by § 1120.2(d) be allowed to be included within and filed and served with the application itself.

The requested waivers will allow any related construction and operation applications to be handled expeditiously along with the control application. The waiver will be granted.

It is ordered:

(1) The petition for waiver is granted to the extent set forth in this decision.

(2) The Commission reserves its right under 49 CFR 1111.4(c)(2)(v) to require applicants to file additional informantion in support of the application.

(3) This decision shall be effective upon service.

Decided: September 30, 1980.

By the Commission, Chairman Gaskins, Vice-Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

Agatha L. Mergenovich,

Secretary.

Appendix A—Southern Railway Co.'s Consolidated Subsidiaries

Class I

The Alabama Great Southern Railroad Company
Central of Georgia Railroad Company
The Cincinnati, New Orleans and Texas Pacific Railroad Company

Class II

Georgia Southern and Florida Railway Company
Norfolk Southern Railway Company

Class III

Atlantic and East Carolina Railway Company
Birmingham Terminal Company
Camp Lejeune Railroad Company
Chattanooga Station Company
The Georgia Northern Railway Company
Interstate Railroad Company
Live Oak, Perry, and South Georgia Railway Company
Louisiana Southern Railway Company
New Orleans Terminal Company
St. Johns River Terminal Company
State University Railroad Company (54%)

Tennessee, Alabama & Georgia Railway Company
Tennessee Railway Company

Other Companies

Airforce Pipeline, Inc.
The Atlanta and Charlotte Air Line Railway Company
Atlanta Terminal Company
Blue Ridge Railway Company
Charlotte-Southern Corporation
Chattanooga Terminal Railway Company
Danville and Western Railway Company
Durham and Southern Railway Company
The Georgia Midland Railway Company
High Point, Randleman, Asheboro and Southern Railroad Company (86%)
Macon Terminal Company
Memphis and Charleston Railway Company
Mobile and Birmingham Railroad Company (78%)
Norfolk Southern Industrial Development Corp.
The North Carolina Midland Railroad Company (97%)
Southern Region Motor Transport, Inc.
The Southern Western Rail Road company (99.8%)
Transylvania Railroad Company (97%)
Virginia and Southwestern Railway Company
Yadkin Railroad Company (74%)

Note.—Control 100% or as indicated.

Appendix B—Norfolk & Western Railway Co.'s Railroad Subsidiaries

Class III

The Akron, Canton & Youngstown Railroad Company
Chesapeake Western Railway
The Lorain & West Virginia Railway Company
New Jersey, Indiana & Illinois Railroad Company
Norfolk, Franklin and Danville Railway Company

Terminal Company

The Lake Erie and Fort Wayne Railroad Company

Other Railroad Companies

The Scioto Valley and New England Railroad Company
The Toledo Belt Railway Company
Wabash Railroad Company
The Wheeling and Lake Erie Railway Company

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BILLING CODE 7035-01-M

Long- and Short-Haul Application for Relief (Formerly Fourth Section Application)

October 3, 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. within 15 days from the date of publication of the notice.

No. 43861-1, Trans-Continental Freight Bureau, Agent, (No. 552), reduced rate on buckwheat, in boxcars, minimum weight 100,000 pounds, from Kincheloe, MI (on the SOO) to Vancouver, BC (on the CP Rail), as published in Supplement 174, Item 2469.01 to its Tariff ICC TCFB 3029-P. Rate became effective September 15, 1980 on 5 days' notice under Special Permission 79-2300. Due to the short notice filing and the emergency situation that was stated to exist, long- and short-haul relief was temporarily granted in Long-And-Short-Haul Order No. 20665. This relief expires with October 20, 1980. The application now under consideration requests that the long- and short-haul relief be permanently granted.

By the Commission.

Agatha L. Mergenovich,

Secretary.

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INTERNATIONAL TRADE COMMISSION

[Investigation No. 303-TA-13 (Final)]

Certain Iron-Metal Castings From India

Determination

On the basis of the record [1] developed in investigation No. 303-TA-13 (Final), the Commission determines (Chairman Alberger dissenting), pursuant to section 303 of the Tariff Act of 1930 (19 U.S.C. 1303), that an industry in the United States is materially injured, or is threatened with material injury,[2] by reason of imports from India of certain iron-metal castings,[3] provided for in item 657.09 of the Tariff Schedules of the United States and accorded duty-free treatment, which the Department of Commerce has found to be subsidized by the Government of India.

Background

The Commission instituted this investigation effective May 20, 1980, following a preliminary determination by the Department of Commerce that bounties or grants are being provided by the Government of India with respect to the production or export of certain iron-metal castings imported into the United States. Notice of the institution of the Commission's investigation and of the public hearing to be held in connection therewith was duly given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and in the Commission's New York City Office, located at 6 World Trade Center, and by publishing the notice in the **Federal Register** on June 18, 1980 (45 FR 41244). The hearing was held in San Francisco, Calif., on August 27 and 28, 1980, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Statement of Reasons for the Affirmative Determination of Commissioners George M. Moore and Catherine Bedell

Determination

On the basis of the record developed in investigation No. 303-TA-13 (Final), we determine that an industry in the United States is materially injured [4] by reason of the importation of certain iron-metal castings from India, provided for in item 657.09 of the Tariff Schedules of the United States (TSUS) and accorded duty-free treatment, upon which the Department of Commerce has determined that bounties or grants are provided by the Government of India.

The following findings and conclusions, based on the record in this investigation, support our determination.

The Imported Article and the Domestic Industry

The certain iron-metal castings which are the subject of this investigation are manhole covers and frames, catch-basin grates and frames, and cleanout covers and frames. These iron-metal castings are encompassed within a larger class of articles commonly called public works castings, and are used either for drainage or access purposes to public utility, water, and sanitary systems.

In this determination we have found that the U.S. industry being injured consists of the domestic producers of these products located in the Western United States, and that these States constitute a regional market.[5] This regional market is well defined since all known imports and production of the subject public works castings in these States are consumed there, and the demand in that market is not supplied to a substantial degree by producers located in other States, because high

[1] The record is defined in sec. 207.2(j) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(j)).

[2] Vice Chairman Calhoun and Commissioners Moore and Bedell found material injury; Commissioner Stern found material injury or threat of material injury.

[3] The specific articles included within the scope of this investigation are manhole covers and frames, catch-basin grates and frames, and cleanout covers and frames.

[4] No party alleged that imports of such merchandise prevented an industry from being established. Therefore, this issue will not be discussed further in this statement.

[5] The Western marketing area was defined for the purposes of this investigation to include the following States: Washington, Oregon, California, Nevada, Idaho, Montana, Arizona, Utah, Wyoming, Colorado, New Mexico, Hawaii, and Alaska.

costs of overland freight make long-distance shipping of these heavy and bulky items uneconomical.[6] In addition, close to 30 percent of all imports of these public works castings from India in the period January 1977–March 1980 entered the United States through ports in the Western region, whereas that region was responsible for only 16 percent of total apparent U.S. consumption of these products over the same period.[7] There are 13 known U.S. producers in the region.

The Bounties or Grants

The U.S. Department of Commerce determined that the Government of India provides Indian manufacturers/exporters of certain public works castings with various rebates of taxes under the Cash Compensatory Support on Export program, as well as other minor benefits. These programs amount to bounties or grants having net benefits ranging from 12.9 to 16.8 percent of the f.o.b. price of the exported product. For most Indian manufacturers/exporters of these products, the net benefit amounts to 13.3 percent of the f.o.b. price.

Material Injury to Western U.S. Producers by Reason of Subsidized Imports

Imports and market share.—Imports of certain public works castings from India in the Western region increased from 8.0 million pounds in 1977, when they accounted for 16 percent of apparent consumption in that region, to 27.7 million pounds in 1979, when they accounted for 37 percent. Imports into the Western region increased again in January–March 1980 compared with those in the corresponding period of 1979, and continued to increase their share of apparent consumption to 55 percent.[8]

U.S. production and utilization of facilities.—Production of certain public works castings by Western U.S. producers fell from 40.9 million pounds in 1977 to 36.0 million pounds in 1979, or by 12 percent. It continued to fall in January–March 1980, to 4.2 million pounds from 7.0 million pounds in the corresponding period of 1979, or by 41 percent. Utilization of productive facilities decreased in each year from 80 percent in 1977 to 70 percent in 1979, and fell sharply in January–March 1980 to less than 50 percent of capacity.[9]

Inventories.—Western producers' inventories rose by 17 percent from 4.2 million pounds in 1977 to 4.9 million pounds in 1979, and by 93 percent from 3.0 million pounds in January–March 1980 to 5.8 million pounds in January–March 1979. The ratio of inventories to shipments also increased from 1977 to 1979, and more than tripled in January–March 1980 compared with the ratio in January–March 1979.[10]

Employment, hours worked, and labor productivity.—Employment of production and related workers by Western respondents declined by 8 percent from 383 in 1977 to 352 in 1979, and dropped precipitously to 229 in January–March 1980. Average weekly hours worked per worker fell in each year from 1977 to 1979 and in January–March 1980 compared with hours worked in January–March 1979. The productivity of Western producers, as measured by output per man-hour, rose slightly from 54.8 pounds per hour in 1977 to 55.8 pounds per hour in 1979 owing to a more rapid decline in man-hours worked than in production. Productivity dropped sharply in January–March 1980 to 37.5 pounds per hour.[11]

Profitability.—Data from U.S. producers located in the Western United States show net sales of these producers declining by 6 percent from $12.1 million in 1977 to $11.4 million in 1979, and by 14 percent in January–March 1980 compared with sales in January–March 1979.[12] These producers experienced net operating losses of $432,000 in 1978, $303,000 in 1979, and $88,000 in January–March 1980, with more than half of the respondents reporting such losses for their firms in January–March 1980. A large Western producer of these products, Comco Foundry of Commerce City, Colo., closed its facility in February 1979, its management claimed, because of competition from low-cost imports. While financial data from Comco influences total Western producers' profitability, a decline is still exhibited without the inclusion of that firm's data.[13]

Prices.—Price data collected from 43 U.S. producers show that the imported product from India, whether offered by producer-importers or importers, undersold that of U.S. producers in each 3-month period for which data were collected from January 1978 to March 1980. For example, the margins of underselling by imports of the 270-pound manhole assembly sold by importers increased from 37.9 percent in January–March 1978 to 40.0 percent in October–December 1979 before declining to 27.5 percent in January–March 1980. Similarly, margins of underselling by imports of the 270-pound manhole assembly sold by producer-importers rose from 11.0 percent in January–March 1978 to 27.3 percent in October–December 1979 and then declined to 23.0 percent in January–March 1980. The decline in the margins of underselling in 1980 is principally the result of a drop in the price of the U.S.-produced product, a clear demonstration of price depression.[14]

Lost Sales

The Commission's staff verified 32 instances in which distributors and end users of certain public works castings purchased imports from India in lieu of the domestic product. Eleven of these purchasers were located in the Western United States. Of these 11, 9 confirmed that they purchased imports from India over the domestic product because of price.[15]

Conclusion

On the basis of the foregoing considerations, we have determined that an industry in the United States is being materially injured by reason of subsidized imports from India. This determination is based upon our finding of material injury to that portion of the industry serving the Western region of the United States.

Views of Vice Chairman Michael J. Calhoun

On the basis of the record developed in investigation No. 303–TA–13 (Final), Certain Iron-Metal Castings from India, I determine pursuant to section 303(a)(2) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(2)), that an industry in the United States is materially injured by reason of the importation of certain iron-metal castings from India, provided for in item 657.09 of the Tariff Schedules of the United States (TSUS) and accorded duty-free treatment, which the Department of Commerce has determined are receiving bounties or grants.

Domestic Industry[16] [17]

To begin an analysis of the impact on a domestic industry of imports of

[6] Report, pp. A–7 and A–13.

[7] Report, pp. A–12, A–28, and A–30.

[8] Report, p. A–30.

[9] Report, p. A–15.

[10] Report, p. A–16.

[11] Report, pp. A–18 and A–19.

[12] Data for 1977–79 represent operations of 10 firms; data for January–March of 1979 and 1980 represent operations of 8 firms.

[13] Report, pp. A–14 and A–23.

[14] Report, pp. A–32 and A–33.

[15] Data submitted in response to questionnaires of the U.S. International Trade Commission.

[16] In this case twelve of the fifty domestic producers of public works castings also import. Section 771(4)(D) gives the Commission discretionary authority under appropriate circumstances to exclude such "related parties" from the domestic industry under consideration.

Footnotes continued on next page

subsidized merchandise sold in the United States, the Commission must first define the relevant industry. As a general rule, the term "industry," as defined in section 771(4)(A) of the Trade Agreements Act of 1979 is:

[T]he domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.

The term "like product" is defined in section 771(10) as:

[A] product which is like, or in the absence of like, most similar in characteristics and uses with the article subject to an investigation.

Therefore, the starting point for an analysis of the relevant domestic industry is the proper identification of the "like product." The Department of Commerce determined that bounties or grants are bestowed upon certain iron-metal castings which enter the United States under item 657.09 of the Tariff Schedules of the United States.

TSUS item 657.09 includes cast-iron articles, not coated or plated with precious metal, not alloyed, and not malleable. It includes a variety of merchandise such as manhole covers and frames, catch basin grates and frames, clean-out covers and frames, water and gas valve boxes, and other cast-iron products for municipal, residential, and utility uses. Also entered under this TSUS item are numerous other articles, such as fence fittings, rail ends, counter weights, and cast-iron carts. But the Commerce Department subsidy finding is with respect to manhole covers and frames, catch basin grates and frames, and cleanout covers and frames. These articles are commonly called municipal or public works castings and are used either for access or for drainage for public utility, water, and sanitary systems. The most important products in this group are manhole covers and frames, which constitute the great bulk both of imports from India and of domestic production.

Domestic foundries that manufacture public works castings are classified as gray iron foundries under the Standard Industrial Classification. In addition to public works castings, gray iron foundries may produce other products such as brake shoes, couplings, pressure and soil pipe, hydrants, railroad car wheels, and various products for automotive uses. Public works castings are reported as part of SIC item 3321 which includes those articles listed above. However, each of these products requires special manufacturing facilities and companies tend to specialize in only a few lines.

Although it is possible for foundries that specialize in public works castings to make some other gray iron foundry products, it is neither economically nor technically feasible for the majority to do so. For example, most public works foundries, especially the larger, more efficient ones, are designed to handle castings within certain size and weight ranges. Therefore, pouring molds for heavy steel ingots or rolls for rolling mills is an impossibility. Furthermore, gray iron products which are used to convey liquids or gases under pressure may require special grades or alloys of gray iron. They require, as well, centrifugal rather than a flat casting technique, hydrostatic testing, and a complex pattern and core-making ability. In contrast, manhole and catch basin assemblies are relatively simple to make and do not require the precision in specification or quality of metal of many of these other products. Public works castings are sold in the United States to two general categories of customers: independent distributors, which buy castings in volume from a number of sources and services the construction industry; and end-users, usually general contractors or public works departments of state of local governments.

For several reasons, the market structure for public works castings is highly fragmented. First, freight costs are very high on these heavy and bulky items. Thus, the further the castings are shipped, the less price competitive they become. Second, specifications for castings vary from one local political jurisdiction to another. And third, different geographical regions of the country present different weather and ware conditions for users. For instance, public works castings sold in the Northwest are designed to handle heavy rain-runoffs while those sold in the Southwest are designed to prevent clogging from sand. As a result, public works castings are usually sold within approximately a 200-mile radius of their manufacture. Domestically produced and imported public works castings are shipped by truck with freight costs usually absorbed by the purchaser. Domestically produced castings are shipped on pallets while imported castings are crated in wood.

There are approximately 50 foundries located throughout the United States which are known to produce public works castings. Domestic production of public works castings generally falls into two groups of producers: those foundries which concentrate on the production of public works castings and the generally smaller, more flexible, "jobber" foundries, whose production of public works castings varies with market conditions. An important difference is that the larger foundries are characterized by greater specialization of product line or mechanization in their foundry operations, which allows them to produce public works castings at lower unit costs than the smaller, jobber foundries. This advantage is gained, however, at the loss of flexibility in product line. Producers of public works castings are located throughout the United States.

It is my view that under the rubric of public works castings there are three domestic like products which, for all practical purposes, are identical to the three imported articles, covered under the Tariff Schedules, which are the subject of this investigation. These three like products are manhole covers and frames, catch basin grates and frames, and cleanout covers and frames.

Material Injury and Causation

In reaching a final determination of material injury by reason of subsidized imports, section 771(7) states that, among other things, the Commission shall take into account:

(i) The volume of imports of the merchandise which is the subject of the investigation,

(ii) The effect of imports of that merchandise on prices in the United States for like products, and

(iii) The impact of such merchandise on domestic producers of like products.

In addition, section 771(4)(D), directs the Commission to assess the effect of subsidized imports in relation to the domestic production of a like product:

[I]f available data permit the separate identification of production in terms of such criteria as production process or the producers' profits.

If this is not possible, then,

[T]he effect of the subsidized * * * imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes a like product, for which the necessary information can be provided.

Although this investigation concerned itself with three distinct types of public works castings, available data do not separate producers' profits for those three castings and assemblies. In addition, other information obtained in

Footnotes continued from last page

Proper exercise of this authority would not affect my conclusions in this case.

[17] With regard to Regional Industry, I concur in the analysis of Chairman Alberger and find that 13 western states do not meet the meaning of market as that term is used under section 771(4)(C).

this investigation, (i.e., manhours worked, number of employees, domestic shipments, etc.) does not allow the separate identification of these three products. Thus, I shall assess the effect of subsidized imports on the narrowest group or range of products, which is public works castings in general.

Imports of public works castings have increased significantly in both relative and absolute terms. In absolute terms, imports from India have increased 277 percent since 1977 from about 25.0 million pounds to about 94.4 million pounds in 1979. In the period from January to April of 1980, such imports increased 30 percent over the same period in 1979, which is approximately 9.2 million pounds.

Consumption of public works castings in absolute terms has increased 26 percent since 1977, from about 371.5 million pounds to about 469.7 million pounds in 1979. In the period from January to March of 1980, consumption has decreased from about 94.4 million pounds to 93.5 million pounds, a decrease of about 1 percent. The ratio of imports from India to consumption for 1977 through 1979 has increased by 196 percent, from 6.8 percent in 1977 to 20.1 percent in 1979. A comparison for the period January through March of 1979 and 1980 shows those figures at 20.9 percent and 28.9 percent respectively, an increase of 38 percent.

During the same period of 1977 through 1979, U.S. production has increased absolutely from 348.1 million pounds to 379.4 million pounds which is 9 percent in relative terms. However, a comparison for January through March for 1979 and 1980 shows production declining from 91.5 million pounds to 83.4 million pounds which is a decrease of 9 percent.

The Commerce Department has determined that subsidies in amounts ranging from a high of 16.8 percent of f.o.b. price to a low of 12.9 percent are given to Indian manufacturers of certain iron-metal castings. Evidence obtained in this investigation shows that prices of imports of public works castings were consistently below those of the domestically produced articles by more than the range of the subsidy. For those U.S. producers who only produce the products in question, the difference in prices from those imported products was about 11 cents in 1978 while in 1980 the difference for January through March was about 9 cents. The margin of underselling by importers fluctuated from approximately 39 percent in 1978 to 28 percent in 1980.

For those U.S. producers who produce and import the product in question, the difference in price from the imported product for their domestic product was about 7 cents in 1978 while in 1980, the difference is about 2 cents; and for their imported product 7 cents in 1978 and 5 cents in 1979. The margin of underselling by importers fluctuated from approximately 30 percent in 1978 to 6 percent in 1980 for the domestic product and 29 percent in 1978 to 6 percent in 1980 for the imported product.

Although the trends for production, shipments and capacity utilization for 1977 through 1979 were up, the period January through March of 1980 shows that production has decreased 8.1 million pounds or about 9 percent as compared to the same period in 1979. Shipments have decreased 7.4 million pounds or about 10 percent as compared to the same period in 1979. And capacity utilization has decreased from 75.4 percent to 70.2 percent, a decline of 6 percent.

The ratio of imports from India to production has increased from 22 percent to 32 percent which is an increase of 45 percent and the ratio of imports to consumption has increased from 20.9 percent to 28.9 percent, which is an increase of 38 percent for the period January through March of 1980 as compared to 1979.

The ratio of net operating profit to net sales was 7.7 percent in 1977 decreasing to 5.2 percent in 1979. This is a decrease of 32 percent. However, examination of the figures for January through March of 1979 versus 1980 shows a drop of the ratio of net operating profits to net sales from 0.6 percent to a 0.3 percent net operating loss, which is nearly a 150 percent decrease. Comparable data for about 140 iron and steel foundries shows net operating profits rising from 4.2 percent in 1977 to 6.0 percent in 1979, which is a 43 percent increase.

Five producers of public works castings cited difficulties in raising capital. In each instance, producers stated that lending organizations refused the loans because of low profit levels.

The average number of production and related workers increased slightly from 1977 to 1979. However, the number dropped by 8 percent in January through March of 1980 as compared to the same period in 1979.

Regarding the requirement that the Commission determine whether there is material injury "by reason of imports," the legislative history of the Trade Agreements Act of 1979 states that:

> [C]urrent law does not, nor will section 705 contemplate that the effects from the subsidized imports be weighed against the effects associated with other factors (e.g., the volume and prices of subsidized imports, contraction in demand or changes in patterns of consumption, * * *) which may be contributing to overall injury to an industry.

It further states:

> [N]or is the issue whether subsidized imports are the principal a substantial, or a significant cause of material injury. Any such requirement has the undesirable result of making relief more difficult to obtain for those industries facing difficulties from a variety of sources, precisely those industries that are most vulnerable of subsidized * * * imports.

That the public works castings industry is suffering material injury is apparent from the above discussion on profits, shipments, market shares, etc. Its condition is exacerbated by the serious decline in housing starts. Total private and public housing starts for the period January through March of 1979 and 1980 have gone from 153 thousand units to 86 thousand units which is a decrease of approximately 43.8 percent. The decrease in housing starts from 1978 to 1979 was 13.6 percent. It is obvious that such a dramatic decline in the housing industry will have a parallel effect on the public works castings industry.

All of these factors contribute significantly to the clearly depressed state of the industry and especially to its marginal profitability. Thus, the presence of low priced, subsidized imports at a penetration level of 28.9 percent, while not perhaps as significant as these other factors, must be considered, nevertheless, as a cause of material injury. The critical nexus between material injury and subsidized imports lies largely in the adverse impact such a high penetration level of imports has on the ability of the marginally profitable domestic public works castings producers to adjust prices or sales to achieve a viable profit level.

The relatively low responsiveness of demand for public works castings, and the relatively high price elasticity of substitution prevent producers of castings from lowering their prices so as to capture sales from lower priced subsidized Indian imports and, thereby, increasing their profit levels. Nor can they increase their prices to pass through increased costs because it would cause a loss in their market share to lower priced subsidized Indian imports causing a further decline in already too low profit levels. Thus, imports must be a cause of material injury to this already vulnerable industry.

Imposing a countervailing duty on Indian imports in this circumstance would increase the domestic producers' rate of utilization and, thus, lower their average fixed costs. It would also

improve profit margins to a more viable level, current economic factors notwithstanding.

Further evidence of the nexus between material injury and subsidized imports can be seen by comparing certain data for January–March 1980 with the same period in 1979. During this period, apparent U.S. consumption fell slightly (by about 1 percent) from 94.4 million pounds to 93.5 million pounds, reflecting a general decline in construction activity. U.S. producers' shipments, however, fell by more than 10 percent, from 72.4 million pounds to 65.0 million pounds, and their share of the U.S. market fell from 79 percent to 71 percent. The direct cause of this deteriorating position must be imports from India, which increased their market share from 21 percent to 29 percent as they rose from 19.7 million pounds to 27.0 million pounds, an increase of 37 percent. The effect of this shift in market share was dramatic on U.S. producers. Their inventories rose sharply, from 98 million pounds to 113 million pounds, the highest level recorded during the period examined. Employment fell by 8 percent to 1,989, the lowest level recorded during the period examined, and reporting firms experienced a net operating loss on operations for the first time during the period. This occurred despite the fact that the price of the principal raw material used by producers, scrap iron, actually declined by about 7 percent as measured by the Bureau of Labor Statistics' producer price index.

Conclusion

Based upon the evidence obtained in this investigation, I determine that an industry in the United States is materially injured by reason of imports of the merchandise with respect to which the Commerce Department has made an affirmative determination.

Statement of Reasons of Commissioner Paula Stern

Introduction

The record developed in the investigation of the impact on the domestic industry of certain iron metal castings imported from India, subsidized by the Government of India, provided an adequate basis for making an affirmative finding,[18] though the investigation was in many respects novel. First, a major segment of the domestic industry imports large quantities of the subject goods. Second, although the product is fungible, a four-tiered pricing structure governs the United States market. Third, the Indians have captured a huge market share and account for almost all imports of a product that is difficult to transport. And finally, the condition of the domestic industry was not immediately apparent from the economic indicators which the Commission traditionally considers in such cases; however, detailed analysis particularly of volatile data on profit and loss in conjunction with import penetration statistics and pricing information, demonstrated clear material injury to the domestic producers resulting from the subsidized Indian imports.

The Imported Article and the Domestic Industry

The iron-metal castings which are the subject of this investigation are manhole covers and frames, catch basin grates and frames and cleanout covers and frames. These iron-metal castings are encompassed within a larger class of articles commonly called public works castings, and are used either for drainage or access purposes to public utility, water, and sanitary systems.

In this determination I have found that the U.S. industry against which the impact of the imports is to be measured consists of all domestic producers of the subject castings. Having made an affirmative determination on the basis of the national industry, I did not reach the question of whether, for the purposes of the law, a regional industry existed and merited separate attention.

The respondents in this case observed that the domestic facilities of foundry-importers could be excluded,[19] presumably under the provisions of section 771(4)(B):

> Related Parties.—When some producers are related to the exporters or importers, or are themselves importers of the allegedly subsidized or dumped merchandise, the term "industry" *may* be applied in *appropriate* circumstances by excluding such producers from those included in that industry. (Emphasis added)

The law is clear that such an exclusion is discretionary and therefore should be made on a case-by-case basis. Foundry-importers accounted for 11 of 43 domestic producers who responded to the Commission's questionnaires and approximately 36 percent of U.S. capacity in 1979. They are responsible for an estimated 32 percent of all imports of the subject products.[20]

The domestic producers who also import made a convincing case that they only do so to stay in the market in the face of price competition from other importers.[21] The diverse array of foundry-importers who supported the petitioner had one common thread—a desire to be able to supply a greater part of the market from their local facilities. No foundry-importer supported the respondents. The circumstances indicate that the primary interests of the foundry-importers lie in domestic production. Their exclusion from the domestic industry is inappropriate because they have become importers only under the duress of the subsidized Indian competition and perceive their fundamental interests to remain in domestic production.[22]

The Bounties or Grants

The U.S. Department of Commerce determined that the Government of India provides Indian manufacturers/exporters of certain public works castings with various rebates of taxes under the Cash Compensatory Support on Export Program, as well as other minor benefits. These programs amount to bounties or grants having net benefits ranging from 12.9 to 16.8 percent of the f.o.b. price of the exported product. For most Indian manufacturers/exporters of these products, the net benefit amounts to 13.3 percent of the f.o.b. price.

Condition of the Domestic Industry

Data were available on a product-line basis for the narrow group of goods like the subject imports.[23] The trends in the data relating to producers' shipments capacity utilization, inventories and employment are fairly uniform throughout the period covered by the investigation. Shipments by domestic

[18] Since this investigation involves merchandise from India, which is not a "country under the Agreement" within the meaning of section 701(b) of the Tariff Act of 1930 (Act) as amended (19 U.S.C. 1671(b)), it has been conducted under the provisions of section 303 of the Act (19 U.S.C. 1303). Section 303(a)(2) directs that, in the case of merchandise which is free of duty, countervailing duties may be imposed only if there is an affirmative determination of injury under the provisions of Title VII of the Act. Therefore, the Commission conducted its investigation in this case in accordance with the provisions of sections 701 through 705 of the Act. Legislative history and Commission precedent with respect to investigations conducted since the passage of the Trade Agreements Act of 1979, which amended the Act, thus have direct bearing.

[19] Hearing transcript of 211 and 212.

[20] Compiled from data submitted in response to questionnaires of the United States International Trade Commission.

[21] Report at A–6.

[22] Additional aspects of this issue are discussed below when pricing is considered. In *Unlasted Leather Footwear Uppers from India* (Inv. No. 701–TA–1 (Final), March 1980), exclusion of domestic producer-importers from the domestic industry was also deemed inappropriate, the basis was different, but the principle of a discretionary case-by-case approach was affirmed.

[23] Sec. 771(4)(D) directs that the "effect of the subsidized . . . imports shall be assessed by the examination of the narrowest group or range of products, which includes a like product, for which the necessary information can be provided."

foundries increased 7.5 percent by quantity from 1977 through 1979, before falling off ten percent in the first quarter of 1980 compared to the same period one year earlier. Production rose nine percent during the three-year period before dropping nine percent in the first quarter of 1980. Likewise, capacity utilization rose ten percent in 1977–1979 and then decreased by seven percent in January–March 1980. Overall capacity utilization reached a peak of 75.8 percent in 1979, below the 80 percent level cited by importers at the hearing as being an adequate level.[24] However, capacity utilization cannot tell us much because capacity is measured in terms of pounds of iron poured; if a foundry chooses to produce light-weight castings, its utilization statistics could fall without any true decline in the level of usage of its factors of production. In fact such a change can be profitable depending on the relationship of the market price of the lighter castings to their costs of production.

There is some doubt as to the degree of relevance of inventory trends in the present case. The petitioner and one other representative of the domestic industry indicated at the Commission's hearing that increasing inventories may be a sign of industry health under certain conditions.[25] Inventories fell marginally by three percent from 1977 to 1979, but increased 15 percent in the first quarter of 1980 when compared to January–March 1979. In that most recent quarter for which data are available the inventories-to-shipments ratio grew 28 percent, completely reversing a decline which had been posted over the three-year period.

Employment grew a marginal 1.4 percent during the three-year period before noticeably declining almost eight percent in the first quarter of 1980, compared to the like period of the preceding year. Average weekly hours per worker declined slightly throughout the period of investigation. Wage increases appear to have closely tracked those for all manufacturing employees over the same period.

The overall picture of the industry worsens considerably when its financial performance is considered. Although net sales of U.S. producers increased each year from 1977 to 1979, net operating profit declined irregularly by 13 percent from 1977 to 1979, and U.S. producers reported a net operating loss of $63,000 in the first three months of 1980. The number of firms reporting such losses increased in each period from 1977 to January-March 1980. Well over one-half of those firms which responded to Commission questionnaires reported net operating losses for the first quarter of 1980. As a ratio of net profit (loss) to net sales, the industry rate of 7.7 percent in 1977 fell to 3.9 percent in 1978, partially recovered to 5.2 percent in 1979 before dropping to a negative 0.3 percent in January-March 1980. Although the performance over the three-year period is not disastrous, the interval was an exceptional boom period in the construction industry, the prime customer for the castings in question. In this countervailing duty case, "material" injury must be attributable to the subsidized imports for an affirmative determination. The lackluster condition of the domestic industry during a boom period and its recent rapid decline indicate that a closer look at the impact of the Indian imports is clearly in order.

Impact of the Indian Imports

The staggering growth in the import penetration by the Indian public works castings is one of the distinctive features of this case. Subject Indian imports increased 277 percent by quantity from 1977 to 1979. Imports continued to increase substantially in the period January-April 1980, increasing 30 percent by quantity compared to the corresponding period of 1979. These date show substantial increases in imports despite the economic recession prevailing in the United States during the first six months of 1980. Even more telling, the imports' share of apparent U.S. consumption rose substantially over the period, from seven percent in 1977 to over twenty percent in 1979, and continued to increase rapidly in the first three months of 1980, again despite the recession. Penetration in the first quarter of 1980 reached 29 percent, 38 percent higher than the figure for the same quarter of the year previous. Though these items are costly to transport, India accounts for over 90 percent of all imports of the goods in question.

Of 35 allegations of lost sales checked by the Commission staff, 32 purchasers confirmed they had purchased castings imported from India. Of these 32 purchasers, 20 stated they made such purchases because of the lower price of the Indian castings. Lost sales due to price considerations are expected in this industry, which manufacturers lower unit profit items of rather simple construction, and in which imports are relatively fungible with U.S. made-products.[26]

An analysis of pricing in the U.S. market is absolutely critical to an understanding of the domestic industry and the impact made by the Indian imports. The cause of the serious and continued deterioration of industry profits already noted lies in the inability of domestic producers to raise prices in the face of rising production costs, principally rising raw materials costs. The industry actually reduced its overhead costs relative to its net sales in the 1977–1979 period,[27] but increasing costs of goods sold forced down net operating profits to unacceptable levels. A major factor in this suppression is competition from imports from India, not only from importers of these products, but also from domestic producer-importers, whose high-markups on imports apparently allow these foundries on both imports and their domestic products to undersell the domestic castings produced by those foundries which do not import.[28]

My analysis shows that subject imports caused price suppression as a result of the subsidies despite the fact that margins of underselling were larger than the levels of subsidy.

Pricing data collected on two types of manhole assemblies representative of products offered by all three types of sellers in the marketplace—foundries which do not import, foundry-importers, and importers—show significant margins of underselling of the domestic producers' product by both the imported product and the domestic product of the foundry-importer. In general, the margins of underselling increased in the latter half of 1979, and then declined noticeably in January-March 1980.

Once in the United States, the simple castings which are the subject of this investigation are apparently fungible. Despite this fact, the data collected by staff show that a four-tiered price structure exists in this industry, and that the structure is stable.[29] The lowest priced item was the imported item sold by importers which undersold the next tier by a significant but changing margin. The second and third tiers were occupied by the imported and domestic products respectively, both sold by foundry-importers. The imported product undersold the domestic castings of the same foundry-importers by consistently small yet persistent margins. At the top of the price spectrum was the domestic product of foundries which do not import, a group that has declined in number as Indian market

[24] Hearing transcript at 227.

[25] Hearing transcript at 114 and 117.

[26] Report A–3, footnote 2; hearing transcript at 184.

[27] Report at A–25.

[28] Report at A–32.

[29] See table 16 in report at A–33 and table 17 at A–34.

penetration has mushroomed. Their product was consistently undersold by large margins by that of domestic competitors who also imported.

The price structure, stable over the entire period of investigation, has a rationale. Most imports are sold by foundry-importers who have extensive marketing experience and an established clientele. Customarily a large order will be sent to India because of the price advantage. However, smaller additional orders are often necessary as a job progresses. Foundry-importers can satisfy these from local inventories, and when possible resort to short domestic runs that do not suffer the long waiting periods required for overseas orders. For each of these services, in turn, foundry-importers can and do extract premiums over the price of castings available directly from importers. Finally, domestic producers are in the least advantageous price situation. They benefit neither from the low Indian labor costs nor the subsidy provided by the Government of India. Furthermore, they do not derive any profits from the distribution of imports. Such profits help sustain the domestic operations of foundry-importers.

The imposition of a countervailing duty could have a beneficial effect despite the large margin of underselling if it would raise the entire price structure. But an affirmative determination which is the prerequisite for such a duty must be based on a finding of actual material injury or threat thereof attributable to the subject imports. The flagging performance of this industry has resulted in current profit levels that for the first quarter of 1980 are in the red. Clearly, the recent severe downturn in residential construction in the United States is a major cause of the declining prospects of this industry.[30] However, the material injury resulting from subsidized imports is subject to countervailing action by international and domestic standards, regardless of the ranking of the subsidized imports as a cause of the industry's difficulties. The Senate Finance Committee has cautioned that the issue is not:

* * * Whether subsidized imports are the principal, a substantial, or a significant cause of material injury. Any such requirement has the undersirable result of making relief more difficult to obtain for industries facing difficulties from a variety of sources; such industries are often the most vulnerable to subsidized imports.[31]

Respondents maintained at the Commission's hearing and in post-hearing brief that the subsidy provided Indian castings is too minimal in light of actual margins of underselling.[32] At the current Indian floor price for these castings, a 13.3 percent countervailing duty would add 1.5 cents per pound to the imported casting, which would decrease the current margins of underselling to 18 to 22 percent on the representative 270 lb.-casting upon which the Commission collected pricing data. Such a margin of underselling without the subsidy in place would still normally guarantee a strong performance by the imports. However, given the four-tier structure of the market under consideration and the rationale for the various price differentials, it is clear that any increase in the price of the lowest level—the Indian imports—can only have one effect, that of making production of the domestic castings relatively more desirable and profitable. If a price increase is fully passed along, it should feed its way up the four levels because the rationale for the various differentials would remain intact. To the extent the duty would not be passed along to ultimate customers, the foundry-importers' choice of imports would be made only at increasingly larger runs because of the reduced profitability of imports. In either case the result on production and profits should be the same—beneficial.

In all likelihood, the effect of any countervailing duty would be further enhanced by the increasing costs of manufacturing and importing the product from India, especially increasing production and freight costs. Indian manufacturers have notified U.S. importers of increases in the Indian floor price for castings of ½ of 1¢ per pound (approximately 4 to 9 percent) effective October 1, 1980, and an additional ½ increase after January 1, 1981. Testimony by one of the respondent's witnesses in the preliminary phase of the case listed a series of costs associated with transporting these heavy and bulky items which are increasing rapidly.[33] Transport costs were estimated by this witness to have increased from 30 percent to 60 percent of the f.o.b. cost from 1978 to 1979. In addition, bunker oil surcharges were said to have increased 100 percent from 1977 to 1979.[34] Inland freight costs and surcharges were also mentioned as affecting the costs of imported castings from India in the United States.[35] If these costs are added, the margin of underselling is compressed and the significance of the subsidy becomes clearer.

In this context, it must be borne in mind that profits on any balance sheet are a rather volatile residual—the difference between sales and costs. In the case of this industry, that residual has fallen to nil. Had the imports in question not suppressed prices across the upper three tiers, sales receipts would have risen without any concomitant rise in costs of the domestic goods sold. The profit residual would have been significantly higher and this industry would be a materially better position to weather the current recession.

I am not aware of any previous Commission cases which have similar circumstances. In *Welded Stainless Steel Pipe and Tube from Japan* (Inv. No. AA1921-180, July 1978), all Commissioners then sitting observed that injury could not have been by reason of less than fair value (LTFV) imports because the LTFV margin was only 3.1 percent compared to margins of underselling of 17-25 percent. In comparing the economic logic of *Pipe and Tube* with that of the present case, it should be noted that the ratio of the LTFV margin (analogous to the subsidy in the present case), of the Japanese product to the margin of underselling was only about 15 percent (as opposed to 33-50 percent here), the import penetration was under 8 percent, and the price structure of the domestic market had no similarity to that exhibited in the present case. In *Certain Zoris from The Republic of China (Taiwan)* (Inv. No. 303-TA-1, September 1976) the Commission found negatively and mentioned the small size of the subsidy (5 percent) in relation to the margin of underselling. But the declining market share of subject imports was also a factor. Price structure of the domestic market was considered but it was based on quality rather than service differences. In *Unlasted Leather Footwear Uppers from India* (Inv. No. 701-TA-1(F), March 1980), the Commission made a unanimous negative determination based in part on the small size of the subsidy (1.01 percent). However, the miniscule Indian import market share of less than 0.5 percent of U.S. consumption was also critical. No margin of underselling could

[30] A further source of trouble in this industry has been the implementation of non-productive investments to comply with environmental regulations. Some smaller foundries have closed because of the cost of compliance.

[31] Committee on Finance, Trade Agreements Act of 1979, S. Rept. No. 261, 96th Cong., 1st sess. at 57.

[32] Post-hearing brief of respondents at 8 and 19.

[33] Transcript of the Conference, pp. 67-68.

[34] Ibid., at 68.

[35] Ibid., at 92.

be calculated because no commercial trade in the imported product could be found. In *Certain Public Works Castings*, the size of the subsidy, the larger ratio of the subsidy to a narrowing margin of underselling, the huge import penetration, and the unusual price structure of the U.S. market clearly distinguished this case from previous ones.

The Immediate Future

The percentage of Indian castings as a share of inventories held by both producers and importers increased from 7 percent in 1977 to 18 percent in 1979, and to over 20 percent in January-March 1980. These Indian castings held in inventory pose a threat of material injury to U.S. producers as importers seek to maintain cash flow to finance future imports.

Responses to the Commission's questionnaires as well as testimony at the Commission's hearing revealed a number of U.S. producers which had abandoned or delayed expansion or modernization plans due to the continued threat of price competition from imports from India.[36]

My affirmative finding is therefore further strengthened by the certainty that the Indian margin of underselling will not significantly exceed any countervailing duty and by the real and imminent threat of further injury exampled in the most recent large rise in import penetration and import inventories during a period of recession in the domestic industry.

Views of Chairman Bill Alberger

On the basis of the record in investigation No. 303-TA-13 (Final), I determine that an industry in the United States is not materially injured, is not threatened with material injury, and that the establishment of an industry is not materially retarded [37] by reason of the importation from India of certain iron-metal castings which the Department of Commerce has determined are receiving bounties or grants.

The Domestic Industry

At the public hearing held on this investigation, the attorney for petitioner stated that "* * * the scope of the industry and the scope of this problem of public works castings imports from India is national."[38] However, petitioners allege in the alternative "* * * that there is, at the very least, material injury to a regional industry in the West, * * *" [39]

Section 771(i)(C) of the Tariff Act of 1930 provides that:

> In appropriate circumstances, the United States, for a particular product market, may be divided into 2 or more markets and the producers within each market may be treated as if they were a separate industry * * *

The majority of the Commission has previously indicated [40] that it believes the application of section 771(4)(C) to be discretionary—to be invoked only in "appropriate circumstances." Further, it appears that the Commission has broad discretion in determining what constitutes appropriate circumstances, as this matter is not addressed in either the legislative history or the Statement of Administrative Action.

In the preliminary phase of this investigation, I concluded that the consideration of a West Coast regional industry was not appropriate. At this final stage I continue to find that appropriate circumstances do not exist for the consideration of a West Coast [41] regional industry in this investigation.

While there are some similarities in foundry size, marketing practices, and impact of imports on the producers in the 13 western states, the 13 producers do not constitute a single geographic marketing area. Rather there appear to be several separate geographic markets within the area. This situation results because the bulk of the castings produced, the consequent expense of transportation, specification requirements, and weather and wear problems relating to the geographic area where use is contemplated make it impractical for the foundries to consider sales outside a 200 mile radius of their facility.[42] Most of these 13 foundries do not, therefore, compete with one another. While there are 13 foundries located within the identified region who technically sell all of their production in the market, several of these foundries have the market to themselves within their own 200 mile marketing areas. Often the only competition is supplied by imports. To consider each foundry separately or each of the smaller marketing areas separately in evaluating regional industry would artifically narrow the region to a base so small that an accurate assessment of the effect of imports could not be accomplished. Also, as a practical matter, inadequate data exists to narrow the geographic scope of the proposed region. The Commission is constrained by petitioners allegations on regions and initial staff judgments as to the appropriate geographic area for data gathering. Therefore, I have made my determination on the basis of a national public works castings industry.

Injury to the Domestic Industry

The public works castings industry has remained fairly successful in light of increasing imports, a faltering economy, and stringent governmental regulations. Imports of castings from India have continued to increase and penetrate the U.S. market since 1977. Throughout this period, until early 1980, domestic shipments, production, capacity utilization, and employment have continued to increase. In the face of increasing imports, the domestic industry, as a whole, remained profitable through 1979. Net sales continue to increase, even into the first quarter of 1980, and the ratio of net operating profit to net sales, while decreasing in 1978, rebounded in 1979 to a level which closely approximates that of other domestic steel and metalworking operations.[43] Two foundries closed during the 1977-79 period while other foundries reported strong performances. Interestingly, the financial situation reported by those domestic producers which import from India was not nearly as strong as that of the non-importing foundries. The ratio of net operating profit to net sales for importing foundries decreased dramatically from 1977 to 1978 and remained low through 1979. The ratio of net operating profit to net sales for the non-importing producers also declined from 1977 to 1978, but by a considerably smaller amount, and then rebounded in 1979.

The predominant factor reported for the switch from domestically produced castings to those imported from India was price. Although the price of domestic castings has increased from 1978 to 1979, imported castings consistently undersold the U.S. product by significant margins during that period. The margin of underselling by the importers product was more than twice the amount of the subsidy through 1979. While the price of U.S. castings decreased somewhat in January-March 1980, the price of importers' castings continued to rise, thus narrowing the

[36] Report, at A-26.

[37] The establishment of an industry producing public works castings in the United States is not at issue in this investigation since there are numerous domestic producers. It will not be discussed further in these views.

[38] Transcript at p. 10.

[39] Ibid.

[40] *Certain Steel Wire Nails from the Republic of Korea*, Views of Chairman Bill Alberger, Vice Chairman Michael J. Calhoun, and Commissioner Paula Stern, USITC Pub. No. 1088, Aug. 1980, p. 9.

[41] The Commission staff has identified a 13 state West Coast region comprised of Washington, Oregon, California, Nevada, Idaho, Montana, Arizona, Utah, Wyoming, Colorado, New Mexico, Hawaii, and Alaska for purposes of data collection.

[42] Staff Report (Report) at p. A-7.

[43] Report at A-25.

margin of underselling. Curiously, at the very time that the margins of underselling narrowed, domestic producers began showing signs of injury.

The declines in production, shipments, capacity utilization and employment experienced by the domestic castings industry in the first quarter of 1980 reflect a downturn in the nation's economy resulting in a large decline in construction and housing starts in the United States. This slowdown, in turn, created a situation of reduced demand for public works castings nationwide. During this time, U.S. producer's inventories began to increase as did importers' inventories. Financial losses were reported for the first quarter of 1980 by domestic foundries. Past history has shown, however, that the domestic producers of castings can compete and succeed in spite of increasing, low-cost imports from India. I, therefore, find that an industry in the United States is not materially injured or threatened with material injury by reason of imports of certain iron-metal castings from India.

Findings of Fact

Section 771(7)(B) of the Tariff Act of 1930 requires the Commission to consider (1) the volume of the subject imports, (2) their effect on the domestic price of the like product, and (3) their impact on the domestic producers of the like product. In section 771(7)(C), the act further specifies a series of economic factors that the Commission must include in these considerations. My findings of fact on each of these factors follows:

A. Volume of Imports

1. Imports of certain public works castings from India increased 277 percent by quantity and 334 percent by value from 1977 to 1979. (Report at p. A-10)

2. Imports from India increased 30 percent by quantity and 42 percent by value in January–April 1980, as compared with the corresponding period of 1979. (Report at p. A-10)

B. Effects of Subsidized Imports on U.S. Prices

3. The average lowest net selling prices for the two representative manhole assemblies compared were uniformly lower for imports from India than those of the comparable U.S. produced product. The margins of underselling were largest for the imported product offered by so-called "true" importers, averaging 39.5 percent in 1978 and 40.4 percent in 1979 for the 270 pound casting; and 36.8 percent in 1978, increasing to 40.8 percent in 1979, for the heavier casting. (Report at pp. A-33–34)

4. Prices of imports offered by those domestic producers which also import undersold U.S. produced castings throughout 1978 and 1979. Margins of underselling on the lighter casting averaged 15.5 percent in 1978, increasing to 24.7 percent in 1979; underselling margins also increased on the heavier casting, from 21.0 percent in 1978 to 26.4 percent in 1979. (Report at pp. A-33–34)

5. The margins of underselling for imports offered by importers decreased from approximately 40 percent in the last quarter of 1979 to approximately 28 percent in January–March 1980. The margins of underselling for imports offered by producer-importers also decreased from approximately 27 percent in the last quarter of 1979 to about 23 to 26 percent depending upon the size of casting. (Report at pp. A-33–34)

6. The price of the 270 lb. casting manufactured by domestic producers which do not import increased from 26.4 cents per pound in January–March 1978 to 33.0 per pound in October–December 1979, or by 25 percent. Prices offered by these same producers increased by 28 percent for the 775 pound casting over the same period. (Report at pp. A-33–34)

7. Prices offered by producer-importers on their U.S. produced castings were consistently lower than comparable castings offered by domestic competitors which do not import. (Report at p. A-32)

C. Impact on the Affected Industry

8. U.S. producers' domestic shipments increased by 8 percent by quantity from 1977 to 1979, before declining by 10 percent in January–March 1980, as compared to the corresponding period in 1979. (Report at p. A-12)

9. Production of certain public works castings rose by 9 percent from 1977 to 1979, before falling by 9 percent in the first 3 months of 1980. Utilization of producers' capacity increased 10 percent from 1977 to 1979, before falling by 7 percent in January–March 1980. (Report at p. A-15)

10. Inventories of domestic producers fell by 3 percent from 1977 to 1979, but rose 15 percent in January–March 1980, as compared to the corresponding period of 1979. (Report at p. A-16)

11. The share of imported castings from India held in inventory by both producer-importers and importers of total inventory increased by 141 percent from 1977 to 1979, and rose by 46 percent in January–March 1980. (Report at p. A-17)

12. Employment of production and related workers remained about the same from 1977 to 1979, but fell by 8 percent in January–March 1980 as compared to January–March 1979. (Report at p. A-18)

13. Labor productivity, as measured by output per man-hour, increased 8 percent from 1977 to 1979, and again, by 3 percent, in January–March 1980 as compared with January–March 1979. (Report at p. A-19)

14. Wage rates for 3 categories of public works castings production and related workers closely tracked rates for production and related workers for all manufacturing concerns, according to the Bureau of Labor Statistics. (Report at p. A-20)

15. Net sales of U.S. producers of certain public works castings increased by 28 percent from 1977 to 1979, and again, by 2.5 percent, in January–March 1980. Net operating profit fell by 45.2 percent from 1977 to 1978, increased 58.8 percent from 1978 to 1979, and U.S. producers reported a net operating loss of $63,000 in January–March 1980. (Report at p. A-22)

16. The number of firms reporting net operating losses increased in each year from 1977 to 1979, and again in January–March 1980. In this latter period, over one-half of respondents reported net operating losses. (Report at p. A-22)

17. Imports from India's share of domestic consumption of certain public works castings increased from 6.8 percent in 1977 to 20.1 percent in 1979. This share increased again in January–March 1980, rising to 28.9 percent of total apparent U.S. consumption. (Report at p. A-28)

18. Fifteen domestic producers submitted specific information as to sales lost to imports from India. Of 35 allegations checked by the Commission staff, 32 purchasers confirmed they had purchased imported castings from India in lieu of the domestic product. Twenty of these purchasers cited the lower price of the imported castings as the most important factor affecting their purchasing decisions. (Report at p. A-35)

D. Other Factors Affecting the Domestic Industry

19. The public works castings industry is affected by the present economic downturn, and specifically, by the slowdown in the residential construction sector. (Report at p. A-35)

20. Increased energy costs and costs associated with government anti-pollution and health and safety regulations are also affecting the domestic industry. (Report at pp. A-38–39)

21. Costs of raw materials, specifically scrap iron, are rising rapidly. (Report at p. A-39)

Conclusions of Law

1. Appropriate circumstances do not exist in this investigation for the consideration of a West Coast regional industry. Therefore, I have made my determination on the basis of a national industry producing certain public works castings.

2. The domestic industry producing certain iron-metal castings, commonly called public works castings, is not being materially injured, and is not threatened with material injury, by reason of the imports of those castings from India, upon which bounties or grants have been found by the U.S. Department of Commerce.

Issued: September 29, 1980.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-31352 Filed 10-7-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-69]

Airtight Cast-Iron Stoves; Hearing on the Presiding Officer's Recommendation and on Relief, Bonding and the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: The scheduling of oral argument and briefing for Investigation No. 337-TA-69, Certain Airtight Cast-Iron Stoves.

Notice is hereby given that the presiding officer has filed her recommended determination that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the unauthorized importation into and sale in the United States of certain airtight cast-iron stoves. She has also certified the evidentiary record to the Commission for its consideration. Interested persons may obtain copies of the nonconfidential version of the presiding officer's recommendation (and all other public documents) by contacting the Office of the Secretary to the Commission, 701 E Street, N.W., Washington, D.C. 20436.

Commission Hearing: The Commission will hold a hearing beginning at 10:00 a.m., e.s.t., on November 3, 1980, in the Commission's Hearing Room (Room 331), 701 E Street, N.W., Washington, D.C. 20436, for two purposes. First, the Commission will hear oral argument on the presiding officer's recommendation that a violation of section 337 of the Tariff Act of 1930 exists. Second, the Commission will hear presentations concerning appropriate relief, the way such relief would affect the public interest, and the proper amount of the bond during the Presidential review period, in the event that the Commission determines that there is a violation of section 337. These matters will be heard on the same day in order to facilitate the completion of this investigation within time limits established under law and to minimize the burden of this hearing upon the parties. The procedure for each portion of the hearing follows.

Oral Argument: A party to the Commission's investigation or an interested agency wishing to present to the Commission an oral argument concerning the presiding officer's recommendation will be limited to no more than 30 minutes. A party or interested agency may reserve 10 minutes of its time for rebuttal. The oral arguments will be held in this order; complainant, respondents, interested agencies, and the Commission investigative attorney. Any rebuttals will be held in this order: respondents, complainant, interested agencies, and the Commission investigative attorney.

Oral Presentations on Relief, Bonding, and the Public Interest: If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion from entry of the subject article or (2) an order which could result in requiring the respondent to cease and desist from alleged unfair methods of competition or unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in what relief, if any, should be ordered.

If the Commission finds that a violation of section 337 has occurred and orders some form of relief, the President has up to 60 days to approve or disapprove the Commission's action. During this period the subject articles would be entitled to enter the United States under a bond determined by the Commission and prescribed by the Secretary of the Treasury. Accordingly, the Commission is interested in what bond, if any, should be assessed.

If the Commission concludes that a violation of section 337 has occurred and orders some form of relief, it must consider the effect of that relief upon the public. Accordingly, the Commission is interested in the effect of any exclusion or cease and desist order upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the production of like or directly competitive articles in the United States, and (4) U.S. consumers.

Following the oral arguments on the presiding officer's recommendation, a party to the investigation, an interested agency, a public-interest group, or any interested member of the public may make an oral presentation on relief, bonding, and the public interest. Such presentations will be limited to no more than 15 minutes. Participants will be permitted an additional 5 minutes for closing arguments after all presentations have been concluded. The Commission investigative attorney will be allotted the full time available to a party.

Written submissions: Parties to the Commission's investigation, interested agencies, and the Commission investigative attorney may file briefs on the issues of violation (to the extent they have not already briefed those issues), remedy, bonding and public interest in order to give greater focus to the hearing. Such briefs must be filed no later than the close of business October 24, 1980. The parties may be asked during the course of the hearing to file post-hearing briefs.

Notice of Appearance: Written requests to appear at the Commission hearing must be filed by October 24, 1980.

Additional Information: The original and 19 true copies of all briefs and written comments and any written request to participate must be filed with the Secretary to the Commission. Any person desiring to discuss confidential information, or to submit a document (or a portion thereof) to the Commission in confidence, must request *in camera* treatment unless the information has already been granted *in camera* treatment by the presiding officer. Such request should be directed to the Chairman of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents or arguments reflecting confidential information approved by the Commission for *in camera* treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Secretary's Office.

Notice of the Commission's investigation was published in the **Federal Register** of July 12, 1979 (44 FR 40732).

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Neeley, Office of the General Counsel, U.S. International Trade Commission, telephone (202) 523-0359.

By order of the Commission.

Issued: October 1, 1980.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-31353 Filed 10-7-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-89]

Apparatus for the Continuous Production of Copper Rod; Hearing on the Presiding Officer's Recommendation and on Relief, Bonding and the Public Interest, and of the Schedule for Filing Written Submissions

AGENCY: U.S. International Trade Commission.

ACTION: The scheduling of oral argument and briefing for investigation No. 337-TA-89, certain apparatus for the continuous production of copper rod.

Notice is hereby given that the presiding officer has filed her recommended determination regarding complainant's request for a temporary exclusion order on September 26, 1980. She has also certified the evidentiary record to the Commission for its consideration. Interested persons may obtain copies of the presiding officer's recommendation (and all other public documents) by contacting the Office of the Secretary to the Commission, 701 E Street, N.W., Washington, D.C. 20436.

Commission Hearing: The Commission will hold a hearing beginning at 10:00 a.m., e.d.t., on October 15, 1980, in the Commission's Hearing Room (Room 331), 701 E Street, N.W., Washington, D.C. 20436, for two purposes. First, the Commission will hear oral argument on the presiding officer's recommendation that temporary exclusion order should not issue under section 337(f) of the Tariff Act of 1930, as amended. Second, the Commission will hear presentations concerning appropriate relief, bonding and the public interest for consideration in the event that the Commission determines that there is reason to believe that there is a violation of section 337. These matters will be heard on the same day in order to facilitate the completion of this investigation within established time limits and to minimize the burden of this hearing upon the parties. The procedure for each portion of the hearing follows.

Oral Argument: A party to the Commission's investigation or an interested agency wishing to present to the Commission an oral argument concerning the presiding officer's recommendation will be limited to 20 minutes. In addition, such party or agency may present oral argument of up to 10 minutes on the questions of relief, bonding, and the public interest. The oral arguments will be held in this order: complainant, respondent, interested agencies, and Commission investigative attorney. The complainant may reserve up to 5 minutes of its time for rebuttal. The issues of relief, bonding, and public interest are more fully described below.

Relief: If the Commission finds that there is reason to believe that a violation of section 337 has occurred, it may issue (1) an order which could result in the temporary exclusion from entry into the United States of Certain Apparatus for the Continuous Production of Copper Rod or (2) an order which could result in requiring the respondent to cease and desist from alleged unfair methods of competition or unfair acts in the importation and sale of such apparatus. Accordingly, the Commission is interested in what relief, if any, should be ordered.

Bonding. If the Commission finds that there is reason to believe that a violation of section 337 has occurred and orders some form of relief, it would not become final for a period during which the President would consider the Commission's report. During this period the apparatus would be entitled to enter the United States under a bond determined by the Commission and prescribed by the Secretary of the Treasury. In addition, should the Commission determine that a temporary exclusion order should issue, it would direct that the articles in question be excluded from entry into the United States during the course of the investigation, except under bond. Accordingly, the Commission is interested in what bond, if any, should be assessed.

Public Interest: If the Commission concludes that there is reason to believe that a violation of section 337 has occurred and orders some form of relief, it must consider the effect of that relief upon the public. Accordingly, the Commission is interested in the effect of any exclusion or cease and desist order upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the production of like or directly competitive articles in the United States, and (4) U.S. consumers.

Written Submissions: Parties to the Commission's investigation, interested agencies, and the Commission investigative attorney are encouraged to file briefs on the issues of violation (to the extent they have not already briefed that issue in connection with their exceptions to the presiding officer's recommended determination), remedy, bonding and public interest in order to give greater focus to the hearing. Such briefs must be filed no later than the close of business October 7, 1980. The parties may be asked during the course of the hearing to file post-hearing briefs.

Notice of Appearance: Written requests to appear at the Commission hearing must be filed by October 7, 1980.

Additional Information: The original and 19 true copies of all briefs and written comments and any written request to participate must be filed with the Secretary to the Commission. Any person desiring to discuss confidential information, or to submit a document (or a portion thereof) to the Commission in confidence, must request *in camera* treatment unless the information has already been granted *in camera* treatment by the presiding officer. Such request should be directed to the Chairman of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents or agruments reflecting confidential information approved by the Commission for *in camera* treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Secretary's Office.

Notice of the Commission's investigation was published in the **Federal Register** of August 13, 1980 (45 FR 53923).

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Neeley, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 523-0359.

By order of the Commission.

Issued: October 2, 1980.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-31355 Filed 10-7-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-67]

Inclined-Field Acceleration Tubes and Components; Hearing on the Presiding Officer's Recommendation and on Relief, Bonding and the Public Interest, and the Schedule for Filing Written Submissions

AGENCY: U.S. International Trade Commission.

ACTION: Change in scheduling of oral argument and briefing for investigation No. 337-TA-67, certain inclined-field acceleration tubes and components thereof.

SUMMARY: Notice is hereby given that the Commission hearing in the above-captioned case, which was announced at 45 FR 63389 (Sept. 24, 1980) and was previously scheduled for October 30, 1980, has been changed. The hearing will begin at 10 a.m., e.s.t., on November 25, 1980, in the Commission's Hearing Room, 701 E Street NW., Washington, D.C. 20436.

Hearing Time Limits: Parties and agencies wishing to make oral argument

with respect to the recommended determination shall be limited in each oral argument to not more than 30 minutes. A party or interested agency may reserve 10 minutes of its time for rebuttal. Oral arguements will be held in this order: complainant, respondent, interested agencies, and the Commission investigative attorney. Rebuttals will be in this order: respondent, complainant, interested agencies, and the Commission investigative attorney.

For that part of the hearing devoted to relief, bonding, and the public interest, parties, interested persons, and Government agencies will be limited in their presentations to no more than 15 minutes. Participants will be permitted an additional 5 minutes for closing arguments after all presentations have been concluded. The Commission investigative attorney will be allotted the full time available to a party. Oral presentations on relief, bonding, and the public interest will be held in the same order as arguments on the recommended determination.

Notice of Appearance: Requests for apearances at the hearing should be filed, in writing, with the Secretary to the Commission at his office in Washington no later than the close of business on October 31, 1980. Requests should indicate the part of the hearing (i.e., with respect to the recommended determination, relief, bonding, and public-interest factors, or any combination thereof) in which the requesting person desired to participate.

Written Submissions: Briefs on the issues of violation (to the extent that they have not already briefed that issue in connection with exceptions to the presiding officer's recommended determination), remedy, bonding and the public interest must be filed no later than the close of business on October 31, 1980.

For further information contact: Michael B. Jennison, Esquire, Office of the General Counsel, U.S. International Trade Commission, telephone (202) 523-0189.

By order of the Commission.

Issued: October 1, 1980.

Kenneth R. Mason,

Secretary.

[FR Doc. 80-31354 Filed 10-7-80; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 603-TA-6]

Steel Jacks From Canada; Request for Comments Concerning Proposed Consent Order

AGENCY: United States International Trade Commission.

ACTION: Request for public comment on proposed consent order.

SUMMARY: The consent order would result in termination of this investigation and imposition of certain requirements on the parties involved. This notice requests comments on the proposed consent order, within thirty (30) days.

DATES: Comments will be considered if received within thirty (30) days of this notice. Comments should conform with Commission rule 201.8 (19 CFR 201.8) and should be addressed to Kenneth R. Mason, Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esquire, Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone (202) 523-0124.

SUPPLEMENTARY INFORMATION: In connection with a complaint filed under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and a preliminary investigation by the Commission under section 603 of the Trade Act of 1974 (19 U.S.C. 2482) of alleged unfair acts and methods of competition in the importation and sale in the United States of steel jacks, the complainant, Bloomfield Manufacturing Co., the Commission investigative attorney, and three companies named in the complaint as responsdents, J. C. Hallman Manufacturing Co., American Gage and Manufacturing Co., and A. H. Bottorff Co., have entered into a consent order agreement. It is proposed that the Commission accept the consent order ageement and issue a consent order incorporating its terms.

Notice of institution of the preliminary investigation was published in the **Federal Register** of May 1, 1980 (45 FR 29141). Notice of the Commission's vote to extend the preliminary investigation was published in the **Federal Register** of July 9, 1980 (45 FR 46262).

Written comments requested. In view of the Commission's duty to consider the public interest, the Commission requests written comments from interested persons and agencies concerning the effect of the proposed consent order upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the production of like or directly competitive articles in the U.S., and (4) U.S. consumers. These written comments must be filed with the Secretary to the Commission no later than November 7, 1980.

The proposed consent order. The proposed consent order is appended to this notice and is being published simultaneously. In conformity with the consent order agreement, the proposed consent order directs Bloomfield Manufacturing Co. and American Gage and Manufacturing Co. to label jacks sold by those firms to reflect that such jacks are assembled in the United States from component parts, the majority of which are of foreign manufacture. This requirement must be complied with as long as a substantial percentage of the component parts used in such jacks are manufactured elsewhere than the United States. The order futher requires American Gage and Manufacturing Co. and A. H. Bottorff Co. to cease using the phrase "malleable cast jack" or "cast jack" in their sales or pricing literature or otherwise to describe jacks having components, some of which are made with steel stampings. American Gage and Manufacturing Co., is directed not to refer in its sales or pricing literature or otherwise to a shear pin safety device unless such a device is actually used in its jacks. The proposed order additionally directs J. C. Hallman Manufacturing Co. and American Gage and Manufacturing Co. to cease providing each other with cost information or suggestions and information relating to the pricing of jacks. The proposed consent order provides that the Commission reserves the right to require the named firms to file affidavits showing compliance with the consent order. The Commisison also is to be permitted to examine business records and documents of the named firms or to interview appropriate representatives and employees of the named firms if reasonable grounds exist to believe that a violation of the consent order has occurred.

Additional information. The original and 19 true copies of all written submissions must be filed with the Secretary to the Commission. Any persons desiring to submit a document (or portion thereof) to the Commission in confidence must request *in camera* treatement. Such request should be directed to the Secretary and must include a full statement of the reasons why the Commission should grant such treatment. The Commission will either accept such submission in confidence or return it. All nonconfidential written submissions will be open to public inspection at the Secretary's office.

By order of the Commission.

Issued: October 1, 1980.

Kenneth R. Mason,

Secretary.

[Preliminary Investigation No. 603-TA-6]

In the Matter of Certain Steel Jacks From Canada; Consent Order

It is ordered, in conformity with the consent order agreement executed by Bloomfield Manufacturing Co. (Bloomfield), Drawer 228, Bloomfield, Indiana 47424; J. C. Hallman Manufacturing Co., Ltd. (Hallman), 80 Alpine Road, Kitchener, Ontario, Canada; American Gage and Manufacturing Co. (Gage), 550 West Linfoot Street, Wauseon, Ohio 43567; A. H. Bottorff Co. (Bottorff), 4002 McCarthy Road, St. Joseph, Missouri 64503; and the United States International Trade Commission investigative attorney, that—

I

Bloomfield shall label jacks sold by it "Assembled in U.S.A. from Portuguese (or other foreign) Component Parts," or words to similar effect, so long as such jacks comprise a substantial percentage of Portuguese (or other foreign) component parts.

II

Hallman shall not directly or indirectly: (1) suggest to Gage how Gage should price private brand label jacks; nor (2) reveal to Gage prices at which Hallman sells jacks to specific customers. Hallman shall sell jacks to Bottorff as long as Bottorff is able to keep its accounts with Hallman reasonably current in accordance with accepted practice in the industry. Hallman shall not discuss pricing of jacks with Bloomfield.

III

Gage shall: (1) not refer in its sales or pricing literature or otherwise to a shear pin safety feature in reference to its jacks, unless such a device is actually incorporated into such jacks; (2) not use the phrase "malleable cast jack" or "cast jack" in its sales or pricing literature or otherwise to describe jacks comprising components (except the rail, the handle, and the hardware), some of which are made with steel stampings; and (3) label jacks sold by it "Assembled in U.S.A. from Canadian (or other foreign) Component Parts," or words of similar effect, as long as such jacks comprise a substantial percentage of Canadian (or other foreign) component parts.

Gage shall not directly or indirectly provide Hallman with (1) information relating to prices at which Gage sells or proposes to sell jacks to specific customers, or (2) information concerning any of Gage's costs, except for such costs of which Hallman would be aware by virtue of Hallman's supplying of component parts to Gage.

IV

Bottorff shall not use the phrases "malleable cast jack" or "cast jack" in its sales or pricing literature or otherwise to describe jacks comprising components (except the rail, the handle, and the hardware), some of which are made with steel stampings.

V

The Commission reserves the right to require the firms named herein to file affidavits executed by their respective duly authorized officers containing statements evidencing compliance with this Consent Order if for any reason it shall be determined by the Commission that reasonable grounds exist to believe that Bloomfield, Hallman, Gage, or Bottorff is in violation of the provisions of this Consent Order.

VI

If for any reason, including the contents of the affidavits which may be required by the paragraph above, it shall be determined by the Commission that reasonable grounds exist to believe that Bloomfield, Hallman, Gage, or Bottorff is in violation of the provisions of this Consent Order, duly authorized representatives of the Commission shall, upon reasonable notice, at reasonable times, be permitted access to such books, ledgers, accounts, correspondence, and other records and documents in the possession or under the control of the firms named herein as are reasonably necessary to verify any matter relating to Parts I and IV above. Duly authorized representatives of the Commission shall also be permitted to interview appropriate representatives and employees of the firms named herein upon reasonable notice to such firms. Such representatives and employees may have counsel present at any such interviews.

VII

The Commission may, at its discretion, without notice to Bloomfield, Hallman, Gage, or Bottorff, issue this Consent Order and may make public any non-confidential information relating to this investigation.

[FR Doc. 80-31356 Filed 10-7-80; 8:45 am]

BILLING CODE 7020-02-M

[337-TA-80]

Plastic Bouquet Holders; Proposed Consent Order and Request for Public Comment

AGENCY: United States International Trade Commission.

ACTION: Notice is hereby given that the presiding officer in the above-captioned investigation has certified to the Commission for action a joint motion to terminate the investigation signed by all parties, along with a proposed consent agreement signed by all parties. Before taking final action on the proposed consent order, the Commission requests that interested members of the public submit written comments regarding the proposed consent order. Such comments should be addressed to the Secretary, U.S. International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436, and should reference investigation No. 337-TA-80. Comments must be received not later than November 7, 1980. The Commission will consider requests for oral argument or oral presentation on this matter is such requests are received in the Office of the Secretary not later than November 7, 1980.

EFFECTIVE DATE: October 8, 1980.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Staff Attorney, Office of the General Counsel, 202-523-0493.

SUPPLEMENTARY INFORMATION: *Background.* A complaint was filed with the United States International Trade Commission on January 18, 1980, and amended on February 7, 1980, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of Lomey Manufacturing Corporation, 301 Suburban Avenue, Deer Park, New York 11729, alleging that unfair methods of competition and unfair acts exist in the importation into the United States of certain plastic bouquet holders, or in their sale, because such plastic bouquet holders are allegedly covered by claims 1 through 4 of U.S. Letters Patent 3,576,699. The complaint alleged that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the Untied States. Complainant requested that, after a full investigation had been conducted, the Commission order exclusion of the imports in question and order such other and further relief as it may deem appropriate.

On April 30, 1980, pursuant to section 210.51 of the Commission's *Rules of*

Practice and Procedure (19 CFR 210.51) all parties to the investigation jointly moved for an order to terminate. The joint motion to teminate was accompanied by a proposed "Consent Order Agreement" duly entered into by the complainant and the respondents.

On May 19, 1980, the presiding officer determined and recommended, pursuant to § 210.51(a) and 210.53(a) of the Commission's *Rules of Practice and Procedure* (19 CFR 210.51(a) and 210.53(a)) that the investigation should be terminated. In conformity with recent Commission practice, the recommended determination made no finding as to whether there is a present violation of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States and the sale of certain plastic bouquet holders, by reason of the alleged coverage of such articles by claims 1 through 4 of U.S. Letters Patent 3,576,699, that allegedly have the effect or tendency to destroy or to injure substantially an industry efficiently and economically operated in the Untied States.

Thereafter, on July 21, 1980, counsel for the complainant submitted a letter to the Commission, whose operative language acquiesces in the disposal by respondents of their remaining inventory, which is represented to approximate not more than a few hundred dozen units. The Commission, on its own motion, has amended the proposed consent order agreement by the inclusion of a new paragraph 9 dealing with inventories. The language of that amendment is identical to the operative language in the letter of July 21, 1980.

On September 9, 1980, all parties to the investigation jointly moved to amend paragraph 5 of the proposed consent order agreement. The Commission has approved the amendment.

The Proposed Consent Order. The proposed consent order is appended to this notice and is being published simultaneously. The proposed consent order as published reflects the amendments made by the Commission to the original proposed consent order. Under the agreement, the respondents are to cease importing into the United States plastic bouquet holders of a type alleged to infringe the patent. None of the parties to the agreement makes any admission as to the issues of validity, enforceability, or infringement of the patent by the imported articles, nor any admissions regarding injury to a domestic industry. The parties submit to Commission jurisdiction and agree that the Commission may take appropriate action, including civil fines and exclusion orders, to enforce the consent order.

Request for Oral Arguments and Oral Presentation. At present, no oral argument or oral presentation is planned with respect to the public interest factors which may be present in this case. Nevertheless, the Commission will consider requests for oral argument or oral presentation if they are received by the Secretary no later than November 7, 1980.

Written Submissions on the Recommended Determination. Written submissions from the parties, other interested persons, government agencies and departments, or the public, with respect to the public interest will be considered by the Commission if received on or before thirty days from the date of the publication of the present notice.

An original and nineteen copies of all submissions must be filed with the Secretary. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence, must request *in camera* treatment. Such request should be directed to the Secretary of the Commission and must include a full statement of the reasons the Commission should grant such treatment. The Commission will either accept such submission in confidence or return the submission.

All nonconfidential written submissions will be open for public inspection at the Office of the Secretary during regular business hours.

By order of the Commission.

Issued: October 2, 1980.

Kenneth R. Mason,

Secretary.

Consent Order Agreement

The parties to this Consent Order Agreement are the complainant, Lomey Manufacturing Corporation, and respondents Sal Spitz Company, Inc., and International Artware Corporation (hereinafter "respondents").[1] On the basic of the Complaint filed with the U.S. International Trade Commission on January 18, 1980 Lomey Manufacturing Corporation (hereinafter "Lomey"), respondents are willing to enter into a Consent Order Agreement as follows:

1. For the purposes of this Consent Order Agreement and the enforcement hereof, and only for such purpose, respondents appear voluntarily and admit to the personal and subject matter jurisdiction of the Commission. This Consent Order Agreement is for settlement purposes only and does not constitute a finding by the Commission or an admission by respondents that Section 337 of the Tariff Act of 1930 (19 U.S.C. Section 1337) or any other statute or any regulation has been violated. Respondents deny each and all of the violations alleged in the Lomey Complaint and deny any and all liability for such alleged violations.

2. Respondents waive (1) all further procedural requirements, including the requirement that the Commission make a determination under Section 337(c) of the Tariff Act of 1930 as a condition to entry of this Order, (2) judicial review of this Consent Order Agreement as entered, (3) the requirement that the Commission's decision on entry of this Order embody findings of fact and conclusions of law, and (4) any other challenge or contest to the validity or enforceability of this Consent Order Agreements entered.

3. Respondents agree that, if this Consent Order Agreement is accepted by the Commission, the Commission may at its discretion, without further notice to respondents, issue its decision containing this Consent Order Agreement and may make public any information relating to this investigation to the extent that such information is not subject to any valid and subsisting protective order entered by the Commission.

4. As of February 1, 1980 and thereafter, Respondents consent and agree that they shall not and will not import or cause to be imported into the United States plastic bouquet holders covered by claims 1–4 of U.S. Letters Patent 3,576,699, and of the kind identified in the Lomey Complaint, unless and until this Consent Order Agreement shall be suspended or terminated.

5. The Commission reserves the right to require such additional information form respondents as may reasonably be required to ascertain compliance or lack of compliance with the requirements of paragraph 4 above.

6. If it shall be determined by the Commission that reasonable grounds exist to believe that respondents are in violation of the provisions of paragraph 4 above, duly authorized representatives of the Commission shall upon written request, and on reasonable notice to respondents, mailed to their principal offices, be permitted access, during the normal business hours of respondents, to such books, ledgers, accounts, correspondence and other records and documents in the possession or under control of the company as are reasonably necessary to verify any matter relating to the agreements set forth in paragraph 4 above. Duly

[1] International Artware was named as a respondent by the Commission.

authorized representatives of the Commission shall also be permitted to interview appropriate officers and employees of respondents upon reasonable advance notice to the respondents. Such officers and employees may have counsel present at any such interviews.

7. If there is an importation in violation of this order or if the reporting and verification requirements of this order are not complied with, the Commission may assess a civil find of $10,000 for each day, pursuant to Section 1105(b) of the Trade Agreements Act of 1979, or the Commission may order such other remedy as is appropriate, including exclusion of the imports. Each determination of a violation shall be made at a Commission hearing scheduled for that purpose.

8. Information obtained by the Commission under paragraph 5 and 6 above which shall be designated by respondents as "confidential" shall only be made available to the Commission or its representatives and shall not be divulged by any representative of the Commission to any other persons, except only upon ten days written or telephonic notice to respondents and only to the extent as may be required of the Commission by law or court order.

9. Complainant hereby acquiesces to the disposal by respondents of their remaining inventory, which inventory it represented to approximate not more than a few hundred dozen.

[FR Doc. 80-31357 Filed 10-7-80; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

Placing Assistant Attorneys General in Charge of Their Respective Offices or Divisions

By virture of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, it is hereby ordered as follows:

1. Assistant Attorney General Alan A. Parker is placed in charge of the Office of Legislative Affairs effective August 7, 1979.

2. Assistant Attorney General Maurice Rosenberg is placed in charge of the Office for Improvements in the Administration of Justice effective August 30, 1979.

3. Assistant Attorney General Alice Daniel is placed in charge of the Civil Division effective November 27, 1979.

4. Assistant Attorney General Sanford M. Litvack is placed in charge of the Antitrust Divison effective February 21, 1980.

5. The following Attorney General orders or sections of Attorney Generl orders are revoked: Order No. 848-79, Order No. 837-79, Order No. 750-77, section 1 and Order No. 698-77, sections 1, 4, and 5.

Dated: September 29, 1980.

Benjamin R. Civiletti,

Attorney General.

[FR Doc. 80-31255 Filed 10-7-80; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Design Arts Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Panel to the National Council on the Arts will be held October 27, 1980 from 9:30 a.m. to 5:00 p.m. and October 28, 1980 from 9:00 a.m. to 5:00 p.m. in the Peter Cooper Suite of the Cooper Union for the Advancement of Science and Art, Cooper Square, New York, NY 10003.

A portion of this meeting will be open to the public on October 27, 1980 from 9:30 a.m. to 5:00 p.m. to discuss program grant issues.

The remaining sessions of this meeting on October 28, 1980 from 9:00 a.m. to 5:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

September 26, 1980.

[FR Doc. 80-31303 Filed 10-7-80; 8:45 am]

BILLING CODE 7537-01-M

Music Panel (Professional Training); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Panel (Professional Training) to the National Council on the Arts will be held October 27, 1980 from 9:00 a.m. to 6:00 p.m. and October 28, 1980 from 9:00 a.m. to 5:30 p.m. in room 1422 of Columbia Plaza Office Complex, 2401 E Street, N.W., Washington, D.C.

A portion of this meeting will be open to the public on October 28, 1980 from 3:30 p.m. to 5:30 p.m. to discuss guidelines.

The remaining sessions of this meeting on October 27, 1980 from 9:00 a.m. to 6:00 p.m. and October 28, 1980 from 9:00 a.m. to 3:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussions of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5 United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

September 26, 1980.

[FR Doc. 80-31302 Filed 10-7-80; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Amendment to the Charter of the Advisory Committee for Minority Programs in Science Education

The charter of the Advisory Committee has been amended to provide that the Committee will also advise periodically, when requested, the Assistant Secretary of Education for Educational Research and Improvement concerning those science education programs transferred from the National Science Foundation to the Education Department in May 1980. In doing so, the Committee will operate according to the charter filed on February 4, 1977, and renewed on January 31, 1979, by the

National Science Foundation. The amendment has been filed with the standing committees of Congress having legislative jurisdiction over the Foundation and the Department of Education and with the Library of Congress.

M. Rebecca Winkler,

Committee Management Coordinator.

October 3, 1980.

[FR Doc. 80-31264 Filed 10-7-80; 8:45 am]

BILLING CODE 7555-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-17169]

List of Foreign Issuers Which Have Submitted Information Required by The Exemption Relating to Certain Foreign Securities

Foreign private issuers with total assets in excess of $1,000,000 and a class of equity securities held of record by 500 or more persons, of which 300 or more shareholders reside in the United States, are subject to the registration and reporting provisions of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq., as amended by pub. L. No. 94-29 (June 4, 1975)] (the "Act").[1]

Rule 12g3-2(b) (17 CFR 240. 12g3-2(b)) provides an exemption from registration under Section 12(g) of the Act for a foreign issuer which submits on a current basis material specified in the Rule to the Commission. Such required material includes that information about which investors ought reasonably to be informed with respect to the issuer and its subsidiaries and which the issuer (1) has made public pursuant to the law of the country of its domicile or in which it is incorporated or organized, (2) has filed with a stock exchange on which its securities are traded and which was made public by such exchange and/or (3) has distributed to its security holders.

When it adopted Rule 12g3-2 and other rules relating to foreign securities (see Securities Exchange Act Release No. 8066, April 28, 1967), the Commission indicated that from time to time it would issue lists containing those foreign issuers which have obtained exemptions from the registration provisions of Section 12(g) of the Act by providing the information specified in Rule 12g3(b). The purpose of the present release is to call to the attention of brokers, dealers and investors that some form of relatively current information concerning the foreign issuers included on the attached list is available in the public files of the Commission. The attached list includes those foreign issuers which, as of August 31, 1980, appear to be current in furnishing information under rule 12g3-2(b). There is a total of 227 foreign issuers on the list.

The Commission also wishes to bring to the attention of brokers, dealers, and investors the fact that current information concerning certain foreign issuers may not be available in the United States. The Commission continues to expect that brokers and dealers will consider this fact in connection with their obligations under the federal securities laws to have a reasonable basis for recommending these securities to their customers. The Commission will continue to review activity in the markets for foreign securities to determine whether the present rules are achieving their purpose and whether further rules or rule revisions are necessary in the public interest or for the protection of investors.

Any questions regarding Rule 12g3-2 or the list included herein should be directed to Carl T. Bodolus or Ronald Adee, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549 (202/272-3246 or 272-3250).

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

September 29, 1980.

List of Foreign Private Issuers Which Appear To Qualify for the Exemption Provided in Rule 12g3-2(b) as of August 31, 1980

Registrant, File No., and Domicile

Abitibi Paper Company Limited, 82-80, Toronto, Ontario, Canada
Aegean Resources Corp., 82-365, Vancouver, B.C., Canada
The Afrikander Lease Limited, 82-245, Johannesburg, South Africa
Agnico-Eagle Mines Limited, 82-179, Toronto, Ontario, Canada
Adtiebolaget Svenska Kullagerfabriekn, 82-139, Gothenberg, Sweden
Algoma Steel Corp. Ltd., 82-99, Sault Ste. Marie, Ontario, Canada
Allwest Industries Ltd., 82-340, Vancouver, B.C., Canada
American Pyramid Resources, 82-384, Vancouver, B.C., Canada
Anglo American Corp. of South Africa Ltd., 82-97, Johannesburg, South Africa
Anglo American Gold Investment Co. Ltd., (formerly West Rand Investment Trust Ltd.), 82-146, Johannesburg, South Africa
Anglo-Bomarc Mines Ltd., 82-346, Vancouver, B.C., Canada
Anglo United Development Corp. Ltd., 82-190, Toronto, Ontario, Canada
B.A.T. Industries Limited, 82-33, London, England
Bank of Montreal, 82-126, Montreal, Quebec, Canada
Banner Resources Ltd., 82-357, Vancouver, B.C., Canada
Basic Resources International S.A., 82-203, Luxembourg, Luxembourg
Beecham Group Limited, 28-22, Middlesex, England
Bethlehem Copper Coporation, 82-248, Vancouver, B.C., Canada
Bianca Resources Ltd., 82-379, Vancouver, B.C. Canada
Blue Diamond Energy Resources Inc., 82-391, Vancouver, B.C., Canada
Blyvooruitzicht Gold Mining Company, Ltd., 82-69, Johannesburg, South Africa
Bonanza Oil & Gas Ltd., 82-355, Calgary, Alberta, Canada
The Border & Southern Stockholders Trust, Ltd., 82-287, London, England
The Bowater Corporation, 82-3, Toronto, Ontario,Canada
Barlorne Resources Ltd., 82-143, Calgary, Alberta, Canada
Bramalea Consolidated Developments Ltd., 82-154, Toronto, Ontario, Canada
Brascan, Ltd., 82-4, Toronto, Ontario, Canada
Brent Exploration Ltd., 82-321, Vancover, British Columbia, Canada
Buffelsfontein Gold Mining Co., Ltd., 82-302, Johannesburg, South Africa
Burmah Oil Company Limited, 82-5, Glasgow, Scotland
B. X. Development Ltd., 82-270, Vancouver, B.C. Canada
Camflo Mines Limited, 82-193, Toronto, Ontario, Canada
Canada Tungsten Mining Corporation, Ltd., 82-290, Vancouver, British Columbia, Canada
Canadian Barranca Corp., Ltd., 82-292, Edmonton , Alberta, Canada
Canadian Bashaw Leduc Oil & Gas Ltd., 82-377, Edmonton , Alberta, Canada
Canadian Cablesystems Ltd., 82-335, Toronto, Ontario, Canada
Canadian Imperial Bank of Commerce, 82-103, Toronto, Ontario, Canada
Canadian Marconi Co., 82-86, Montreal, Quebec, Canada
Celanese Canada Inc., 82-171, Montreal, Quebec, Canada
Central Pacific Mines, 82-354, Sydney, Australia
Challenger International Services Ltd., 82-369, Calgary, Alberta, Canada
Charriot Resources Ltd., 82-372, Toronto, Ontario, Canada
Charter Consolidated Ltd., 82-233, London, England
Chromasco Ltd., 82-106, Montreal, Quebec, Canada
Cominco Ltd., 82-107, Vancouver, B.C., Canada
Conex Australia N.L., 82-319, Perth, Australia
Coniagas Mines Ltd., 82-168, Toronto, Ontario, Canada

[1] Foreign issuers may also be subject to such requirements of the Act by reason of having securities registered and listed on a national securities exchange in the United States or subject to the reporting requirements by reason of having registered securities under the Securities Act of 1933 [15 U.S.C. 77a et seq., as amended by Pub. L. No. 94-29 (June 4, 1975)].

Consolidated-Bathurst Limited, 82-172, Montreal, Quebec, Canada
Consolidated Cinola Mines, Ltd., 82-310, Vancouver, British Columbia, Canada
Consumers Distributing Co., Ltd., 82-297, Toronto, Ontario, Canada
Consumers Gas Ltd., 82-329, Toronto, Ontario, Canada
Coralta Resources Ltd., 82-380, Vancouver, B.C., Canada
Cornwall Petroleum & Resources Ltd., 82-347, Vancouver, B.C., Canada
Coseka Resources Ltd., 82-295, Vancouver, British Columbia, Canada
Cusac Industries Ltd., 82-367, Vancouver, B.C., Canada
Cygnus Corporation Ltd., 82-110, Toronto, Ontario, Canada
The Dai'ei, 82-230, Osaka, Japan
Daon Development Corp., 82-344, Vancouver, B.C., Canada
DeBeers Consolidated Mines, Ltd., 82-91, Johannesburg, South Africa
Deelkraal Gold Mining Company Ltd., 82-246, Johannesburg, South Africa
Delhi Pacific Mines Ltd., 82-370, Toronto, Ontario, Canada
Deutsche Bank AG, 82-334, Frankfurt, W. Germany
Dickenson Mines Limited, 82-8, Toronto, Ontario, Canada
Dominion Textile Company Limited, 82-113, Montreal, Quebec, Canada
Domtar Limited, 82-18, Montreal, Quebec, Canada
Doornfontein Gold Mining Co. Ltd., 82-213, Johannesburg, South America
Double Eagle Energy & Resources Ltd., 82-362, Vancouver, B.C., Canada
Dresdner Frank AG, 82-229, Frankfurt a.M., Federal Republic of Germany
Dupont of Canada Limited, 82-19, Montreal, Canada
Durban Roodepoort Deep Ltd., 82-156, Johannesburg, South Africa
East Daggafontein Mines Limited, 82-42, Johannesburg, South Africa
East Driefontein Gold Mining Co., Inc., 82-124, Johannesburg, South Africa
East Rand Gold and Uranium Company, Ltd., 82-289, Johannesburg, South Africa
East Rand Proprietary Mines, Limited, 82-239, Johannesburg, South Africa
Elandsrand Gold Mining Company Ltd., 82-266, Johannesburg, South Africa
Elsburg Gold Mining Company Limited, 82-269, Johannesburg, South Africa
L. M. Ericsson Telephone Co., 82-115, Stockholm, Sweden
Falconbridge Nickel Mines Ltd., 82-30, Toronto, Ontario, Canada
Fisons Limited, 82-202, Suffolk, England
Free State Development & Investment, Corp., Ltd., 82-296, Johannesburg, South Africa
Free State Geduld Mines Ltd., 82-40, Johannesburg, South Africa
Free State Saaiplass Gold Mining Co., Ltd., 82-41, Johannesburg South Africa
Fuji Photo Film Company, Limited, 82-78, Tokyo, Japan
General Mining Union Corp., Ltd., formerly, General Mining and Finance Corp., Ltd., 82-311, Marshalltown, South Africa
Gillian Mines Ltd., 82-386, Vancouver, B.C., Canada
Glaxo Holdings Limited, 82-10, London, England
Gold Fields of South Africa, Ltd., 82-204, Johannesburg, South Africa
Gold Fields Property Co. Ltd., 82-214, Johannesburg, South Africa
Granisle Copper Ltd., 82-26, Vancouver, British Columbia, Canada
Greenwood Explorations Ltd., 82-368, Vancouver, B.C., Canada
Grootvlei Proprietary Mines Ltd., 82-222, Johannesburg, South Africa
Groundstar Resources Ltd., 82-249, Toronto, Ontario, Canada
Grove Explorations Ltd., 82-343, Vancouver, B.C., Canada
Gulf Oil Ltd. (Canada), 82-101, Toronto, Ontario, Canada
Hal Roach Studios Corp., 82-250, Toronto, Ontario, Canada
Harlequin Enterprises Ltd., 82-318, Don Mills, Ontario, Canada
Harmony Gold Mining Ltd., 82-238, Johannesburg, South Africa
Host Ventures Ltd., 82-257, Vancouver, B.C., Canada
IAC Limited, 82-120, Toronto, Ontario, Canada
Imasco Limited, 82-118, Montreal, Quebec, Canada
Impala Platinum Holdings Ltd., 82-359, Johannesburg, South Africa
Imperial Group Ltd., 82-316, London, England
Indusmin Limited, 82-201, Toronto, Ontario, Canada
The Investors Group, 82-13, Winnipeg, Manitoba, Canada
Iona Silver Mines Ltd. (NPL), 82-356, Vancouver, B.C., Canada
Japan Air Lines, 82-122, Tokyo, Japan
Jet-Star Resources Ltd., 82-325, Vancouver, B.C., Canada
Julia Resources Group, Ltd., 82-366, Vancouver, B.C., Canada
Kerr Addison Mines Limited, 82-14, Toronto, Ontario, Canada
Kirin Brewery Co., Ltd., 82-188, Tokyo, Japan
Kloof Gold Mining Company Ltd., 82-205, Johannesburg, South Africa
Knobby Lake Mines, Ltd., 82-336, Vancouver, B.C., Canada
LCM Resources Ltd., 82-330, Calgary, Alberta, Canada
Lacana Mining Corporation, 82-265, Toronto, Ontario, Canada
LaLuz Mines Ltd., 82-237, Toronto, Ontario, Canada
Lava Cap Resources Ltd., 82-376, Ontario, Canada
Leichardt Exploration Ltd., 82-322, Adelaide, Australia
Lennard Oil Co., 82-298, Perth, Australia
Libanon Gold Mining Co. Limited, 82-215, Johannesburg, South Africa
Lincoln Resources Inc., 82-349, Vancouver, B.C., Canada
Little Long Lac Mines Ltd., 82-198, Toronto, Ontario, Canada
Lydenburg Platinum Ltd., 82-312, Marshalltown, South Africa
Magnet Metals, Ltd., 82-299, Perth, Australia
Marievale Consolidated Mines Ltd., 82-224, Johannesburg, South Africa
Mentor Exploration & Development Ltd., 82-178, Toronto, Ontario, Canada
M.I.M. Holdings Ltd., 82-173, Brisbane, Australia
Minerals and Resources Corporation, 82-206, Pembroke, Bermuda
Mitel Corp., 82-326, Ottawa, Ontario, Canada
Monarch Petroleum N. L., 82-339, Perth, Australia
NRD Mining Ltd., 82-358, Vancouver, B.C., Canada
Neomar Resources Ltd., 82-382, Toronto, Ontario, Canada
New Dimension Resources Ltd., 82-272, Toronto, Ontario, Canada
New Frontier Exploration Inc., 82-341, Vancouver, B.C., Canada
Ni-Cal Developments Ltd., 82-360, Vancouver, B.C., Canada
Nor-Quest Resources Ltd., 82-374, Nanaimo, B.C., Canada
Noranda Mines Ltd., 82-158, Toronto, Ontario, Canada
North American Power Petroleums Inc., 82-383, Vancouver, B.C., Canada
North West Mining N. L., 82-309, Perth Australia
Northwest Ventures Ltd., 82-260, Toronto, Ontario, Canada
Norwegian American Line, 82-111, Oslo, Norway
Nu-Energy Development Company, 82-286, Vancouver, British Columbia, Canada
Oceanic Iron Ore of Canada, Ltd., 82-159, Toronto, Ontario, Canada
Ocelot Industries Inc., 82-331, Calgary, Alberta, Canada
Onaping Mines Limited, 82-273, Toronto, Ontario, Canada
Otter Exploration N. L., 82-320, St. Leonards, Australia
Omni Resources Inc., 82-385, Vancouver, B.C., Canada
Overseas Inns SA, 82-166, Luxembourg City, Luxembourg
Pan Canadian Petroleum Limited, 82-285, Calgary, Alberta, Canada
Paragon Resources Ltd., 82-388, Vancouver, B.C., Canada
Patino N.V., 82-135, The Hague, The Netherlands
Pennant Resources Ltd., 82-371, Toronto, Ontario, Canada
Philex Mining Corp., 82-136, Manila, Philippines
Piper Petroleums Ltd., 82-361, Vancouver, B.C., Canada
Pop Shoppes International Inc. (PSI), 82-256, Ontario, Canada
Power Corporation of Canada Limited, 82-137, Montreal, Quebec, Canada
President Brand Gold Mining Co., Ltd., 82-39, Johannesburg, South Africa
President Steyn Gold Mining Co., Ltd., 82-44, Johannesburg, South Africa
Prism Resources Ltd., 82-375, Vancouver, B.C., Canada
Quasar Petroleum Ltd., 82-278, Alberta, Canada
Quintaine Resources Inc., 82-350, Edmonton, Calgary, Alberta, Canada
Quebec Sturgeon River Mines Ltd., 82-186, Toronto, Ontario, Canada
The Randfontein Estates Gold Mining Co. Witwatersrand, Limited, 82-267, Johannesburg, South Africa
Rank Organisation Limited, 82-17, London, England
Rayrock Resources Ltd., 82-378, Toronto, Ontario, Canada
Reed Steinhouse Companies Limited, 82-254, Toronto, Ontario, Canada

Roman Corp. Ltd., 82-345, Toronto, Ontario, Canada
Rothmans International Limited, 82-84, Basildon, Essex, England
Rustenburg Platinum Holdings Ltd., 82-241, Johannesburg, South Africa
Sabina Industries Ltd., 82-244, Pembroke, Ontario, Canada
Samantha Exploration N.L., 82-323, Perth, Australia
San Miguel Crop., 82-306, Manila, Phillipines
Santa Sarita Mining Co., Ltd., 82-338, Vancouver, B.C., Canada
Sanyo Electric Co., Ltd., 82-264, Tokyo, Japan
Sceptre Resources Ltd., 82-387, Calgary, Alberta, Canada
Scottie Gold Mines Ltd., 82-351, Vancouver, B.C., Canada
Scheer Energy Development Corp., 82-333, Vancouver, B.C., Canada
Sherritt Gordon Mines, Limited, 82-29, Toronto, Ontario, Canada
Shiseido Co., Ltd., 82-225, Tokyo, Japan
Siemens Aktiengesellschaft, 82-73, Munich, Federal Republic of Germany
Silverado Mines Ltd., 82-348, Vancouver, B.C., Canada
Sotheby Parke Bernet Group Ltd., 82-337, London, England
Source Perrier, 82-291, Paris, France
South African Breweries, Ltd., 82-303, Johannesburg, South Africa
Southern Pacific Petroleum N.L., 82-353, Sydney, Australia
Southvaal Holdings Limited, 82-197, Johannesburg, South Africa
Spartan Capital Corp. Ltd., 82-160, Ottawa, Ontario, Canada
Stampede International Resources Ltd., 82-242, Toronto, Ontario, Canada
Steel Co. of Canada Limited, 82-141, Toronto, Ontario, Canada
Sudbury Contact Mines Ltd., 82-180, Toronto, Ontario, Canada
Sunexco Energy Corp., 82-389, Vancouver, B.C., Canada
20th Century Energy Fund Corp., 82-352, Vancouver, B.C., Canada
TDK Electronics Co., Ltd., 82-255, Tokyo, Japan
T.R.V. Minerals Corp., 82-327, Vancouver, B.C., Canada
Taro-Vit Chemical Industries Ltd., 82-210, Haifa, Israel
Telefonos de Mexico, S.A., 82-332, Mexico
Toronto Dominion Bank, 82-142, Toronto, Ontario, Canada
Tournigan Mining Explorations, 82-328, Vancouver, B.C., Canada
Toyota Motor Co., Ltd., 82-208, Tokyo, Japan
Trans Cold Resources Ltd., 82-342, Vancouver, B.C., Canada
Transvaal Consolidated Land & Exploration Co., 82-304, Johannesburg, South Africa
Treasure Cay Ltd., 82-288, Abaco, Bahamas
Troy Gold Industries, 82-307, Calgary, Alberta, Canada
U.C. Investments Limited, 82-235, Johannesburg, South Africa
Union Corporation Limited, 82-231, Johannesburg, South Africa
United Hearne Resources Ltd., 82-315, Vancouver, British Columbia, Canada
United Keno Hill Mines Ltd., 82-61, Toronto, Ontario, Canada
United Siscoe Mines Inc., 82-194, Toronto, Ontario, Canada
United Westland Resources Ltd., 82-393, Vancouver, B.C., Canada
Velcro Industries N.V., 82-145, Curacao, Netherlands Antilles
Venterspost Gold Mining Company Ltd., 82-216, Johannesburg, South Africa
Ventora Resources Ltd., 82-381, Vancouver, B.C., Canada
Veronex Resources Ltd., 82-364, Vancouver, B.C., Canada
Versatile Cornat Corp., 82-390, Vancouver, B.C., Canada
Vlakfontein Gold Mining Company Ltd., 82-217, Johannesburg, South Africa
Warrior Resources Ltd., 82-363, Vancouver, B.C., Canada
Welkom Gold Mining Company Limited, 82-57, Johannesburg, South Africa
West Driefontein Gold Mining Co. Ltd., 82-90, Johannesburg, South Africa
Westfort, Petroleums Ltd., 82-308, Calgary, Alberta, Canada
Westmount Resources Ltd., 82-392, Vancouver, B.C., Canada
West Rand Condolidated Mines, Ltd., 82-314, Marshalltown, South Africa
Western Areas Gold Mining Company Ltd., 82-268, Johannesburg, South Africa
Western Deep Levels Limited, 82-58, Johannesburg, South Africa
Western Holdings Limited, 82-54, Johannesburg, South Africa
Willanour Resources Ltd. (formerly Cochenour Willans Gold Mines Ltd.), 82-63, Toronto, Ontario, Canada
F.W. Woolworth and Co., Limited, 82-200, London, England
Zambie Copper Investments, Ltd., 82-227, Pembroke, Bermuda

[FR Doc. 80-31248 Filed 10-7-80; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-17179; File No. SR-PSE-80-17]

Self-Regulatory Organizations; Proposed Rule Change By Pacific Stock Exchange Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-24, 16 (June 4, 1975), notice is hereby given that on September 29, 1980, the above-mentioned self-regulatory organization ("SRO") filed with the Securities and Exchange Commission a proposed rule change as follows:

SRO's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE") proposes to amend Rule VI, Section 31 of the Rules of the Board of Governors of the PSE. The amendments relate to the explanation of acceptable methods of allocating options exercise notices among options trading accounts at member organizations. *Italics* indicate additions.

Rule VI

Section 31

a. No change.

b. Each member organization shall report its proposed method of allocation to the Exchange and obtain the Exchange's prior approval thereof, and no member organization shall change its method of allocation unless the change has been reported to and been approved by the Exchange. The requirements of this paragraph shall not be applicable to allocation procedures submitted to *and approved by* another self-regulatory organization having comparable standards pertaining to methods of allocation.

c. No change.

Commentary .01 No Change.

Commentary .02 and .03 recite verbatim from an Educational Circular which was distributed to all member organizations explaining how computerized random exercise allocation methods must be constructed.

The basis and purpose of the foregoing rule change is as follows:

The purpose of the amendments to Rule VI, Section 31 is to explain how exercise notices may be properly allocated among options customers.

The proposed rule change is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 inasmuch as the changes are intended to protect investors and the public interest.

Comments have neither been solicited nor received from members, participants, or others on the proposed rule change.

The proposed rule change imposes no burden on competition.

Within 35 days of the date of publication of this notice in the **Federal Register**, 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 change, or

(B) institute proceedings to determine whether the proposed rule change 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 six 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 NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before October 29, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

September 30, 1980.

[FR Doc. 80-31253 Filed 10-7-80; 8:45 am]

BILLING CODE 8010-01-M

Government Employee's Investment Fund, Inc.; Notice of Filing of Application Pursuant to Section 8(f) of the Act for Order Declaring That Applicant Has Ceased To Be An Investment Company

[Release No. 11383; 811-1872]

October 2, 1980.

Notice is hereby given that Government Employee's Investment Fund, Inc. ("Applicant") P.O. Box 572, Rancho Santa Fe, California 92067, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application of July 7, 1980, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined by the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it registered under the Act on May 28, 1969, and that it filed also on that date a registration statement under the Securities Act of 1933 ("1933 Act"). The registration statement under the 1933 Act was ordered abandoned by the Commission, pursuant to Rule 479 under the 1933 Act, following notice to Applicant. The application states that Applicant: (1) has never made a public offering of its securities; (2) has no assets, debts or liabilities currently outstanding; and (3) has never commenced operations. The application further states that Applicant's Delaware corporate charter has been abandoned. Finally, Applicant states that it did not, within the last eighteen months, transfer any of its assets to a separate trust the beneficiaries of which were or are securityholders of Applicant.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission upon application finds that a registered investment company has ceased to be an investment company it shall so declare by order, and that upon the effectiveness of such order the registration of such company under the Act shall cease to be in effect.

Notice is further given that any interested person may, not later than October 27, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contrmporaneously 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. 80-31250 Filed 10-7-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21735; 70-6395]

National Fuel Gas Co.; Notice of Proposed Issuance and Sale of Commercial Paper and Notes to Banks by Holding Company, October 1, 1980

In the matter of National Fuel Gas Co., 30 Rockefeller Plaza, New York, New York 10112; National Fuel Gas Distribution Corp., 10 Lafayette Square, Buffalo, New York 14203; National Fuel Gas Supply Corp., 308 Seneca Street, Oil City, Pennsylvania 16301

Notice Is Hereby Given that National Fuel Gas Company, ("National"), a registered holding company, has filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By order in this proceeding dated January 21, 1980 (HCAR No. 21402) the Commission authorized National to issue and sell from time to time during the period from January 21, 1980, through December 31, 1980, up to $30,000,000 aggregate principal amount at any one time outstanding of its short-term unsecured notes to The Chase Manhattan Bank, N.A. ("Chase") and to loan the proceeds therefrom to National Fuel Gas Distribution Corporation ("Distribution Corporation") ("Transaction A"). The Commission also authorized National to issue and sell from time to time during the same period up to $20,000,000 aggregate principal amount at any one time outstanding of its commercial paper and/or short-term unsecured notes to Chase and to loan the proceeds to Distribution Corporation ("Transaction B").

In addition, National was authorized to establish lines of credit with various banks aggregating $50,000,000 and to issue and sell from time to time short-term unsecured notes and loan the proceeds to National Fuel Gas Supply Corporation ("Supply Corporation") ("Transaction C"). Supply Corporation uses the funds for working capital and to purchase gas placed in storage during the summer months.

In order to take advantage of more favorable commercial paper borrowing rates, National has filed a post-effective amendment to seek authorization to make the following changes in their proposals outlined as Transaction A and Transaction B in the original application-declaration:

Transaction A: National now proposes to issue and sell from time to time through December 31, 1980, up to $10,000,000 aggregate principal amount at any one time outstanding of its short-term unsecured notes to Chase and to loan the proceeds therefrom to Distribution Corporation.

The short-term unsecured notes issued to Chase will be dated as of the date of issue, will mature not later than twelve months from the date thereof, will be prepayable at any time without premium, and will bear interest based on the Chase prime rate as it fluctuates from time to time. Interest will be payable quarterly until the principal amount is paid in full. National has informally agreed with Chase to

maintain average balances of 20% of the average loans outstanding; however, the average balances maintained for normal operating needs are sufficient to cover these amounts. Assuming an average balance of 20% was required, the effective cost of money, based on a 12.25% prime rate, would be 15.3125%. There will be no commitment fee or any closing or related cost in connection with the above borrowings.

National proposes to exchange the proceeds from the sale of its short-term notes for up to $10,000,000 aggregate principal amount at any one time outstanding of short-term unsecured notes from Distribution Corporation on the same terms and conditions as provided in the original application-declaration. National tentatively proposes to repay the $10,000,000 through monies received from Distribution Corporation, from bank loans, or from the sale of long-term securities.

Transaction B: National now proposes to issue and sell from time to time through December 31, 1980, up to $40,000,000 aggregate principal amount at any one time outstanding of its commercial paper to A. G. Becker & Co., Incorporated ("Dealer") and/or short-term unsecured notes to Chase and to loan the proceeds to Distribution Corporation.

The decision to issue commercial paper or short-term notes is at the discretion of National, except that, if the effective cost for commercial paper exceeds the cost of equivalent borrowings from Chase on the date of issue, National will issue its short-term unsecured notes to Chase. The commercial paper will be sold by National to the Dealer on the same terms and conditions as provided in the original application-declaration.

National proposes to exchange the proceeds from the sale of its short-term notes and/or commercial paper for up to $40,000,000 aggregate principal amount at any one time outstanding of short-term unsecured notes from Distribution Corporation on the same terms and conditions as provided in the original application-declaration. National tentatively proposes to repay the $40,000,000 through monies received from Distribution Corporation, from bank loans, or from the sale of long-term securities.

It is stated that all of the other terms and conditions in the order dated January 21, 1980, will remain the same.

It is stated that no special and separable fees or expenses are anticipated in connection with the consummation of the transactions proposed herein and that no federal or state regulatory authority, other than this Commission, has jurisdiction over the proposed transactions.

Notice Is Further Given that any interested person may, not later than October 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 said post-effective amendment to the application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-31249 Filed 10-7-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21736; 70-6441]

National Fuel Gas Co.; Notice of Proposal To Allocate Taxes Within a Holding Company System in a Manner Differing From That Permitted by Rule 45

October 2, 1980.

In the matter of National Fuel Gas Co., 30 Rockefeller Plaza, New York, New York 10112; National Fuel Gas Supply Corp., 308 Seneca Street, Oil City, Pennsylvania 16301; National Fuel Gas Distribution Corp., National Gas Storage Corporation, Seneca Resources Corporation, 10 Lafayette Square, Buffalo, New York.

Notice is hereby given that National Fuel Gas Company ("National"), a registered holding company, and its four subsidiary companies, National Fuel Gas Supply Corporation, National Fuel Gas Distribution Corporation, National Gas Storage Corporation and Seneca Resources Corporation ("Seneca") have filed a declaration and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 12(b) and 12(f) of the Act and Rule 45 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transaction.

By order dated April 17, 1963 (HCAR No. 14853) the Commission granted National authority to allocate the National Fuel Gas System's consolidated federal income tax liabilities, after giving effect to investment tax credits allowed, in a manner differing from that permitted by Rule 45 under the Act. By order dated October 17, 1978 (HCAR No. 20733), the Commission granted National authorization to further modify its manner of allocating consolidated Federal income tax liabilities among its subsidiaries for the years 1978 and 1979.

National and its subsidiaries now request authority to allocate consolidated tax liabilities for their 1980 and 1981 fiscal years in the same manner as authorized by the Commission's order dated October 17, 1978 (HCAR No. 20733).

Seneca, National's exploration and development subsidiary, has incurred and is expected to continue to incur tax losses. During initial years, a large portion of the related expenses for gas exploration and development, such as intangible drilling and development costs and the abandonment of certain leasehold interests, although capitalized on Seneca's books, are deducted as current expenses for federal income tax purposes. These deductions produce tax losses which consequently result in savings to the system by decreasing the system's consolidated tax liability. However, under the tax allocation method set out in Rule 45(b) of the Act, the benefit of such current reductions are allocated to subsidiaries in the system other than Seneca, whose tax losses decrease the tax liability of the

system. This allocation would make unavailable to Seneca the tax benefits which might otherwise be utilized in furtherance of its efforts to develop additional gas reserves which may be needed in the future to supplement the System's supplies.

It is stated that the proposed method of tax allocation will enable Seneca to utilize the tax losses sustained in the initial years of its exploration and development program as a source of funds for future exploration and development of gas reserves. By utilizing the tax allocation procedure authorized by the Commission's previous orders, Seneca received benefits of $2,088,575 during the 1978 fiscal year, and $3,688,302 during the 1979 fiscal year. These benefits resulted from tax losses sustained and investment tax credits generated by Seneca's exploration and development program. It is stated that expenditures for exploration and development normally exceed revenues from newly discovered reserves for a period of several years and that, as a result, it is uncertain when Seneca will be in a profitable tax position.

National proposes to calculate the system's tax liability to be reported on its consolidated tax return for its 1980 and 1981 fiscal years in the usual manner, but, for purposes of allocating liability among individual subsidiaries in the system, will add back the reduction in such tax liability generated by Seneca's tax loss during each year. This combined amoung (adjusted consolidated tax liability) will then be allocated among the system companies which are not in a tax loss position in accordance with the procedure specified in Rule 45. The other subsidiaries will then make payments to National of their allocated share of the adjusted consolidated tax liability.

National, in turn, will pay to Seneca the cash equivalent of the differences between the actual consolidated tax liability of the system and the aggregate amounts received by National from its other subsidiaries. In no event will the tax allocated to any subsidiary exceed the amount of tax based upon a separate return computed as if each subsidiary had always filed its tax return on a separate return basis.

Expenditures for Seneca's exploration and development program are presently estimated at $17,000,000 for fiscal 1980. Based on this budgeted amount, it is estimated that Seneca will have a net tax loss of $10,120,000 for the 1980 fiscal year. The proposed transaction will allow Seneca to continue to receive the benefit of its tax losses during 1980 and 1981, and enable it to sustain the level of expenditures necessary to find and develop gas reserves. In future years, when Seneca has taxable income, it may be entitled to tax credits as a result of the net operating loss carryback or carryover provisions of the Internal Revenue Code ("Code") in order to comply with the separate return limitation provisions of the Code and Rule 45 of the Act. To the extent that Seneca receives tax benefits pursuant to the proposed transaction, such benefits would be applied to reduce any tax credits in future years to which Seneca might otherwise become entitled under the aforementioned separate return limitation provisions.

The fees, commissions and expenses to be incurred in connection with the proposed transaction are estimated at $2,930. 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 October 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 applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-31251 Filed 10-7-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 11385; 812-4674]

Reserve Fund, Inc.; Notice of Filing of Application for Order Pursuant to Section 6(c) of the Act Exempting Applicant From the Provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 Thereunder

October 2, 1980.

Notice if hereby given that The Reserve Fund, Inc. ("Applicant"), 810 Seventh Avenue, New York, N.Y., registered under the Investment Company Act of 1940 ("Act") as an open-end, non-diversified, management investment company, filed an application on May 1, 1980, and an amendment thereto on July 22, 1980, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting 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 Applicant's assets to be valued at amortized cost. 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 is a "money market" fund incorporated in the State of Maryland, and that it is designed to offer corporations, fiduciaries, other institutions and individuals, a means to invest in a professionally managed portfolio of money market instruments with the objective of seeking as high a level of current income as is consistent with the preservation of capital and liquidity. According to the application, Applicant invests its assets in various money market instruments. Applicant further states that it will not purchase any security which has a maturity date of more than one year after the date of purchase, except purchases subject to repurchase agreements calling for redelivery in one year or less following the date of purchase.

As here pertinent, Section 2(a)(41) of the Act defines value to mean: (1) with respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the Board of Directors. Rule 22c-1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor 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

to sell such security. Rule 2a–4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption 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 states that portfolio securities with respect to 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 of the registered company. Prior to the filing of the application, the Commission expressed its view that, among other things: (1) 2a–4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent, generally, with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Applicant states that experience indicates that two features are important to most investors in "money market" funds: (1) stability of principal, and (2) steady flow of predictable and competitive investment income. Applicant asserts that its ability to provide these features would be enhanced through use of amortized cost valuation. Applicant represents that its Board of Directors has properly determined to value the portfolio of Applicant at amortized cost and that this method is in the best interests of shareholders. Applicant further represents that the amortized cost method represents fair value of the instruments in Applicant's portfolio. Accordingly, Applicant requests an exemption from Section 2(a)(41) of the Act, and Rules 2a–4 and 22c–1 thereunder, to the extent necessary to permit its assets to be valued as set forth in the application, and as described above, whether or not market quotations are available.

Section 6(c) of the Act provides, in part, that upon application the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act or of the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant submits that the exemptions it requests satisfy these standards in view of its management policies and the conditions hereinafter set forth.

Applicant consents to the imposition of the following conditions in an order granting the relief it requests:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment manager, Applicant's Board of Directors 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 objective, to stabilize Applicant's net asset value per share, 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 of Directors shall be the following:

(a) Review by the Board of Directors, 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 determined by reference to market factors from Applicant's $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the Board of Directors will promptly consider what action, if any, should be initiated.

(c) Where the Board of Directors believes the extent of any deviation from Applicant's $1.00 amortized cost price per share may 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 reduce to the extent reasonably practicable such dilution or unfair results, which may include: selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; withholding dividends; redemption of shares of kind; or utilizing a net asset value per share as determined be using available market quotations.

[1] To fulfill this condition, Applicant intends to use available market quotations in its current valuation system and any other indicators of market value of portfolio instruments which its Board of Directors from time to time may consider appropriate.

(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 (unless subject to a repurchase agreement with a maturity of one year or less), or (b) maintain a dollar-weighted average portfolio maturity in excess of 120 days. 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 such average maturity to 120 days or less as soon as reasonably practicable.

(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 paragraph 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 of Directors' 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 of Directors' 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 if 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 United States dollar denominated instruments which the Board of Directors 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 comparable quality as determined by the Board of Directors.

(6) Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statement as to whether any action pursuant to paragraph 2(c) above was taken during the preceding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than October 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 at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the matter 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. 80–31252 Filed 10–7–80; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 11380; 812–4740]

United Cash Management, Inc.; Filing of Application for Amended Order Pursuant to Section 6(c) of the Act Exempting Applicant From the Provisions of Rules 2a–4 and 22c–1 Under the Act

September 30, 1980.

Notice is hereby given that United Cash Management, Inc. ("Applicant") One Crown Center, P.O. Box 1343, Kansas City, Missouri 64141, an open-end, diversified investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on August 7, 1980, for an amended order, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Rules 2a–4 and 22c–1 under the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

On July 17, 1979, the Commission issued an order (Investment Company Act Release No. 10783) ("Prior Order"), pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Rules 2a–4 and 22c–1 under the Act to the extent necessary to permit it to compute its price per share for the purposes of sales and redemptions to the nearest one cent on a share value of one dollar. The Prior Order was issued subject to the following condition, among others:

(3) Applicant will invest only in (i) obligations issued or guaranteed by the U.S. Government or its agencies or instrumentalities; (ii) time deposits, certificates of deposit, bankers' acceptances and other bank obligations (or instruments secured by such obligations) provided that the issuing bank has at least $1,000,000,000 in assets and is subject to regulations by the United States Government (including foreign branches of such banks); (iii) commercial paper rates A–1 or A–2 by Standard & Poor's Corporation ("S&P") or Prime–1 or Prime–2 by Moody's Investors Service, Inc. ("MIS"), or if not rated, issued by a corporation in whose debt obligations Application may invest; (iv) corporate debt obligations if they are rated at least A through (iv) only if such other obligations is guaranteed as to principal and interest by either a bank in whose obligations Applicant may invest or a corporation in whose commercial paper Applicant may invest.

Applicant requests an order of the Commission amending the Prior Order by deleting condition (3) as set forth above and substituting the following condition:

(3) Applicant will limit its portfolio investments, including repurchase agreements, to those instruments which are denominated in U.S. dollars and which the Board of Directors of Applicant 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 rated, of comparable as determined by the Board of Directors.

In support of this request, Applicant submits that the restrictions set forth in condition (3) of the Prior Order would not be necessary if, as provided in new condition (3), its Board of Directors assumes responsibility for such quality determinations. Applicant further submits that exemptive orders issued by the Commission after the Prior Order with respect to other money-market funds contain restrictions similar to those now proposed by it.

Rule 22c–1 under the Act provides, in part, that no registered investment company issuing any redeemable security shall sell, redeem or repurchase 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 under the Act provides, as relevant here, that "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be determined with reference to (1) current market value for portfolio securities with respect to which market quotations are readily available and (2) for other securities and assets, fair market value as determined in good faith by the board of directors of the registered company. In Investment Company Act Release No. 9786, the Commission expressed its views that it is inconsistent with Rule 2a–4 for certain money market funds to "round-off" calculations of their net asset value per share to the nearest one cent on a share value of one dollar, because such a calculation might have the effect of masking the impact of changing values of portfolio securities and therefore might not "reflect" its portfolio valuation as required by Rule 2a–4.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than October 27, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controversial, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein 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. 80-31247 Filed 10-7-80; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1930]

Alaska; Declaration of Disaster Loan Area

Bristol Bay Borough and portions of the unorganized borough of the State of Alaska from the Dillingham to Port Heiden, including the Lake Illiamma and adjacent Boroughs within the State of Alaska constitute a disaster area as a result of damage caused by high winds and heavy seawaves which occurred on August 17, 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on November 28, 1980, and for economic injury until the close of business on June 26, 1981, at: Small Business Administration, District Office, Suite 200 Anchorage Legal Center, 1016 West Sixth Avenue, Anchorage, Alaska 99501, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated September 26, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-31170 Filed 10-7-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 1927]

Kansas; Declaration of Disaster Loan Area

The following 65 counties and adjacent counties within the State of Kansas constitute a disaster area as a result of natural disaster as indicated:

County	Natural disaster(s)	Date(s)
Allen	Drought	6/1/80-8/26/80
Anderson	Drought	6/1/80-8/26/80
Bourbon	Drought	6/1/80-8/26/80
Butler	Drought	5/15/80-7/16/80
Chase	Drought	6/1/80-8/5/80
Chautauqua	Drought	5/25/80-8/1/80
Cherokee	Drought	6/1/80-8/5/80
Cloud	Drought	6/1/80-7/29/80
Coffee	Drought	6/1/80-8/4/80
Cowley	Drought	6/1/80-8/26/80
Crawford	Drought	6/1/80-7/31/80
Dickinson	Drought	6/8/80-7/29/80
Douglas	Drought	6/1/80-8/26/80
Elk	Drought	6/1/80-8/26/80
Ellsworth	Drought	6/1/80-8/26/80
Franklin	Drought	6/1/80-8/1/80
Geary	Drought	6/1/80-8/5/80
Greenwood	Drought	6/1/80-8/4/80
Harvey	Drought	6/1/80-8/26/80
Johnson	Drought	6/1/80-8/26/80
Labette	Drought	6/1/80-8/26/80
	Grasshopper damage (infestation).	6/1/80-8/26/80
Lincoln	Drought	6/1/80-8/26/80
	Chinch bug infestation.	6/1/80-8/26/80
Linn	Drought	6/1/80-8/26/80
Lyon	Drought	6/1/80-8/5/80
Marion	Drought	4/1/80-7/23/80
McPherson	Drought	6/1/80-7/29/80
Miami	Drought	4/1/80-7/31/80
Mitchell	Drought	6/1/80-8/26/80
Montgomery	Drought	6/1/80-8/26/80
Morris	Drought	6/1/80-8/5/80
Neosho	Drought	6/1/80-7/29/80
Osage	Drought	6/1/80-8/1/80
Ottawa	Drought	6/1/80-7/29/80
Rice	Drought	6/1/80-8/26/80
Saline	Drought	6/1/80-7/29/80
Shawnee	Drought	6/1/80-7/29/80
Wabaunsee	Drought	6/1/80-8/26/80
Wilson	Drought	6/1/80-8/4/80
Woodson	Drought	6/1/80-8/4/80
Atchison	Drought	6/1/80-7/29/80
Barton	Drought	6/1/80-8/26/80
Brown	Drought	4/1/80-8/5/80
Clay	Drought	6/1/80-8/26/80
Doniphan	Drought	6/1/80-7/29/80
Ellis	Drought	6/20/80-8/10/80
Harper	Drought	6/1/80-8/1/80
Jackson	Drought	6/1/80-7/29/80
Jefferson	Drought	6/1/80-8/26/80
Jewell	Drought	6/1/80-8/26/80
	Chinch bug infestation.	6/1/80-8/26/80
Kingman	Drought	6/23/80-7/21/80
Leavenworth	Drought	6/1/80-8/26/80
Marshall	Drought	7/1/80-8/5/80
Nemaha	Drought	4/1/80-8/5/80
Pottawatomie	Drought	6/1/80-8/26/80
Reno	Drought	6/23/80-7/21/80
Republic	Drought	6/1/80-8/22/80
Riley	Drought	6/1/80-8/26/80
Rooks	Drought	4/1/80-8/7/80
Rush	Drought	6/20/80-8/10/80
Russell	Drought	6/20/80-8/10/80
Sedgwick	Drought	6/1/80-8/16/80
Stafford	Drought	6/23/80-7/21/80
Sumner	Drought	6/1/80-8/1/80
Washington	Drought	6/1/80-8/26/80
Wyandotte	Drought	4/1/80-7/31/80

Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on March 26, 1981, and for economic injury until the close of business on June 26, 1981, at;

Small Business Administration, District Office; 12 Grand Bldg.-5th Floor, 1150 Grand Avenue, Kansas City, Missouri 64106

or

Small Business Administration, District Office, Main Place Building, 110 East Waterman Street, Wichita, Kansas 67202

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated September 26, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-31171 Filed 10-7-80; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Product Disaster Loan Area No. 5598]

Maine; Declaration of Product Disaster Loan Area

York, Cuberland, Sagadahoc, Lincoln, Knox, Waldo, Hancock and Washington counties within the State of Maine constitute a Product Disaster Loan Area as a result of an inability to harvest, process or market of soft shell clams; hard shell clams, commonly known as quehogs or little necks; mussels; and European and American cultured oysters, due to contamination by toxic paralytic shellfish poisoning, commonly known as "Red Tide," and the subsequent embargo on the harvesting, processing and marketing of these shellfish, effective September 1, 1980, but retroactive to July 30, 1980.

Eligible small businesses may file applications for Product Disaster Loans, as authorized under Section 7(b)(4) of the Small Business Act, until the close of business on June 26, 1981, at;

Small Business Administration, District Office, 40 Western Ave., Room 512, Augusta, Maine 04330

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program No. 59010.)

Dated: September 26, 1980.

A. Vernon Weaver,

Administrator.

[FR Doc. 80-31172 Filed 10-7-80; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The Small Business Administration Region VI Advisory Council, located in the geographical area of Houston, Texas, will hold a public meeting at 10:00 a.m., Monday, November 3, 1980, at the University of Houston Continuing Education Center, located at 4800 Calhoun, Room 275, Houston, Texas, to dicuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Donald D. Grose, District Director, U.S. Small Business Administration, One Allen Center, Suite 705, 500 Dallas Avenue, Houston, Texas 77002—(713) 226-4897.

Dated: September 30, 1980.

Michael B. Kraft,

Director, Office of Advisory Councils.

[FR Doc. 80-31173 Filed 10-7-80; 8:45 am]

BILLING CODE 8025-01-M

Application for Eligibility Determination as a Small Business Lending Company; Associates Commercial Corp. of Delaware

An application for Eligibility Determination as a Small Business Lending Company has been filed by the Associates Commerical Corporation of Delaware (Applicant), 55 East Monroe Street, Chicago, Illinois 60603, with the Small Business Administration pursuant to Section 120.4 (b) of SBA Regulations [13 CFR 120.4 (b), 1980], promulgated under the Small Business Act.

As a Small Business Lending Company (SBLC), under Subsection (b) mentioned above, the Applicant will be engaged solely in the making of loans in participation with SBA, to small business concerns, in accordance with applicable SBA Regulations. The Applicant will be subject to supervision and examination by the SBA.

The Applicant is incorporated under the laws of the State of Delaware, and it will commence operations with an initial capitalization of $627,392. It intends to conduct its operations on a nationwide basis and to sell in the Secondary Market the SBA's guaranteed protions of loans made to small business concerns.

Associates Corporation of North America, 1 Gulf & Western Plaza, New York, New York 10023 is the parent of the Applicant and owns 100 percent of its outstanding common stock. Associates Corporation of North America is a wholly-owned subsidiary of Gulf & Western Industries, Inc., which is publicly held and traded on the New York Stock Exchange.

The Officers and Directors of the Applicants are:

Ronald J. Krause, 201 Tampico, Irving, Texas 75062—President and Director

Harold D. Marshall, 760 Waveland Rd., Lake Forest, IL 60045—Senior Executive Vice President and Director

Russell B. Donahue, 711 Cleveland Rd., Hinsdale, IL 60521—Executive Vice President and Director

Dennis J. Mandick, 1220 Heatherton Dr., Naperville, IL 60540—Senior Vice President and Controller

Frank C. Suarino, 306 W. Maple, Hinsdale, IL 60521—Senior Vice President, General Counsel and Assistant Secretary

Gordon Bigelow, 401 W. Maple, Hinsdale, IL 60521—Senior Vice President and Director

James E. Jack, 4425 Mill Run Rd. Dallas, TX 75234—Vice President and Treasurer

William G. Dolan, 1015 Loch Lomond, Arlington, Texas 76012—Vice President

Robert L. Jones, 7301 Tomlinson St., Dallas, TX 75248—Vice President

Thomas J. O'Keefe, Jr., 5310 Edlen Road, Dallas, Texas 75220—Vice President

Thomas S. Landis, 1911 McCartney Court, Arlington, Texas 76012—Secretary

Rocco N. Nanni, 1911 Cleburn Drive, Arlington, Texas 76012—Assistant Secretary

Anthony N. Briganti, 33 Tanglewood Court, Ridgefield, Conn. 06877—Assistant Vice President and Assistant Secretary

Julius P. Cardosi, 56 Cranbury Drive, Trumbull, CT 06611—Assistant Vice President and Assistant Secretary

Matters involved in SBA's consideration of the application include the general business reputation and character of management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Act and the Regulations promulgated thereunder.

Notice is hereby given that all interested parties may, not later than October 23, 1980, submit to SBA written comments on the proposed Applicant and/or its management. Any such communication should be addressed to: Wayne S. Foren, Director, SBLC Operations, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416

A copy of this notice shall be published by the Applicant in a newspaper of general circulation in Chicago, Illinois and all for regional editions of the *Wall Street Journal.*

(Catalog of Federal Domestic Assistance Program No. 59.012 Small Business Loans).

Dated: October 1, 1980.

Rita M. McCoy,

Associate Administrator for Financial Assistance.

[FR Doc. 80-31169 Filed 10-7-80; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council Public Meeting

The Small Business Administration Region III Advisory Council, located in the geographical area of Baltimore, Maryland, will hold a public meeting at 1:30 p.m., to begin Thursday, October 23, 1980, through Friday, October 24, 1980, at the Gateway West, 48th Street and Ocean Highway, Ocean City, Maryland, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Gerard Lang, Deputy District Director, U.S. Small Business Administration, 8600 LaSalle Road, 630 Oxford Building, Towson, Maryland 21204 (301) 962-2054.

Dated: October 2, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-31349 Filed 10-7-80; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council Public Meeting

The Small Business Administration Region V Advisory Council, located in the geographical area of Detroit, Michigan, will hold a public meeting on Friday, October 31, 1980, at the Hyatt Regency, Dearborn, Michigan, to discuss such matters as may be presented by members, staff of the Small Business Administration, and others attending. Registration will begin at 7:30 a.m., with the formal meeting commencing at 8:00 a.m.

For further information, write or call Raymond Harshman, District Director, U.S. Small Business Administration, 515 Patrick V. McNamara Building, 477 Michigan Avenue, Detroit, Michigan 48226—(313) 226-7240.

Dated: October 3, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80-31348 Filed 10-7-80; 8:45 am]

BILLING CODE 8025-01-M

VETERANS ADMINISTRATION

Career Development Committee; Meeting

The Veterans Administration gives notice under the provisions of Pub. L. 92-463 that a meeting of the Career Development Committee, authorized by 38 U.S.C. 4101, will be held in Room 817 of the Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC 20420, October 27 and 28, 1980 at 8:30 a.m. The meeting will be for the purpose of scientific review of applications for appointment to the Career Development Program in the Veterans Administration system. The Committee advises the Director, Medical Research Service on selection and appointment of Associate Investigators, Research Associates, Clinical Investigators, Medical Investigators, Senior Medical Investigators and William S. Middleton Award nominees.

The meeting will be open to the public up to the seating capacity of the room from 8:30 a.m. to 9 a.m. to discuss the general status of the program. Because of the limited seating capacity of the room, those who plan to attend should contact Mr. David D. Thomas, Executive

Secretary of the Committee, Veterans Administration Central Office, Washington, D.C. (202–389–2317) prior to October 17, 1980.

The meeting will be closed from 9 a.m. to 5 p.m. on October 27 and 28 for consideration of individual applications for positions in the Career Development Program. This necessarily requires examination of personnel files and discussion and evaluation of the qualifications, competence, and potential of the several candidates, disclosure of which would constitute a clearly unwarranted invasion of personel privacy. In addition, decisions recommended by the committee are strictly advisory in nature; other factors are considered in final decisions. Premature disclosure of committee recommendations as well as the disclosure of research information would be likely to significantly frustrate implementation of final proposed agency actions. Accordingly, closure of this portion of the meeting is permitted by section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended, in accordance with subsection (c)(6) and (c) 9(B), 5 U.S.C. 552b.

Minutes of the meeting and rosters of the committee members may be obtained from Mr. David D. Thomas, Chief, Career Development Program, Medical Research Service, Veterans Administration, Washington, DC, 20420 (phone 202–389–2317).

Dated: September 30, 1980.

Max Cleland,

Adminstrator.

[FR Doc. 80–31275 Filed 10–7–80; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 197
Wednesday, October 8, 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).

CONTENTS

	Items
Commodity Futures Trading Commission	1
Federal Communications Commission	2-6
Federal Home Loan Bank Board	7
Nuclear Regulatory Commission	8
Railroad Retirement Board	9

1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., Friday, October 17, 1980.

PLACE: 2033 K Street NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1849-80 Filed 10-6-80; 12:27 pm]

BILLING CODE 6351-01-M

2

FEDERAL COMMUNICATIONS COMMISSION.

The Federal Communications Commission will consider an additional item on the subject listed below at the Closed Meeting scheduled Friday, October 3, 1980 at 1919 M Street NW., Washington, D.C.

Agenda, Item Number, and Subject

General—1—Office Space Briefing.

The prompt and orderly conduct of Commission business requires that less than 7-days notice be given consideration of this additional item.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: October 2, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S-1855-80 Filed 10-6-80; 3:46 pm]

BILLING CODE 6712-01-M

3

FEDERAL COMMUNICATIONS COMMISSION.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, October 9, 1980, starting at 9:30 A.M., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item Number, and Subject

Common Carrier—1—*Title:* Docket No. 21039—Amendment of Part 22 of the Rules to reflect the availability of land mobile channels in the 470-512 MHz band. *Summary:* Interelectronics Corporation (Intron) filed a petition for partial reconsideration of the Commission's April 23, 1980 Order (77 F.C.C. 2d 201). The issues raised include: (1) Whether to count each of the members of a prearranged consortium separately or as one unit in ascertaining a plurality. (2) Whether the Commission ought to mandate a signalling scheme for each metropolitan area.

Common Carrier—2—Memorandum Opinion and Order and Notice of Inquiry and Proposed Rule Making. This order implements the Second Circuit's recent decision in *ITT World Communications, Inc. et al.* v. *FCC,* decided August 25, 1980. The court determined that Western Union's arrangements with Canadian and Mexican carriers for the transmission of international telex services were precluded by Section 222 of the Communications Act. The order also solicits comment on an international telex traffic distribution formula to govern relations between Western Union and the IRCs.

Common Carrier—3—Inquiry into alleged improper activities of Southern Bell Telephone and Telegraph Company and Southwestern Bell Telephone Company, CC Docket No. 78-242.

Common Carrier—4—*Title:* Overseas Communications Service. *Summary:* This Notice of Proposed Rulemaking proposes to initiate a review of existing Commission policies which limit AT&T's provision of record services internationally and the international record carriers' provision of voice services internationally.

Common Carrier—5—*Title:* In the Matter of ITT World Communications, Inc., Required Rate of Return. *Summary:* The Commission will review the earnings level of ITT World Communications, Inc. and other International Record Carriers and consider whether formal ratemaking proceedings are appropriate.

Common Carrier—6—Uniform Settlement Rates on Parallel International Communications Routes, Docket No. 21265. The Commission will consider a recommendation dealing with waivers to the policy of uniform settlements between U.S. carriers and foreign correspondents.

Common Carrier—7—Notice of Proposed Rulemaking requesting public comment on the need for any changes in the corporate structure and operations of Comsat as a result of the Commission's Comsat Study. (See *Communications Satellite Corporation,* 77 FCC 2d 564 (1980). In the Comsat Study, the Commission identified a number of problems with Comsat's corporate structure as adversely impacting Comsat's ability to carry out effectively its statutory missions. The Commission made certain tentative proposals for changes in Comsat's structure and operations in view of the problems it found. This Notice provides interested parties with an opportunity to comment on the Commission's tentative proposals and to suggest alternative approaches.

Common Carrier—8—*Title:* Petitions for Reconsideration of the Commission's Report and Order Revising the Processing Policies for Waiver of the Telephone Company-Cable Television "Cross Ownership Rules." The Commission resolves petitions for reconsideration filed by various parties against the *Report and Order* in CC Docket No. 78-219 announcing a presumption in favor of waiver of the telephone company-cable television cross-ownership rules where the area to be served contains less than 30 homes per route mile.

Common Carrier—9—RCA Global Communications, Inc. Petition for Partial Reconsideration of the Commission's Report and Order and Notice of Proposed Rulemaking in Docket No. 21005, which was released February 15, 1980. RCA seeks reconsideration of the conclusion by the Commission in that Report and Order not to order immediate interconnection of the telex networks of the international record carriers with the domestic telex and TWX networks of The Western Union Telegraph Company for through domestic telex service.

Renewal—1—*Title:* License Renewal Applications of Certain Broadcast Stations Licensed to and Serving the District of Columbia. *Summary:* United Broadcasting Company, licensee of Station WOOK-FM, Washington, D.C., filed a petition for reconsideration of the Commission's Order released April 11, 1980. That Order considered a petition by the District of Columbia's Office of Human Rights and the D.C. Media Task Force challenging renewal of several stations licensed to the District, based on alleged deficiencies in each station's EEO practices. The Commission now considers United's contention that the conditions placed on the renewal of Station WOOK-FM's license are not warranted.

Renewal—2—*Title:* License renewal application of CBS, Inc., for KNXT-TV, Los Angeles, California. *Summary:* Pursuant to instructions stated by the Court of Appeals in *Los Angeles Women's Coalition for Better Broadcasting* (Coalition) v. *FCC,* 584 F. 2d 1089, the Commission considers its *Memorandum Opinion and Order,* 57 FCC 2d 505 (1976), granting the 1974 renewal

application for KNXT and denying the Coalition's petition to deny in light of *The Bilingual Bicultural Coalition on Mass Media, Inc.* v. *FCC*, 193 U.S. App. D.C. 236, 595 F. 2d 621 (1978). In addition, the Commission considers the licensee qualifications of CBS, Inc., in light of prior broadcasts of misleading promotions, that resulted in a short-term renewal for Station KNXT-TV expiring August 1, 1979.

Aural—1—*Title:* Memorandum Opinion and Order in re: application of Jackson County Broadcasting Service, Inc. (WCRI) for a construction permit to increase power of WCRI, Scottsboro, Alabama and a petition for waiver of Section 73.35(a) of the Rules filed by applicant. *Summary:* The FCC considers the above application for an increase in power and applicant's petition for waiver of Section 73.35(a) of the Rules, pertaining to multiple ownership.

MO&O RM-3629

Broadcast—1—*Title:* Amendment to Parts 2 and 73 of the Commission's Rules to provide for the use of frequency 530 or 531 kHz for AM broadcasting, and to set aside such frequency for minority ownership. *Summary:* The Commission will consider a petition for rule making filed by the National Black Media Coalition requesting designation of the frequency 530 or 531 kHz for the sole use of AM broadcasting and reserving stations on that frequency for minority owners.

Complaints and Compliance—1—*Title:* Results of field investigation into the operation of Radio Station WPAM, Pottsville, Pennsylvania. *Summary:* A field investigation of WPAM was conducted following receipt by the Commission of information alleging, among other things, that the station violated Section 315(a) of the Act by refusing to broadcast a candidate's political announcements. Upon review of the evidence obtained during the course of the investigation, the Commission must decide what sanction, if any, is appropriate in this case.

The meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: October 3, 1980.

Federal Communications Commission.

Wiliam J. Tricarico,

Secretary.

[S-1854-80 Filed 10-6-80; 3:46 pm]

BILLING CODE 6712-01-M

4

FEDERAL COMMUNICATIONS COMMISSION.

The Federal Communication Commission will hold a Special Open Meeting on the subject listed below on Wednesday, October 15, 1980, and Thursday, October 16, 1980, at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Broadcast: *Title:* Panel discussions In the Matter of Children's Television Programming (Docket No. 19142). *Subject:* The Special meetings will be held so that panel discussions can take place to permit the exchange of view with the Commission regarding the issues in this proceeding. No official action will be taken by the Commission at these meetings.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: October 3, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S-1852-80 Filed 10-6-80; 2:56 pm]

BILLING CODE 6712-01-M

5

FEDERAL COMMUNICATIONS COMMISSION.

The Federal Communications Commission will hold a Special Closed Meeting with the Engineers in Charge of the field installations, Field Operations Bureau on Tuesday, October 14, 1980 in Room 856, at 1919 M Street, N.W., Washington, D.C.

This meeting is closed to the public because it concerns internal personnel rules and privileged/confidential matters (See 47 CFR 0.603 (b) and (c)).

The following persons are expected to attend the meeting.

Members of the Commission.

Chief, Field Operations Bureau and members of Washington staff.

Engineers in Charge of field installations.

Action by the Commission October 1, 1980. Commissioners Ferris, Chairman; Lee, Quello, Washburn, Fogarty, Brown and Jones voting to consider this matter in Closed Session.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued October 3, 1980.

Federal Communications Commission.

William J. Tricarico.

Secretary.

[S-1851-80 Filed 10-6-80; 2:56 pm]

BILLING CODE 6712-01-M

6

FEDERAL COMMUNICATIONS COMMISSION.

The following item has been deleted at the request of the Common Carrier Bureau from the list of agenda items scheduled for consideration at the October 3, 1980 Open Meeting, and previously listed in the Commission's Public Notice of September 26, 1980 (#28151).

Agenda, Item Number, and Subject

Common Carrier—2—*Title:* Application of Association of Data Processing Service Organizations, Inc. (ADAPSO) for review of three Common Carrier Bureau authorizations issued pursuant to delegated authority. *Summary:* This item considers ADAPSO's application to set aside or condition the Bureau's order of December 14, 1979, authorizing ITT World Communications, Inc., RCA Global Communications, Inc., and Western Union International, Inc. to provide usage sensitive, packet switched data service between the U.S. and Japan.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: October 3, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S-1850-80 Filed 10-7-80; 8:45 am]

BILLING CODE 6712-01-M

7

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 45, issue No. 194, page No. 65764, date of publication October 8, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2 p.m., October 8, 1980.

PLACE: 1700 G Street NW. sixth floor, Washington, D.C.

STATUS: OPEN MEETING.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6677).

CHANGES IN THE MEETING: The following item has been withdrawn from the agenda for the open meeting:

Insurance of Accounts and Bank Membership—Marine Savings and Loan Association Naples, Florida.

No. 401, October 6, 1980.

[S-1856-80 Filed 10-7-80; 8:45 am]

BILLING CODE 6720-01-M

8

NUCLEAR REGULATORY COMMISSION.

DATE: October 2, 6, and 9, 1980 (revised).

PLACE: Commissioners conference room, 1717 H Street NW., Washington, D.C.

STATUS: Open/closed.

MATTERS TO BE CONSIDERED: Thursday, October 2, Additional items:

2 p.m.

1. Affirmation Session (additional item).
b. NRC Jurisdiction in Waters Beyond Agreement States' Territorial Waters.

2:10 p.m.

1. Briefing by Executive Branch on Export Matter (approximately 1½ hours), closed—Exemption 1 (additional item).

Monday, October 6:

9:30 a.m.

1. Discussion of Potential Litigation & Other Responses to TMI-2 Developments (approximately 2½ hours), closed—Exemption 10.

Thursday, October 9, Changes:

10 a.m.

1. Affirmation Session (approximately 10 minutes), public meeting.
a. Gen. Rev. of Part 50 Appendices G & H.
b. Amendments to Part 2 (2.786(a) & 2.206(c)).
c. Order Concerning Intervention Petition in Skagit.
d. Order on Board Certified Question in Black Fox.
2. Time Reserved for Discussion and Vote on Affirmation Items (if required).
3. Time Reserved for Discussion of Management-Organization and Internal Personnel Matters (2 hours, closed—Exemptions 2 and 6).

ADDITIONAL INFORMATION: By a vote of 3–0 (Commissioner Hendrie not present) on October 2, the Commission determined pursuant to 5 U.S.C. 552b(e)(1) and § 9.107(a) of the Commission's Rules, that Commission business required that Affirmation Item b, and the Briefing by Executive Branch on Export Matter, held that day, be held on less than one week's notice to the public.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498.

Those planning to attend a meeting should reverify the status on the day of the meeting.

October 3, 1980.

Roger M. Tweed,

Office of the Secretary.

[S-1853-80 Filed 10-6-80; 3:05 pm]

BILLING CODE 7590-01-M

9

RAILROAD RETIREMENT BOARD.

TIME AND DATE: 9 a.m., October 16, 1980.

PLACE: Board's meeting room, eighth floor, headquarters building, 844 Rush Street, Chicago, Illinois, 60611.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portion open to the public:

(1) Remand from Court of Appeals of John A. Robbins case.
(2) Appeal of nonwaiver of overpayment, Gladys E. McKenna.
(3) Expiration of time limitation on appeal, Preston Manning.

Portion closed to the public:

(A) Appeal from referee's denial of claim for a "period of disability", Jimmy Sammons.
(B) Appeal from referee's denial of disability annuity, Anna C. Desko.
(C) Appeal from referee's denial of disability annuity, Oscar Bloomfield.
(D) Appeal from referee's denial of disability annuity, Kenneth w. Hanson.
(E) Appeal from referee's denial of disability annuity, Chester E. Gullett.
(F) Board decision on remand from the U.S. Court of Appeals for the 8th Circuit, Robert M. Jones.

CONTACT PERSON FOR MORE INFORMATION: R. F. Butler, Secretary of the Board, COM No. 312–751–4920; FTS No. 387–4920.

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Part II

Environmental Protection Agency

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Submission of Altitude Performance Adjustments for Motor Vehicles

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL 1619-5a; Docket No. A-79-42]

Control of Air Pollution From New Motor Vehicle and New Motor Vehicle Engines; Submission of Altitude Performance Adjustments for Motor Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rules.

SUMMARY: This action establishes a final rule the requirements for manufacturers of motor vehicles and motor vehicle engines to provide to the Administrator altitude performance adjustment instructions. This action is intended to improve the emission control performance of vehicles operated at an altitude other than the altitude for which they were originally certified. These requirements are applicable to all motor vehicles and motor vehicle engines to which Title II of the Clean Air Act applies. Section 215 of the Clean Air Act as amended in 1977 provides the authority for this action. This action was published as a Notice of Proposed Rulemaking (NPRM) on Thursday, January 24, 1980. The NPRM proposed the criteria which the Administrator would use to judge the acceptability of altitude performance adjustments and administrative procedures for the approval of these adjustments.

EFFECTIVE DATE: This final rule will become effective on November 7, 1980.

ADDRESSES: Material relevant to this final rule are available from the U.S. Environmental Protection Agengy, Central Docket Section (A-130), Attn: A-79-42, Waterside Mall, Room 2903B (EPA Library), 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: William R. Wright, Certification Division, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, 313-668-4328.

SUPPLEMENTARY INFORMATION: These regulations will require that within one year of the effective date manufacturers of 1981 and earlier model year motor vehicles and motor vehicle engines shall submit to the Administrator altitude adjustment instructions for in-use motor vehicles and motor vehicle engines. For 1982 and later model year motor vehicles and motor vehicles engines, manufacturers are required to submit to the Administrator altitutde performance adjustment instructions for new motor vehicles and motor vehicle engines within 30 days from the date on which a certificate of conformity is issued by EPA. Section 215 of the Act mandates this action and establishes the authority to require manufacturers to submit to the Administrator instructions for the adjustment or modification of vehicles being operated at elevations other than the altitude for which the vehicle was originally designed. Section 215 also requires that EPA establish regulations to require these submissions. Pursuant to Section 215(a)(1) EPA will not consider adjustments or modifications (hereafter "adjustments") made to vehicles in accordance with instructions (approved under these regulations) as being in violation of the tampering provisions of Section 203(a)(3) of the Act. Although Section 215 does not require specific emission reductions to be achieved as a result of the adjustments, EPA believes the intent of Congress when it enacted Section 215 was to bring about a reduction in emissions from in-use motor vehicles.

Light-duty vehicles (LDV's) and light-duty trucks (LDT's) that are not designed for operation at high altitude (over 4,000 feet above sea level) emit significantly more hydrocarbons (HC) and carbon monoxide (CO) per mile at high altitude than at low altitude. For the 1977 model year, EPA regulations required that manufacturers of LDV's sold at high altitude certify those vehicles to meet emission standards at high altitude. These regulations were revoked for 1978 and later model years by the 1977 Clean Air Act Amendments. As a result of that congressional action, vehicles that comply with only emission standards at low altitude may now be legally sold at high altitude. This proposed regulation will provide procedures for manufacturers to provide instructions to adjust these in-use vehicles in order to reduce vehicle emissions at high altitude.

As required by Section 215(b)(3), this proposed regulation will also require instructions to adjust for low-altitude operation in-use vehicles that are designed for operation only at high altitude. These vehicles may not perform acceptably at low altitude and may emit more pollutants if not adjusted for low-altitude use.

Air quality improvements resulting from this regulatory action will depend on how many vehicles are adjusted in practice. Inspection and maintenance (I/M) programs in the affected areas would provide the greatest incentive to the vehicle owner to have the adjustments performed. Recent data collected in Denver show that 95 percent of the vehicles sampled had incorrect adjustments.[1] We assume that many of these adjustments to other-than-recommended specifications were deliberately performed to improve vehicle performance at high altitude. Thus, even without I/M, vehicle owners may have sufficient incentive to have their vehicles adjusted to compensate for high-altitude operating conditions. However, the possibility of improved drivability may not be adequate incentive if the costs of adjustments are unreasonable.

Section 215(d) prohibits high-altitude performance adjustments after December 31, 1980 in any states which have a nonattainment area where an I/M program is required, but which have not implemented an I/M program. This may provide states with added incentives to implement I/M programs. EPA anticipates that nearly all high-altitude states will meet the December 31, 1980 deadline.

Comments Received

Comments in response to the Notice of Proposed Rulemaking (NPRM) were received from the regulated industry, elected officials at both the State and Federal level, public service groups, and the general public. The EPA staff has summarized and responded to the comments in a document called "Summary and Analysis of Comments" that is now available through the Central Docket Section, Public Docket NO. (see Addresses, above). Comments from the public expressed a definite perceived need for an effort to improve vehicle performance, and to improve ambient air quality, in high altitude areas. Comments from industry were mixed; and although few manufacturers questioned the intent of this rulemaking, portions of the proposed were strongly criticized. Those aspects of the NPRM which were changed in response to the comments follows.

Cost Restrictions

In the development of the NPRM, EPA was concerned with maximizing the voluntary owner use of high-altitude performance adjustments so that the maximum benefit in improved vehicle emission performance could be realized. EPA believed that if the cost to the customer of the altitude performance adjustments was too high in relation to driver-perceived benefits (e.g., driveability and fuel economy), the air quality benefits might not be realized because of a lack of owner participation. The NPRM proposed that EPA not approve adjustments which were

[1] EPA-460/3-78-001, March 1978, Colorado Motor Vehicle Emission Inspection Pilot Program.

estimated by the manufacturer to cost more than 20 dollars. EPA determined the 20-dollar amount to be reasonable based on some manufacturers' cost information submitted to EPA in conjunction with the submittal of voluntary altitude performance adjustments under the guidelines of OMSAPC Advisory Circular No. 80, *Altitude Performance Adjustments for Vehicles In Use*. The preamble to the NPRM specifically solicited comments and pertinent information as to the appropriateness of a cost restriction, and to the amount of the restriction.

Information received in response to the NPRM indicates that a large number of manufacturers are unable to recommend altitude adjustment maintenance that could be performed for no more than 20 dollars. Based upon the information submitted in response to the NPRM, EPA is convinced that a 20-dollar maximum cost requirement is not realistic in many cases.

Due to the variety and complexity of vehicles and emission control systems, and the impact of the parameter adjustment regulations, cost estimates provided by manufacturers vary widely but are generally less than 100 dollars. Cost ranging from 20 dollars to 100 dollars for repairs that should improve emissions fuel economy, and driveability are not unreasonable. Therefore, the EPA believes it is reasonable to delete the cost limitation.

EPA encourages the manufacturer submitting altitude performance adjustment instructions to do so with the intent which these regulations are written: to provide the simple and inexpensive adjustments which are consistent with good engineering practice and which maintain adequate emission control and vehicle performance for vehicles and engines operated at altitudes other than the one for which they were originally designed.

The proposed regulations had exempted manufacturers from submitting altitude performance adjustment instructions for vehicles equipped with systems or devices which compensate (in full or in part) the fuel metering system for changes in air density. A provision of this exemption was that altitude performance adjustment instructions would still be required for partially compensating systems if further emission reductions could be obtained by adjusting the vehicle at a cost of 20 dollars or less. The deletion of the cost limitation in this final rulemaking has also resulted in the deletion of the provision requiring adjustment instructions for partially compensated systems provided the adjustments could be performed for less than 20 dollars.

Impact of Parameter Adjustment Regulations on Compliance With These Regulations

Regulations are effective for light-duty vehicles (LDV's) and light-duty trucks (LDT's) beginning in the 1981 model year, and for motorcycles beginning in the 1980 model year, that allow EPA to adjust certain vehicle parameters within the limits of their adjustability prior to testing. These regulations are commonly referred to as the parameter adjustment regulations. The regulations have the intended effect of inducing designs that have no or limited adjustability which would jeopardize vehicle emission performance.

The parameter adjustment regulations for the 1981 and later model year LDV and LDT are applicable to idle mixture and choke adjustments. The scope of the regulations is enlarged for the 1982 and later model years to also include ignition timing. The inaccessability of these parameters is deemed to be acceptable if adjustments cost more than 20 dollars and take more than one-half hour to perform. The parameter adjustment regulations for motorcycles began with the 1980 model year and are applicable to the idle and fuel system mixture parameters and the ignition timing parameter. The motorcycle regulations do not contain any criteria for determining adequate inaccessibility.

Several manufacturers noted that the adjustments governed by the parameter adjustment regulations would be the ones most likely to be used to make the simple, inexpensive adjustments anticipated by the high-altitude performance adjustment regulations. The NPRM for this regulation had not addressed this situation because the rule as proposed contained a 20-dollar cost limitation on high-altitude performance adjustments. This would have effectively made it impossible to render parameters accessible without exceeding both the cost limitations of the performance adjustment proposal and the parameter adjustment limitation. The elimination of the cost maximum for this rule makes it possible to render parameters accessible in order to perform altitude adjustments. Manufacturers may now include idle mixture, choke adjustment, and ignition timing as part of their altitude adjustment instructions, albeit at a cost in excess of 20 dollars to the customer and requiring more than one-half hour to perform. Therefore, EPA has taken steps in this final rule to avoid possible maladjustment problems occurring on in-use vehicles once high-altitude adjustments are made. The final rule requires that manufacturers either include in the altitude performance instructions further instructions on how to restore parameters to their inaccessible state when the manufacturer believes it is reasonable, or to include a statement on the label required in § 86.1606 that the adjustment of accessible parameters to other than manufacturer-recommended values may be considered a violation of Federal law.

Application to Heavy-Duty Diesel Engines

The provisions of the proposed regulations, in compliance with the requirements of section 215, applied equally to light-duty vehicles, light-duty trucks, heavy-duty engines, and motorcycles. Several manufacturers of heavy-duty diesel engines commented that it would be technically impossible to develop altitude performance adjustments for high altitude which would reduce emissions and also comply with the proposed requirement (§ 86.1004(a)(4)) prohibiting adjustments which would result in a customer-perceived reduction in vehicle performance.

In the case of a gasoline-fueled engine calibrated for low-altitude use but operated at high altitude, the reduced air density at high altitude could cause the engine to operate at such an overly rich mixture that vehicle performance and fuel economy would decrease. Readjusting the mixture at high altitude would correct this overly rich condition and improve performance and fuel economy. Diesel engines, however, when calibrated for low-altitude use are calibrated to such a lean mixture that it is unlikely the engine could be operated at an altitude high enough to cause the mixture to become overly rich. Therefore, a high-altitude performance adjustment to a typical diesel engine which reduced fuel flow (i.e., a leaner A/F ratio) would result in a loss in power. Thus, although diesel engine performance tends to decrease with increases in altitude, typical adjustments to improve emission performance at the higher altitude will tend to further decrease performance.

Due to these characteristics of the heavy-duty diesel engine, the fuel delivery rate of a low-altitude calibration can be reduced for high-altitude operation to achieve reduced emissions, but the vehicle will often realize a noticeable decrease in performance. As a result of these considerations, heavy-duty diesel engines have been exempted from the vehicle performance requirement.

However, it would be contrary to the intent of section 215 and a disservice to the public to exempt heavy-duty diesel engine manufacturers from providing performance adjustments to the customer who wished to decrease fuel consumption or reduce emissions (particularly smoke) and who was willing to accept the peformance penalty. Manufacturers of heavy-duty diesel engines are required to submit to the Administrator altitude performance adjustment instructions.

Some manufacturers of heavy-duty diesel engines have described high-altitude maintenance instructions designed to avoid elevated engine operating temperatures because of rich mixtures and the resultant excess fuel continuing to burn in the exhaust manifold. The manufacturer's recommended altitude limit is not based on emissions or vehicle performance, but rather it is based on the mixture ratio the engine can sustain for prolonged periods without risk of damage from elevated temperatures. The reduction in fuel flow described in these high-altitude fuel derate instructions is similar in intent to the altitude adjustment instructions which these regulations require. Because these similar instructions are already available for some engines, requiring altitude performance adjustment instructions from heavy-duty diesel engine manufacturers does not place an excessive burden on this segment of the industry.

Some heavy-duty engine manufacturers commented that turbocharged heavy-duty diesel engines should be specifically excluded from this rulemaking. Turbocharged engines are capable of maintaining the same manifold pressure at high altitude as at low altitude, and are therefore unaffected by high-altitude operation. The compensation for air density available to the turbocharged engine meets the requirements of § 86.1063(b) (§ 86.1003(6)(2) of the NPRM) which exempts vehicles which compensate in full or in part for air density changes. Therefore, the manufacturer of a turbocharged engine is not required to submit altitude performance adjustments instructions for these vehicles.

Applicability to Previous Model Years

Section 215(b)(1) of the Clean Air Act of 1977 requires altitude performance instructions for each class or category of vehicles or engines to which this subchapter (Title II) applies. Thus this regulation applies to:

—1968 and later model year light-duty vehicles and light-duty trucks,

—1970 and later model year heavy-duty engines built after December 31, 1969, and

—1978 and later model year motorcycles built after December 31, 1977.

EPA received extensive comments on this subject. Some commenters believed that regulations which applied retroactively exceeded the authority of EPA, pointing out that section 202(a)(1) of the Act gives authority to the Administrator to promulgate regulations which are applicable to new motor vehicles and new motor vehicle engines; that is, vehicles and engines which are new after the regulations are promulgated. Other commenters accepted the wording of section 215 to allow the regulations to apply to previous model years, but commented that they should only be applicable to in-use vehicles which had not exceeded their statutory useful life (i.e., 5 years or 50,000 miles).

Section 215(b)(1) requires instructions for "each class or category of vehicles or engines to which this subchapter [Title II] applies." This language requires that instructions be provided for all model years in which a given class or category of vehicle or engines was regulated under Title II. Title II does not cease to apply once a vehicle reaches the end of its useful life. For example, the Section 203 prohibition against tampering does not distinguish between vehicles which have and have not reached the end of their useful lives.

The legislative history also supports the conclusion that Section 215 applies to all vehicles regulated under the Clean Air Act. For example, Congresswoman Schroeder, a sponsor of this provision, indicated that the provision was intended to apply to pre-1970 motor vehicles—vehicles that were past their statutory useful lives at the time the provision was being considered by Congress. Also, while there was an attempt to limit the applicability of Section 215 so that it would not apply to vehicles manufactured in model years after the date of enactment, no effort was made to limit the applicability to vehicles that had not reached the end of their useful lives.

EPA is required to promulgate regulations applicable to all model years of vehicles and engines regulated by Title II of the Clean Air Act. It is not within the scope of EPA's authority to limit the applicability of these regulations to a reduced number of model years.

Cost Considerations

The extensive and expensive development programs which were outlined by some commenters as being necessary to comply with the applicability to several model years indicate a misunderstanding of what is required by section 215 and of how the proposed regulations were intended to implement section 215. The simple and inexpensive nature of the intended compliance procedure cannot be overemphasized. EPA envisions and encourages that a minimum use of developmental and confirmatory testing and a maximum use of technical evaluations, consistent with good engineering practice, be performed to comply with the proposed standards. Emission testing is not required to demonstrate compliance with these regulations. Emission trends resulting from a particular adjustment may be derived from testing, or may be derived from an enginieering analysis of the adjustment. EPA believes that such trends may be applicable to several model years and several vehicles within a model year, and may be a sufficient demonstration of compliance with these regulations.

Several potential reductions are possible to the workload assumed by some commenters as necessary to demonstrate compliance with these regulations. The regulations governing acceptable increases in pollutant emissions as a result of altitude performance adjustments are made by comparing the increases with the emission standard appropriate to that model year, class, and category of vehicle or engine to which the performance adjustment applies. Thus, the emission performance of a vehicle or engine as the result of an altitude performance adjustment will only be evaluated as an approval criterion if there is an emission standard applicable to the particular class and model year of vehicle or engine in question. For example, light-duty vehicles, light-duty trucks, and heavy-duty engines manufactured prior to the 1973 model year, and all model year motorcycles, are exempt from meeting a NO_x criteria because none are applicable to these vehicles and engines.

Fuel Economy

An important consideration in the development of this regulation was to ensure that altitude performance adjustments did not result in a customer-perceived penalty to vehicle performance or fuel economy. The proposed regulations contained a provision which required the Administrator to disapprove a performance adjustment if it resulted in a decrease in fuel economy.

EPA has reviewed the comments to the NPRM and the altitude adjustment instruction submitted voluntarily in response to OMSAPC Advisory Circular No. 80. Based upon this review, EPA has concluded that a decrease in fuel economy is unlikely to result from any directionally correct altitude performance adjustment (e.g., a leaning of the air/fuel mixture) for a vehicle moving from low to high altitude. Thus, the requirement that an altitude adjustment not cause a decrease in fuel economy has little positive value for a vehicle moving from low altitude to high altitude. Conversely, EPA's review of the effects of altitude performance adjustments for vehicles moving from high altitude to low altitude (e.g., a richening of the air/fuel mixture) has indicated that a fuel economy decrease may result, contrary to the proposed regulation. The potential decrease in fuel economy in moving from high to low altitude, however, is expected to be counterbalanced by an improvement in vehicle performance.

EPA has concluded that the proposed fuel economy performance criterion would have little effect on public acceptance of the altitude performance adjustments, and would potentially burden the industry with an unnecessary compliance requirement. Further, the proposed regulations potentially conflict with the effects on fuel economy of performance adjustments for vehicles moving from high to low altitude. The fuel economy acceptance criterion has been deleted from this rulemaking.

Acceptable Performance Adjustment Specifications

In the NPRM, EPA took the position that readjustments which do not change parameter specifications from original specifications, and which are part of normal scheduled maintenance, will not be considered as altitude performance adjustments. EPA adopted this position for two reasons. First, EPA has concluded that the large number of maladjusted vehicles found at high altitude (95 percent) are the result of owners deliberately adjusting them to an other-than-recommended specification in order to improve a driver-perceived performance problem. It is assumed that as a first step in improving a performance the vehicle owner would have the vehicle adjusted to the manufacturer's specifications. Thus, it is also assumed that a manufacturer's tuneup specifications for one altitude may be inadequate in terms of emission control or vehicle performance at another altitude. These regulations are intended to require the development of unique altitude performance adjustment specifications which will improve vehicle emission performance at an altitude other than that for which it was originally certified. Second, the Congressional intent of section 215 was to allow manufacturers to recommend, and service facilities to perform, altitude performance adjustments to an other-than-certified specification without the jeopardy of being in violation of the tampering provisions of section 203(a). A manufacturer's normally scheduled maintenance tuneup specifications are neither specifically intended to improve a vehicle's emission control performance at an altitude other than that for which it was certified, nor can they be considered as tampering. Tuneup specifications which are part of regularly scheduled maintenance, therefore, do not of themselves meet the intent of these regulations, nor do they require any protection from being considered tampering.

Several comments to the NPRM were received which indicated that the proposed requirement had been interpreted to prohibit a manufacturer from including normal scheduled tuneup specifications in addition to the unique altitude performance adjustments which are required. It would be counter-productive for EPA to assume such a position, and manufacturers are encouraged to include normal scheduled maintenance specifications where appropriate in conjunction with the altitude performance adjustments required by this rulemaking. However, EPA has retained in this rulemaking the position that normal scheduled tuneup specifications do not of themselves satisfy the requirements of this rulemaking. Manufacturers are required to provide altitude performance adjustments which are uniquely intended to improve vehicle emission control performance. The adjustments may be made to the same parameter as are included in a normal tuneup, but the parameters should be adjusted to specifications which are uniquely intended to improve vehicle emission performance at altitudes other than that for which the vehicle was originally designed.

Application to Motorcycles

Comments received in response to the NPRM pointed out that some situations existed unique to motorcycles. The NPRM included motorcycles in the requirement that the vehicle emission control update label be placed in the engine compartment of the vehicle. This requirement is not directly applicable to motorcycles because they do not have an engine compartment. The requirement has been changed to be consistent with the motorcycle tuneup specifications label required under § 86.413–78. The emission control update label must now be readily accessible and may be divided into parts.

Motorcycle manufacturers were concerned that they would be unable to comply with the emission restrictions as proposed. Their principal concern was that currently there are no high-altitude emission test facilities for motorcycles and that emission test data would not be available. The commenters incorrectly assumed that presenting emission test data was the only means to demonstrate emission compliance. Manufacturers of all classes of vehicles are reminded that EPA encourages them to demonstrate compliance using engineering analyses, consistent with good engineering practice, to demonstrate compliance.

Interaction With 1982/1983 High Altitude Emission Standards

EPA has proposed high-altitude emission standards for new 1982 and 1983 model year light-duty vehicles and light-duty trucks sold at high altitude. It is expected that this proposal will become final in the near future. The 1982/1983 high altitude emission standards regulation will require that all vehicles certified at low altitude be capable of being modified to a vehicle configuration which complies with meeting emission standards at high-altitude. Manufacturers are not required to provide high-altitude performance adjustment instructions for vehicles already modified to configurations which complies with the high-altitude emission standards. It should be noted, however, that manufacturers will be required to make available low-altitude performance adjustment instructions for vehicles modified to meet high-altitude emission standards.

For the 1982 and 1983 model years manufacturers have two options in developing altitude performance adjustments for in-use vehicles moving from low altitude to high altitude and vice versa. Manufacturers may offer as adjustment instructions that the vehicle be modified to the same configuration as was certified for that altitude (e.g., a low-altitude vehicle would be modified to the certified high-altitude configuration. Such instructions would have the advantage of ensuring that in-use vehicles would meet the appropriate emission standards. However, vehicles are not required to be modified to a certified condition after they have been sold, and modifications to a certified configuration may be relatively expensive due to the necessity of

meeting a specific emission standard. EPA is concerned that expensive modifications may discourage the owner of an in-use vehicle from having the adjustments performed. The alternative is that a manufacturer may develop separate high-altitude performance adjustments in accordance with this regulation, and which would not have to meet any specific emission standard. EPA believes that high altitude performance adjustments would be relatively less expensive than the modifications necessary to meet the high altitude emission standards. EPA encourages manufacturers to provide altitude performance adjustment instructions for in-use vehicles as an alternative to the modifications necessary to meet the high-altitude emission standards if the modifications are potentially so expensive that the public is unlikely to voluntarily have them performed.

Reporting and Recordkeeping Requirements

This regulation will require manufacturers to submit to EPA altitude performance adjustment instructions for all motor vehicles and motor vehicle engines to which Title II of the Clean Air Act applies. The intent of this regulation is that these instructions should be as simple and as inexpensive as possible to perform, and therefore relatively brief. It is also expected that instructions may be applicable to more than one model and model year of similar vehicles.

The initial submission of instructions for all of the previous model years affected by this regulation, which are to be made within one year of the date of publication, will be relatively large. The large volume of submissions, however, will be a one-time occurrence, and all further submissions will be for each current model year. EPA is unable to estimate the size of the single submissions for previous model years because of the combining of instructions across models and model years. These submissions are not expected to be excessively large, however. For example, the altitude performance adjustment instructions submitted by one manufacturer under the authority of Advisory Circular No. 80 includes light-duty trucks and light-duty vehicles for the 1976 through 1979 model years, and yet is only 10 pages. By comparison, the application for certification by the same manufacturer for the single 1981 model year is approximately 1,000 pages.

After the initial submission of instructions, the reporting burden for each model year is expected to be minor, and should not place a significant additional reporting burden on the industry.

The cost to the Federal Government to handle and process the industry's submissions is similarly larger for the first year this regulation is in effect than for subsequent years. The initial effort during the first year following publication of this regulation should not exceed two person-years of effort. For subsequent years (because all previous model years should be caught up), effort should not exceed one person-year.

Regulatory Analysis

The Administrator has determined that this is a "significant routine" regulation. The impact of the regulation will be significant, in that Agency resources will be required to develop and implement the regulation and because an air quality improvement may be expected as a result of the regulation. However, because of the limited number of vehicles that will be affected by the regulations, the limited geographical area in which the primary impact of the regulations will be felt, and the failure of the regulation to trigger any of the criteria governing the preparation of a regulatory analysis, the proposal is not a "major" regulation.

This regulation does not require preparation of an Environmental Impact Study (EIS) under the National Environmental Policy Act, although the environmental effects of the regulation will be considered during the rulemaking. Similarly, an Economic Impact Assessment (EIA) is not required since the proposal does not meet the criteria of Section 317(a) of the Act, and the action does not meet the criteria requiring preparation of a Regulatory Analysis.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit on or before December 8, 1980. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

Dated: October 2, 1980.

Douglas M. Costle,

Administrator.

Accordingly, the final rule reads as follows by adding a new Subpart Q to 40 CFR Part 86.

Subpart Q—Regulations for Altitude Performance Adjustments for New and In-Use Motor Vehicles and Engines

Secs.

86.1601 General applicability.
86.1602 Definitions.
86.1603 General requirements.
86.1604 Conditions for disapproval.
86.1605 Information to be submitted.
86.1606 Labeling.

Subpart Q—Regulations for Altitude Performance Adjustments for New and In-Use Motor Vehicles and Engines

§ 86.1601 General applicability.

This subpart applies to manufacturers of motor vehicles and motor vehicle engines (hereafter referred to as vehicles) which are subject to the requirements of Title II of the Clean Air Act. This subpart applies to the following vehicles:

(a) 1968 and later model year light-duty vehicles and light-duty trucks.

(b) 1970 and later model year heavy-duty engines built after December 31, 1969.

(c) 1978 and later model year motorcycles built after December 31, 1977.

§ 86.1602 Definitions.

The definitions provided in Subpart A also apply in this subpart. Additional definitions that apply in this subpart are as follow:

"Altitude performance adjustments" are adjustments or modifications made to vehicle, engine, or emission control functions in order to improve emission control performance at altitudes other than those for which the vehicles were designed.

"Low altitude" means any elevation less than or equal to 1,219 meters (4,000 feet).

"Manufacturer parts" are parts produced or sold by the manufacturer of the motor vehicle or motor vehicle engine.

§ 86.1603 General requirements.

(a) Manufacturers of vehicles specified in § 86.1601 shall submit to the Administrator for approval the following altitude performance adjustment instructions.

(1) Low-altitude adjustment instructions for vehicles certified to meet the appropriate high-altitude emission standards.

(2) High-altitude adjustment instructions for vehicles certified to meet the appropriate low-altitude emission standards.

(b) Manufacturers are not required to submit altitude adjustment instructions for vehicles equipped with systems or devices that compensate (in full or in part) the engine fuel metering system for air density changes. Manufacturers claiming this exemption must submit to the Administrator for approval a notification of the claim specifying the affected vehicles. The notification must

also describe the compensating system used.

(c) Manufacturers may request the Administrator to waive the application of this regulation for vehicles which potentially may never be operated at an altitude other than that for which they were designed (such as vehicles which are not offered for sale within the continental United States).

(d) Manufacturers shall meet the requirements of paragraph (a), according to the following schedule:

(1) Altitude adjustment instructions for all 1980 and earlier model year vehicles or engines shall be submitted to the Administrator within one (1) year of the effective date of this regulation.

(2) Altitude adjustment instructions for 1982 and later model year vehicles or engines shall be submitted to the Administrator within 30 days of the issuance of the certificate of conformity for those vehicles or engines. For vehicles or engines certified for the 1981 model year before the publication of this regulation, altitude adjustment instructions shall be submitted within 90 days of the publication of this regulation.

(e) Failure to submit altitude performance adjustment instructions in accordance with this section is a violation of Section 203(a)(3) of the Clean Air Act and may result in penalties as specified in Section 205 of the Clean Air Act. The Administrator may grant extensions of the schedule in paragraph (c) if the manufacturer submits a written request to the Administrator specifying the reasons for the need for the extension. Requests for an extension must be received by EPA at least 5 working days prior to the submittal date contained in paragraph (d).

(f) The adjustment instructions (including labels) that the Administrator approves under this subpart shall be made available by the manufacturer at no cost to service outlets and the general public. EPA encourages manufacturers to notify vehicle owners in high-altitude areas of the availability of high-altitude adjustments.

(g) If altitude adjustments are performed according to the instructions approved by the Administrator, they will not be treated as violations of the tampering provisions of Section 203(a) of the Act except as described below:

§ 86.1604 Conditions for disapproval.

(a) The Administrator shall not approve altitude performance adjustments that will:

(1) Cause any regulated pollutant emission level to increase if the emission level exceeded the appropriate emission standard before adjustment was made.

(2) Cause any regulated pollutant emission level to exceed the appropriate emission standard if the emission level did not exceed the emission standard before the adjustment was made.

(3) For light-duty vehicles, light-duty trucks, motorcycles, heavy-duty gasoline-fueled engines, cause any reduction of vehicle performance (as evaluated by the manufacturer) such that vehicle drivers will likely complain.

(4) Be of such technical complexity or require such complex, expensive, or exclusive equipment that a competent mechanic in an average service establishment cannot perform the adjustments correctly. Adjustment procedures should not require knowledge or training beyond that required to perform normal engine maintenance. All required equipment must be available to any service establishment at competitive cost.

(5) Require the use of manufacturer parts, unless they are necessary to ensure emission control performance and unless the Administrator grants a waiver under Section 207(c)(3)(B) of the Act.

(6) Removes or defeats the parameter adjustment controls for the parameters listed in paragraphs 86.081–22(e)(1)(i) and 86.082–22(e)(1)(i) for light-duty vehicles and light-duty trucks, and paragraph 86.428–80(d) for motorcycles unless:

(i) The manufacturer determines that it is reasonable to restore the parameter adjustment control in use and provides appropriate instruction as part of the high-altitude performance adjustment instructions, or

(ii) The manufacturer determines that is is not reasonable to restore the parameter adjustment control in use and alternatively includes on the label required in section 86.1606 a statement to the effect that the labeled vehicle can be adjusted but that adjustment to other than manufacturer specification may be considered violation of Federal law.

(b) If the Administrator determines that the altitude performance adjustment instructions cannot be approved, the Administrator shall notify the manufacturer in writing of the disapproval. This notification shall explain the reasons for the disapproval.

(1) Within 20 working days of the date of a notification of disapproval, the manufacturer may file a written appeal to the Administrator. The Administrator may allow additional oral or written testimony prior to rendering a final decision.

(2) If the manufacturer files no appeal with the Administrator, the disapproval becomes final.

(3) Within 30 days following the Administrator's final decision of disapproval, the manufacturer must submit new altitude performance adjustment instructions applying to all of the vehicles for which the disapproved instructions applied. If these new instructions are not submitted within 30 days, EPA may take action under Sections 203(a)(3) and 205 of the Act. If the new altitude performance adjustment instructions are disapproved by the Administrator, the manufacturer may follow the appeal procedures under paragraphs (b)(1) and (b)(2) of this section.

(ii) If the Administrator makes a final decision to disapprove the new instructions, EPA may take action under Sections 203(a)(3) and 205 of the Act.

§ 86.1605 Information to be submitted.

(a) Manufacturers shall submit to the Administrator the text of the altitude performance adjustment instructions to be provided to vehicle owners and service establishments. Each set of altitude performance adjustment instructions must set forth the adjustment procedure (including the installation of the label required by § 86.1606) to be followed and identify the vehicles for which the instructions are applicable. At a minimum, each set of instructions shall identify the vehicle applicability by manufacturer, car line, model year, engine displacement, engine family, and exhaust emission control systems. Manufacturers may specify vehicle applicability in greater detail if necessary, but such specifications must be identifiable to the public and the service industry through vehicle marking or codes.

(b) The manufacturer shall submit to the Administrator the following information about the adjustments:

(1) Specifications of changes in calibrations of any component, including the original and new calibration values or curves;

(2) Descriptions of component additions, including a full description of the new components along with the configurations (sketch or drawing), calibration values, and part numbers;

(3) Descriptions of component replacements, including all items in paragraph (2), above, for the new parts. Also, a description of the differences between the original component and the new component with respect to design, calibration, and function;

(4) Descriptions of any special tools necessary to perform the adjustments.

(c) The manufacturer shall submit to the Administrator the following evaluations of the adjustments:

(1) A statement that the conditions of § 86.1604 (a)(1) and (a)(2) are not caused by the adjustment, and supporting information for this statement consisting of technical evaluations (consistent with good engineering practice) or emission test data.

(2) A statement that vehicle performance is generally unchanged or improved as result of the adjustments, and supporting information for this statement consisting of technical evaluations or driver evaluations.

(3) Information that shows compliance with Section 202(a)(4)(A) of the Act (which prohibits vehicles from causing unreasonable risks to public health, welfare, and safety).

(d) The manufacturer shall submit to the Administrator for approval a copy or sample of the label required by § 86.1606 and a copy of the instructions for installation of the label.

§ 86.1606 Labeling.

(a) The manufacturer shall make available to the public as part of the altitude performance adjustment instructions the labels described in this section. Instructions for installing the labels according to the requirements of this section shall be provided with each label.

(b) The label installation instructions shall indicate the following information.

(1) For light-duty vehicles, light-duty trucks, and heavy-duty engines, the label should be affixed in a readily visible position in the engine compartment and beside (to the extent possible) the existing label which is required under § 86.079–35.

(2) For motorcycles, the label should be affixed in a readily accessible position and beside (to the extent possible) the existing label which is required under § 86.413–78(a)(1).

(3) The instructions shall also indicate that the label should not be affixed to any equipment that can be easily detached from the vehicle.

(c) The label must be constructed such that if installed properly, it cannot be removed without destroying or defacing the label.

(d) The label shall contain the following information lettered in the English language in block letters and numerals, which must be of a color that contrasts with the background of the label:

(1) The label heading: Vehicle Emission Control Information Update;

(2) Full corporate name and trademark of the vehicle manufactuer;

(3) The statement: "This vehicle has been (adjusted) (modified) to improve emission control performance when operated at (high) (low) altitude";

(4) Information on where altitude performance adjustment instructions may be obtained or include the actual altitude performance adjustment instructions;

(5) The new tuneup specifications (if changed from the original label specifications) at the applicable altitude.

(Secs. 215 and 301, Clean Air Act, as amended, (42 USC §§ 7550 and 7601))

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Part III

Department of Energy

Office of Conservation and Solar Energy

Residential Conservation Service Program

DEPARTMENT OF ENERGY

Office of Conservation and Solar Energy

10 CFR Part 456

[Docket No. CAS-RM-79-101]

Residential Conservation Service Program; Proposed Rule and Public Hearing

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy is implementing the amendments to the Residential Conservation Service (RCS) program made by the Energy Security Act (ESA). On November 7, 1979 (44 FR 64602), DOE published a Final Rule implementing the RCS program which was established pursuant to Part 1 of Title II of the National Energy Conservation Policy Act (NECPA). The purpose of the program is to encourage the installation of energy conservation and renewable resource measures in existing houses of the residential customers of the larger gas and electric utilities and of participating home heating suppliers. On June 30, 1980, the ESA was enacted. Title V, Subtitle B, of the ESA amends, in part, the RCS provisions of NECPA.

This Proposed Rule amends the Final Rule of November 7, 1979 (herein after referred to as the Final Rule) to incorporate certain of the statutory changes made to the RCS program by the ESA. The major amendments in this rulemaking involve the warranty requirements, the utility cost and accounting provisions, and the prohibition against utility supply and installation of energy conservation and renewable resource measures.

Because ESA was made effective upon enactment (June 30, 1980), DOE is required to review and approve or disapprove RCS plans in accordance with NECPA as amended by ESA. DOE will individually advise those who have submitted such plans what changes are required in their plans in order to bring them into compliance with the ESA amendments. Upon finalizing this Proposed Rule, more RCS plan amendments may be required. However, DOE is aware of the administrative burden caused by plan amendments and will therefore attempt to minimize any new regulatory requirements which would result in further plan amendments.

DATES: Written comments must be received by November 24, 1980, 5:00 p.m., e.s.t. in order to ensure their consideration. The public hearing will begin at 9:00 a.m., October 30, 1980.

ADDRESSES: Comments and requests to speak at the hearing should be addressed to: Carol Snipes, Office of Conservation and Solar Energy, Department of Energy, Room 1F-085, 1000 Independence Avenue SW., Washington, D.C. 20585 (Phone: 202-252-9319). See "Comment Procedures" under Supplementary Information below.

The public hearing will be held in Room 2105, 2000 M Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

James R. Tanck, Director, Residential Conservation Service Program, Office of Conservation and Solar Energy, Department of Energy, Room GH-068, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9161.

Laura Rockwood, Office of General Counsel, Department of Energy, Room 1E-258, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9519.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Warranty Provisions
III. Cost and Accounting Provisions
IV. Utility Supply and Installation of Measures
V. Regulatory Analysis and Urban and Community Impact
VI. Environmental Impact Statement
VII. Consultation with Other Federal Agencies
VIII. Contractor Contributions to the Rulemaking
IX. Executive Order 12044
X. Comment and Hearing Procedures

I. Introduction

The Department of Energy is implementing the amendments to the Residential Conservation Service (RCS) program made by the Energy Security Act (ESA) (Public Law 96-294, 94 Stat. 611 *et seq.*). On November 7, 1979, the DOE published a Final Rule (44 F.R. 64602) implementing the RCS program which was established pursuant to Part I of Title II of the National Energy Conservation Policy Act (NECPA) (Public Law 95-619, 92 Stat. 3206 *et seq.*). The purpose of the program is to encourage the installation of energy conservation and renewable resource measures in existing houses of the residential customers of the larger gas and electric utilities and of participating home heating suppliers.

On June 30, 1980, the ESA was enacted. Subtitle B of Title V amended the RCS provisions of NECPA in three major areas: warranty requirements, cost and accounting provisions, and utility supply, installation and financing. DOE is required by section 549(b) of ESA to promulgate rules amending the RCS regulations to comply with the ESA amendments.

This Proposed Rule would amend the Final Rule of November 7, 1979 (hereinafter referred to as the Final Rule), to incorporate certain of the statutory changes made to the RCS program. In particular, this rule proposes amendments to the warranty requirements, the cost and accounting provisions, and the prohibition on utility supply and installation of energy conservation and renewable resource measures. Because the other changes are technical amendments only and are self-explanatory, the discussion below involves only the warranty amendments, the cost and accounting amendments, and the prohibition amendments.

II. Warranty Provision

ESA and NECPA by removing the requirement that measures supplied or installed under the program must be warranted by manufacturers to meet a specified level of performance over a period of not less than 3 years. In its place, ESA requires that manufacturers, suppliers, and installation contractors supply 1-year written warranties for measures manufactured, supplied or installed under the program. ESA also requires that suppliers and contractors agree to provide these warranties, in order to be included on lists developed by the States and distributed by utilities and fuel suppliers to their customers.

Specifically, ESA requires that manufactures of measures installed under the program warrant in writing to residential customers, installation contractors, and suppliers that any defects in materials, manufacture, or design discovered within 1 year from the date of installation, will be remedied by means of free replacement parts or materials, as appropriate. Suppliers must provide a 1-year warranty, equivalent to the manufacturer's warranty, to purchasers of measures under the RCS program. Contractors must provide a 1-year written warranty against material, manufacture, design and installation defects discovered within 1 year from the date of installation.

Section 542(d) of ESA also states that all other Federal or State warranty laws are applicable, except where those laws are inconsistent with NECPA, as amended

The conference report states that the amended RCS provisions are minimum warranty requirements. Persons

involved in the RCS program are free to offer any warranty protection they desire, as long as the warranty meets *or exceeds* the minimum requirements imposed by the ESA amendments.

ESA does not define the term "manufacturer." DOE has also declined to define the term in order to prevent any unnecessary rigidity when a State must enforce the warranty requirement under its own particular warranty laws.

The warranty required of contractors does not limit the warranty to the customer for whom a measure is installed, as does the manufacturer's warranty. DOE considered whether the conferees intended to require contractors to provide warranties to subsequent owners of a measure, rather than only the original purchaser. The conference report states that the purpose of the provision is "to insure that the customer *for whom residential energy conservation measures are installed* under a utility program have at least the warranty protection set forth in this provision." (Emphasis added). DOE has decided in its definition of the contractor's warranty to use the statutory provision, rather than to limit the coverage to the customer for whom it was installed. DOE intends that interpretation of this provision be consistent with otherwise applicable law. DOE solicits comments on this proposal.

Neither NECPA nor ESA define the term "supplier", but DOE assumes that Congress intended "supplier" to mean retailer. NECPA requires utilities to distribute to its residential customers lists of "suppliers" of measures. Since a list of retailers would be most helful to consumers, and since manufacturers are discussed separately, DOE interpreted supply to mean sell at retail. See for example 10 CFR 456.501(b)(3). However, in an effort to be consistent with our decision not to define manufacturer, DOE has not defined the term "supplier" for the purposes of the warranty provisions. DOE solicits comments on that decision.

The ESA requirement for a supplier's warranty is written in slightly differnt terms than the manufacturer's and contractor's warranty. The supplier need not "warrant in writing", as is required of the manufacturer or supplier, but must "provide" a warranty equivalent to the manufacturer's warranty. The conference report states that "(t)he conferees intend that a supplier could satisfy the warranty requirement of section 212(b)(3)(C) by an assignment of the manufacturer's warranty to the person to whom the measure is supplied." Therefore, we propose to permit the supplier to either pass on the manufacturer's warranty or provide one of its own. DOE has not required that the supplier provide both a manufacturer's and supplier's warranty.

In defining the varous warranties required under the RCS program, DOE has used the statutory language. DOE calls attention to the scope of the warranty: *any* defect in materials, manufacture, design or (in the case of the contractor) installation found within one year after installation. That the conferees intended broad warranty coverage against any defect, rather than a warranty against major defects only, is made clear in the conference report.

Both the legislative language and the conferees' report underscore the intent that the warranty requirements contained in ESA not supersede any existing otherwise applicable Federal or State warranty law, except to the extent that such other laws are inconsistent with NECPA as amended. The conferees provide further guidance in interpreting how the warranty provisions contained in ESA interact with other laws. The conferees cite as an example section 111(d) of the Magnuson-Moss Warranty Act, which renders the warranty requirements of that statute inapplicable to any written warranty "the making or content of which is otherwise governed by Federal law." Section 111(d) also states that "(if) only a portion of a written warranty is so governed by Federal law, the remaining portion shall be subject to this title." The conferees explain that "[nothing] in the Magnuson-Moss Warranty act is inconsistent with a requirements that the minimum warranty specified in this section be offered" and explain that the Magnuson-Moss Act and the FTC's rules under that Act would continue to apply.

In light of the guidance provided by the conferees, Magnuson-Moss requirements for disclosure of warranty provisions must be followed. Also, where State law requires a higher level of warranty than that required in amended NECPA, State warranty requirements will prevail.

DOE has been advised by a major supplier of energy conservation measures that the word "design" is not usually included in either a Magnuson-Moss limited or Magnuson-Moss full warranty. The supplier was concerned that certain States may require that the term "design" be explicitly stated in the warranty, which would require re-printing of existing warranties. While DOE has decided at this time to leave the question of the wording of the warranty to individual States and nonregulated utilities, we solicit comment on this decision. DOE believes that Congress used the word "design" to ensure that consumers would have a remedy for having purchased products under the RCS program that contain no defective parts or materials, but are so designed that they yield no significant benefit as energy saving or energy producing devices.

Generally, warranties that do not disclaim the implied warranty of merchantability would provide redress for a consumer who has purchased such a product and would therefore be acceptable under RCS even though the term "design" was not used in the warranty. (The implied warranty of merchantability is defined in Uniform Commerical Code § 2–314. It provides, in part, that the goods "are fit for the ordinary purposes for which such goods are used".) However, since there is a great deal of precedential case law on warranty issues under which States presently operate, it may be that such redress is not ordinarily available and must be explicitly stated in the warranty. DOE therefore believes that it is preferable to leave interpretations of warranty law to the individual States and require only that the minimum Federal requirements be met by whatever words are deemed necessary in that State.

The following sections of the Final Rule would be amended by this Proposed Rule as follows:

The term "measures warranty" would be divided into three separate warranties: manufacturer's, supplier's, and contractor's measure warranty. These new definitions incorporate the language of ESA and are contained in § 456.105(j) (1), (2), and (3). The definition of "useful life" contained in § 456.105(ee) would be removed, since it is no longer applicable.

In § 456.305, Scope of Benefits, two warranty benefit paragraphs would be substituted for the warranty benefit delineated in existing paragraph (a)(1) in order to retain appropriate references in paragraph (b)–(d). Paragraph (a)(1) would refer to the manufacturer's and supplier's warranties, while paragraph (a)(2) would refer to the manufacturer's, supplier's and contractor's warranties. The remaining sub-paragraphs of paragraph (b)(1) would be renumbered. In paragraphs (b), (c), and (d), the references to benefits would be changed to reflect the new numbering.

Section 456.312(b)(1)(ii) would be changed to require installers to agree to install under the program only measures covered by a manufacturer's or supplier's warranty and by a contractor's warranty in order to be listed in the Master Record. That section would also require the warranty to be extended to caulking and

weatherstripping because the ESA amendment to § 210(11) of NECPA deletes the previous limitation on the warranting of such measures. New paragraph (b)(1)(vi) is inserted to require contractors installing measures under the program to include the measure warranty in every contract. As provided for in § 456.312(a)(4), failure to provide the warranty is grounds for removal from the Master Record.

DOE has decided to retain the listing requirement in § 456.312(b)(1)(v), a guarantee to correct violation of installation standards without cost to the customer. Although the new contractor warranty requirement is similar to this requirement in certain respects, and these requirements may overlap in some areas, there are also distinct differences in remedies available to consumers under these two provisions. Therefore, we have decided not to retreat from our previous position that any violation of a standard must be corrected. Instead, we have added the statutorily required contractor's warranty and also retained the previous guarantee in order to ensure maximum consumer protection.

In § 456.312(b)(2)(i), the reference to suppliers carrying measures that carry a measures warranty is changed to require suppliers to supply measures that carry a supplier's or a manufacturer's warranty. These warranties must also now extend to caulking and weatherstripping.

III. Cost and Accounting Provisions

Section 215(c) of NECPA sets forth certain requirements concerning how utilities must treat certain costs of the RCS program and allowed the exercise of limited discretion concerning treatment of other costs by State regulatory authorities and nonregulated utilities. The regulations administering these requirements were contained in 10 CFR § 456.310.

Pursuant to NECPA requirements, the Final Rule provided for State regulatory authority and nonregulated utility discretion concerning whether utilities should charge customers directly or should expense the costs over all ratepayers for certain program services.

Section 544 of ESA revises the requirements concerning utility recovery of costs. It revises as well several of the requirements for treatment of loans under the program. The regulations for the RCS program are being changed to reflect the revisions.

Section 544(1) of ESA amends NECPA by removing the requirement that State regulatory authorities and nonregulated utilities determine that utilities either expense over all ratepayers or charge customers directly for the amounts expended by a utility for general and administrative functions and project manager requirements. Substituted in its place are provisions that a State regulatory authority or a nonregulated utility may exercise its discretion in the manner of cost recovery for those costs, but places a $15 limit on the amount that can be recovered directly from a customer for the "project manager requirements."

Project manager requirements specified in section 215(b) of NECPA include the providing of energy audits, the arranging for installation and financing, and the providing of customers with lists of suppliers, installers, and lenders. ESA further requires the State regulatory authority or the nonregulated utility to take into account to the extent practicable the customers' ability to pay and the effect on program participation of direct charges to customers.

ESA removes the requirement in NECPA that customers be charged directly for labor and material for measures purchased or installed in their homes. Also removed is the NECPA requirement that regulatory authorities and nonregulated utilities find that expensing of costs, other than information costs, general and administrative costs, and project manager costs, will result in lower prices for utility service ratepayers before permitting utilities to expense such costs. DOE therefore proposes changes to several provisions of § 456.310 of the Final Rule.

Section 456.310(b)(2) dealing with direct charges to customers for labor and material would be removed (along with the parenthetical discussion concerning interest costs). Subparagraph (b)(5), regarding treatment of program costs not treated elsewhere, would be removed as well. Subparagraph (b)(3) would be changed to provide State regulatory authority discretion regarding recovery of program costs, but would limit this discretion with regard to the project manager requirements, so that the amount that may be recovered directly from a customer does not exceed $15 per dwelling unit. Those expenses listed as "administrative and general expenses" in the Final Rule inadvertently included "list distribution" in those costs. List distribution is properly a project manager requirement under § 215(b)(2) of NECPA. In this proposed rulemaking, list distribution is correctly included as a project manager requirement, and subject to the limitation on charges that can be recovered directly from consumers.

While post-installation inspections and conciliation conferences are primarily the State's responsibility, the State may assign such responsibility to the public utilities. The Proposed Rule requires that, if the responsibility is assigned to a utility, it must be handled as part of their arranging service. Therefore, with respect to recovery of those costs, the regulatory authority or nonregulated utility has discretion, subject to the limitation of $15 or actual costs per dwelling unit, whichever is less. DOE notes that the regulations require that the conciliation conference be free of cost of the customer.

In light of the limit placed on recovery of program manager costs from customers, § 456.310(c) regarding duplication of audits is no longer appropriate. The congressional intent was to provide the regulatory authority or nonregulated utility with discretion as to treatment of costs by each utility, subject, however to the $15 limitation. DOE has therefore removed subsection (c) regarding State regulatory authority and nonregulated utility discretion regarding subsidization of only one audit.

ESA also removes the provisions of section 215(f) of NECPA, dealing with repayment of loans made by utilities under the program, and places in its stead a requirement that utilities allow customers to repay all arranged loans as part of the periodic bill if the lender so requests. In effect, ESA removes the requirement that utilities allow repayment of utility loans through periodic utility bills over 3 years. In this Proposed Rule, DOE therefore removes section 311(b)(1) in its entirety, and modifies 311(b)(2) so that all arranged loans are treated the same and may be repaid as part of the periodic bill, if a lender requests such an arrangement. ESA provides that utilities may recover the costs of this service from the lenders. This provision is now included in the Proposed Rule.

In removing the provisions of section 215(f) of NECPA, ESA also removed provisions allowing lenders to require lump-sum payments of outstanding principal and interest upon default in repayment. Removed as well was a prohibition against imposition of penalties on customers for prepayment of loans. Therefore, this Proposed Rule removes those requirements from the Final Rule.

It should be noted that none of the provisions in section 217 of NECPA relating to loans made or arranged by participating home heating suppliers were amended by ESA. Therefore, we have proposed adding a new paragraph (d) to § 456.317 which incorporates

explicitly the loan requirements that still apply to home heating suppliers.

IV. Utility Supply and Installation of Measures

ESA makes a number of changes to the prohibition against utility supply, installation, and financing contained in section 216 of NECPA. ESA removes completely the prohibition against financing by utilities, and modifies the NECPA prohibition against utility supply and installation of energy conservation and renewable resource measures. As amended, section 216 now prohibits only the supply and installation of such measures by utilities, subject to certain exemptions and waivers. The exemption and waiver provisions of 216(b) (regarding certain measures), 216(d) (grandfathered activities), and 216(e) (waivers) are still in effect with respect to supply and installation activities. However, section 216(c) has been replaced with a new exemption for utility supply and installation through subcontractors.

A. Section 216(c) Exemption

The new 216(c) exemption created by the ESA allows a utility to supply and install measures through subcontracts with independent suppliers and contractors who are listed on the RCS Master List, as provided under § 456.312, and who are not otherwise subject to the control of the public utility, or affiliates or subsidiaries of the utility. The subcontractor exemption (216(c)) contemplates at least two different scenarios: one where the customer selects the subcontractor, the other where the utility chooses the subcontractor. In either case, section 216 requires the supplier or installer to be listed on the RCS Master List in accordance with section 213(a)(2) (10 CFR § 456.312). Additionally, the subcontractor may not be subject to the utility's control (except with respect to that contract) or an affiliate or subsidiary of the utility.

With respect to the requirement in 216(c)(1)(A) that a supplier through which a utility supplies measures be on the Master List of suppliers associated with the RCS, the question arises whether a utility could contract directly with a manufacturer or wholesaler for the supply of measures. Since the RCS supplier lists include only those suppliers who supply measures to customers directly, typically retailers, such an arrangement is precluded by 216(c)(1)(A).

Section 216(c)(1)(B) requires that the contractors with which utilities may contract must not be under the control of the utility, except regarding the performance of the contract. DOE would consider contractural provisions which would impose a limitation on a contractor regarding other work not contracted for by the customer with the utility to be an unacceptable level of utility control over a contractor. For example, a utility may not require as part of its subcontract an agreement not to perform similar services for other utilities or prime contractors. DOE solicits comments on these issues, particularly suggestions which could serve to lessen uncertainties utilities may encounter when engaging in subcontracting activities.

If the utility selects the subcontractor, certain additional requirements are imposed on the selection procedure. Specifically, the utility may not use selection procedures which involve unfair methods of competition, have an adverse effect on competition, or result in any supplier or contractor receiving an unreasonably large share of contracts. Further, if the utility finances such supply or installation of energy conservation or renewable resource measures through its subcontractor(s), the utility must also make available financing for the supply or installation by any contractor listed on the RCS Master List and for the purchase of such measures to be installed by the customer. The utility must also conduct its supply and installation activities so as to minimize the cost of measures to the customer. Finally, ESA requires that the the utility make available, upon request, a current estimate of the average price of the supply and installation of measures subject to 216(c).

These amendments to the NECPA prohibition against utility supply, installation, and financing were made in recognition of the potential that active utility involvement has for encouraging customers to install energy conservation and renewable resource measures. However, as expressed in the ESA Conference Report, Congress was also concerned that "any such utility activities be carried out in a fashion which will not be deceptive or anticompetitive". Additionally, given that most utilities are regulated monopolies, the conferees expressed concern that no utility in conducting its subcontractor supply or installation program unfairly discriminate against any business (and, particularly, small businesses) active in the supply and installation of measures.

Section 216(c)(2) places stringent requirements on utilities that select suppliers and installers in order to prevent anticompetitive activity by utilities in the exercising of unreasonable control over the marketplace through selection of subcontractors. However, DOE is concerned that uncertainty about such requirements may inhibit utility desire to engage in these activities. Therefore, DOE would like to provide in the rulemaking some guidance to utilities to encourage the offering of supply and installation services.

DOE is now proposing to adopt language which closely tracks the statutory language in the ESA which amends section 216 of NECPA. Section 456.502(a) should be amended to remove the prohibition against utility financing; § 456.502(b) would reflect amended section numbers. Section 456.502(b)(2) would be amended to prohibit utility supply, installation and financing which involve the use of unfair, deceptive, or anticompetitive acts or practices or are being carried out in a manner that does not comply with the requirements of amended NECPA section 219(c) (proposed herein as § 456.504). Sections 456.503 through 506.508 would also be modified to remove all references to financing and loans.

Although DOE has chosen to propose language similar to that contained in ESA, DOE solicits comments on the issues discussed below in hopes of promulgating final regulations which will offer more guidance and direction to participating utility companies, suppliers and installers, and residential energy consumers.

The first area of concern is whether DOE should prescribe the content of the contract between the utility and the customer. Because the ESA appears to permit a utility to supply or install measures outside the RCS program, a consumer may not be obtaining the benefits to which he might be entitled if the supply or installation were conducted under the RCS Program. This is somewhat offset by the requirement that a utility subcontract only with those suppliers and installers who are listed on the RCS Master List. DOE is concerned that there is at least a risk of consumer confusion if some provision concerning entitlement to program benefits is not required in the customer's contract with the utility. However, DOE believes that by requiring that 216(c) activities be conducted in conjunction with the RCS Program (as proposed in the new § 456.504), the problem of assuring quality control, warranties, and redress proceedings, for example, would be solved. The rationale for such requirement is based on clear Congressional intent that 216(c) activities be closely tied to the RCS

Program (as evidenced by the requirement that subcontractors be listed and that State plans contain 216(c) provisions).

It should be noted that a utility conducting a 216(c) activity then would be allowed to conduct any post-installation inspections of its subcontractor's work in order to maintain quality control. This approach is consistent with the Congressional intent to encourage utility supply and installation by not requiring the utility to incur additional expenses to obtain such inspections.

The second major issue relates to the relationship between 216(c) activities and arranging services. Section 456.308(b)(2) of the existing regulations permits alternative services for arranging the supply, installation, and financing of measures, provided that a level of service is offered which meets or exceeds that required by § 456.308(b)(1). DOE considered whether utility installation of measures through subcontractors would be an acceptable substitute for the required arranging service. DOE proposes to allow utility installation activities meeting the requirements of § 456.504 to be one form of arranging installation as required in § 456.308. However, since some listed contractors may not want to agree to work with a utility for its installation activity, DOE would require a utility to provide another arranging service in addition to its own installation activity. DOE solicits comments on this decision. DOE is interested specifically in whether there is any arrangement which meets the requirements of § 456.504 that would unduly affect the competitive environment or the consumer. If so, are there additional requirements that could be imposed which might mitigate any adverse impacts?

The third issue is defining when a utility, rather than a customer, "selects" a subcontractor. DOE believes that selection occurs as soon as the utility chooses any number of suppliers or installers on the Master List which is less than the whole list. So long as the utility is in the position of pre-selecting a subgroup of suppliers or installers, the opportunity for unfair discrimination is present and, therefore, the procedural safeguards believed by Congress to be necessary should be required. ESA requires that if and when a utility selects the supplier or installer, all of the selection procedure requirements identified above must be complied with by the utility. Where the customer selects the subcontractor, only the first two requirements (listing and subcontractor independence) need be met.

Utilities should not unreasonably refuse to deal with contractors listed in the RCS program lists. For example, if a utility sets up a selection process, any criteria used for that selection process must be fair and reasonable.

Restricting in advance the number of contractors with which the utility will deal would be considered unreasonable, as would limiting the ability of new or small businesses to participate. For example, high performance bonds or insurance requirements may serve to restrict small business' access to the market and, as such, would be unreasonable. Where the selection process establishes, in essence, a subset of the lists of contractors, the selection process should be repeated periodically in order to avoid restricting a business's access for an unreasonable period to time. It would not be reasonable for utilities to divide a service area into territories and restrict access to that territory to a small number of contractors with permission to sell or install measures.

The fourth issue on which DOE solicits comments is the method of computing average costs of measures supplied and installed under section 216(c). DOE has not yet proposed a specific method of computation.

B. State Plan Requirements

The ESA also amended NECPA to require that a State plan which allows or requires utilities to supply or install measures must include provisions to assure that those activities are undertaken in a manner consistent with the requirement of 216(c). To the extent that a State plan addresses the issue of supply and installation, and does not specifically prohibit such activities, DOE will interpret that plan as "allowing or requiring" those activities.

Although the ESA does not prohibit utility financing of the supply or installation of energy conservation and renewable resource measures, State plans must now include provisions to assure that, whenever a utility borrows money to make such loans to its customers, that utility shall seek the funds from institutions throughout its service area, to the extent the utility determines feasible, consistent with good business practice, and advantageous to its customers.

To accommodate these changes, DOE proposes to add new §§ 456.304(d)(2) through (4) in the existing regulations as follows: proposed subparagraph (2) incorporates directly the detailed requirements of amended 216(c), but changes the references to conform to the regulations; proposed subparagraph (3) incorporates the ESA requirement for a utility that finances measures and seeks capital from financial institution, to seek such capital from institutions throughout its service area; proposed subparagraph (4) now requires State Plans to specifically describe how compliance by utilities that conduct activities allowed by proposed § 456.504 will be assured.

Under ESA, State plans must now contain a requirement that utilities undertaking activities allowed by 216(c) of NECPA or providing financing for the purchase or installation or measures inform the Secretary when the activity commences. Proposed § 456.304(e) incorporates those requirements.

DOE wishes to make clear that DOE will not waive the public hearing requirement for Plan amendments submitted in response to final regulations on utility supply and installation through subcontractors.

C. Impact on Cost and Accounting Requirements

Section 216(f) of NECPA requires that utility supply and installation programs being conducted pursuant to 216(b), (c), (d)(1), and (d)(2) comply with the cost and accounting requirements of section 215 of NECPA. There is now no such requirement for utility financing activities. However, sections 216(d)(1) and (d)(2) of NECPA were not amended by ESA to delete the references to financing. The Congressional intent in removing the NECPA prohibition against utility financing was to encourage utilities to conduct such programs, thereby making more money available to consumers for residential energy efficiency improvements. Clearly Congress did not intend to burden those financing programs which were being conducted pursuant to section 216(d) with requirements not demanded of financing programs which are now permitted by virtue of the amendments in ESA. Therefore, DOE believes that the requirement in section 216(f) of NECPA that a utility conducting activities pursuant to sections 216(d)(1) or (2) must comply with section 215, does not apply to financing programs.

D. Reporting and Monitoring

ESA provides responsiblity and authority to DOE for monitoring supply, installation and financing of measures by utilities and to require utilities to discontinue activities under certain circumstances. NECPA and ESA give the Secretary authority to halt supply, installation and financing activities that involve the use of unfair, deceptive, or anticompetitive acts or practices, or which are being carried out in a manner

which does not comply with 216(c). The Secretary's authority to order that a utility discontinue activities that involve the use of unfair, deceptive, or anticompetitive acts or practices extends to all exempt activities, including "grandfathered" activities, those involving certain measures, and those authorized by State or local law or regulation. The proposed reporting requirements are contained in § 456.318 of this Proposed Rule.

V. Regulatory Analysis and Urban and Community Impact Assessment

The President, by Executive Order 12044, has directed agencies of the executive branch to conduct a Regulatory Analysis of significant regulations that they prepare which are likely to have a major impact. Section 3(a) of the executive order directs the agencies to establish criteria to indentify which regulations require regulatory analyses. DOE's implementing procedures are contained in DOE Order 2030 (44 FR 1032, January 3, 1979). In accordance with OMB Circular A-116, an Urban and Community Impact Assessment should be prepared when the Proposed Rule is a major policy and program initiative. This assessment should be incorporated into the Regulatory Analysis.

DOE determined that the Residential Conservation Service Program, authorized under Title II, Part 1 of the National Energy Conservation Policy Act, was major action and required preparation of a Regulatory Anaylsis and an Urban Community Impact Assessment. Consequently, the Department prepared the two analyses in draft in conjunction with the publication of the Proposed Rule for the RCS program on March 19, 1979, (44 FR 64602). Because this Proposed Rule is generally limited to incorporating amendments to the RCS program as mandated by ESA and it reflects only a minimal amount of adminstrative discretion, DOE believes that this Proposed Rule is not a significant regulation which will have a major impact. Therefore, a Regulatory Analysis is not required for this rulemaking.

VI. Environmental Impact Statement

In accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, DOE prepared an Environmental Impact Statement (EIS) for the entire Residential Conservation Service Program. A notice of availability of the Final Environmental Impact Statement was published in the **Federal Register** on November 7, 1979, (44 FR 64602).

DOE has reviewed these amendments and has determined that they do not constitute a "major Federal action significantly affecting the quality of the human environment" within the meaning of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*), and therefore an environmental assessment or an Environmental Impact Statement is not required by NEPA and the applicable DOE regions for compliance with NEPA.

VII. Consultation With Other Federal Agencies

In preparing this Proposed Rule, DOE consulted with representatives of the Federal Trade Commission.

VIII. Contractor Contributions to the Rulemaking

There have been no contractor contributions to this rulemaking.

IX. Executive Order 12044

Executive Order 12044 (43 FR 12661, March 23, 1978) generally requires agencies to provide the public at least 60 days to comment on proposed significant regulations. DOE's implementing procedures are contained in DOE Order 2030 (44 FR 1032, January 3, 1979). DOE has reduced the comment period from 60 to 45 days in order to incorporate the changes resulting from the ESA into the RCS regulations as soon as possible.

DOE believes that it is reasonable to reduce the comment period to 45 days because the Proposed Rule does not reflect important policy concerns nor is it likely to engage public interest. The Proposed Rule merely incorporates the statutory amendments of the ESA into the RCS regulations. DOE has made a deliberate effort not to exercise wide discretion in implementing the ESA amendments in order to minimize the necessity of RCS plan amendments beyond those discussed in the interpretative rule published on August 11, 1980, 45 FR 53422. DOE cannot approve a State Plan which does not reflect the changes required by ESA. In order to assist States in making these changes, DOE wishes to expedite the publication of Final rules. Therefore, it is necessary that DOE reduce the comment period to 45 days.

X. Comment Procedures

A. *Written Comments*—Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed procedures, requirements, and criteria. Comments should be submitted to the address indicated in the addresses section of this preamble and should be identified on the envelope and on the documents submitted to DOE with the designation "Residential Conservation Service Program, (Docket No. CAS-RM-79-101)." Fifteen copies should be submitted. All written comments must be received by (45 days after publication), 1980, 5:00 p.m., e.s.t., to ensure consideration.

All written comments received on this proposed rule will be available for public inspection in the DOE Reading Room, Room 5B-180, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. to 4:00 p.m., Monday through Friday. Any information or data considered by the person furnishing it to be confidential must be so identified and one copy submitted in writing. DOE reserves the right to determine the confidential status of the information or data and treat it according to its determination.

B. *Hearing Request Procedures*—The time and place of the public hearing is indicated in the hearing section of this preamble. DOE invites any person who has an interest in the proposed rulemaking or who is a representative of a group or class of persons that has an interest in the proposed rulemaking, to make a written request for an opportunity to make an oral presentation. Such a request should be directed to the address indicated in the addresses section of this preamble and must be received before 5:00 p.m. on October 17, 1980.

Such a request may be hand delivered to Carol A. Snipes, Room 1F-085, 1000 Independence Avenue, S.W., between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday. A request should be labeled both on the document and on the envelope "Residential Conservation Service Program," Docket CAS-RM-79-101.

The person making the request should briefly describe the interest concerned; if appropriate, state why she or he is a proper representative of a group of class of persons that has an interest; give a concise summary of the proposed oral presentation; and provide a telephone number where he or she may be contacted through the day of the hearing.

Each person who, in DOE's judgement, proposes to present relevant material and information shall be selected to be heard and shall be notified by DOE of his or her participation before 5:00 p.m. on October 24, 1980.

Persons selected to appear at the hearing should bring 15 copies of his or her statement to the hearing site. The hearing will begin at 9:00 a.m., e.s.t. on

October 30, 1980, in Room 2105, 2000 M Street, N.W., Washington, D.C.

C. *Conduct of Hearing*—DOE reserves the right to arrange the schedule of presentations to be heard and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard. A DOE official will be designated as presiding officer to chair the hearing and there will be no cross-examination of persons presenting statements.

Any participant who wishes to ask a question at the hearing may submit the question, in writing, at the registration desk. The presiding officer will determine whether the question is relevant and material, and whether the time limitations permit it to be presented for answer. Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection by the DOE Freedom of Information Reading Room, Room 5B-180, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

In consideration of the foregoing, the Department of Energy proposes to amend Chapter II, Title 10 of part 456 of the Code of Federal Regulations, as set forth below.

(Part 1 of Title II of the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3206 *et seq.*, as amended by Title V, Subtitle B of the Energy Security Act, Pub. L. 96-294, 94 Stat. 611 *et seq.*; Department of Energy Organization Act, Pub. L. 95-91, 91 Stat 565 *et seq.*, 42 U.S.C. 7101 *et seq.*)

Issued in Washington, D.C., on October 1, 1980.

T. E. Stelson,

Assistant Secretary, Conservation and Solar Energy.

1. In 10 CFR Part 456, the citation of authority is revised to read as follows:

Authority: Part 1 of Title II of the National Energy Conservation Policy Act, Pub. L. 95-619 92 Stat. 3206 *et seq.*, as amended by Subtitle B of Title V of the Energy Act, Pub. L. 96-294, 92 State. 611 *et seq.*; Department of Energy Organization Act, Pub. L. 95-91, 92 Stat. 565 *et seq.*, 42 U.S.C. 7101 *et seq.*

2. In 10 CFR Part 456, Subpart E of the Table of Contents is amended to read as follows:

Sec.
456.504 Exemption for utility subcontractor supply and installation.
456.505 Exemption for existing supply and installation.
456.506 Exemption for supply and installation authorized by State or local law.
456.507 Waivers.
456.508 Notification.
456.509 Procedures for obtaining determinations and waivers.
456.510 Appeals.

3. 10 CFR 456.101 is amended to read as follows:

§ 456.101 Purpose and scope.

This part contains the regulations to implement Part 1 of Title II of the National Energy Conservation Policy Act, Pub. L. 95-619 (reference to NECPA hereinafter refer to Part 1 of Title II of the Act), as amended by Subtitle B of Title V of the Energy Security Act (ESA), Pub. L. 96-294. NECPA requires the establishment of utility programs to encourage and facilitate the installations of energy conservation measures and renewable resource measures.

§ 456.103 [Amended]

4. 10 CFR 456.103(a) is amended by inserting the phrase ", or 456.507" following the citation "§ 456.502-456.505."

§ 456.105 [Amended]

5. 10 CFR § 456.105(j) is amended to read as follows:

* * * * *

(j) *Measure Warranties.* (1) The term "manufacturer's measure warranty" means, at a minimum, a written warranty by the manufacturer of an energy conservation or renewable resource measure to the eligible customer for whom the measure, is installed, the installation contractor who installs the measure, and the supplier of the measure, that such manufacturer shall replace within a reasonable period of time and at no charge, parts or materials for those measures found within one year from the date of installation to be defective due to materials, manufacturer, or design;

(2) The term "supplier's measure warranty" means, at a minimum, a written warranty equivalent to that referred to in § 456.105(j)(1) above, by the supplier of an energy conservation or renewable resource measure provided to persons who purchase the measure from such supplier.

(3) The term "contractor's measure warranty" means, at a minimum, a written warranty by a contractor installing an energy conservation or renewable resource measure that any defect in materials, manufacturer, design, or installation found within one year from the date of installation shall be remedied without charge and within a reasonable period of time.

6. 10 CFR § 456.105 is amended by deleting subparagraph (ee), the definition of "Useful life."

§ 456.208 [Amended]

7. 10 CFR 456.208(a)(8) is amended to read as follows: The prohibition against supplying and installing by covered utilities described in § 456.502(a)."

8. 10 CFR 456.208(c) is amended to read as follows:

* * * * *

(c) *Time for submission.* A proposed Temporary Program shall be submitted to the Assistant Secretary within 180 days of the effective date of the rules promulgated pursuant to Section 549(b) of the Energy Security Act (Pub. L. 96-294, June 30, 1980).

§ 456.304 [Amended]

9. 10 CFR 456.304(a) is amended by deleting the phrase "pursuant to §§ 456.503-456.505."

10. 10 CFR 456.304(d) is amended by deleting the phrase "pursuant to §§ 456.503-456.505."

11. 10 CFR §§ 456.304(d)(2) and (3) and (3) revised and a new paragraph (4) is added to read as follows:

* * * * * *

(d) * * *

(2) Conduct such activities in a manner which does not have a substantial adverse effect upon competition or involve the use of unfair, deceptive, or anticompetitive acts or practices and in a manner which complies with § 456.504;

(3) When undertaking to finance a lending program for such measures through financial institutions, seek funds for such financing from financial institutions located throughout the area covered by the lending program (to the extent each such utility determines feasible, consistent with good business practice, and not disadvantagous to its customers);

(4) In the case of any State plan which does not prohibit utility supply and installation of such measures, will undertake such supply or installation in accordance with procedures which are consistent with the requirements of § 456.504.

12. 10 CFR 456.304, insert a new § 456.304(e) as follows:

(e) Require any utility undertaking a program involving the supply or installation of any energy conservation or renewable resource measures as premitted by § 456.504 or providing financing for the purchase or installation

of any such measure to notify the Assistant Secretary when such program becomes effective.

§ 456.305 [Amended]

13. 10 CFR 456.305(a) is amended by deleting paragraph (a)(1), renumbering paragraphs (a)(2)—(a)(6) as (a)(3)—(a)(7) and inserting new paragraphs (a)(1) and (a)(2) to read as follows:

(a) * * *

(1) The measure warranties defined in § 456.105(j)(1) and (2) with respect to any program or State measure;

(2) The measure warranties defined in § 456.105(j)(1), (2), and (3) with respect to any program or State meaure.

14. 10 CFR 456.305(b) is amended by deleting the reference to paragraphs "(a)(1)—5" and inserting "(a)(2)—(6)" in lieu thereof.

15. 10 CFR 456.305(c) is amended by deleting the reference to paragraphs "(a)(4) and (5)" and inserting "(a)(5) and (6)" in lieu thereof.

16. 10 CFR 456.305(d) is amended by deleting the reference to paragraphs "(a)(1), (4), and (5)" and inserting "(a)(1), (3), (5), and (6)" in lieu thereof.

§ 456.310 [Amended]

17. 10 CFR 456.310(b) is amended by deleting paragraphs (b)(2), (b)(3), and (b)(5).

18. 10 CFR 456.310(b) is amended by inserting new paragraphs (b) (2) and (3) to read as follows, and by deleting paragraphs(c):

* * * * *

(b) * * *

(2) The following program elements shall be recovered in the manner specified by the State regulatory authority (in the case of a regulated utility) or the nonregulated utility, except that the amount that may be removed directly from a residential customer for whom the activities described in § 456.310(b)(2)(ii) are performed shall not exceed a total of $15 per dwelling unit or the actual cost of such activities, whichever is less:

(i) Administrative and general expenses, including those associated with program audits, customer billing services, and arranging.

(ii) Project management requirements, including:

(A) The providing of program audits;

(B) The arranging for a lender to make a loan to a eligible customer to finance the purchase and installation costs of energy conservation and renewable resource measures, including the cost of conducting conciliation conferences pursuant to § 456.315(a);

(C) The arranging to have the program measures installed, including any costs of conducting post-installation inspections pursuant to § 456.313 and of conducting conciliation conferences pursuant to § 456.315(a);

(D) List distribution.

(3) In determinmg the amount to be recovered directly from customers as provided under subparagraph (2) above, the State regulatory authority (in the case of a regulated utility) or the nonregulated utility shall take into consideration, to the extent practicable, the customers' ability to pay and the likely levels of participation in the utility program which will result from such recovery.

(c) (Deleted).

§ 456.311 [Amended]

19. 10 CFR § 456.311(b) is amended to read as follows:

* * * * *

(b) *Repayment of loans.* (1) In the case of any loan arranged by a public utility pursuant to § 456.309, the utility, at the request of the lender, shall permit repayment of the loan as part of the periodic utility bill. The utility may recover from the lender the cost incurred by the utility in carrying out such manner of repayment.

(2) In the case of any loan for the purchase or installation of program measures made by a particpating home heating supplier under the Residential Conservation Service Program, or under the circumstances described in the State Plan pursuant to § 456.305, by a lender other than that participating home heating supplier—

(i) The participating home heating supplier shall permit the eligible customer to include repayment of that loan in such customer's payment of his periodic utility or fuel bill over a period of not less than three years, unless the eligible customer chooses a shorter repayment period. A participating home heating supplier shall not be required to provide for periodic payments of less than five dollars.

(ii) A lump-sum payment of outstanding principal and interest may be required by the lender upon default (as determined under applicable law) in payment by the eligible customer.

(iii) No penalty shall be imposed by an home heating supplier or any other lender arranged with by the home heating supplier for payment of all or any portion of the outstanding loan amount prior to the date such payment would otherwise be due.

§ 456.312 [Amended]

20. 10 CFR § 456.312(b)(1)(ii) is amended to read as follows:

* * * * *

(b) * * *

(1) * * *

(ii) Install only measures covered by the measure warranties defined in: (A) § 456.105(j)(1) or (2) and (B) § 456.105(j)(3);

21. 10 CFR 456.312(b)(2)(i) is amended to read as follows:

* * * * *

(b) * * *

(2) * * *

(i) With respect to the program measures the supplier is listed as carrying, supply program measures that carry the measure warranties defined in § 456.105(j)(1) or (2);

22. 10 CFR 456.312(b)(3) is amended by deleting paragraph (ii) and renumbering paragraphs (iii) and (iv) as (ii) and (iii) respectively.

§ 456.317 [Amended]

23. 10 CFR 456.317(c)(7)(ii) is amended to read as follows:

(ii) Section 456.318(a)(6), except that the Governor may waive § 456.318(a)(6)(v) concerning the accounting of program costs; and * * *

§ 456.318 [Amended]

24. 10 CFR 456.318(a) is amended by inserting a new § 456.318(a)(3) as follows:

* * * * *

(a) * * *

(3) A list of covered utilities subject to the State plan engaged in supplying or installing energy conservation or renewable resource measures pursuant to § 456.504 (Exemption for Utility Subcontractor Supply and Installation) of these rules, and a brief description with respect to each utility of the nature of the exempted activity in which it is engaged;

25. 10 CFR 456.318(a)(3) is renumbered § 456.318(a)(4) and the citation "§ 456.504" is amended to read "§ 456.505".

26. 10 CFR 456.318(a)(4) is renumbered § 456.318(a)(5) and the citation "§ 456.505" is amended to read "§ 456.507".

27. 10 CFR 456.318(a) is amended by renumbering §§ 456.318(a)(5) through 456.318(a)(13) as §§ 456.318(a)(6)—456.318(a)(14).

28. 10 CFR 456.501(a) is amended to read as follows:

§ 456.501 Scope and definitions.

(a) This subpart contains the prohibition against a utility's supply and installation of energy conservation and renewable resource measures. It specifies the exemptions to this prohibition and the procedures, where applicable, for obtaining those exemptions. It also sets forth certain

requirements concerning utility financing programs.

* * * * *

§ 456.502 [Amended]

29. In 10 CFR 456.502(a), the phrase, "may supply install or finance the supply or installation of" is amended to read "may supply or install".

30. 10 CFR 456.502(b), is amended by inserting the phrase "or § 456.507" following the citation "§§ 456.503—456.505".

31. 10 CFR 456.502(b)(2) is amended to read as follows:

* * * * *

(b) * * *

(2) Such loans made, or supply or installations carried out, by such utility have a substantial adverse effect upon competition or involve the use of unfair, deceptive, or anticompetitive acts or practices, or are being carried out in a manner that does not comply with § 456.504.

* * * * *

§ 456.503 [Amended]

32. 10 CFR 456.503(a), is amended by deleting the "(a)" and by revising the phrase "supply, installation, or financing" to read "supply or installation".

33. 10 CFR 456.503(b), is amended by deleting paragraph (b) in its entirety.

34. 10 CFR 456.504 is amended by renumbering the existing paragraph as § 456.505, and inserting a new § 456.504 which reads as follows:

§ 456.504 Exemption for utility subcontractor supply and installation.

(a) The prohibition contained in § 456.502(a) shall not apply to any energy conservation measure or renewable resource measure supplied or installed by a public utility under the Program through contracts between such utility and independent suppliers or contractors where the customer requests such supply and installation and each supplier or contractor:

(1) Is on the list of suppliers and contractors referred to in § 456.312;

(2) Is not subject to the control of the public utility, except as to the performance of such contract, and is not an affiliate or a subsidiary of such utility; and,

(3) If selected by the utility, is selected in a manner consistent with § 456.504(b).

(b) Activities of a public utility conducted pursuant to § 456.504(a)(3):

(1) May not involve unfair methods of competition;

(2) May not have a substantial adverse effect on competition in the area in which such activities are undertaken nor result in providing to any supplier or contractor an unreasonably large share of contracts for the supply or installation of energy conservation or renewable resource measures;

(3) Shall be undertaken in a manner that provides, subject to reasonable conditions the utility may establish to ensure the quality of supply and installation of energy conservation or renewable resource measures, that any financing by the utility of such measures shall be available for the supply or installation by any contractor on the lists referred to in § 456.312 or for the purchase of such measures to be installed by the customer;

(4) Shall be undertaken, to the extent practicable and consistent with § 456.504(b)(1)–(3), in a manner that minimizes the cost of energy conservation and renewable resource measures to such customers; and

(5) Shall include making available upon request a current estimate of the average price of supply and installation of energy conservation and renewable resource measures subject to the contracts entered into by the public utility under § 456.504(a).

35. The former 10 CFR 456.504, now renumbered as § 456.505, is amended to read as follows:

§ 456.505 Exemption for existing supply and installation.

(a) The prohibition in § 456.502(a) shall not apply to any supply or installation of any energy conservation or renewable resource measure that the covered utility was engaged in on November 9, 1978:

(1) During such time as applications for determinations with respect to such activities, filed in accordance with § 456.509, are pending; and

(2) Upon a final determination that, on or by November 9, 1978, such energy conservation or renewable resource measure was being supplied or installed by the utility seeking such determination.

(b) The prohibition in § 456.502(a) shall not apply to any supply or installation of any energy conservation or renewable resource measure which the covered utility had by November 9, 1978, broadly advertised that it would supply or install, or with respect to which the utility had by November 9, 1978, completed substantial preparations for supplying or installing:

(1) During such time as applications for determinations with respect to such activity filed in accordance with § 456.509 are pending; and

(2) Upon a final determination that, on or by November 9, 1978, such energy conservation or renewable resource measure had been broadly advertised or for which substantial preparations had been completed by the utility seeking such determination.

§§ 456.505 and 456.507 [Redesignated]

36. 10 CFR § 456.505 is renumbered § 456.507 and the citation "§ 456.507" is amended to read "§ 456.509".

37. 10 CFR § 456.506 is amended to read as follows:

§ 456.506 Exemption for supply and installation authorized by State or local law.

(a) The prohibition in § 456.502(a) shall not apply to any supply or installation of any energy conservation or renewable resource measure:

(1) In which a State or local law or regulation required or explicitly permitted a covered utility to engage; or

(2) Which the Attorney General of the appropriate State certifies to the Assistant Secretary was intended by a State law or regulation in effect on November 9, 1978, to be required or permitted.

(b) A covered utility is exempt from any Federal requirement to include in its RCS program any supply or installation of any energy conservation or renewable resources measure in which it is engaged by reason of a State law or regulation in effect prior to November 9, 1978, permitting or requiring such activities. However, a covered utility that includes supplying and installing in its RCS program pursuant to the exemption in paragraph (a) shall be subject to all the requirements of the Federal RCS Plan with respect to those activities in the same manner as any contractor, supplier, or lender, except that it shall be exempt from the requirements of § 456.310 (Accounting and Payment of Costs) and § 456.311 (Customer Billing, Repayment of Loans, and Termination of Service) with respect to such activities.

§§ 456.507 and 456.509 [Redesignated]

33. 10 CFR 456.507 is renumbered § 456.509 and the citations "§ 456.504" and "§ 456.505" are amended to read "§ 456.505" and § 456.507" respectively.

§§ [Redesignated]

39. 10 CFR, § 456.508 is renumbered § 456.510 and a new § 456.508 is inserted which reads as follows:

§ 456.508 Notification.

Each utility undertaking a program involving the supply or installation of any energy conservation or renewable resource measure as permitted under § 456.504, or providing financing for the purchase or installation of any such measure, must notify the Assistant Secretary when such program becomes effective.

[FR Doc. 80-31331 Filed 10-7-80; 8:45 am]

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October 8, 1980

Part IV

Department of Energy

Office of Conservation and Solar Energy

Energy Auditor Training and Certification Grants; Proposed Rulemaking and Public Hearing

DEPARTMENT OF ENERGY

10 CFR Part 457

[Docket No. CAS-RM-80-120]

Energy Auditor Training and Certification Grants; Proposed Rulemaking and Public Hearing

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy (DOE) proposes to implement the Energy Auditor Training and Certification Program pursuant to Subtitle F of Title V of the Energy Security Act (ESA), Pub. L. 96-294, 794 Stat. 611 *et seq.* The purpose of the program is to provide grants to States to encourage the training and certification of individuals to conduct energy audits of residential and commercial buildings.

Energy audits are defined for the purposes of this Part in accordance with Sections 215(b)(1)(A) and 710(b)(7) of the National Energy Conservation Policy Act (NECPA), relating to the Residential Conservation Service (RCS) program (10 CFR 456). The RCS program requires large electric and gas utilities to provide their residential customers who receive fuel bills in dwellings of one-to-four units with specific information and various services including an on-site audit of their home upon request. The Congress anticipated that their would not be enough persons qualified to respond to the number of audit requests expected to be generated by RCS and other audit programs, and therefore included Subtitle F in ESA. While the Training and Certificates Program is independent of RCS, DOE recognizes that the major on-site auditing effort in one-to-four unit dwellings will be done in connection with RCS. Therefore, DOE has attempted to integrate and coordinate this proposed rulemaking with RCS requirements to the maximum extent possible.

In this proposed rulemaking, DOE defines the minimum requirements for submission and content of State applications, training of single to four unit residential auditors, content of training curriculum, standards for certification, and reciprocity. Sections on training and certification of commercial building auditors are reserved.

DATES: Written comments must be received by November 24, 1980 4:30 p.m., e.s.t. in order to ensure their consideration. A hearing will be held at 9:00 a.m. on October 30-31, 1980.

ADDRESSES: Comments and requests to speak at the hearings should be addressed to: Carol Snipes, Office of Conservation and Solar Energy, Department of Energy, Room IF-085, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Copies of the model auditor training manual described in § 457.403 have been distributed to all States and utilities participating in the RCS program. Copies can be purchased for the cost of reproduction ($15) at: Energy Training and Education Center, 82 Lake Street, Northamption, MA 01060.

Copies of the model audit noted in § 457.403 and 457.404 can be obtained through: Energy Training and Education Center, 82 Lake Street, Northampton, MA 01060.

In addition both the model audit and auditor training manual are available for inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday in the DOE Reading Room, Room 5B-180, Forrestal Building, 1000 Independence Avenue, S.W.

A public Hearing will be held at 2000 M Street, N.W., Room 2105, Washington, D.C.

FOR FURTHER INFORMATION CONTACT:
James R. Tanck, Acting Director, Building Conservation Services Division, Department of Energy, Room GH-068, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-9161.

Daniel Ruge, Office of General Counsel, Room 1E-254, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-9519.

SUPPLEMENTARY INFORMATION:

I. Introduction.
II. Subpart A—General Provisions and Definitions.
III. Subpart B—Submission, Approval and Administration of Grants.
IV. Subpart C—Content of Grant Applications.
V. Subpart D—Requirements for Training Residential Building Auditors.
VI. Subpart E—Requirements for Training of Commercial Building Auditors.
VII. Subpart F—Requirements for Certification of Residential Auditors.
VIII. Subpart G—Requirements for Certification of Commercial Auditors.
IX. Regulatory Analysis and Urban and Comminity Impact Assessment.
X. Executive Order 12044.
XI. National Environmental Policy Act Review.
XII. Consulatation with Other Federal Agencies.
XIII. Contractor Contributions to the Rulemaking.
XIV. Comment and Hearings Procedures.

I. Introduction

The Department of Energy (DOE) hereby proposes regulations which will set forth the requirements of Section 581 of Subtitle F of Title V, of the Energy Security Act (ESA) (Pub. L. 96-294, 794 Stat. 611 *et seq.*). The purpose of Subtitle F is to encourage the training and certification of individuals to conduct energy audits of residential and commercial buildings in order to serve the Nation's various public and private needs for energy audits. Energy audit is defined as an inspection as described in Section 215(b)(1)(A) of NECPA or an energy audit as defined in Section 710(B)(7) of NECPA and, for the purposes of this Part may include installation energy-related improvements in buildings.

The RCS program requires all large electric and gas utilities (those with annual retail sales of 750 million Kwh for electric and 10 billion cubic feet for gas and which have residential customers) to provide their residential customers in one-to-four unit dwelling with information on specific energy-saving practices and energy conservation and renewable resource measures appropriate to their home. It also requires them to provide various services upon request including an on-site energy audit of their home.

The RCS program will be implemented by covered utilities and participating home heating suppliers under State Plans (including Puerto Rico, the District of Columbia, and the Tennessee Valley Authority) within six months of DOE approval. In States choosing not to submit plans, investor-owned, covered utilities will be ordered by the Secretary to comply with a Federal RCS Plan; covered nonregulated, municipal utilities in such States will be required to develop and implement their own plans.

The on-site audit (as defined in 10 CFR 456.307) is a crucial element of the RCS program and the regulations set forth criteria to ensure that persons who perform RCS program audits are qualified (10 CFR 456.314). DOE has developed a model auditor training curriculum which statisfies the RCS requirements. (See summary for availability.)

Congress anticipated that the RCS and other audit programs would stimulate a demand for audits which cannot be met in a timely fashion by the existing number of persons qualified to conduct such audits and therefore enacted Subtitle F of the ESA.

Subtitle F establishes the 2-year Energy Auditor Training and Certification Program and specifies that grants only be made to State Governors upon DOE approval of applications. In these proposed regulations, DOE defines the minimum requirements for

submission and content of State applications; training of single to four unit residential auditors; content of training curriculum; criteria for certification; and reciprocity. DOE intends to propose regulations for training and certification of auditors of multifamily and commercial buildings to coincide with the second year of the grant program and the effective date of RCS expansion (January 1, 1982) to include such buildings as provided in the ESA.

DOE recognizes that the major on-site auditing effort in one-to-four unit dwellings will be done in connection with the RCS program beginning in 1981. Therefore, DOE has attempted to integrate and coordinate these proposed regulations with the RCS requirements to the maximum extent possible, while at the same time recognizing that the proposed rule is independent of the requirements of the RCS program (10 CFR Part 456).

DOE proposes to accept applications from all States, including those which have elected not to participate in the RCS program to encourge training and certification of the maximum number of residential auditors. DOE/believes this is consistent with Congressional intent. DOE recognizes that some State applicants will have funded RCS auditor training programs before financial assistance is available under these proposed regulations, and is therefore proposing to accept applications for funds to train other residential building auditors (non-RCS auditors) or to train and/or test inspectors or installers of conservation or renewable resource measures as long as applicants indicate that RCS program needs have been met adequately. However, preference must be demonstrated in the applications for training and certifying RCS auditors prior to training other groups in order to meet the anticipated demand for qualified auditors to be generated by this nationwide program.

Unlike the RCS regulations, this proposed rule specifies auditor training curriculum requirements and requires States to detail alternative curriculum to be used which is not DOE's model auditor training curriculum. These proposed regulations also establish procedures for certifying qualified auditors.

Subtitle F leaves most of the decisions to DOE on how grant funds are to be allocated to States under this program. However, the conferees did indicate that funds should be made available to all States on the basis of State program scope and should not be limited to just a few States. These proposed regulations set forth the formula for distribution of available funds under this program.

As proposed, these regulations provide States the opportunity to shape auditor training and certification programs to meet individual State needs.

II. Subpart A, General Provisions and Definitions

DOE proposes to incorporate many of the definitions used in the RCS regulation (10 CFR 456.105) for this rulemaking. In addition, some new terms have been included.

DOE has defined the term "applicant" to mean a State RCS lead agency or its functional equivalent with responsibility for energy conservation programs or such other entity as designated by the Governor. The definition is designed to allow for State discretion in cases where an RCS lead agency is the regulatory authority and lacks appropriate resources and experience to conduct such training and certification programs, or where there is no RCS lead agency designated by the Governor to submit an RCS State Plan. DOE solicits comments on the problems that may arise in cases where the regulatory authority as applicant is responsible for the certification aspects of this program.

The definition for the term "lead agency" is derived from the RCS regulation (10 CFR 456.202(a)) and means an agency either designated by the Governor to develop and submit an RCS State Plan or specifically authorized by law to develop and submit such a plan.

DOE has defined the term "State" in accordance with Subtitle F to include any State, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. This definition differs from that in the RCS regulation by its omission of the Tennessee Valley Authority (TVA) and its inclusion of the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. DOE does not anticipate that TVA will be excluded from auditor training and certification opportunities since the States serviced by TVA may submit grant applications.

III. Subpart B, Submission, Approval and Administration of Grants

A. Financial Assistance

DOE proposes to allocate funds under this program to States in two 12-month cycles upon approval of separate applications for each cycle. The first cycle will be limited to training and certification of auditors of one-to-four unit residential buildings, while the second cycle will provide funds to States to train and certify auditors of multifamily and commercial buildings. One-half of the funds to be awarded to an applicant would be made available through a letter of credit immediately after the awarding of grant award. The second half would be available upon approval of an interim report. DOE has specified the content of such reports in § 457.206 of this rule.

Congress did not specify the funding formula for DOE to use in distributing available funds to grant applicants. However, the Conference Report on the legislation indicates that distribution of funds should be on the basis of program scope and should not be concentrated in only a few States. DOE considered several methods including an allocation based on competition and several formulas before proposing the formula in § 457.202(c)

DOE rejected a competitive award approach because of the potential that some States would be excluded from participation as a result. DOE also decided against using an equal share formula because it would not take into consideration such factors as the larger number of auditors needed to serve States with a greater number of eligible residential buildings.

DOE has chosen instead a three-part allocation method based on fixed cost, scope and the relative number of buildings to be audited in each State. DOE believes that all grantee States will encounter similar fixed costs ot plan and implement this program regardless of State size or number of dwelling units. Therefore, the proposed funding formula provides $50,000 to cover each grantee's administrative expenses. However, DOE does not intend to limit State use of funds for specific purposes to predetermined percentages of total grants or require that the full amount of $50,000 be used for administrative costs.

DOE proposes to allocate the remainder of available funds on the basis of a ratio of a State's eligible units to the total number of units in the Nation. Of this remainder of available funds, 70% will be apportioned to States who implement auditor training programs, whether or not they implement an auditor certification program. An additional 30% will be apportioned to those States who implement and require auditor certification. Because certification affords a level of quality control beyond training, DOE proposes to provide an additional incentive to those States which certify their auditors in accordance with the criteria in Subpart F.

In order to obtain the most up-to-date information on housing stock, DOE proposes to use the 1970 Census of Housing Statistics and estimate the 1978 statistics by adding the appropriate housing units constructed between 1970 and 1978 in each State and subtracting the housing units in buildings demolished during that time period. Such data is available by State from the Bureau of the Census, and represents approximately 80 percent of all residential units.

The ratio of State units to national units is proposed as the multiplier because the number of units will be a major factor in determining the number of audit requests and the number of auditors seeking training and certification. DOE considered but rejected using weighted degree days because such a factor does not have a major impact on the number of auditors needed to satisfy audit requests in a State.

DOE seeks comment on the use of this three-part formula.

B. Limitation on the Use of Grant Funds

DOE proposes to place four restrictions on the use of grant funds. During the first year of this 2-year program, DOE would limit the use of funds to the training and certification of auditors of one-to-four unit residential buildings. DOE intends to allow States flexibility for using second-year funds but will give priority to training and certifying multifamily and commercial building auditors. In view of the fact that DOE has developed a model auditor training curriculum, DOE believes that grant funds allocated under this program should not be used for alternative curriculum development. DOE acknowledges that its auditory training curriculum may not address certain special needs. Therefore, although these grant funds may not be used for curriculum development, they may be used to modify or adapt portions of the curriculum to suit particular State circumstances. DOE has also worked with the private sector to encourage development of a certification system, and therefore, DOE proposes to prohibit use of these grant funds for certification development. Purchase of training curricula or certification tests would be an acceptable program expenditure. The fourth proposed restriction is that grant funds may only be used for training for Class A, on-site auditors.

The legislation requires States to assure that grants under this Part supplement and not supplant other funds available for training and certification. DOE has interpreted the phrase "other funds" to apply only to other Federal, State or local funds so that participating utilities and home heating suppliers that have expended funds on auditor training may benefit from the grants to the same extent as utilities or fuel suppliers that have not yet begun such programs. DOE solicits comments on this section with specfic attention to the limitation on the definition of "other funds."

DOE considered and rejected proposing additional restrictions on State use of these grant funds. While States are required, as part of the application and reporting requirements to supply detailed budget information, they will not have to expend funds in accordance with any DOE imposed percentage criteria for various planning and implementation activities. Funds may be used for salaries, rental of institutional facilities, purchase of materials and equipment, including those of a capital nature, upon approval of DOE and consistent with Federal Management Circular 74–4: Cost Principles Applicable to Grants and Contracts with State and Local Governments. States also may use grant funds to pay for services performed by contractors, subgrantees and other government agencies to support planning and implementation of the program.

C. Procedures for Submission and Approval of Grant Applications

DOE has attempted to provide adequate time for States to prepare and submit grant applications and award grants on a timely basis. Although there is a provision proposed to allow for extensions for application submission, DOE would not permit any extension in excess of 30 days, because of the need for expeditious program implementation. DOE also intends to work closely with applicants as needed to comply with the criteria of Subpart C in an effort to award grants to as many interested States as possible.

D. Reports and Recordkeeping

DOE proposes to require grantees to submit semi-annual and final reports. Approval of the semi-annual reports will be a precondition to award of the second half of grant funds allocated for each program cycle.

The reports would provide DOE with information on the status of each program and analysis of any instances where the actual number of persons trained and-or certified falls short of the number projected in the State's grant application, as well as recommendations for necessary changes to the program to compensate for any such discrepancies. DOE also proposes to require financial recordkeeping statements to account for expenditure of funds awarded under this grant program.

IV. Subpart C, Content of Grant Applications

DOE proposes to require grant applicants to provide a descriptive narative of proposed training and certification program planning, implementation and monitoring activities as well as a proposed budget based on quarterly expenditure of funds received. In cases where a State proposes to use grant funds for specified purposes other than to train and certify RCS auditors (i.e., for inspectors or installers), the applicant would be required to indicate how RCS auditor needs will be met through other sources. The applicant would in such cases, provide details and a justification for the alternative use of grant funds.

V. Subpart D, Requirements for Training Residential Building Auditors

A. Training Availability

DOE is proposing that all applicants be required to offer auditor training to all eligible persons. The following options were considered:

- Mandatory vs. voluntary training programs,
- Inclusion in the training program of only RCS auditors vs. open enrollment.

DOE is proposing that States may determine for themselves whether training should be a prerequisite for auditor certification. DOE is also proposing that the training program be offered to any eligible State resident, rather than only RCS auditors. States, in providing auditor training and certification programs, are encouraged to take positive and measurable steps toward increasing the use of disadvantaged business persons and minorities. The State must demonstrate, however, that sufficient training programs are available to accommodate all RCS auditors in an expeditious manner. RCS auditors should be given priority to receive training over other auditors. Once the State demonstrates that RCS auditors will be trained and certified, the State has considerable flexibility in using the grant funds for other training and certification such as for other auditors, installers, or inspectors. DOE seeks comment on this approach.

DOE considered the options of requiring a single State agency to perform all training functions or allowing States to opt for decentralized training by various units including utilities and home heating suppliers. DOE's preference is for a single agency.

This approach would result in uniformity and would be more easily monitored. DOE realizes, however, that under the RCS program many States intend to use utilities as training centers, both because the program is based in utility service areas and because in many instances the State RCS plan will allow the utility to expense training costs, thereby reducing potential State costs.

DOE proposes to allow States to be flexible in determining administration of training programs. In any event, States must review the content of all training programs and will be required in the plan submission to indicate measures for assuring quality control. DOE specifically solicits comments on this approach with regard to what role DOE ought to pay in providing States with assistance in establishing guidelines for quality control.

DOE's experience demonstrates that it takes a *minimum* of 2 weeks in the classroom and 1 week in the field to properly train energy auditor candidates when DOE materials are used. However, depending on the educational background and experience of any specific auditor trainee group, training time may vary.

DOE has also found that a follow-up session for all trainees after they have had some field experience greatly contributes to the quality of the audits they conduct. Given the complexity and importance of the energy audit, the refresher session reinforces correct applicant of energy audit methods, insures that trainees did not miss important procedures and/or adopt incorrect practices, and allows trainees to ask the questions that invariably come up when they are out on their own. DOE strongly encourages States to include follow-up sessions in their auditor training programs.

B. Content of Auditor Training

DOE is proposing, that, at a minimum, the course content of a State training curriculum be essentially equivalent to the model autitor training curriculum developed by DOE for the RCS program. The requirements contained in the proposed rule are substantially identical to those contained in 10 CFR 456.314. DOE recognizes, however, that all auditors may not wish to be qualified in all areas. DOE therefore proposes that, in addition to offering a comprehensive auditor training curriculum, States have the option to divide the content of the auditor training curriculum into any of the following alternatives:

(1) An auditor training curriculum which includes only those portions relating to the mechanical systems.

(2) An auditor training curriculum which includes only those portions relating to energy conservation measures, not including those relating to the mechanical systems;

(3) An auditor training curriculum which includes only those portions relating to renewable resource measures;

(4) Any combination of the above.

This will allow, for instance, auditors who specialize in furnace efficiency, to become certified and/or training in only that area. DOE encourages States to require auditors to become qualified in all aspects of energy analysis, but has not proposed requiring States to adopt this approach. DOE solicits comments on the impact of this approach on auditor quality, on RCS, on ease of implementation, and on reciprocity.

In an effort to provide assistance to States, a complete auditor training curriculm (including student manual, instructor's guideline and visual aids) has already been provided to States participating in the RCS program. (See *Summary* for availability.)

C. Instructor Qualifications

Because the quality of instruction largely determines the quality of the entire training program, DOE is proposing specific criteria for auditor training instructors. DOE seeks comment on the appropriateness of the critria listed.

In an effort to provide assistance to States, DOE will conduct an unspecified number of train-the-trainer programs. These will be conducted in October and November 1980.

VI. Subpart E, Requirements for Training of Commercial Building Auditors—

DOE is proposing that this Subpart be reserved because, to date, no DOE or RCS audit requirements exist for commercial buildings. In addition, because grant money is not available for training and certifying commercial auditors until fiscal year 1982, States will have sufficient time to submit a second application.

DOE will offer technical assistance to States by providing a model commercial audit, and a model training curriculum for commercial auditors.

VII. Subpart F, Requirements for Certification of Residential Auditors

DOE considered several approaches for certification. Because DOE recognizes that all States do not have the flexibility to implement an auditor certification system, certification is not a requirement for the grant funds. Nevertheless, certification will contribute substantially to auditor quality and to the standardization of auditor quality. DOE has therefore provided a funding incentive to those States who provide opportunities for certification and require it as a prerequisite to conducting audits. Proposed here are guidelines which can be used to develop certification programs. These guidelines, however, serve only as a framework, and, in most instances, the decisions on specific certification requirements are left to the States

At a minimum, developing a certification program includes: (a) establishing criteria that auditor trainees must meet to become certified; (b) providing a validation procedure; (c) establishing a system of administration; (d) addressing reciprocity for those energy auditors who perform duties in more than one State and/or transfer residence to another State; (e) determining how often certification applications are reviewed and accepted; and (f) deciding what, if any, fee to charge for certification. These program development issues are discussed below.

DOE seeks comment on whether or not (a) the certification funds provide a large enough incentive to encourage States to establish certification programs; and (b) States which cannot implement certification programs should be able to propose alternative quality control programs and quality for the certification funds.

As was discussed previously, DOE proposes to prohibit the use of grant funds for developing certification examinations. This prohibition is proposed because DOE has encouraged private, nationally-oriented certification companies to develop written examinations and energy auditor certification services. DOE has determined that if the private sector can provide these certification program components, States will be spared the costly and time consuming development work. Furthermore, the national orientation of these companies will help provide some uniformity to certification programs across the country. National uniformity is especially helpful to those auditors who work for utilities which serve more than one State and those who change residence from one State to another. DOE encourages States to use the services of these companies and to benefit from their development work. Although DOE proposes that funds not be used to develop examinations, the funds can be used to modify existing certification programs.

A. discussion of specific certification issues for those States which choose to

apply for the certification funds follows below:

A. Criteria for Auditor Certification

At a minimum, DOE proposes that all auditor certification candidates take a written examination. It is proposed that those candidates who have not also completed the approved training program, take a practical examination in addition. This is included to assure that all auditors, prior to becoming certified, will have some hands-on experience identifying certain construction types determining applicability of and identifying specific measures, taking actual measurements, etc. DOE recognizes the administrative and practical burden of conducting this type of test and has therefore allowed States to propose an alternative for evaluating the practical ability of an auditor certification candidate. DOE seeks comment on the importance of a practical examination, ways in which it might be administered, and alternatives to it.

The proposed criteria for certification examinations appear in § 457.605. The criteria provide a framework only and do not deal with specifics of the content. DOE seeks comment on the adequacy of this framework. For instance is the framework sufficiently detailed for States to evaluate a given auditor certification examination? Since the framework lacks specificity, what impact might this have on differences in the quality of certification programs from one State to another and therefore on reciprocity?

B. Validation

DOE has determined that someone must accept responsibility for validating the certification program against the criteria provided to ensure the integrity of the testing system. DOE therefore proposes two alternatives: either the State may validate the certification test, or, if requested, DOE will perform the service. DOE seeks comment on this approach.

C. Reciprocity

In § 457.610, DOE proposes that an auditor certified under the provisions of Subpart F be allowed to perform all responsibilities associated with a certified auditor in any other State for 6 months before requiring recertification. Recertification after the 6-month period would only be required when the certificaiton requirements differ from one State to another.

D. Certification Availability

DOE proposes that the State provide an opportunity for certification every five months. DOE also proposes that once the auditor certification requirements are completed, the auditor candidate would have to wait no more than one month for the results. This is included to ensure that (a) every effort is made to keep the certification process running swiftly, and (b) that a certified auditor in one state who changes residence to another and/or performs duties in another state will have an opportunity to be recertified before reciprocity expires.

E. Enrollment Fees

DOE is proposing to give States the option to charge enrollment fees for both training and certification if they desire as long as the fees do not result in a profit. DOE believes, however, that if fees are charged for certification, they should be less than $25 per person.

VIII. Subpart G—Requirements for Certification of Commerical Auditors

[This section has been reserved].

IX. Regulatory Analysis and Urban and Community Impact Assessment

The President, by Executive Order 12044 (as extended by Executive Order 12221, 45 FR 44249, July 1, 1980), has directed agencies of the Executive Branch to conduct a Regulatory Analysis of regulations that they prepare that are likely to have a major economic impact. Section 3(a) of the Executive Order directs the agencies to establish criteria to identify which regulations require regulatory analyses. DOE's implementing procedures are contained in DOE Order 2030 (44 FR 1032, January 3, 1979). In accordance with OMB Circular A-116, an Urban and Community Impact Assessment should be prepared when the proposed rule is a major policy and program initiative. This assessment should be incorporated into the Regulatory Analysis.

DOE has reviewed this proposal and has determined that because this is a voluntary assistance program which is primarily intended to impact upon the quality of audits performed and is not expected to significantly effect the number of audits performed, it will not be "major" because it will not have the kind or degree of effects which necessitate either a Regulatory Analysis or an Urban and Community Impact Assessment.

X. Executive Order 12044

Executive Order 12044, as extended generally requires agencies to provide the public at least 60 days to comment on proposed significant regulations. DOE Order 2030 contains a similar provision. DOE feels that for the reasons listed below it is necessary and reasonable to reduce the comment period to 45 days.

First, this rule as proposed is not "significant" inasmuch as it is not expected to effect important policy concerns or to engage substantial public interest. Secondly, utilities will very shortly begin implementing the RCS program. Grants timely received pursuant to these regulations when finalized would contribute greatly to the effectiveness of the RCS program.

XI. National Environmental Policy Act Review

In accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, DOE has reviewed this proposal and has determined that it does not constitute "a major Federal action significantly affecting the quality of the human environment" within the meaning of NEPA. Therefore, DOE has determined that neither an environmental assessment nor an environmental impact statement is required by NEPA or the applicable DOE guidelines for compliance with NEPA (45 FR 20694, March 28, 1980).

XII. Consultation With Other Federal Agencies

In preparing this Proposed Rule, DOE has not consulted with representatives of other Federal agencies.

XIII. Contractor Contributions to the Rulemaking

Xenergy Corporation assisted in the development of the proposed rule.

XIV. Comment and Hearing Procedures

A. Written Comments

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to today's proposed rule. Comments must be submitted by November 24, 1980, to the address indicated in the beginning of this preamble. Comments should be identified on the outside of the envelope and on documents submitted to DOE with the designation—"Auditor Tranining and Certification Grant Program" (Docket No. CAS-RM-80-120). Fifteen copies should be submitted. All comments received will be available for public inspection in the DOE Reading Room, Room 5B-180, Forrestal Building, 1000 Independence Avenue, S.W., between 8:00 a.m. and 4:00 p.m., Monday through Friday.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to

be confidential and exempt by law from public disclosure should submit one complete copy, and fifteen copies from which information claimed to be confidential has been deleted. In accordance with the procedures established in 10 CFR 1004.11, DOE shall make its own determination with regard to any claim that information submitted be exempt from public disclosure.

B. Hearing Request Procedures

The time and place of the public hearing are indicated in the date and addresses section of this preamble. DOE invites any person who has an interest in the proposed rulemaking issued today, or who is representative of a group or class of persons that has an interest in today's proposed rulemaking, to make a written request for an opportunity to make an oral presentation. Such a request should be directed to the address indicated in the addresses section of this preamble, must be received before October 17, 1980, and may be hand-delivered to such address, between the hours of 9:00 a.m. and 4:30 p.m. A request should be labeled both on the document and on the envelope "Auditor Training and Certification Grant Program," Docket No. CAS-RM-80-120.

The person making the request should briefly describe the interest concerned; if appropriate, state why she or he is a proper representative of a group or class of persons that has such an interest; and give a concise summary of the proposed oral presentation and a telephone number where she or he may be contacted during the day.

DOE will notify each person selected to appear at the hearings before October 24, 1980. Each person selected to be heard should bring 15 copies of his or here statement to the hearing location.

C. Conduct of Hearing

DOE reserves 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 hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination. At the conclusion of all initial oral statements, each person who has made an oral statement will, if time permits, be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any person who wishes to have a question asked at the hearing may submit the question, in writing, at the registration desk. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be asked.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made, and the entire record of the hearing, including the transcripts, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, Room 5B-180, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

In consideration of the foregoing, DOE hereby proposes to amend Chapter II of Title 10 of the Code of Federal Regulations, by establishing Part 457 as set forth below.

Issued in Washington, D.C., October 1, 1980.

T. E. Stelson,

Assistant Secretary, Conservation and Solar Energy.

10 CFR is amended by adding a new Part 457 entitled "Energy Auditor Training and Certification Grants" to read as follows:

PART 457—ENERGY AUDITOR TRAINING AND CERTIFICATION GRANTS

Subpart A—General Provisions and Definitions

Sec.
457.101 Purpose and scope.
457.102 Definitions.

Subpart B—Submission, Approval and Administration of Grants

457.201 Scope.
457.202 Financial assistance.
457.203 Initial submission.
457.204 Procedures for submission and approval of grant applications.
457.205 Suspension or termination of grants.
457.206 Reports and record keeping.
457.207 Administration of grants.

Subpart C—Content of Grant Applications

457.301 Scope.
457.302 Content of applications.

Subpart D—Requirements for Training Residential Building Auditors

457.401 Scope.
457.402 Training availability.
457.403 Content of auditor training.
457.404 Instructor qualifications.
457.405 Instructor selection.
457.406 Enrollment conditions.

Subpart E—Requirements for Training of Commercial Building Auditors (Reserved)

Subpart F—Requirements for Certification of Residential Auditors

457.601 Scope.
457.602 Certification availability.
457.603 Standards for certification.
457.604 Criteria for auditor certification.
457.605 Examination criteria.
457.606 Examination validation.
457.607 Certification agency.
457.608 Candidates notification.
457.609 Enrollment fees.
457.610 Reciprocity.

Subpart G—Requirements for Certification of Commercial Auditors [Reserved]

Authority: Part I, Title II of the National Energy Conservation Policy Act. Pub. L. 95-618, 92 Stat. 3206 *et seq.*, as amended; Subtitle F of the Title V of the Energy Security Act, Pub. L. 96-294, 794 Stat. 611 *et seq.*; Department of Energy Organization Act, Pub. L. 95-91 Stat. 565 *et seq.*; 42 U.S.C. 7101 *et seq.*

Subpart A—General Provisions and Definitions

§ 457.101 Purpose and scope.

This Part contains regulations to implement Subtitle F of Title V of the Energy Security Act, Pub. L. 96-294. References to the Energy Security Act or the Act hereinafter refer to Subtitle F of Title V of the Energy Security Act. It is the purpose of this Part to encourage the training and certification of individuals to conduct energy audits for residential and commercial buildings in order to facilitate the adoption of energy conservation practices and measures.

§ 457.102 Definitions.

For purposes of this part—

(a) The term "Assistant Secretary" means the Assistant Secretary for Conservation and Solar Energy of the U.S. Department of Energy.

(b) The term "applicant" shall be the lead agency, or its functional equivalent, designated by the Governor to submit the state's application with responsibility for energy conservation programs.

(c) The term "Budget Period" means a consecutive 12 month period for which financial assistance will be provided to carry out the activities of this Part.

(d) The term "Auditor Certification" means the process whereby a State attests that an individual is capable of performing an energy audit in accordance with the requirements of 10 CFR 456.307.

(e) The term "Class A Audit" means an energy audit in which the estimated costs and savings associated with the

installation of energy conservation and renewable resource measures are based on information collected on-site by a qualified energy auditor and analyzed by a qualified energy auditor.

(f) The term "Commercial Building" [Reserved]

(g) The term "DOE" means the Department of Energy.

(h) The term "Energy Audit" means an inspection as described in section 215(b)(1)(A) of the National Energy Conservation Policy Act or an energy audit as described in section 710(b)(7) of such Act, which in addition may provide information on the utilization of renewable resources and may include energy-related improvements in the building.

(i) The term "Energy Auditor" means an individual certified in accordance with the State program implemented under this Part to conduct energy audits and who has chief responsibility for preparing the cost and savings estimates resulting from such energy audit.

(j) The term "Governor" means the chief executive officer of a State including the Mayor of the District of Columbia, or a person duly designated in writing by the Governor to act upon his or her behalf.

(k) The term "Grantee" means the entity named in the Notice of Grant Award as the recipient of financial assistance provided under this part.

(l) The term "Lead Agency" means an agency designated by the Governor to develop and submit a State plan or a State agency specifically authorized by law to develop and submit a State plan for the RCS program, in accordance with 10 CFR 456, Subpart C.

(m) The term "Multifamily Dwelling" [Reserved]

(n) The term "National Energy Conservation Policy Act (NECPA)" means Pub. L. 95–618, 92 Stat. 3206 *et seq.*, as amended by the Energy Security Act, Pub. L. 96–294, 794 Stat. 611 *et seq.*

(o) The term "Residential Building" means any building to be used for residential occupancy which is not a new building which final standards under sections 304(a) and 305 of the Energy Conservation and Production Act (42 U.S.C. 6833) apply; which contains at least one but not more than four dwelling units, and which has a system for heating or cooling or both (town houses and row houses in rows of more than 4 individual houses are included in this definition but garden apartment complexes which contain clusters of four apartment units or less are not).

(p) The term "Residential Conservation Service Program" means the program required to be implemented by covered utilities pursuant to section 215 of the National Energy Conservation Policy and 10 CFR Part 456.

(q) The term "Secretary" means the Secretary of the Department of Energy.

(r) The term "Energy Conservation Measures" means the following measures in a residential building:

(1) Caulking. The term "caulking" means pliable materials used to reduce the passage of air and moisture by filling small gaps including (i) at fixed joints on a building, (ii) underneath baseboards inside a building, (iii) in exterior walls at electric outlets, (iv) around pipes and wires entering a building, and (v) around dryer vents and exhaust fans in exterior walls. Caulking includes, but is not limited to, materials commonly known as "sealants," "putty," and "glazing compounds."

(2) Weatherstripping. The term "Weatherstripping" means narrow strips of material placed over or in movable joints of windows and doors to reduce the passage of air and moisture.

(3) Furnace Efficiency Modifications. The term "furnace efficiency modifications" means:

(i) Replacement Furnaces or Boilers. The term "replacement furnaces or boilers" means a furnace or boiler, including a heat pump, which replaces an existing furnace or boiler of the same fuel type and which reduces the amount of fuel consumed due to an increase in combustion efficiency, improved heat generation or reduced heat losses.

(ii) Furnace Replacement Burner (Oil). The term "furnace replacement burner (oil)" means a device which atomizes the fuel oil, mixes it with air, and ignites the fuel-air mixture, and is an integral part of an oil-fired furnace or boiler including the combustion chamber, and which because of its design, achieves a reduction in the oil used from that used by the device which it replaces.

(iii) Flue Opening Modification (Vent Damper). The term "flue opening modification (vent damper)" means an automatically operated damper installed in a gas-fired furnace which (a), is installed downstream from the drafthood and (b), conserves energy by substantially reducing the flow of heated air through the chimney when the furnace is not in operation.

(iv) Automatic Intermittent Pilot Ignition System (IID). The term "automatic intermittent pilot ignition system (IID)," means a device which, when installed in a gas-fired furnace or boiler, automatically ignites the gas burner and replaces a gas pilot light.

(4) Replacement Central Air Conditioner. The term "replacement central air conditioner" means a central air conditioner which replaces an existing central air conditioner of the same fuel type and which reduces the amount of fuel consumed due to an increase in efficiency.

(5) Ceiling Insulation. The term "ceiling insulation" means a material primarily designed to resist heat flow which is installed between the conditioned area of a building and an unconditioned attic. Where the conditioned area of a building extends to the roofs, the term "ceiling insulation" also applies to such material used between the underside and upperside of the roof. The term "ceiling insulation" also includes such material installed on the exterior of the roof.

(6) Wall Insulation. The term "wall insulation" means a material primarily designed to resist heat flow which is installed within or on the walls between conditioned areas of a building and the unconditioned areas of a building or the outside.

(7) Floor Insulation. The term "floor insulation" means a material primarily designed to resist heat flow which is installed between the first level conditioned area of a building and an unconditioned area of a building and an unconditioned basement, a crawl space, or the outside beneath it. Where the first level conditioned area of a building is on a ground level concrete slab, the term "floor insulation" also means such material installed around the perimeter of or on the slab. In the case of mobile homes, the term "floor insulation" also means skirting to enclose the space between the building and the ground.

(8) Duct Insulation. The term "duct insulation" means a material primarily designed to resist heat flow which is installed on a heating or cooling duct in an unconditioned area of a building.

(9) Pipe Insulation. The term "pipe insulation" means a material primarily designed to resist heat flow which is installed on a heating or cooling pipe in an unconditioned area of a building.

(10) Water Heater Insulation. The term "water heater insulation" means a material primarily designed to resist heat flow which is suitable for wrapping around the exterior surface of the water heater casing.

(11) Storm Window. The term "storm window" means a window or glazing material placed outside or inside an ordinary or prime window, creating an air space, to provide greater resistance to heat flow than the prime window alone.

(12) Thermal Window. The term "thermal window" means a window unit with improved thermal performance through the use of two or more sheets of glazing material affixed to a window

frame to create one or more insulated air spaces.

(13) Storm or Thermal Door. The term "storm or thermal door" means (i), a second door, installed outside or inside a prime door, creating an insulating air space, (ii), a door with enhanced resistance to heat flow through the glass area by affixing two or more sheets of glazing material, or (iii), a prime exterior door with an R-value of at least 2.

(14) Heat Reflective and Heat Absorbing Window or Door Material. The term "heat reflective and heat absorbing window or door material" means a window or door glazing material with exceptional heat-absorbing or heat-reflecting properties; or reflective or absorptive films and coatings applied to an existing window or door which thereby result in exceptional heat-absorbing or heat-reflecting properties.

(15) Devises Associated With Electric Load Management Techniques. The term "devices associated with electric load management techniques" means customer-owned or leased devices that reduce the maximum kilowatt demand on an electric utility and which are either (i), part of radio, ripple or other utility controlled load switching system on the customer's premises; (ii), clock-controlled load switching devices; (iii), interlocks, and other load-actuated, load-limiting devices; or (iv), energy storage devices with control systems.

(16) Clock Thermostat. The term "clock thermostat" means a device which is designed to reduce energy consumption by regulating the demand on the heating or cooling system in which it is installed, and uses (i), a temperature control device for interior spaces incorporating more than one temperature control level, and (ii), a clock or other automatic mechanism for switching from one control level to another.

(s) Energy Conserving Practices. The term "energy conserving practices" means:

(1) Furnace Efficiency Maintenance and Adjustments, which means cleaning and combustion efficiency adjustment of gas or oil furnaces, periodic cleaning or replacement of air filters on forced-air heating or cooling systems, lowering the bonnet or plenum thermostats to 80°F on a gas or oil forced-air furnace and turning off the pilot light on a gas furnace during the summer.

(2) Night time Temperature Setback, which means manually lowering the thermostat control setting for the furnace during the heating season to a maximum of 55°F during sleeping hours.

(3) Reducing Thermostat Settings in Winter, which means limiting the maximum thermostat control setting for the furnace to 65°F during the heating season.

(4) Raising Thermostat Setting in Summer, which means setting the thermostat control for an air conditioner to 78°F or higher during the cooling season.

(5) Water Flow Reduction in showers and Faucets, which means placing a device in showerhead or faucet to limit the maximum flow to three gallons per minute, or replacing existing showerheads or faucets with those having built-in provisions for limiting the maximum flow to three gallons per minute.

(6) Reducing Hot Water Temperatures, which means manually setting back the water heater thermostat setting to 120°F and reducing the use of heated water for clothes washing.

(7) Reducing Energy Use When a Home is Unoccupied, which means reducing the thermostat setting to 55°F when a home is empty for four hours or longer in the heating season, turning an air conditioner off in the cooling season when no one is home, and turning a water heater off when a home is vacant for two days or longer.

(8) Plugging Leaks in Attics, Basements, and Fireplaces, which means (i) installing scrap insulation or other pliable materials in gaps around pipes, ducts, fans, or other items which enter the attic or basement from a heated space, (ii) installing fireproof material to plug any holes around any damper in a fireplace, and (iii) adding insulation to an attic or basement door.

(9) Sealing Leaks in Pipes and Ducts, which means installing caulking in any leak in a heating or cooling duct, tightening or plugging any leaking joints in hot water or steam pipes, and replacement of washers in leaking water valves.

(10) Efficient Use of Shading, which means using shades or drapes (i) to block sunlight from entering a building in the cooling season, (ii) to allow sunlight to enter during the heating season, and (iii) to cover windows tightly at night during the heating season.

(11) Such other low or no cost practices designated by the Governor and approved by the Assistant Secretary in a State Plan which (i) save energy; (ii) do not require the installation of energy conservation or renewable resource measures; and (iii) do not adversely impact the RCS Program.

(t) Renewable Resource Measure. The term "renewable resource measure" means the following measures in or with respect to a residential building:

(1) Solar Domestic Hot Water Systems. The term "solar domestic hot water systems" means equipment designed to absorb the sun's energy and to use this energy to heat water for use in a residential building other than for space heating, including thermosiphon hot water heaters.

(2) Active Solar Space Heating Systems. The term "active solar space heating systems" means equipment designed to absorb the sun's energy and to use this energy to heat living space by use of mechanically forced energy transfer, such as fans or pumps.

(3) Combined Active Solar Space Heating and Solar Domestic Hot Water System. The term "combined active solar space heating and solar domestic hot water system" means equipment designed to perform both of the functions described in paragraphs (1) and (2).

(4) Passive Solar Space Heating and Cooling Systems. The term "passive solar space heating and cooling systems" means systems that make most efficient use of, or enhance the use of, natural forces—including solar insolation, winds, night time coolness and opportunity to lose heat by radiation to the night sky—to heat or cool living space by the use of conductive, convective or radiant energy transfer. Passive solar systems include only:

(i) Direct Glazing Systems. The term "direct gain glazing systems" means the use of South-facing (+ or − 45° of True South) panels of insulated glass, fiberglass, or other similar transparent substances that admit the sun's rays into the living space where the heat is retained. Glazing is either double-paned, or single-paned equipped with movable insulation.

(ii) Indirect Gain Systems. The term "indirect gain systems" means the use of panels of insulated glass, fiberglass or other transparent substances that direct the sun's rays onto specially constructed thermal walls, ceilings, rockbeds, or containers of water or other fluids where heat is stored and radiated.

(iii) Solaria/Sunspace Systems. The term "solaria/sunspace system" means a structure of glass, fiberglass or similar transparent material which is attached to the South-facing (+ or −45° of True South) wall of a structure which allows for air circulation to bring heat into the residence, and which is able to be closed off from the residential structure during periods of low solar insolation.

(iv) Window Heat Gain and/or Loss Retardants. The term "window heat gain and/or loss retardants" means those mechanisms which significantly reduce summer heat gain or winter time heat

loss through windows by use of devices such as awnings, insulated rollup shades (external or internal), metal or plastic solar screens, or movable rigid insulation.

(5) Wind Energy Devices. The term "wind energy devices" means equipment that uses wind energy to produce energy in any form for personal residential purposes.

(6) Replacement Solar Swimming Pool Heaters. The term "replacement solar swimming pool heaters" means devices which are used solely for the purpose of using the sun's energy to heat swimming pool water and which replace a swimming pool heater using electricity, gas and other fossil fuel.

(u) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa and the Northern Mariana Islands.

Subpart B—Submission, Approval and Administration of Grants

§ 457.201 Scope.

This subpart contains the formula to be used to allocate funds to grant recipients; identifies the responsibilities of the States in preparation and submission of grant applications, hereinafter referred to as "applications", and describes the procedures for approval of the applications.

§ 457.202 Financial assistance.

(a) The Assistant Secretary shall provide financial assistance from funds available for any fiscal year on the basis of two 12-month cycles to each State having an approved application according to Subpart C. Separate applications will be required for each cycle.

(b) Letters of credit for one-half of a State's allocation for each cycle will be issued following grant award. The remaining portion of funds for that cycle will be made available upon approval of the semi-annual report submitted in accordance with § 457.206.

(c) Financial assistance shall be allocated among all of the States based on the following formula:

(1) Each Grantee shall annually receive fifty thousand dollars;

(2) 70 percent of the remainder of funds available shall be apportioned to each eligible State in such amount as results from multiplying the remainder by the ratio of the State's number of residential units eligible under the Residential Conservation Service as reported in the 1978 Annual Housing Census published by the Department of Commerce, Bureau of the Census, to the total such number for all the States.

(3) The remaining 30 percent of available funds shall be apportioned to each eligible State which, as part of the grant application has required certification of auditors, and made available the opportunity to become certified. The amount will be that which reults from multiplying the remainder by the ratio of the State's number of residential units under the RCS as reported in the 1978 Annual Housing Census published by the Department of Commerce, Bureau of the Census, to the total such number for all States.

(d) Financial assistance allocated to a State pursuant to this subpart for the first grant program cycle which remains unobligated at the end of the grant program cycle shall be reallocated by the Assistant Secretary as appropriate for the second cycle in accordance with paragraph (c) of this section. The second cycle shall continue until available grant program funds are expended.

(e) Limitation on Use of Grant Funds: Financial assistance allocated to a State pursuant to this subpart shall be used for the following purposes:

(1) Program Planning.

(2) Program implementation including:

(i) Salaries of instructors;

(ii) Salaries for administrative support;

(iii) Instructional facility rentals;

(iv) Purchase of materials and equipment (including capital items) upon specific DOE approval on a case-by-case basis;

(v) Services performed by contractors, subgrantees, and other Government agencies.

(3) Such funds shall *not* be used for:

(i) Curriculum development;

(ii) Certification development;

(iii) Audit development or implementation costs;

(iv) Training auditors to conduct audits which are not Class A audits.

§ 457.203 Initial submission.

If a State intends to submit an application, the Governor shall submit the name and address of the State agency responsible for submitting an application, hereinafter referred to as "applicant," within 30 days of the effective date of the rules.

§ 457.204 Procedures for submission and approval of grant applications.

(a) *Who shall submit.* An original and two (2) copies of the proposed application shall be submitted to the Assistant Secretary by either

(1) The Governor of the State; or

(2) The applicant.

(b) *Time for submission.* The proposed application shall be submitted within 90 days of the effective date of these rules. The time for submission may be extended by no more than 30 days by the Assistant Secretary if:

(1) The Governor or the applicant requests in writing an extension at least 10 days prior to the formal deadline; and

(2) Good cause is shown for allowing an extension.

(c) *Approval.* If a State application meets the criteria of Subpart C of this Part, the Assistant Secretary shall approve it within 60 days of the date the application was submitted.

(d) *Disapproval.* (1) If an application does not meet the criteria of Subpart C of this Part, the Assistant Secretary shall advise the applicant informally by telephone and subsequently in writing of the reasons for disapproval within 60 days.

(2) The Governor or the applicant may submit another application within 30 days of the date of either oral or written notification of disapproval of a proposed State plan, or such longer period as the Assistant Secretary may determine. All procedures of this Part for submission of the original application shall be applicable.

§ 457.205 Suspension of termination of grants.

(a) If the Assistant Secretary determines that implementation of a State program approved in accordance with Subpart C of this Part fails to meet those requirements, notice shall be given to the Governor of intent to terminate or suspend financial assistance to the grantee for cause in accordance with Federal Grant Closeout Procedures, Attachment L–OMB Circular No. A–102 (42 FR 45828, September 12, 1977). The notice shall be issued in writing and sent by registered mail with return receipt requested and include a statement of the reasons for the intended suspension or termination of financial assistance including an explanation of whether any amendments or other actions would result in compliance with this Part.

(b) Appeals regarding termination of grants may be submitted to the Financial Assistance Appeals Board for resolution.

(c) DOE or any State may terminate grants in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many

outstanding obligations as possible. DOE shall allow full credit to the State for the Federal share of the non-cancelable obligations, properly incurred by the State prior to termination.

§ 457.206 Reports and recordkeeping.

(a) *Timing of reports.* For each program cycle, States receiving financial assistance under this Part shall submit to the Assistant Secretary both semi-annual and final program performance reports and statements. The semi-annual report shall be reviewed and approved by the Assistant Secretary as a precondition to receipt of the remaining balance of financial assistance allocated to each State for that program cycle.

(b) *Content of program performance reports.* Each State receiving financial assistance under this Part shall advise the Assistant Secretary of the status of the program including:

(1) Number and frequency of training programs conducted as well as the number of participants trained therein;

(2) Number and frequency of certification tests administered;

(3) In cases where numbers of persons trained and tested fall short of those projected in program application, analysis of cause and recommendations for possible remedies, if any;

(4) Explanation of any changes to the training program not included in application;

(5) Explanation of any changes to the certification program not included in application;

(6) Description of program monitoring activities and findings;

(7) Executive Summary including:

(i) Analysis of program accomplishments to date versus objectives; and

(ii) Recommendations for improvements, if needed.

(c) *Content of financial recordkeeping statements.* Each State receiving financial assistance under this Part shall provide the following information to the Assistant Secretary:

(1) Amount and disposition of financial assistance received to date;

(2) Cost of administration;

(3) Total cost of all activities for which assistance is given or used;

(4) Source and amount of any funds not supplied by the Secretary including amount of fees charged, if any, to participants for training and/or certification;

(5) Comparison of program budget and actual expenditures to date and anticipated; explanation of any discrepancies; and recommendations for resolution of any conflicts.

(d) Financial information required under Subpart (c) above shall be reported in accordance with Attachment H of OMB Circular A-102.

§ 457.207 Administration of grants.

(a) Grants provided under this Part shall comply with all applicable laws and regulations including, but without limitation, the requirements of:

(1) Federal Management Circular 74-4, 34 CFR Part 255, entitled "Cost Principles Applicable to Grants and Contracts with States and local governments;"

(2) Office of Management and Budget Circular A-102, 42 FR 45828, entitled "Uniform Administrative Requirements for Grants-in-Aid to State and local Governments";

(3) Civil rights requirements of law administered pursuant to the DOE Organization Act and the following public laws: 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; and the Age Discrimination Act of 1975.

(4) DOE Assistance Regulations 10 CFR 600 Subparts A and B;

(5) DOE Procedures for Financial Assistance Appeals 10 CFR 1024.

(b) Grants provided under this Part shall comply with such additional procedures applicable to this Part as DOE may from time to time prescribe for the administration of grants.

Subpart C—Content of Grant Applications

§ 457.301 Scope.

This subpart describes the content of the application required for a State to participate in the Auditor Training and Certification Grants Program.

§ 457.302 Content of applications.

Each application shall contain the following information:

(a) Name, address and telephone number of the grantee and an appropriate contact person thereof;

(b) A description of policies and procedures which assure that financial assistance provided under this Part will not supplant the expenditure of Federal, State, or local funds otherwise available for the training and certification of auditors, but rather supplements such funds, and will be used to increase the expenditure of the total funds available for such activities to the maximum extent practicable. For the purposes of this section, State funds shall include funds expended by a utility or home heating supplier under the State RCS plan;

(c) A budget for the activities to be carried out in the State's program by calendar quarters for the 12-month period in which financial assistance will be provided;

(d) A narrative describing the proposed training program for residential auditors in accordance with §§ 457.401-406 including:

(1) An explanation of how the needs of the RCS program will be met as well as justification for use of funds available under this Part to support other auditor training efforts;

(2) The State's criteria for enrollment in training, including the State's procedures for addressing the needs and resources of minorities;

(3) The training methods and materials to be used; a description of materials if not prepared by DOE; and an explanation of the method for administering the training program;

(4) The procedures for qualifying and selecting trainers;

(5) The procedures for promoting the availability of training opportunities; and

(6) The costs if any, to be charged for training.

(e) A narrative describing the proposed training program for commercial building auditors [Reserved];

(f) A narrative describing the proposed certification program, in accordance with §§ 457.601-610, including:

(1) The State's criterial for participation in the certification process;

(2) The criteria for auditor certification;

(3) The organization who will conduct the certification procedure;

(4) The procedures for promoting the availability of the certification process;

(5) The costs, if any, to be charged for certification; and

(6) The extent to which the certification process will have reciprocity with other States and listing of those States where a reciprocal agreement will exist if such reciprocity is to be limited. In the case of a certified auditor who has moved, all States are required to recognize the auditor for six months, thereafter the auditor must comply with the requirements of the particular State where he (she) has moved.

(g) A narrative describing the proposed certification program for commercial building auditors [Reserved];

(h) A listing of milestones by calendar quarter to achieve the State's proposed program, including timing for:

(1) Selection of trainers,

(2) Offering of courses, and certification,

(3) Promotion of training and certification opportunities; and

(i) A description of the State's program monitoring approach to ensure quality control over training and certification, including a description of procedures for decertification.

(i) A statement describing how States plan to encourage participation in the training programs of disadvantaged business persons—minorities.

Subpart D—Requirements for Training Residential Building Auditors

§ 457.401 Scope.

This subpart describes the minimum standards for training auditors of residential buildings which must be addressed in all applications.

§ 457.402 Training availability.

This application shall indicate that sufficient auditor training programs are offered to accommodate those people in the State eligible to take the course. The application shall include the following information.

(a) Estimated number of auditor trainees;

(b) Schedule for conducting training courses;

(c) Assurance that preference is given to enrolling RCS auditor candidates, although the grantee may enroll other auditors as is deemed appropriate, except that if a State determines that training shall be a condition of certification, then assurance that all persons desiring certification can be accommodated;

(d) Assurance that all persons wishing to enroll in the auditor training program are treated in a fair, open, and non-discriminatory manner. The grantee may specify enrollment criteria as long as such criteria are fair, open, and non-discriminatory.

§ 457.403 Content of auditor training.

The application shall indicate intended course content. Course content shall be at least equivalent in content, duration and detail to the DOE model training curriculum (which is hereby incorporated by reference. See *Summary* for availability of curriculum.) The application shall include:

(a) Procedures to assure that the person or persons conducting an audit pursuant to the requirements of 10 CFR 456.307 shall individually or collectively have the following qualifications:

(1) A general understanding of the three types of heat transfer and the effects of temperature and humidity on heat transfer;

(2) A general understanding of residential construction terminology and components;

(3) A general knowledge of the operation of the heating and cooling systems used in the residential buildings;

(4) A general knowledge of the different types of each applicable energy conservation and renewable resource measures; of the advantages, disadvantages and applications of each; and of any installation standards in Subparts G or I which apply to those measures or types;

(5) The capability to conduct the audit as required in 10 CFR 456.307, including:

(i) a familiarity with the energy conserving practices;

(ii) The capability to determine the applicability of the energy conservation and renewable resource measures; and

(iii) A proficiency in DOE or State approved auditing procedures.

(6) Where a furnace efficiency modification is an applicable energy conservation measure, and the source of fuel for the existing furnace or boiler is either gas or oil, a working ability to calculate the steady state efficiency of the furnace or boiler. Steady state efficiency shall be derived from manufacturer's design data and observation of the furnace components, or alternatively, by a flue gas analysis of measured flue gas temperature and carbon dioxide content.

(7) Where a renewable resource measure, other than wind energy devices, is an applicable measure, an understanding of the nature of solar energy and its residential applications, including:

(i) Insolation;

(ii) Shading;

(iii) Heat capture and transport; and

(iv) Where appropriate, heat transfer for hot water and space heating.

(8) Where a wind energy device is an applicable measure, an understanding of the nature of wind energy and its residential applications, including:

(i) Wind availability;

(ii) Effects of obstructions;

(iii) Wind capture

(iv) Power generation; and

(v) Interfaces with residential and utility power lines.

(b) An indication of how the course will be taught. Course content may be taught in its entirety or may be divided into one or all of the following sections:

(1) 10 CFR 456.303 (a) (1–6) relating to all energy conservation measures.

(2) 10 CFR 456.303(a)(1), (6) as well as those portions of (4) and (5) relating to heating and/or cooling systems and modifications to them.

(3) 10 CFR 456.303(a)(1), (2), (7), (8) as well as those portions of (4) and (5) relating to renewable resource measures.

(c) Specification of how course content shall be monitored to ensure compliance with the course content in paragraph (a) above.

(d) Description of

(1) Length of training program,

(2) Name of entity which developed the curriculum, and

(3) Subject areas covered

(e) Description of how the state training curriculum differs from the DOE model curriculum and reasons for any such difference. (See *Summary* for availability of curriculum materials.)

§ 457.404 Instructor qualifications.

The applicant shall indicate qualifications for auditor training instructors. At a minimum, auditor training instructors shall—

(a) Have conducted at least 10 residential energy audits,

(b) Be capable of conducting an energy audit using the DOE model audit;

(c) Have a B.S. in engineering or science-related fields,

(d) Be familiar with the DOE model auditor training curriculum,

(e) Be knowledgeable in all course content areas described in § 457.403(a), 1–8,

(f) Have teaching experience, and

(g) Meet other such criteria that the applicant deems necessary.

§ 457.405 Instructor selection.

The applicant shall describe in the application how trainers shall be selected and provide an estimate of how many trainers will be required.

§ 457.406 Enrollment conditions.

The grantee may charge a fee to enroll in the auditor training program. If the applicant intends to charge an enrollment fee, the applicant must so state in the application, state the amount of the fee and describe how the fee is to be used. In addition, the applicant shall describe in the application—

(a) How the facilities and materials are to be used;

(b) The mechanism to be used so that all persons wishing to enroll in the auditor training program will know:

(i) How to enroll,

(ii) When to enroll,

(iii) Where to enroll,

(iv) The applicable fee, and

(v) Such other information as the applicant deems necessary.

Subpart E—Requirements for Training of Commercial Building Auditors [Reserved]

Subpart F—Requirements for Certification of Residential Auditors

§ 457.601 Scope.

Certification of residential auditors is not a requirement for funding. However, applicants who describe certification procedures and require auditor certification are eligible for additional funding as described in § 457.202.

§ 457.602 Certification availability.

The applicant shall describe certification procedures and indicate that certification will be available to all State residents desiring to be certified. Opportunities for certification must be provided at least every 5 months.

§ 457.603 Standards for certification.

(a) In order to be certified, an auditor must successfully pass the examination described in § 457.604.

(b) The application shall contain provisions ensuring that all persons applying for certification are treated in a fair, open and non-discriminatory manner and indicate how the provisions will be applied.

§ 457.604 Criteria for auditor certification.

(a) *Examination.*

At a minimum, auditor certification shall consist of a written examination which reliably measures the candidate's understanding of these areas necessary to conduct audits required in § 403.

(b) *Examination for candidates not receiving training under § 457.401 et seq.*

Auditor candidates who have not attended in its entirety the grantee's training program described in § 457.401 *et seq.*, must take and successfully complete a practical examination or an alternative described by the State in addition to the written examination. The practical examination shall demonstrate that the auditor candidate can accurately conduct a DOE or State-approved audit in an actual residence. The applicant shall describe—

(1) How the practial examination is to be administered, and

(2) The criteria determining successful completion.

§ 457.605 Examination criteria.

The examinations shall—

(a) Be able to discriminate correctly between competent and incompetent auditors,

(b) Contain a mechanism for validating results against successful performance,

(c) Be reliable and repeatable regardless of who administers it, or of the specific conditions under which it is administered,

(d) Contain questions which evaluate the auditor candidate's knowledge of the audit process, and the elements described in § 457.403.

(e) Be evaluated within 1 month and the results provided to the auditor candidate.

(f) Evaluate the auditor candidate's interpersonal skills and ability to communicate with the resident.

§ 457.606 Examination validation.

The applicant shall include in the application—

(a) A detailed description of the process used to validate a certification program against the provisions of § 457.605 of this part, or

(b) A verification that the applicant will seek and receive the approval of the Assistant Secretary as to the validity of the certification process.

(c) A description of a mechanism for monitoring, updating, and recertifying auditor candidates. This includes:

(1) The circumstances and criteria under which an auditor is decertified.

(2) The conditions under which he (she) can be recertified.

(3) The procedures for appealing State decertification actions.

(4) The monitoring mechanism which will be used to identify the circumstances where that decertification or recertification action should be initiated and is appropriate.

(d) A decription of the process used to administer the certification examinations.

(e) A decription of the security to be used in protecting the control of the examination.

§ 457.607 Certification agency.

The application shall list the name and address and qualification of the agency(ies) performing certification.

§ 457.608 Candidates notification.

The applicant shall describe the mechanism to be used to notify all persons wishing to be certified as auditors about the availability and cost (if any) of the certification.

§ 457.609 Enrollment fees.

The grantee may charge a fee to enroll in the auditor certification program so long as the fee does not result in profit for the grantee. If the grantee intends to charge an application fee, the grantee must so state in the application and describe how the fee is to be used.

§ 457.610 Reciprocity.

An auditor certified in one State under the Provisions of this Part shall be allowed to perform all responsibilities associated with a certified auditor in any other State for 6 months before being required to be recertified. Recertification is only required when certification requirements are different from one State to another.

Subpart G—Requirements for Certification of Commercial Auditors [Reserved]

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Part V

Environmental Protection Agency

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Final High-Altitude Emission Standards for 1982 and 1983 Model Year Light-Duty Motor Vehicles

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[Docket No. A-79-14; AMS-FRL 1619-5]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Final High-Altitude Emission Standards for 1982 and 1983 Model Year Light-Duty Motor Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action establishes as a final rule exhaust and evaporative emission standards for 1982 and 1983 model year light-duty vehicles (LDV) and Light-duty trucks (LDT) sold for principal use at altitudes above 4,000 feet. Specific vehicular regulations at high altitude are necessary because the effect of the lower air pressure at high altitude is to increase the exhaust and evaporative emissions well beyond the low altitude standards.

This action is intended to provide improved air quality in high-altitude urban areas in the interim before the 1984 statutory high-altitude standards become effective. This two-year interim standard will reduce unburned hydrocarbon emissions by about 33,000 tons and carbon monoxide emissions by 1,195,000 tons. The total cost of this regulation to the nation is about $22 million.

See Supplementary Information for expanded summary.

EFFECTIVE DATE: Effective November 7, 1980.

ADDRESSES: Copies of material relevant to this rulemaking action are contained in Public Docket No. A-79-14 at the U.S. Environmental Protection Agency, Central Docket Section, (A-130), West Tower Lobby, Gallery 1, 401 M Street SW., Washington, D.C. 20460. The docket may be inspected between the hours of 8:00 a.m. to 4:00 p.m., Monday through Friday. A reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Richard Wilcox, Emission Control Technology Division, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, 313-668-4390.

SUPPLEMENTARY INFORMATION:

Expanded Summary:

This action establishes as a final rule exhaust and evaporative emission standards for 1982 and 1983 model year light-duty vehicles (LDV) and light-duty trucks (LDT) sold for principal use at altitudes above 4,000 feet. Specific vehicular regulations at high altitude are necessary because the effect of the lower air pressure at high altitude is to increase the exhaust and evaporative emissions well beyond the low altitude standards. Nevertheless, the constraints set by the legal authority for this action (section 202(f) of the Clean Air Act as amended in 1977) generally imply numerically higher standards for this interim rule than are found in the corresponding low-altitude standards. In contrast, the 1984 statutory mandate for high-altitude vehicles requires numerically identical standards.

The emission standards being established for LDVs are 0.57 g/mi hydrocarbons (HC), 7.8 g/mi carbon monoxide (CO), 1.0 g/mi oxides of nitrogen (NO_x), and 2.6 g/test evaporative HC. In addition, waiver standards for CO (11 g/mi) and NO_x (1.5 g/mi) corresponding to the previous waiver determinations made under Section 202(b)(5) and (6) are provided. The standards for LDTs are 2.0 g/mi HC, 26 g/mi CO, 2.3 g/mi NO_x and 2.6 g/test evaporative HC. All vehicles sold for principal use above 4,000 feet must be capable of meeting these standards at a test altitude of 5,315 feet (± 328 feet).

This rule requires that for any engine family (except exempted ones) to receive a certificate of compliance, it must be capable of meeting both the applicable low- and high-altitude standards, or at least be capable of being modified or recalibrated to do so. In the NPRM, EPA proposed that any necessary modifications be capable of being done within a $40 limit, even if done as a retrofit to an in-use vehicle. This limit is eliminated in this Final Rule.

Exemptions may be granted for certain low-power vehicles which would be expected to have unacceptable performance at high altitude and which may have unacceptable performance at high altitude and which may have technical difficulty in meeting the high-altitude standards. Such vehicles are designed principally for high fuel economy at low altitude and are incapable of providing satisfactory performance at high altitude. Such exempted LDVs and LDTs could not then legally be sold for principal use at high altitude. LDT exemptions may also be granted for up to 30 percent of a manufacturer's projected LDT sales at high altitude in the 1982 model year in lieu of the performance exemption. This is to ease the certification burden for the industry. This exemption is provided for the 1982 model year because of the short leadtime remaining before the effective date of these regulations. Such exempted 1982 LDTs could still be sold for principal use at high altitude since the exemption in this case is based only on certification leadtime considerations and not on expected unacceptable performance characteristics.

This action is intended to provide improved air quality in high-altitude urban areas in the interim before the 1984 statutory high-altitude standards become effective. This two-year interim standard will reduce unburned hydrocarbon emissions by about 33,000 tons and carbon monoxide emissions by 1,195,000 tons. The total cost of this regulation to the nation is about $22 million.

I. Background

EPA has found that motor vehicles which demonstrate compliance with emission standards at low altitude produce as much as 50 percent more exhaust hydrocarbons (HC) and nearly 100 percent more carbon monoxide (CO) when tested at 5,000 feet above sea level. The Agency has also learned that, in most high-altitude urban areas, motor vehicles account for more than half of the total HC emissions and almost all of the CO emissions. These emission levels combine with summer sunlight and stable winter atmospheric conditions to cause numerous violations of the ambient air quality standards for oxidant and CO in high-altitude metropolitan areas.

During model year 1977, EPA regulations required that new light-duty motor vehicles sold for principal use at high-altitude demonstrate compliance with the applicable emission standards at high altitude. One result of this requirement was that some motor vehicle manufacturers chose not to be certified for principal use at high-altitude, all of the models in their product lines. The limitation in the number of models available for sale in these areas generated an adverse reaction among the affected vehicle purchasers and automobile dealerships. With passage of the Clean Air Amendments of 1977, the Congress, in section 213 of those amendments (section 202(f) of the Clean Air Act, as amended), revoked the EPA high-altitude motor vehicle certification regulations, prohibited the establishment of any other regulations governing the sale or distribution of motor vehicles at high altitude before 1981, and required that, beginning with the 1984 model year, all new light-duty vehicles (LDVs) comply with the applicable emission standards regardless of the altitude at which they are sold.

For the interim period between model years 1981 and 1983, the Congress has given EPA authority to promulgate regulations affecting the distribution and sale of new motor vehicles at high altitude, including the establishment of high-altitude emission standards. Such standards, however, may not require a percentage reduction in vehicle emissions at high altitude that exceeds the comparable percent reduction provided by section 202(b) of the Act for LDV's (generally for HC and CO these standards could represent a 90 percent reduction from the 1970 high-altitude base-level). In no event, however, may numerically more stringent standards be established for high-altitude areas than are applicable under non-high-altitude conditions. For example, EPA may not require an oxides of nitrogen (NO_x) standard numerically lower than the 1.0 gram per mile (g/mile) standard that will be in effect at low altitude on model year 1982.

The high-altitude emission standards for 1982 and 1983 model year light-duty vehicles and light-duty trucks, which are being finalized in this rulemaking, were proposed in the **Federal Register** on January 24, 1980 (45 FR 5988). A public hearing on this proposal was held March 5, 1980 in Denver, Colorado. The record remained open for comment until April 30, 1980. On July 24, 1980, EPA published a policy statement in the **Federal Register** (45 FR 49254) announcing a final decision to delete the proposed $40 limit for modifying a vehicle to conform with the high-altitude standards.

During the public comment period, EPA received an significant amount of information from the concerned public. The EPA staff has summarized and responded to the comments in a document entitled Summary and Analysis of Comments, which is now available through the Central Docket Section, Public Docket No. A–79–14 (see Addresses, above).

II. Components of the Package and Major Issues

A. Standards

The Clean Air Act Amendments established the limiting guideline for the value of the high-altitude LDV standards as a 90 percent reduction from uncontrolled vehicles tested at high altitude, but in no case may the numerical value of the standard be less than the low-altitude standard. Since NO_x emissions decrease as uncontrolled vehicles are driven to higher altitudes, a 90 percent NO_x reduction from these vehicles would be lower than the NO_x values determined for low altitude. Because the high-altitude standards may not be numerically less than the low-altitude standards, the present NO_x standards for the applicable model year and class of vehicle shall apply at all altitudes. For the HC and CO standards, a method for determining the 90 percent reduction was required. In addition, an alternative high-altitude CO standard was required for LDVs that are granted a waiver from the statutory low-altitude standard of 3.4 g/mi, allowing them to emit up to 7.0 g/mi at low altitude.

This action does not establish an interim high-altitude diesel particulate standard for the 1982–1983 model years. Light-duty diesel vehicles and trucks sold in high-altitude areas will only have to comply with the particulate standard at low altitude. EPA will soon initiate a separate rulemaking implementing Clean Air Act section 206(f)(1), which states that: "All light-duty vehicles and engines manufactured during or after model year 1984 shall comply with the requirements of section 202 of this Act regardless of the altitude at which they are sold." In this rulemaking, EPA will also evaluate a high-altitude particulate standard for light-duty motor vehicles.

1. *Derivation of gaseous emission standards for non-waivered vehicles.* EPA believes that Congress, in amending the high-altitude provisions of the Clean Air Act, intended that high-altitude LDV emission standards be determined by simply establishing a 90 percent reduction from a baseline fleet of representative high-altitude vehicles. Ideally, the same vehicle fleet which was used to establish the low-altitude standards should be used to determine the high-altitude baseline. Since this fleet no longer exists as tested, an alternate method was necessary.

Recent testing of a 1970 fleet of 25 light-duty vehicles was performed under the direction of the Motor Vehicle Manufacturers Association (MVMA) at low altitude (St. Louis, 600 feet), and at high altitude (Denver, 5,400 feet).[1] The results of the MVMA tests yielded average fleet emissions of 2.85 g/mi HC and 20.45 g/mi CO at low altitude, and 4.47 g/mi HC and 64.4 g/mi CO at high altitude. The MVMA low-altitude baseline values compare with 4.1 g/mi HC and 34 g/mi CO which are generally accepted as the low altitude LDV baseline values. Because of the disparity between the two sets of low-altitude baseline values, EPA determined the high-altitude exhaust emission standards by deriving a low-to-high altitude correction factor from the MVMA baseline data. This factor was then applied to the existing low-altitude standards. Without using this methodology, a simple 90 percent reduction from the MVMA baseline data would have yielded potential high-altitude standards of 0.45 g/mi HC and 6.4 g/mi CO. EPA believes that these latter standards are more stringent than those Congress envisioned.

In developing the correction factor, EPA assumed that the change in vehicle exhaust emissions is directly proportional to the change in altitude. Therefore, the relationship between light-duty vehicle emissions and altitude can be described by the equation:

$$\text{Baseline at Altitude} = \text{Baseline at Low Altitude} + \left[\frac{\text{Change in Emission}}{\text{(Change in Altitude)}} \times \text{Change in Altitude}\right]$$

If the emissions at low altitude are assumed to be the low-altitude baseline value, then high-altitude baselines can be established from:

$$\text{Emissions at Altitude} = \text{Emissions at Base Altitude} + \left[\frac{\text{Change in Emission}}{\text{(Change in Altitude)}} \times \text{Change in Altitude}\right]$$

[1] Draft Society of Automotives Engineers paper by J. B. Edwards, et al., dated June 11, 1979 and entitled "1970 Passenger Car High Altitude Emission Baseline."

As previously stated, the generally accepted low-altitude LDV baseline values are 4.1 g/mi HC and 34 g/mi CO. The average emissions for the MVMA fleet are 2.85 g/mi HC and 20.45 g/mi CO at the St. Louis altitude (600 feet), and 4.47 g/mi HC and 64.4 g/mi CO at the Denver altitude. Substituting the appropriate values into the equation yields:

$$\text{HC Baseline at Altitude} = 4.1 + \left[\frac{4.47 - 2.85}{5400 - 600}(5400-600)\right]$$

$$\text{HC High-Altitude Baseline} = 5.7$$

Taking a 90 percent reduction from this baseline yields a high-altitude HC standard of 0.57 g/mi (at 5,400 feet).

Similarly for CO:

$$\text{CO Baseline at Altitude} = 34 + \left[\frac{64.4 - 20.4}{5400 - 600}(5400 - 600)\right]$$

$$\text{CO High-Altitude Baseline} = 78$$

Again, taking a 90 percent reduction yields a high-altitude CO standard of 7.8 g/mi.

The proposed high-altitude standards for LDTs are determined in a different manner from the LDV high-altitude standards. EPA used an alternative approach partially because Congress did not mandate, in the Clean Air Act, that the same methodology which is followed for LDVs must also be used to set equally stringent standards for LDTs. In addition, a different approach had to be found because no 1970 LDT baseline fleet tested at both high and low altitudes was available. The Agency's alternative methodology fully responds to the Congressional intent of significantly reducing high-altitude motor vehicle emissions, and in EPA's opinion, represents the best data available.

The high-altitude LDT standards are found by using (1) data from a 1969 LDT baseline fleet which was tested at low altitude, and (2) the absolute difference in the emissions of a 1970 LDV baseline fleet (MVMA vehicles) when tested at both high and low altitudes. If a proportional relationship is assumed between the standards and baseline emissions at high altitude, and the standards and baseline emissions at low altitude, the high-altitude standards can be determined from the following equation:

$$\text{Standards at Altitude} = \text{LDT baseline at (low altitude} + \text{Change in LDV emissions)} \frac{\text{LDT low-altitude standard}}{\text{LDT low-altitude baseline}}$$

By deriving the LDT standards in this manner, EPA assumed that the absolute change in LDT and LDV exhaust emissions with altitude is the same. This assumption is based upon EPA's judgment that the change in emissions with altitude is a function of enriching the fuel-air mixture of the carburetor, and is not significantly affected by the differences in weight or road load between the two categories of vehicles.

The LDT high-altitude standards can be determined with the following information. The 1969 LDT baseline emissions were 8 g/mi HC and 102 g/mi CO.[2] As previously stated, the 1970 LDV baseline values were 2.85 g/mi HC and 20.45 g/mi CO at low altitude, and 4.47 g/mi HC and 64.4 g/mi CO at high altitude. The high-to-low absolute differences are, therefore, 1.6 g/mi HC and 44 g/mi CO. The LDT low-altitude standards for the years in question are 1.7 g/mi HC and 18 g/mi CO. Substituting these values into the above equation yields the following high-altitude standards for LDTs:

$$\text{HC High Altitude Standard} = (8 + 1.6)\ \frac{1.7}{8} = 2.0$$

$$\text{CO High Altitude Standard} = (102 + 44)\ \frac{18}{102} = 26$$

[2] "1969 Light-Duty Truck Baseline Program and 1983 Emission Standards Development," EPA Report No. SDSB-79-23, July 1979, in the docket.

The Agency derived the required evaporative emission standards for high altitude by using a ratio concept. This ratio was obtained from a theoretical analysis rather than vehicle test data.[3] The ratio of high-to-low altitude evaporative emissions was determined to be 1.3. Multiplying the low-altitude standard (2.0 grams per test) by this ratio gives the high-altitude evaporative emission standard of 2.6 grams per test.

2. *Derivation of gaseous emission standards for waivered vehicles.* In an approach similar to that used in the previous section, EPA derived the waiver standards by adding to the high-altitude standards, the increments between each of the low-altitude waiver standards and the low-altitude statutory LDV standards. Hence, the CO waiver standard at high altitude is 7.8 + (7.0 − 3.4) = 11.4 g/mi, or, rounding to two signifcant figures, 11 g/mi. The same NO_x waiver standard, from 1.0 g/mi to a maximum of 1.5 g/mi, established for MY 1981–84 diesel vehicle model which may be granted under 202(b)(6) of the Clean Air Act as amended (1977) will be applicable to the same high-altitude vehicle model. Any vehicle which is granted a NO_x waiver at low altitude will be granted the same waiver at high altitude because the Clean Air Act prohibits EPA from establishing high-altitude standards which are numerically lower than corresponding low-altitude standards even though NO_x emissions are generally lower at high altitudes.

The following table summarizes the high-altitude standards at the reference altitude.

Standards at Reference Altitude of 5,315 Feet (Denver Test Site)

	HC[1]	CO[1 2]	NO_x[1 3]	Evap.[4]
LDV 1982–1983	0.57	7.8	[5]1.0	2.6
LDT 1982–1983	2.00	26.0	2.3	2.6

[1] Grans per mile.
[2] CO waiver standard for 1982 LDVs is 11 g/mi.
[3] NO_x waiver standard for 1982 and 1983 diesel vehicles is up to 1.5 g/mi.
[4] Grams per test.
[5] For 1982, American Motors Corporation must meet a standard of 2.0 g/mi NO_x.

[3] "Effect of Altitude on Noncontrolled Evaporative Emissions from Gasoline-Fueled Vehicles," EPA Report No. SDSB 79–01, January 1978, in the docket.

B. Technology Requirements

In model year 1982, EPA expects the automobile industry to employ emission control systems which use three-way catalytic converters ("catalysts") with oxygen-sensor controlled feedback fuel systems on 70 percent of the light-duty vehicles. The three-way catalyst is a device which operates in the exhaust stream of the vehicle. It employs noble metals (typically Platinum and Rhodium) to act as catalysts to chemical reactions which aid in lowering the emission levels of all three regulated pollutants (HC, CO, and NO_x), thus the term three-way catalyst. The noble metals promote the oxidation of HC and CO to form H_2O (water) and CO_2 (Carbon dioxide). At the same time, NO_x emissions are reduced (oxygen is taken away) to result in emissions of N_2 (nitrogen) and O_2 (oxygen).

For this emission control system to operate properly, it is necessary to control the air-fuel ratio which enters the combustion chamber to approximately stoichiometric conditions. (That is, the proportion of fuel-to-air is kept as close as possible to the mixture [approximately 1 part of fuel to 15 parts of air] at which, under ideal conditions, complete combustion of the fuel would take place and would yield only carbon dioxide and water as combustion products). Therefore, manufacturers have developed fuel metering systems to maintain the air-fuel ratio near stoichiometry. This has been accomplished by placing a sensor in the engine exhaust which monitors the air-fuel ratio by measuring oxygen in the exhaust (O_2 sensor signals the fuel system either to add or subtract fuel to regain the stoichiometric air-fuel ratio). This is the oxygen sensor controlled feedback fuel system.

The combination of the three-way catalyst and the O_2 sensor feedback fuel system is very effective at lowering emissions. At the same time, this system tends to be effective at compensating for changes in altitude. As altitude increases, less air will enter for each part of fuel than would occur at sea level. The O_2 sensor will note this excursion from a stoichiometric air-fuel ratio, and the fuel system will then be directed to meter less fuel until the stoichiometric ratio is once again attained. Thus, the emissions of the vehicle will be maintained at a low level even as the air density varies with changes in altitude. EPA believes that the high-altitude standards will assure that these emission control systems are designed and calibrated for high altitudes where emission reductions are required.

The Agency anticipates that the balance of the model year 1982 fleet (i.e., 30 percent of the light-duty vehicles and all light-duty trucks) will typically use either open-loop, three-way catalyst system; oxidation catalysts; or no catalyst at all to control emissions.

Oxidation catalysts are located in the exhaust stream, as are the three-way catalysts. However, the catalytic properties of this device do not promote the reduction of NO_x emissions. Instead, this device only aids in the oxidation of HC and CO.

Because this catalyst does not control emission of NO_x, for which precise air-fuel metering is essential, the air-fuel ratio entering the engine does not have to be maintained at stoichiometry. Therefore, manufacturers do not use oxygen-sensor controlled feedback fuel systems on these vehicles, and generally the fuel metering is calibrated for optimum performance at a fixed barometric pressure.

Similarly, those vehicles which do not use catalysts at all generally employ a fixed calibration fuel system. These vehicles rely upon a combination of other devices to assure that emissions of HC, CO, and NO_x are minimized.

Because these non-three-way systems use fixed-point calibrations for their fuel metering systems, the air-fuel ratio becomes richer (more fuel per unit of air) as the altitude increases. This tends to result in higher emissions of HC and CO at higher altitude. Thus, for these vehicles to comply with emission standards at high altitude, the manufacturers will need to either add compensating devices which will maintain the air-fuel ratio at a constant value as altitude varies or use separate control hardware calibrated especially for high altitude.

C. Selective Enforcement Auditing (SEA)

Selective Enforcement Auditing (SEA) is an emission testing program authorized by section 206(b) of the Clean Air Act for new production vehicles. SEA provides a logical means of ensuring that production vehicles comply with standards at the time of manufacture by testing vehicles at the completion of assembly. In this manner, SEA provides a deterrent to the production of noncomplying vehicles and thus serves to prevent introduction into commerce of vehicles polluting more than allowed by the established standards.

The SEA regulations 40 CFR Part 86, Subpart G, are structured to accommodate these 1982 and 1983 high-altitude regulations. EPA believes that any unique situations which may develop when testing vehicles under high-altitude conditions can be dealt with adequately under the purview of the existing SEA regulations. Therefore, EPA has determined that no regulatory changes to the existing SEA programs are required due to the new standards.

The current SEA regulations (Subpart G of Part 86) require that manufacturers provide the personnel and facilities needed to conduct testing. EPA has determined that existing high-altitude commercial facilities are more than adequate to allow SEA testing. If the manufacturer should not be able to schedule test time at its own or a commercial facility on an "as needed" basis, Subpart G allows that sufficient leadtime can be provided to obtain the use of a high-altitude test facility. If the manufacturer is foreign, then the facilities can be in the home country (or anywhere else) as long as the facilities provide testing capability under high-altitude conditions.

At the present time, only a small proportion (approximately 4.0 percent) of nationwide vehicle sales are expected to occur at high altitude. To the extent that the Agency is satisfied that high-altitude vehicles are not more likely to be in noncompliance with the emission standards than low-altitude vehicles, the proportion of test orders applicable to high-altitude vehicles should generally approximate their sales fraction. Since fewer than 12 tests would be required to complete a typical high-altitude SEA, the total burden on the industry will be minimal. Furthermore, since high-altitude test orders will be a part of a manufacturers quota and the quota would be the same with or without these regulations, the maximum number of SEAs does not increase due to these regulations.

D. High-Altitude Certification

Certification of the high-altitude fleet is essentially the same as certification of the low-altitude fleet, with the exceptions that: (1) the number of emission-data vehicles tested is significantly less under high-altitude conditions and (2) a separate 4,000-mile emission-data vehicle and 50,000-mile durability-data vehicle are not required for high altitude.

The test procedure used for high-altitude certification is the same Federal Test Procedure that is used for low-altitude certification. Subpart B, Part 86 of Title 40 of the Code of Federal Regulations contains this test procedure. The one difference is that testing will be done under high-altitude conditions (i.e., at an elevation of 1,620±100 meters (5,315 feet±328 feet) or under barometric pressure of 83.3 kPa + 1 kPa).

As in the proposal, this final rule provides for the issuance of a single certificate of conformity which will cover both high- and low-altitude configurations of an engine family simultaneously. This is in accord with the requirement that all vehicles must be capable of being modified (if necessary) to meet either the low-altitude standard or the high-altitude standard. Therefore, a revocation of the certificate would halt the sale of both high- and low-altitude vehicles even if only high-altitude vehicles (or low-altitude vehicles) were found to be in noncompliance.

A major change in this final rule as compared to the proposal is that only one emission-data vehicle per engine family will be tested under high-altitude conditions. The proposal would have allowed the Administrator to select any or all of the low-altitude emission-data vehicles for testing under high-altitude conditions. Additionally, one other configuration could have been selected if such configuration was expected to have high emissions when tested under high-altitude conditions. Thus, under the proposal it would have been possible to require more testing to certify the high-altitude fleet (4 percent of national sales) than to certify the low-altitude fleet (96 percent of national sales).

The Agency had never intended to select the maximum number of emission-data vehicles possible under the proposal and, indeed, had estimated that 3 emission-data vehicles per engine family would be the maximum the Agency would ever require (see the Draft Regulatory Analysis in the docket) for certification testing. However, after further analysis, EPA has determined that the testing of one emission-data vehicle per engine family (in concert with Selective Enforcement Auditing) will provide sufficient incentive to the industry to assure EPA that all low-altitude configurations are adequately developed to meet these high-altitude emission standards. Thus, the certification cost of this final rule is significantly less than the certification cost of the proposal and is more in line with the proportions of high- and low-altitude sales.

The one emission-data vehicle per engine family chosen for certification testing under high-altitude conditions will be an emission-data vehicle already chosen for certification testing at low altitude. This ensures that the manufacturer will not have to incur the cost of building and accumulating 4,000 miles on the high-altitude, emission-data vehicle. This Final Rule requires that the manufacturer select the required low-altitude, emission-data vehicle which is expected to have the worst emissions when tested under high-altitude conditions.

Additionally, we have sought to ensure that the manufacturer does not need to run any new 50,000-mile durability vehicles as a result of this rulemaking. In the majority of cases, the high-altitude configuration selected will be in the same family-system combination as the low-altitude configuration and, therefore, the deterioration factor (DF) obtained for the low-altitude, family-system combination will apply to the high-altitude, emission-data vehicle. However, there may be some instances where the modification of the low-altitude, emission-data vehicle for high-altitude testing will create a new family-system combination (such as the addition of an air pump). In these few instances, the Administrator will allow the assignment of DFs based on the testing of low-altitude, family-system combinations similar to the newly created family-system combinations. Thus, these regulations do not impose on the industry any additional cost of running 50,000-mile durability vehicles.

E. Economic Impact

The costs of complying with the 1982 and 1983 high-altitude standards, as with other mobile source regulations, will primarily affect the producers and, ultimately the users, of high-altitude light-duty vehicles and light-duty trucks. High-altitude dealers are also affected by these standards; therefore, the economic impact on their activities is also addressed below. These values were originally calculated with a more stringent 1983 LDT standard than will now be in effect for that model year because of the recent postponement of

the low-altitude LDT standards until 1984. Although this makes the cost of the high-altitude standards somewhat less, the values do not change significantly and have not been revised.

1. *Costs of Manufacturers of High-Altitude Vehicles.* EPA expects manufacturers to incur expenses in three major areas: (1) emission control hardware, (2) development testing, and (3) certification testing. No significant changes are expected in the costs of the existing SEA testing program for two reasons. First, the high-altitude standards will not increase the overall number of SEAs a manufacturer must perform, assuming that the audited vehicles pass their respective tests. High-altitude audits count toward manufacturer's annual quota. Therefore, high-altitude audits are merely substituted for low-altitude audits and do not increase the quota. Second, as described in the Summary and Analysis of Comments (in the docket), manufacturers should experience little or no cost increase in transporting vehicles to SEA test sites or in testing. There also should be no need to expand existing high-altitude testing facilities or to build new ones. EPA has found existing facilities (both commercial and private) to be more than adequate to absorb the added development and certification testing that will be required.

The emission control technology can be grouped into five generic emission control systems for the purposes of analyzing the economic impact of this regulation: (1) unmodified electronic feedback systems, (2) recalibrated feedback systems, (3) aneroid non-feedback systems, (4) air injection non-feedback systems, and (5) diesel engine systems. Each of these systems will have one or more of the previously mentioned costs (hardware, development, and certification) associated with it.

Additional hardware (aneriod controls) will be required only on non-feedback LDVs and LDTs. Also a few GM LDT models will require the addition of air pumps. For high-altitude LDVs and LDTs, the hardware cost is about $2.2 million and $4.2 million, respectively, or a total of about $6.4 million (undiscounted, 1980 dollars).

A significant amount of development testing will be required to establish unique calibrations for all high-altitude vehicle engine families except those using "unmodified feedback systems." EPA estimates the cost of this development testing to be approximately $8.9 million and $5.5 million for LDVs and LDTs, respectively, or a total of $14.3 million dollars (undiscounted, 1980 dollars).

Under the high-altitude certification rules, manufacturers will be required to certify a high-altitude counterpart for each low-altitude configuration within an engine family. EPA has prescribed the high-altitude certification process in such a manner that the cost of the program is minimized, while still providing adequate assurance that high-altitude vehicles are complying with the standards. Manufacturers will not be required to build and accumulate mileage on special high-altitude emission-data vehicles. Deterioration factors (DFs) for high-altitude vehicles will be the same as those developed with low-altitude, 50,000-mile durability vehicles. EPA estimates that high-altitude certification costs for LDVs and LDTs will be a maximum of approximately $632,000 and $211,000, respectively, or a total of $843,000 for the 2-year life of the standards (undiscounted, 1980 dollars).

In summary, the aggregate, 2-year cost of these regulations (1982–83) is estimated to be approximately $22 million (present value at the start of 1982 assuming a 10 percent discount rate).

2. *Costs of Users of High-Altitude Vehicles.* The added cost to manufacturers for development, certification, and emission control system hardware will be passed on to purchasers of high-altitude vehicles. The amount a manufacturer must increase the price to recover its expenses depends on the timing of the costs and of the revenues from sales, as well as on the cost of capital to the manufacturer. EPA's analysis of first price increases for high-altitude vehicles assumed that all fixed costs are recovered by the end of the 1983 model year, i.e., the date these interim standards are no longer effective, and that the manufacturers' cost of capital is 15 percent per annum. Based on these assumptions, the average first price increase for a high-altitude vehicle is about $23. This is comprised of $16 for development, $1 certification, and $6 for emission control hardware. This overall average figure represents a $20 increase for LDVs and a $36 increase for LDTs. Expressed differently, the cost increase for only those vehicles that require modifications, i.e., some feedback LDVs, all nonfeedback LDVs and all LDTs, is $42 for LDVs and $36 for LDTs

EPA expects no change in the maintenance costs of high-altitude vehicles. (Air pumps and aneroids are the only additional pieces of hardware that will be required on some vehicles to comply with the regulations. The remaining vehicles will not have additional hardware, although some will require special high-altitude calibrations. Such calibrations should not change the existing maintenance characteristics of high-altitude vehicles.) These high-altitude standards could potentially affect the fuel economy of high-altitude vehicles, however. In general, it appears that these regulations will have a beneficial effect. Manufacturers are expected to recalibrate many engines to compensate for the effects of high altitude on the combustion process. In particular, the fuel-air mixture for many controlled engines will be leaner than for uncontrolled engines. Because of the very limited data base and the uncertainties involved, EPA will not credit any fuel economy benefit from better high-altitude emissions performance.

3. *Impact on High-Altitude Dealers.* The potential economic impact of these standards on dealerships can be divided into two general areas: reduced model availability and higher vehicle prices. Adverse changes in either area could affect vehicle sales and, hence, dealership profitability.

The 1977 high-altitude regulations resulted in the unavailability of many models and optional engine configurations in high-altitude areas. Manufacturers chose to limit model availability at high-altitude because the small percentage of the market represented by high-altitude sales (about four percent) did not justify the development costs required to certify the emission control capabilities of all their vehicle configurations. Some high-altitude dealers alleged that this resulted in lost sales.

To avoid model availability problems with the 1982–83 interim regulations, EPA is requiring that all models sold for principal use at high altitude (except exempted 1982 LDTs), shall meet, or the high-altitude standards. Since almost all new vehicles will be certified for sale at high altitude, each manufacturer will be more likely to make most of its full product line available to high-altitude purchasers. Conceivably, a manufacturer might comply with the regulations by certifying all models for high-altitude sale but choose not to offer certain models to high-altitude purchasers. The Agency believes, however, that manufacturers will make almost all models available once those models have been certified. An exception might involve certain exempted, low-power vehicles which perform poorly at high altitude. Because the sale of such vehicles for principal use at high-altitude would be unlikely,

EPA has developed criteria to certify them for principal use at low-altitude.

We believe that this control strategy, combined with manufacturers' increased experience with altitude-compensating emission control systems, will keep availability problems well below the 1977 level. Thus, the overall economic impact of the interim high-altitude regulations should be minimal.

If manufacturers recover their costs only on high-altitude sales, the estimated price increase for the average LDV is about $20 and for a LDT is about $36. The overall average will be about $23 per high-altitude vehicle. This represents approximately 290 lost sales per year, or 580 over the 2-year life of the standards. Only those dealers representing manufacturers whose vehicles must be recalibrated to meet the high-altitude standards will be impacted by significantly higher vehicle prices. EPA estimates that 50 percent of the 1000 high-altitude dealers may be impacted by significant first price increases. If equally impacted, each of these 500 dealerships would lose about one sale during the two year period. Therefore, the potential price increase for original equipment vehicles should have no significant economic impact on individual high-altitude dealerships.

In some cases, dealer trades may be adversely affected by the interim high-altitude standards. Dealer trades generally involve small rural dealers who cannot stock a wide variety of vehicles and must trade with large metropolitan area dealers to satisfy customer demand. Therefore, the potential for adversely affecting sales is limited to relatively isolated, rural, high-altitude dealerships which must "modify" low latitude vehicles acquired in dealer trades with low-altitude dealerships. For these isolated dealers, the potential problem should be limited to the relatively few "high demand" vehicles which are expensive to modify into the proper high altitude configuration. Even in these instances, however, only a portion of the potential sales would be lost. Therefore, it is reasonable to assume that any single high-altitude dealership will not be greatly affected by high-altitude standards. The reader is encouraged to examine the more detailed economic analysis for these standards contained in the Regulatory Analysis (in the docket).

F. Air Quality Benefits

The severity of the air pollution problems in the larger, high-altitude cities dictates the need for this regulation. As an example, the Clean Air Act requires attainment of the ambient CO and oxidant standards by 1982. An extension until 1987 can be allowed if all reasonable control measures will not allow attainment of the standards by 1982. Denver and Boulder, Colorado, and Salt Lake City, Utah, require extensions to meet both the ozone and the CO standards. Albuquerque, New Mexico, has both an ozone and CO problem, but is expected to achieve the ozone standard by 1982. Albuquerque, New Mexico, Colorado Springs, Greeley, and Fort Collins, Colorado require extensions to meet the CO standard. These areas also are required to implement an inspection and maintenance (I/M) program to reduce HC and CO emissions. Even with I/M and other transportation control measures, attainment of the standards in the Denver area by 1987 is not assured. Therefore, it is important that the emission control systems used on high-altitude vehicles be designed and calibrated to operate as efficiently as possible to reduce the severity of high-altitude air quality problems.

Projected emissions of CO and HC for Denver with and without the high-altitude standards are shown below for selected years to illustrate the relative impact of these standards on air quality in high-altitude urban areas. These projections are based on vehicle-miles-traveled per day (VMT) of 20.5 million for 1980, 21 million for 1982, 23 million for 1984, and 24 million for 1987, in addition to the fleet emission rates presented in the Regulatory Analysis. (These values were originally calculated with a more stringent 1983 LDT standard than will now be in effect for that model year because of the recent postponement of the low-altitude LDT standards until 1984. However, the values will not change significantly since the absolute reductions in grams/mile for 1982 LDTs are only about 20 percent less than for 1983 LDTs. Therefore, the values continue to be representative and have not been revised.)

In calculating emissions with the 1982 and 1983 high-altitude standards, light-duty vehicles and light-duty trucks are affected by the standards, heavy-duty trucks are not. Forty tons per day of stationary source hydrocarbon emissions are included in the hydrocarbon emission totals for all years.

Denver Area Emissions

[Tons/day]

	1980		1982		1984		1987	
	HC	CO	HC	CO	HC	CO	HC	CO
Baseline	231.7	1927	196.8	1687	162.2	135.8	133.7	1011
With Stds	231.7	1927	196.3	1670	160.8	131.2	132.4	977
Reduction:								
Tons/day	0	0	0.5	17	1.4	46	1.3	34
Percent	0	0	0.3	1.0	0.9	3.4	1.0	3.4

These estimated reductions are comparable in magnitude with other control strategies, which combined together provide a significant reduction in emissions. The estimates assumed the introduction of nationwide control technology designed to meet low-altitude standards but which also provides some compensation to control emissions when the vehicles are operated at high altitudes. Should other technologies, which do not have high-altitude compensation, be utilized for achieving future low-altitude standards, or should the compensating systems not be developed to their full control capability, the uncontrolled high-altitude emissions would be much higher. This would result in substantially higher air quality benefits for this action.

G. Cost Effectiveness

The cost effectiveness of the high-altitude standards was determined by dividing the total cost by the expected emissions reduction. The total cost is approximately $22 million, while the total lifetime emissions reduction in high-altitude areas is about 33,000 tons of HC and 1,195,000 tons of CO. The resulting cost per ton of emissions reduced is $10 for CO and $330 for HC. (These values were originally calculated with a more stringent 1983 LDT standard than will now be in effect for that model year because of the recent postponement of the low-altitude LDT standards until 1984. However, the values will not increase significantly since the absolute reductions in grams/mile for 1982 LDTs are only about 20 percent less than for 1983 LDTs. Therefore, the values continue to be representative and have not been revised.) The high-altitude cost-effectiveness values compared favorably to cost-effectiveness figures for other implemented or proposed control strategies which range up to about $50 per ton for CO and $1,000 per ton for HC.

H. Leadtime

The determination of adequate leadtime involves three central issues: technical complexity, availability of testing facilities, and available personnel. While EPA is in basic agreement with the argument that insufficient leadtime exists for developing and tooling long leadtime items, the Agency rejects the position that major hardware and tooling changes are necessary to accomplish the necessary types of control strategies. The principle control strategy for vehicles that do not have the inherent capability to meet the standards is to lean the fuel-air mixture to promote more complete combustion. After carefully reviewing all of the comments and after conducting an independent investigation, EPA concludes that this enleanment will be achieved with recalibrations of engine and emission control parameters. The required recalibrations may include short leadtime tooling on both feedback and non-feedback systems. As an example, the most critical, or "worst case", hardware modifications include calibration changes to carburetors for non-feedback systems and the addition of electronic components for feedback systems. Other techniques include changes to timing, air pump, and exhaust gas recirculation.

For non-feedback systems, modifying carburetors to attain leaner fuel-air mixtures can be done by using either fixed calibrations or automatically compensating aneroids. Aneroids are currently available on some car/truck models; other models could easily change to existing aneriod controlled carburetors; while still other carburetors could be modified by machining air bleed passages or through simple modifications to castings. The remaining non-feedback carburetors could be redesigned to accept an aneroid only by more complex changes to die patterns. This type of change is a long leadtime modification for which sufficient time is not available. In these instances, however, manufacturers can obtain the same emission control results at the design altitude by using carburetors specifically calibrated for use at high altitude (fixed calibration).

Optimal high-altitude fixed calibrations can usually be achieved by simple machining or readjustment of certain carburetor parameters (e.g., fuel jets, choke, idle mixture, idle speed, power enrichment, etc.), and will not require long leadtime retooling efforts as might be necessary if the whole carburetor casting pattern had to be modified in order to accept an aneroid.

Feedback systems have an inherent capability to compensate for changes in altitude. In this regard, some systems have a greater range of compensating authority than others. Although many systems appear to be able to automatically meet the high-altitude standards, others will need to be recalibrated. As delineated in the comments at the public hearings, leadtime is most critical if a manifold absolute pressure (MAP) sensor must be added to the feedback system. However, MAP sensors are no longer expected to be necessary. Reprogramming the electronic control unit may be required for some vehicles, but it is not as difficult as adding a MAP sensor.

Historically, manufacturers' production hardware calibrations are determined through a series of reiterations which occur throughout the development and certification process. This could require a long leadtime if the calibrations must be developed to a great degree in time for the building of 50,000-mile durability vehicles or, alternatively, at least in time for 4,000-mile emission-data vehicles as would be true for vehicles which must currently be certified for compliance with low-altitude standards. However, this is not the case for compliance with high-altitude standards. Manufacturers will not be required to build and accumulate mileage on high-altitude hardware for 50,000-mile durability or 4,000-mile emission-data tests. Even though preliminary calibrations would be specified to EPA earlier, specific calibrations would not absolutely need to be developed and built until the high-altitude emission tests were ready to be conducted. These tests would not be performed until the 4,000-mile, low-altitude tests had been completed and the vehicles were ready to be modified into high-altitude test configurations.

The concern for the last central issue, available personnel, arises especially in the case of manufacturers who produce both LDV and LDT lines. Because of the short time available before 1982 production begins, some manufacturers may not be able to complete the total development and certification processes for their entire product lines. It is difficult, however, to estimate the magnitude of this problem, except by a comparison with the normal development and certification timeframes.

EPA has concluded that adequate leadtime generally exists for vehicles to comply with the high-altitude standards beginning in the 1982 model year. This conclusion is based primarily on the fact that time is available in which to develop and certify the required "worst case" hardware, i.e., recalibrations of low-altitude engine and emission control parameters. The conclusion is further supported by the fact that most manufacturers already have significant experience with the effects of altitude on vehicle emissions and that many vehicles have already demonstrated the ability to meet the standards.

Nonetheless, EPA is concerned with the uncertainties in the analysis, and the possible limited resources of some truck manufacturers. Consequently, EPA is providing, for the 1982 model year only, an exemption for 30 percent of each manufacturer's projected sales volume of light-duty trucks. These exempted vehicles can be sold at high altitude.

I. Exemptions

EPA has recognized two situations which require exemptions for acceptable resolution. First, EPA wishes to avoid having the most fuel economic vehicles eliminated from the general market because they could not comply with the high-altitude standards. Second, EPA realizes a need to offer relief to the manufacturers because there may be insufficient leadtime available to complete all the development and certification activities for entire vehicle lines for 1982.

Failure to provide these exemptions would have a potentially serious impact on national fuel economy and on model availability to the consumer, regardless of altitude. This would be expected because the rule requires compliance with both the high- and the low-altitude standards (with modification, if necessary) for certification. Failure to comply with either standard precludes certification and, therefore, marketing at any location, regardless of altitude. Many vehicles which are relatively underpowered in order to enhance fuel economy performance are expected to have some difficulty complying. Thus, the rule impacts the fuel economic vehicles more heavily, leading to a potential loss of some fuel economic vehicles and ultimately to an adverse effect on national fuel consumption. In addition, the short time between this promulgation and the beginning of 1982 production, creates problems for manufacturers attempting to complete development and certification for their entire product line. This problem is more pronounced among LDTs because of the magnitude of the technical problems associated with compliance.

EPA has concluded that the criterion for exemption should be based upon unacceptable performance at high-altitude. This should offer relief to those vehicles which might have technical

problems or which have a limited market at altitude because of poor performance and yet allow certification and sale at low altitude, at least. The limit of acceptable performance for each manufacturer will be based upon certain objective and relevant design parameters. These will be the power-to-weight ratio (specifically displacement-to-weight or D/W) and the engine speed (in either the 1:1 gear or in the lowest numerical gear ratio at the manufacturer's option)-to-vehicle speed ratio (or N/V). These two parameters define the overall performance of a vehicle. Each manufacturer will have in a given model year a range of combinations of these parameters, the lower limit circumscribing a well-defined boundary of minimum performance which that manufacturer will judge to be sufficient to be marketable. This curve will then be mathematically shifted to a 16 percent higher displacement to reflect the effect of high altitude (5300 feet). Vehicles of each manufacturers with N/V and D/W combinations that fall on the low performance side of his own curve will be eligible for exemption.

Another exemption will be offered in 1982 only for light-duty trucks in lieu of the performance exemption. This will be a blanket exemption of 30 percent of each manufacturer's projected high-altitude LDT sales. These exempted vehicles, determined at the manufacturer's discretion, can be sold at high altitude, unlike the vehicles exempted under the performance criterion which cannot be sold at high altitude. This broad sales-based exemption scheme is being provided because EPA recognizes the promulgation of this rule leaves truck manufacturers, especially those which also produce cars, with little time in which to complete the development and certification of their entire LDT fleet for 1982. The Agency encourages manufacturers and their dealers to take advantage of the section 215 altitude performance adjustment regulations for exempted LDTs sold at high altitude. These regulations specify simple, relatively inexpensive adjustments which are intended to reduce automotive emissions from vehicles operated at altitudes other than that for which they were originally designed.

The low-altitude vehicles that are exempted from the high-altitude standards on the basis of performance will be required to have a label which simply states that the performance of the vehicle is considered unacceptable for high altitude use because of its poor performance and that it does not comply with the required standard. Similarly, 1982 LDTs that are included within the thirty percent sales exemption will be required to carry labels stating that they are not covered by the emission performance warranty under Section 207(b) (45 FR 30802).

J. Model Availability

High-altitude standards have the potential to adversely affect model availability in four principal ways: (1) vehicles may not be certified for sale at high altitude, (2) trading between low- and high-altitude dealerships may be prevented, (3) the purchase price of a vehicle may be significantly increased, and (4) vehicles may be certified, but the manufactuers may choose not to offer them for sale at high altitude. EPA recognizes that these high-altitude regulations will have some negative impact on model availability but has carefully structured the way in which the standards will be implemented in order to prevent undue hardship either to consumers or to dealers (at *high* and *low* altitude).

The high altitude regulations seek to minimize any negative impact on model availability by requiring that all non-exempt vehicle models be certified to both the low-and high-altitude standards. This is intended to prevent the problem which occurred under the 1977 high-altitude standards where many manufacturers found it more economical to eliminate certain vehicle/engine/transmission/axle combinations from the high-altitude market than to undergo the development and certification expense. Even though it will be possible for manufacturers to certify a high-altitude vehicle in compliance with these interim standards and, then, not offer it for sale, EPA believes the expenditure of some money to develop and certify such a vehicle will make that action impractical. Hence, every low-altitude vehicle should have a high-altitude counterpart available, except, or course, for some exempted vehicles.

The proposed rule sought to minimize potential model availability problems by requiring that all vehicles not automatically complying with the standards (both low and high altitude) must be capable of being modified to comply with the applicable standard at a reasonable expense ($40). This would ensure that vehicle trading between high-and low-altitude dealerships would remain unhindered, since dealers would not be dependent solely on factory installed original equipment as occurred under the 1977 program. Also, EPA reasoned that a limit on the cost of a conversion would minimize the new vehicle price difference between high- and low-altitude versions of the same vehicle for factory installed original equipment. As previously announced in the **Federal Register** (45 FR 49254), EPA found that some modifications were necessarily expensive and that the dollar limit should be deleted in this final rulemaking. The Agency has retained the modifiable requirement for non-exempt vehicles, however, and is convinced that most models will be available in high altitude areas.

Dealer trades will not be excessively restricted because the majority of vehicles will either inherently meet the standards or will be capable of being modified at an affordable price. The new vehicle price increment between high-and low-altitude vehicles is exected to be relatively small since it appears that even the high cost modifications could be ordered as original equipment from the manufacturers at no cost or at a reasonable price.

For example, EPA expected the highest incremental cost for a high-altitude vehicle will not exceed $75 when ordered with original equipment from the factory. The average vehicle cost increment should be about $23. Sales and, therefore, model availability should be impacted only in the relatively few instances where vehicles must be modified at considerable expense (e.g., greater than $150–$200) before they are sold.

Exemptions necessarily affect model availability. EPA believes it has properly circumscribed the exemption rule so that the loss of models at high altitude will be minimized. Furthermore, those models which are lost at high altitude have a minimal market potential there even in the absence of these regulations because of their unsatisfactory performance. The exemption rule will permit low-altitude sales (96 percent of the total market of a model) of vehicle configurations which might otherwise not be sold anywhere for the lack of an acceptable high-altitude modification. Therefore, no impact on low-altitude model availability will result from these standards.

At high-altitude locations, EPA will allow the sale of 1982 model LDTs exempted under the 30 percent sales exemption. The sale of performance-exempted LDTs and LDVs for the principal use at high altitude will not be permitted. The Agency has adopted a separate strategy for 1982 LDTs because leadtime is quite short for this class of vehicles. The sales exemption for 1982 LDTs will significantly reduce the risk of not complying with the 1982 high-altitude standards. To offset the

possible negative impact on LDT availability at high altitude because of the exemption, EPA will allow sales-exempted LDTs to be sold at high-altitudes in the 1982 model year. This strategy will be discontinued in the 1983 model year since EPA does not expect the LDT leadtime problem to occur after 1982.

K. Legal Authority

1. *Basic Authority.* EPA's basic authority for this interim rule lies in section 202(f)(1) of the Clean Air Act. This paragraph repeals the 1977 high-altitude standards and permits future regulations no earlier than model year 1981. Furthermore section 202(f)(2) permits EPA to set such standards with proportional limits (i.e., the same reduction as implied by the low-altitude rules). These standards necessarily would be less stringent than the statutory 1984 rule imposed by section 206(f) which requires the same standard at all altitudes. Inasmuch as this final rule is proportional within the degree of stringency permitted and is applicable after 1981, section 202(f) satisfied.

2. *Liability for Sale.* In this final rule, the vehicle manufacturer is liable for the sale of motor vehicles used principally at high altitudes which are configured to meet low-altitude emission standards. The justification for this position lies in Section 203(A)(1) of the Clean Air Act which prohibits the vehicle manufacturer from the "* * * distribution in commerce, the sale, or the offering for sale, or the introduction or delivery for introduction, into commerce * * * of any new motor vehicle or new motor vehicle engine * * * unless such vehicle or engine is covered by a certificate of conformity issued (and in effect) under regulations prescribed under this part." Section 206(a)(1) provides that a certificate of conformity shall be issued if the Administrator determines that the vehicle conforms to the emission standards prescribed under section 202. The requirement that all vehicles meet the applicable emission standards is clear.

In fact, as a result of the above considerations, this Final Rule has been changed from the proposal. In the NPRM EPA stated that while the sale of low-altitude vehicles for principal use at high altitude would be illegal, the sale of high-altitude vehicles at low altitude would be allowed. This provision was intended to allow low-altitude consumers, whose principal altitude of use is close to high-altitude location, to buy high-altitude vehicles if desired. At such "fringe" locations, a high-altitude vehicle would be expected to have better fuel economy and HC and CO emission characteristics than its low-altitude version.

However, this provision has been dropped in this Final Rule. While HC and CO emissions from a high-altitude vehicle are expected to decrease with altitude, NO_x emissions may increase due to leaner fuel to air ratios. It is conceiveable that if a low-altitude consumer bought a high-altitude vehicle and operated it at low altitude, that vehicle would be emitting NO_x above the level of the statutory low-altitude standard.

This Final Rule requires that high-altitude vehicles be sold only for principal use at high-altitude and that low-altitude vehicles be sold only for principal use at low altitude.

Recognizing the technological difficulties of designing a vehicle which could meet emission standards at all altitudes, this Final Rule does not require that all vehicles automatically be capable of meeting standards at high altitudes, but that they be capable of meeting the standards by adjustment or modification, § 86.082–8(h)(i). The flexibility in the regulation does not relieve the manufacturer of his responsibility to see that the vehicle is in a configuration that meets the standards at the time of sale. Because § 203(a)(1) prohibits the manufacturer from selling a vehicle without a certificate of conformity with the emission standards, sale of a vehicle which conforms only to low-altitude standards for principal use at a high altitude would violate § 203(a)(1) because that vehicle would not retain its coverage under the applicable certificate of conformity, causing the manufacturer to violate § 203(a)(1).

3. *Recall Authority.* This rule requires (sections 86.082–8(h) and 86.082–9(h)) that all light-duty vehicles (LDVs) and light-duty trucks (LDTs) must be capable of complying with both the low- and high-altitude emission standards, "by initial design, adjustment, or modification," with a possible exemption of this requirement for certain low-power, high fuel economy vehicles and some LDTs in the 1982 model year. Accordingly, certificates of conformity certify compliance with both low- and high-altitude emission standards (section 96.082–30(a)(3)). Vehicles sold for principal use at high-altitude locations must have undergone the certified adjustments or modifications, if any, in order to be covered by the certificate.

EPA may perform surveys of in-use high-altitude vehicles to determine whether they conform to the high-altitude standards throughout their useful life (as defined in section 202(d)). Since the high-altitude regulations are being promulgated under the authority of sections 202(a) and 202(f), a manufacturer whose in-use vehicles do not comply with these regulations may be ordered to remedy nonconforming vehicles when it can be determined, from available information, that a substantial number of properly maintained and used in-use vehicles do not comply with these section 202 regulations. In particular, if vehicles sold for principal use at high altitudes do not comply with high-altitude standards when in use, a recall may be warranted. It is possible that a determination of nonconformity at high altitude may also indicate that low-altitude vehicles fail to meet regulatory requirements for low-altitude vehicles. In such cases, the low-altitude vehicles may also be in nonconformity.

4. *Statutory Requirements.* Section 202(f) of the Clean Air Act permits EPA to promulgate interim high-altitude standards only after the Administrator has considered and made a finding with respect to: (1) economic impact, (2) availability of emission control hardware, and (3) the likelihood that any significant improvement in air quality will result.

All three of these issues were specifically addressed in the draft Regulatory Analysis which was prepared as a support document for the proposed standards. These issues were further discussed in the Preamble of the proposal. These issues have again been analyzed for the Summary and Analysis of Comments and the final Regulatory Analysis which support this final rulemaking. These documents are available for public review (See ADDRESSES). Therefore, the Administrator has met the conditions of section 202(f) for promulgating high-altitude standards for 1982 and 1983 model year light-duty motor vehicles.

L. Conflicts With the Parameter Adjustment Regulation

Beginning with the 1981 model year, manufacturers must comply with "parameter adjustment" regulations (44 FR 2960). These regulations will permit EPA, and require manufacturers, to test vehicles with their engines adjusted to any combination of settings within the physically adjustable ranges of their adjustable parameters, as opposed to the previous practice of setting those adjustable parameters to the manufacturer's specifications. For gasoline-fueled LDVs and LDTs with carburetion systems, idle air/fuel mixture and choke valve action (e.g., bimetal spring tension and vacuum pull-off adjustments) will be subject to EPA

adjustment beginning with the 1981 model year, and initial spark timing will be subject to adjustment beginning with the 1982 model year. Gasoline-fueled LDVs and LDTs with fuel injection systems will follow the same schedule, except that choke parameters will not be affected. There is as yet no schedule for adjusting specific parameters on diesel-powered LDVs and LDTs.

Manufacturers will comply by either narrowing the physically adjustable ranges of certain parameters or else making them entirely nonadjustable altogether (i.e., "fix" or "seal" them). Furthermore, for the certificate of conformity to be valid, any mechanism intended to seal or limit the adjustability of these parameters must be in place and effective at the time of original sales. It is likely, however, that all of the parameters which are limited or sealed due to the parameter adjustment regulations will need to be adjusted or recalibrated in order to comply with the 1982/1983 high-altitude standards. This becomes a problem for non-original equipment high-altitude vehicles which might have to be recalibrated in the field (due to a dealer trade for example). Any seal or other limiting mechanism which is defeated in order to recalibrate a parameter to a high-altitude specification must be restored prior to the original sale. This may force the dealer, instead, to replace whole mechanisms, such as the carburetor, to achieve the necessary recalibrations. Such wholesale replacements would have been particularly onerous had the proposed $40 maximum cost for modifications been retained (see 45 FR 49254). This would have been a concern, of course, only for low-altitude vehicles transported to high-altitude areas for sale or relocation. Vehicles originally calibrated for high altitude would have had no conflict between the now rejected $40 limit and the parameter adjustment regulation.

M. Fuel Economy

The high-altitude standards could potentially affect the fuel economy of low-altitude vehicles, and high-altitude vehicles. With respect to low-altitude vehicles, EPA believes that these regulations will have no effect. The availability of exemptions for certain low-power vehicles will enable the manufacturers to market certain high fuel economy models at low altitude that possibly could not easily certify to the high-altitude standards, and thus could not easily obtain certificates of compliance even at low altitude. Alternatively, manufacturers of such vehicles might be forced to achieve compliance at high altitude by introducing a higher numeral axle ratio. However, if this axle is the only gear ratio offered with a particular model, it must be employed also on the vehicle's low-altitude counterpart, and this would make the low-altitude vehicle less fuel efficient. Of course, manufacturers could produce more than one complying axle and then sell only the most fuel efficient at low altitude to retain a higher Corporate Average Fuel Economy (CAFE) rating.

For high-altitude vehicles, in general, it appears that these regulations will have a beneficial effect on fuel economy. Manufacturers are expected to recalibrate many engines to compensate for the effects of high altitude on the combustion process. In particular, the fuel-air mixture for controlled engines will be leaner than for uncontrolled engines. Unfortunately, the very limited data which are available to EPA preclude a quantification of this potential benefit.

III. Public Participation

It is the purpose of this section of the Preamble to highlight those major areas of comment which resulted in significant alterations to the Proposed Rulemaking package as well as those which did not. The reader will be able to see from these paragraphs how the Final Rule differs from the NPRM and why EPA did not follow the suggestions of some commenters. The reader is encouraged to consult the separate document entitled "Summary and Analysis of Comments," which summarizes the comments received along with the comprehensive EPA staff analysis (see Availability of Documents below). All of the detailed documents are assembled in the public docket.

A. Standards

The automotive industry, principally through the Motor Vehicle Manufacturers' Association (MVMA), challenged EPA's proposed standards as violating the intent of Congress as expressed in section 202(f) of the Clean Air Act, as amended. That paragraph mandated that the interim (1982–83) high-altitude standards not require a percentage reduction greater than that implied by the low-altitude, light-duty vehicle (LDV) standards for the same year. The baseline or reference year was to be 1970; hence, a 90 percent reduction from the 1970 fleets of LDV and LDT (light-duty trucks) is the legal maximum.

The MVMA challenged that EPA's manipulation of the available data was not valid and led to an incorrect value for the estimated 1970 baseline. This low baseline would then lead to unacceptably stringent standards after a 90 percent reduction was taken. Although there is some merit to the alternative MVMA approach, EPA believes its approach better estimates the baseline. While both approaches are merely mathematical simplifications, MVMA's approach is less able to provide an explanation for the effect of altitude on emissions which is based upon physical grounds. Furthermore, adoption of the MVMA recommendations would lead to high-altitude standards that are totally ineffective for controlling LDT emissions. The MVMA standard for CO would result in a higher lifetime emission rate than that for current LDTs operating at high-altitude in the absence of these regulations, and the MVMA standard for HC would result in insignificant reduction for that pollutant.

The crux of the problem lies in the fact that no proper baseline of 1970 vehicles was obtained at high-altitude operation when the vehicles were new. "Proper" here refers to the use of the 1975 Federal Test procedure (FTP) now in use and upon which these interim standards rely. Obtaining the baseline a decade later requires considerable compromise inasmuch as the fleet now is worn and generally not available. MVMA ran a study of 25 1970 light-duty vehicles selected to represent the sales-weighted fleet for that year. After the vehicles were overhauled to the extent possible to return their engines, drivetrains, and, especially, their emissions control devices to original condition, tests were run at both low and high altitude.

A comparison between the MVMA low-altitude LDV results (2.85 g/mi HC and 20.45 g/mi CO) and the generally accepted low-altitude LDV baseline values for that year (4.1 g/mi HC and 34 g/mi CO) showed that the MVMA fleet would have produced anomalously low values for the high-altitude standards, thus, a correction to the MVMA high-altitude baseline was necessary. EPA, in the proposal, derived the estimated high-altitude baseline by adding the difference between the low and high-altitude results from MVMA to the generally accepted low-altitude LDV baseline values. MVMA's position was that the ratio of their high and low-altitude results should have been multiplied by the generally accepted low-altitude LDV baseline. EPA's principal rationale is that due to the linearity between the mixture ratio and emissions on the rich side of stoichiometric mixture, the effect of a change in altitude, which will change the mixture ratio, will yield an additive effect on the emissions. For the above

mentioned reasons, EPA has made no revisions to the high-altitude LDV standards.

MVMA also objected to EPA's derivation of the LDT standards. In the proposal, EPA derived the standards by using (1) data from a 1969 LDT baseline fleet which was tested at low altitude, and (2) the absolute difference in the emissions of the MVMA 1970 LDV baseline fleet when tested at both high and low altitudes. The NPRM stated that using data from these two sources could introduce some error into the derivation of the standard but reasoned that the potential errors would likely cancel one another to a large degree. MVMA correctly pointed out that this assumption was erroneous and argued that the equation used to derive the standards was inappropriate. After carefully considering the comments, EPA rejected the argument that the equation was inappropriate. However, because of errors in the data base, EPA reconsidered the overall derivation of the standards. In this analysis, it was found that the proposed standards, which are being promulgated in this rulemaking, are actually less stringent than those allowed by section 202(f). Unfortunately, while the Act apparently permits these more stringent standards, to use them at this point could require additional analysis and possibly a reproposal which would delay the truck standards, at least to 1983. EPA judges that it would be preferable from an air quality perspective to promulgate the standards as proposed, thereby obtaining some control, although not the maximum, in 1982.

Finally, the industry correctly observed that EPA had not proposed waiver standards for CO and NOx to correspond to the low-altitude waiver standards. Failure to do so may contravene section 202(f). Thus, in response to the comments, EPA is promulgating waiver standards. These standards were derived by a method which is comparable to that used in finding the non-waivered LDV and LDT high-altitude standards.

B. Technical Feasibility

Many manufacturers commented that the proposed standards were infeasible for the 1982 model year LDVs or LDTs. Only a few commenters argued that the standards were infeasible for 1983 model year vehicles. In analyzing these comments, EPA found that many manufacturers failed to provide relevant test data with which to justify their claims of technical infeasibility. Nevertheless, depite the limitations imposed by the lack of substantive comments, EPA's technical staff performed a comprehensive feasibility analysis for all the manufacturers that commented on this issue.[4] The analysis utilized all the information presently available to EPA including 1981 certification data, CO waiver applications, oral testimony and written comments on the proposal, and the technical literature. Using this information, EPA finds that no evidence exists which proves any of the high-altitute standards are technically infeasible for LDVs and LDTs. On the contrary, in the cases where sufficient data was available with which to draw definite conclusions, the standards were indeed feasible. Anyone wishing further detail should consult the above referenced report.

C. Adequacy of Existing High-Altitude Test Facilities

EPA received comments which, in general, claimed that the amount of existing test capacity at high altitude was inadequate for implementation of this rule in 1982. It was claimed that the two commercial testing facilities at high altitude could not handle all of the necessary devlopment work that manufacturers without high-altitude testing facilities would require. However, no analysis of the alleged facilities shortage was attempted by any commenter.

As a result of these comments, EPA solicited additional information from the manufacturers and from the two high-altitude commercial facilities. EPA asked the companies if they had a test facility located anywhere at high altitude, and, if so, how many chassis dynamometers and Sealed Housings for Evaporative Determination (SHEDs) the facility had. Also, they were asked if they had any environmental chambers capable of simulating high-altitude conditions and, if so, what equipment did it have. EPA obtained a quick but comprehensive survey of the existing high-altitude facilities in this manner. The manfacuturers and the commercial labs were very cooperative. From this survey the Agency was able to estimate the total capacity for high-altitude testing.

Next, EPA needed to know the number of high-altitude tests required to implement this regulation. The Agency separated testing requirements into four groups: (1) Development, (2) Certification, (3) Selective Enforcement Auditing (SEA), and (4) In-Use Surveillance. As EPA analyzed each testing need it soon became apparent that the only one which would make significant demands on test facility capacity would be development. The summation of the other three areas of testing is less than 10 percent of the development testing needs.

In order to assess the industry's development testing needs, EPA had to estimate the emission control technologies that would be used to meet the high-altitude standards and then estimate the number of development tests each technology would require. The emission control technologies which EPA expects each manufacturer will utilize are based on the manufacturers' comments and on the Agency's analysis of existing data (see Summary and Analysis of Comments in docket, technical feasibility issue). The number of development tests per engine family was estimated using manufacturers' comments, and EPA's own in-house development expertise.

Once the number of development tests was determined for each manufacturer, the manufacturer's testing capability was compared to that number of development tests. If the manufacturer's testing capacity was inadequate to handle the estimated number of development tests, then it was assumed that the excess number of tests would be at the commercial facilities in Denver. When all of the manufacturers' excess development tests were summed and compared to the existing high-altitude test capacity of about 60 percent was determined. Thus, EPA concluded that not only are existing high-altitude test facilities adequate for 1982 implementation of this rule, but the safety margin is relatively comfortable. Even with the addition of certification testing, SEA testing and In-Use Surveillance testing to development testing, the excess capacity for high-altitude testing at the two commercial labs should be greater than 50 percent.

D. Selective Enforcement Auditing

The Selective Enforcement Auditing (SEA) regulations found as Subpart G, Part 86 of Title 40 of the Code of Federal Regulations will apply to these final high-altitude regulations. Comments on the relationship of SEA and these regulations were received and are separated into seven major subissues: (1) Adequacy of Proposal, (2) Facilities, (3) Impact on Foreign Manufacturers, (4) Available Vehicles, (5) Sanctions and, (6) Alternative Test Procedures. Each of these subissues is discussed below.

1. *Adequacy of Proposal.* Commenters on this subissue claimed that EPA had failed to propose a clear and responsible regulatory system for high-altitude SEAs. They requested that EPA

[4] "Technical Feasibility of the Proposed 1982–1983 High-Altitude Standards for LDVs and LDTs," EPA Report Number CTAB/TA/80-3, August, 1980.

repropose high-altitude SEA only after the specific requirements and a specific need were determined.

The SEA regulations are structured to accommodate new light-duty vehicle and light-duty truck standards within the existing SEA program. The special high-altitude testing situations and problems anticipated by EPA and the manufacturers can be handled by the flexibility contained in the existing SEA regulations.

EPA's experience with SEA indicates that compliance with a standard by a prototype certification vehicle does not necessarily mean that the manufacturer's production vehicles will also meet the standards. EPA sees no reason that this will be different for these new high-altitude regulations. After reviewing the SEA regulations, EPA has concluded that reproposal is not required and, thus, this final rulemaking includes high-altitude SEA.

2. *Facilities.* Some commenters expressed concern that, due to the limited number (two) of high-altitude commercial testing facilities in the U.S., the manufacturers would not be able to conduct SEA testing within the time constraints imposed by the SEA regulations. EPA's analysis of available commercial testing facilities indicates that the testing capacity should be many times that required for an SEA (see Summary and Analysis of Comments in docket). Furthermore, the Agency may exercise its authority under section 86.608(g) to give the manufacturer more time if he is experiencing scheduling difficulties. Therefore, EPA has determined that availability of facilities should not be a problem in conducting a high-altitude SEA.

3. *Impact on Foreign Manufacturers.* Several foreign manufacturers were concerned that their high-altitude SEA testing would have to be done in the U.S., thereby increasing the cost due to shipping charges. The SEA regulations address this point. Manufacturers must provide the personnel and equipment (facilities) needed to conduct SEA testing but such personnel and equipment does not have to be in the U.S. If a foreign manufacturer has access to a high-altitude testing facility in its own country, EPA will have the option to conduct any high-altitude SEAs at that facility. If a foreign manufacturer does not have a facility at home or simply wishes to conduct an SEA in Denver instead, then the costs to ship the vehicles should be a minimal extra cost since the vehicles would have been shipped anyway and probably to a location fairly close to Denver.

4. *Available Vehicles.* Commenters were generally concerned that if EPA were to pick a vehicle configuration of low sales volume, then it could be very difficult to secure enough of these vehicles for a high-altitude SEA. EPA is aware that some vehicle configurations have very low sales at high altitude. However, different sampling plans available in the SEA regulation could allow as few as four (4) vehicles to be tested in an SEA. Furthermore, this final rule requires that all vehicles (unless exempted) be capable of being modified (if necessary) to meet both high- and low-altitude standards; therefore, low-altitude versions of the selected configuration could be modified to supply the high-altitude versions needed for an SEA. New sampling plans under consideration by the Agency would further reduce the possibility of any problems with obtaining low sales volume vehicles.

5. *Sanctions.* One commenter stated that EPA lacks authority to suspend or revoke certification based upon testing at any altitude other than the altitude at which the vehicles in question are principally operated. This final rule provides that one certificate of conformity be issued to cover both high- and low-altitude versions of an engine family. If a manufacturer's certificate is revoked, then both high- and low-altitude vehicles would be illegal to sell. The commenter did not provide a basis for the statement that EPA lacked such authority.

EPA has promulgated regulations under authority of sections 202(a) and 202(f) of the Clean Air Act. These high-altitude regulations require that a vehicle (unless exempted) be capable of meeting both high- and low-altitude standards. If a vehicle is found not to meet either standard, it is in noncompliance and the certificate can be revoked.

6. *Alternative Test Procedures.* Several commenters requested that some alternative testing procedure be employed for high-altitude SEA. The SEA regulations (section 86.608(a)), however, require that SEA vehicles be tested according to the Federal Test Procedure (FTP). Alternate test procedures for both high-altitude certification and SEA have been rejected. These test procedures are discussed more fully below.

E. High-Altitude Certification

EPA received a substantial number of comments concerning various aspects of the proposed high-altitude certification scheme. These comments were separated into four major subissues: (1) Alternative Certification Test Procedures, (2) Number of Certification Vehicles, (3) Testing in Foreign Countries and, (4) Federal Test Procedure (FTP) Driving Cycle Change. Each subissue is discussed below.

1. *Alternative Certification Test Procedures.* The commenters requested that EPA adopt some alternative test procedure rather than requiring the full FTP to show compliance with the high-altitude standards. The commenters suggested that the California Air Resources Board's (CARB) high-altitude certification scheme would be appropriate for a Federal high-altitude emission control program. One commenter claimed that the CARB procedures have "already been found to meet the needs of high-altitude population centers" while another claimed that the California procedures are "an effective means of reducing high-altitude emissions." However, neither commenter included any analysis or supportive data to substantiate its claim. Industry support for the alternative certification scheme is founded on the economic relief that accrues because of the reduced certification and development costs.

The CARB certification scheme basically attempts to ensure that, at high altitudes, the amount of oxygen in the vehicle exhaust is sufficient to combust the unburned fuel in the exhaust. The CARB procedure consists of three choices which the manufacturer can employ to show a lean mixture at the tailpipe: flow bench testing, analytical calculations, and dynamometer testing.

While EPA agrees with the commenters that the CARB procedures would probably reduce hydrocarbon (HC) and carbon monoxide (CO) emissions to some extent as compared to no certification scheme at all, the Agency is confident that the reductions would be substantially less than those obtained under EPA's certification test procedure. The CARB procedures seek only to assure that the *potential* exists for the unburned fuel to be oxidized and this potential is only ensured over a few selected driving modes (i.e., idle, cruise, and wide-open throttle). Whether or not the unburned fuel is actually oxidized before being emitted to the atmosphere is unknown. Also, driving modes which are known to cause major proportions of total emissions (i.e., coldstart and transient operation) are not even considered.

Although this Final Rule is cost effective as compared to other HC and CO control strategies, there are two other important reasons why EPA's certification program is preferred. First, under EPA's program, in-use emissions can be approximated for future air quality planning. CARB's program makes no attempt to define the amount

of emissions that are actually reaching the atmosphere. An extensive in-use surveillance program would be required to determine at what level high-altitude vehicles are emitting pollutants. The variation among different manufacturer's vehicles as well as the variation among different models of the same manufacturer would be quite large, necessitating an extensive and costly in-use surveillance program to define emission levels. Under this Final Rule, actual in-use emissions can be estimated because certification testing provides data on the level of emissions being produced. From these estimates of in-use emissions, benefits have been calculated and necessary air quality planning can be accomplished.

Second, use of the FTP is necessary to implement effectively section 207(b) warranty regulations. In section 207(b) of the Clean Air Act, as amended, Congress authorized EPA to establish regulations which would require manufacturer liability for improperly functioning emission control systems. These warranty regulations rely on Inspection and Maintenance short tests which are correlated to the FTP and the appropriate standard. Since the CARB certification scheme would have, in practicality, precluded a high-altitude standard, section 207(b) warranty protection would have been denied to high-altitude consumers. This would be unfair and unacceptable in light of the fact that low-altitude consumers will soon have this protection.

2. *Number of Certification Vehicles.* The manufacturers were generally concerned that, as proposed, the regulation would allow EPA to select for certification testing under high-altitude conditions more emission-data vehicles than allowed for low-altitude certification testing. The manufacturers claimed that since only a small percentage (4 percent) of national sales occur at high altitude, the high-altitude certification program was overly burdensome compared to the low-altitude certification program.

EPA agrees that the high-altitude certification burden should be less than at low altitude. In the proposal EPA emphasized that, in fact, emission-data vehicle selection for high-altitude certification testing would be substantially less than the maximum allowed under the proposed regulation. However, after further analysis, EPA has concluded that a change in the final regulation is appropriate. The Agency has determined that the allowance of only one high-altitude, emission-data vehicle selection per engine family, in concert with Selective Enforcement Auditing, will provide sufficient assurance to EPA that the engine family is in compliance with the new high-altitude standards. Additionally, this change to the proposal will decrease expected certification costs by approximately 67 percent.

3. *Testing in Foreign Countries.* A couple of foreign manufacturers questioned whether they would be permitted to conduct certification testing in their own countries or they would be required to do certification testing in the United States. Under EPA's current low-altitude certification program manufacturers can do certification testing anywhere they wish. These high-altitude regulations are the same as the low-altitude regulations on this point. Foreign manufacturers can conduct tests in their country and then send the results to EPA.

4. *FTP Driving Cycle Change.* Comments received on this subissue claimed that the driving cycle used for high-altitude certification testing should be changed to reflect the different performance characteristics of vehicles at high altitude as compared to low altitudes. The commenters claimed that since acceleration is generally poorer at high altitude the acceleration rates contained in the FTP driving cycle should be reduced. Furthermore, they stated that unless the acceleration rates were reduced, the vehicles would operate at wide-open throttle too much of the time thereby making it more difficult to meet the high-altitude standards.

EPA agrees with the commenters that vehicle acceleration is, indeed, adversely affected at high altitudes. However, the appropriate driving cycle will not attempt to reflect the performance characteristics of a vehicle. Rather, the appropriate driving cycle will attempt to simulate the "typical trip" taken by the "typical driver." EPA has no reason to believe (nor did any commenter address this point) that the "typical trip" and the "typical driver" at high altitudes differ from those at low altitudes. In other words, although the demands placed on the vehicle may be somewhat more under high-altitude conditions because acceleration rates are less, the high-altitude driver still attempts to get from point "A" to point "B" in the same amount of time as the low-altitude driver. It may be true that the high-altitude vehicle is in wide-open-throttle more of the time but this is an accurate reflection of high-altitude driving conditions. Therefore, EPA has determined that the driving cycle currently in use at low altitude is also correct for high altitude.

F. Economic Impact

The majority of commenters on this issue stated that EPA had significantly underestimated the cost of the proposal. Unfortunately, in almost every case, the comments on the cost of the high-altitude regulation were general and provided no breakdown of the associated cost elements or other supporting detail. This lack of substance and, hence, justification, prevents EPA from effectively analyzing the manufacturers' technology cost comments in detail.

In addition to the general and unsupported nature of many of the manufacturers' comments, EPA's technology analysis found that some estimates appeared to be very pessimistic and could not be used to characterize realistically the costs of this regulation. The comments, however, were very helpful in characterizing the emission control technology which will be required to comply with the standards. EPA used this information to develop a more accurate economic analysis than was possible in the proposal.

The aggregate cost estimate for these regulations has increased significantly from the NPRM. Primarily, the Agency's previous estimate of the most likely control hardware, which was based on discussions with industry representatives, was essentially correct with two exceptions. First, the complexity of the changes which may be required by some feedback systems was in error. Second, Ford Motor Company reversed its earlier commitment to feedback systems on its LDV's in favor of nonfeedback systems. Controlling high-altitude emissions with nonfeedback systems is usually more expensive than with feedback systems. Another reason the costs changed from the NPRM is that EPA had underestimated the development effort which will be required to recalibrate engine operating parameters for good emissions performance at higher elevations. EPA's revised economic analysis paid particularly close attention to the required feedback changes and development effort. Therefore, the more accurate estimate of control technology costs was made possible, in part, by the comments to the proposal.

G. Environmental Impact

All automobile manufacturers commented that the interim standards are unjustified and will not result in any significant improvement in air quality. Opposing this view were comments from political representatives and the

general public which stated that the standards were necessary to improve air quality and protect the public health. In response to specific statements by industry representatives, EPA performed a careful reevaluation of the existing air pollution data.

Many industry representatives pointed out that recent air quality trends up to 1977 have shown an improvement in pollution levels, and that because many new cars have the capability to compensate somewhat for altitude changes, this air quality improvement will continue without the standards. EPA is in agreement with the commenters, that CO levels have steadily declined in the period up to 1977. However, the trend has not continued after that date. CO levels in 1978 were higher than 1977, and were not significantly different than those in 1975 and 1976. EPA also is in general agreement with the commenters, that many new cars have the capability to compensate somewhat for altitude changes. This was acknowledged in the NPRM which went on to add that high-altitude standards are needed to assure that the electronic control systems are adequately designed for the full range of altitudes where emission reductions are required. Since there is no assurance that electronic systems are adequately designed or even to know how many cars will indeed have these systems, it is unwise to conclude that air quality will continue to improve in high-altitude areas because of these systems.

Nevertheless, the justification for the interim high-altitude standard is not based on whether beneficial air quality trends will or will not continue. The issue is if the standards will help in the attainment and maintenance to the National Ambient Air Quality Standards (NAAQS). Unfortunately, even with the high-altitude standards, attainment of the NAAQS is not assured.

Based on a photochemical dispersion model, the State of Colorado was not able to project attainment of the ozone standard by the statutory deadline of 1987, using Mobile I emission factors and an inspection and maintenance program (I/M). Colorado was able to predict attainment of the CO standard by 1987 using Mobile I and I/M. It must be noted, however, that the Mobile I emission factors used by Colorado are lower than those used in EPA's draft Regulatory Analysis. Mobile I was based on the assumption that 1980 and later model year vehicles would exhibit the same ratio of high- to low-altitude emissions as 1975 and 1976 model year vehicles. Data from prototype 1980 and 1981 control system vehicles were used in the Regulatory Analysis to update emission factors for 1980-83 model year vehicles without high-altitude standards. This analysis has since been revised in the final Regulatory Analysis to include new information. The new vehicle CO emission rates for 1979–83 LDVs and LDTs at high altitude have been increased in the revised analysis, so the disparity between the figures used by EPA and those previously used by Colorado appear to be significant. Furthermore, the Colorado I/M program has been revised by the Colorado Legislature and may not provide as much emission reduction by 1987 as was assumed when attainment of the CO standard was demonstrated. Therefore, attainment of the CO standard is not a certainty.

One commenter correctly pointed out that the high-altitude standard may result in leaning the motor vehicle's fuel-air mixture which could result in greater NO_x emissions. Since NO_2 is a catalyst for photochemical smog, any increase in NO_x could lead to a more severe ozone problem.

In analyzing this comment, EPA found that even though high-altitude emissions of NO_x for 1982 and 1983 vehicles may increase slightly over what they would be without standards, the high-altitude NO_x standard is much lower than high-altitude NO_x levels for any model year prior to 1981. Thus, ambient NO_2 levels will continue to decline with the interim high-altitude standards. Furthermore, Denver is the only high-altitude area with high levels of NO_2. Denver only marginally exceeded the standard from 1975 to 1977, and in 1978 NO_2 levels were below the standard. Denver also has levels of ozone which exceed the national standards. Analyses of attaining the ozone standard by the State of Colorado and EPA indicate that reductions in HC emissions are more critical than reductions in NO_2. Therefore, EPA believes that these regulations will not significantly impact the ability of high-altitude regions to meet the NAAQS for ozone or NO_2.

Several changes from the proposal were made in the final environmental analysis. Some of these have already been described previously. First, the CO emission rates for 1979–1983 LDVs and LDTs have been increased. Second, the analysis has been revised to account for the higher usage of light-duty trucks in high-altitude areas. Third, Ford Motor Company stated at the public hearing that most of their vehicles would utilize non-feedback carburetors in model years 1982 and 1983. The analysis has been revised to account for this change in technology by Ford.

H. Leadtime

Manufacturers generally expressed concern that inadequate leadtime existed in which to develop the necessary control hardware either because of the hardware's complexity, or because adequate high-altitude test facilities are not available. In analyzing the issue of technical complexity, EPA found that the manufacturers' concern was often related to the possibility that long-leadtime tooling may be required. After reviewing the commenters' other statements regarding control hardware requirements and conducting an independent study, the Agency found that major tooling changes are not required to produce the requisite control hardware. Therefore, long-leadtime tooling is not a problem. It was also found that the requisite hardware is not "complex." EPA believes that the standards can be achieved in a timely manner with recalibrations of certain engine and emission control parameters. These recalibrations include carburetion changes for nonfeedback systems and electronic module changes for feedback systems. All recalibrations can be developed within the available time, utilizing the existing high-altitude test facilities. Hence, EPA has retained 1982 as the implementation date of these standards.

However, the lack of detail in the manufacturers' submittals casts some doubt on the accuracy with which EPA can predict the requisite leadtime in all cases. Coupled with the small interval of time now available for 1982 certification, this uncertainty leads EPA to be concerned that the manufacturers may not, in all cases, have sufficient time and resources to complete the certification process. In order to relieve this leadtime burden, this rule includes a special 1982 only exemption for 30 percent of each manufacturer's LDT fleet. These exempted vehicles can be sold at high altitude and, hence, the exemption does relieve the manufacturers of this burden.

I. Exemptions

EPA is promulgating this Final Rule with two new exemption provisions, while removing that which was proposed. The first exemption is based upon a vehicle having insufficient performance to be generally suitable for high-altitude use. This is the same general perspective as the exemption scheme in the proposed rule. However, instead of basing performance upon measured acceleration, the criterion shall be the values of certain design parameters upon which performance depends. These parameters are the engine displacement-to-weight ratio (D/

W) and the engine speed-to-vehicle speed ratio (N/V). The alternative, acceleration-based performance criterion that was proposed has been dropped as a result of manufacturers' comments.

In addition, and for an entirely different purpose, another exemption will be offered for light-duty trucks in 1982 only. This will be a blanket exemption of 30 percent of each manufacturer's projected high-altitude LDT sales and replaces the performance exemption. These vehicles will still be eligible for sale at high altitude.

The manufacturers unanimously supported the exemption idea, although for different reasons and, reflecting those reasons, they offered a variety of alternative criteria to circumscribe the exemptions. Their perceived need for exemptions in many cases was influenced by the question of whether they would be permitted by the certification rules to employ axle ratio changes as part of the high-altitude fix.

The variety of alternative criteria that were suggested included (1) exemption for vehicles having automatic compensating devices, (2) exemption for all vehicles having fixed calibration, (3) exemption for all high fuel economy vehicles, (4) exemption for poor performers as measured by actual performance or by certain design variables, and (5) exemption of a percentage of sales.

EPA reconsidered the exemption criterion in the light of the various proposals and with particular emphasis on the basic purpose of the exemption rule: to avoid the loss of fuel economic vehicles from the low-altitude market because those vehicles could not, without great difficulty, comply with the high-altitude rule. In addition, EPA considered the need for exemptions during the 1982 model year based upon leadtime.

EPA rejected schemes to exempt vehicles according to the control technology which they employed. Such schemes are self serving to particular manufacturers and do not directly address the goal. EPA considered the exemption criteria proposed by industry which addressed high fuel economy vehicles. While relevant to the goal, absolute, and unambiguous, the criterion would miss many vehicles which EPA has determined are in need of exemption on technical grounds, namely those vehicles of lower absolute fuel economy, but relatively high fuel economy for their size. Also, it is not high fuel economy *per se* which creates the technical problems for compliance, but rather poor performance arising largely from the attempt to improve the relative fuel economy of all vehicles, large and small. The poor performance arises from the use of smaller engines and results in excessive time in power enrichment and, hence, excessive emissions, especially at high altitude when available power is very small.

The logic leads directly to a consideration of the performance-based criteria such as that proposed by EPA. The principal defect with EPA's proposal, according to industry, is that it requires testing of vehicles for acceleration at altitude at a very late stage in the development cycle, thus creating severe leadtime problems should a vehicle unexpectedly not be eligible for exemption. Several manufacturers suggested the use of objective design parameters which are the governing variables which impact performance. These parameters are the displacement-to-weight ratio (D/W) and the engine speed-to-vehicle speed ratio (N/V).

Initially, EPA rejected such proposals because if the values were fixed, the consumers' changing perception of minimal acceptable performance (in response to growing fuel economy concerns) would lead to an ever-increasing fraction of the fleet being exempted. However, EPA has modified this concept to allow the criterion to change with the market. Each manufacturer will have, in a given model year, a range of combinations of D/W and N/V, the lower limit circumscribing a well-defined boundary of minimum performance which that manufacturer will judge to be sufficient to be marketable. This curve will then be mathematically shifted to a 16 percent higher displacement (D) to reflect the effect of high altitude (5300 feet). Vehicles of each manufacturer with N/V and D/W combinations that now fall on the unacceptable performance side of his own displaced curve will be eligible for exemption. This will be the basic exemption criterion.

N/V is, of course, dependent upon the transmission gear selected. Two possibilities are paramount: either the lowest numerical gear ratio which may be direct drive (1:1) or an overdrive, or, alternatively, direct drive exclusively (1:1). In the latter case, the presence of an overdrive, if any, is ignored. Substantial arguments support each choice. The motivation for this entire procedure is to identify those vehicles which may be expected to have inferior performance at high altitude. If the performance in question is low-speed acceleration typical of driving over the FTP, then the lower option (1:1) is perhaps more relevant; it also puts all vehicles on an equal footing. If, on the other hand, the performance of interest is acceleration at cruise, then the highest gear (1:1 or overdrive, if available) is more relevant. This performance may, indeed, be of primary interest to low-powered vehicles at high altitude which may find the power available at cruise to negotiate passing and minor road grade insufficient to maintain overdrive. Because EPA could not find a sufficient rationale to select one over the other, this final rule allows each manufacturer to select the basis for the determination of the gearing for N/V, 1:1 or the lowest numerical gear ratio.

A criterion based upon a percentage of sales was judged to miss the point of the purpose of exemptions for technical difficulty, although it would address the question of preservation of fuel economic vehicles at low altitude. However, in the context of exemptions because of inadequate leadtime, this criterion appears more logical. EPA determined in its review of comments on leadtime constraints, that manufacturers of trucks would have some difficulty completing for the 1982 model year, all the necessary calibration adjustments and subsequent certification activities. This would be especially true of the larger manufacturers which offer a diverse line of LDTs and which also must do parallel activities for their LDV lines. This may strain severely their resources in the short time available. Hence, an exemption of 30 percent of each manufacturer's projected high-altitude LDT sales would lighten the burden for 1982 considerably. These vehicles would still be eligible for sale at high altitude as, otherwise, the exemption penalizes the manufacturers. This exemption is offered in lieu of the performance exemption.

J. Model Availability

A number of responses to the NPRM claimed that the proposed $40 limit to modify any vehicle configuration to its high-altitude equivalent would reduce model availability rather than maximize it. This would occur because the infeasibility of holding to $40 would prevent certification altogether of some configurations. Others pointed out a failure to certify on either technical or business grounds would reduce availability at high *and* low altitude. These vehicles lost would likely be the most fuel economical.

In reviewing the manufacturers' statements of the technology base, EPA recognized that the control methods to be used were not as simple to employ as originally conceived. Also, certain carburetion controls, which were

assumed to be employed on both high- and low-altitude vehicles, would be, in fact, employed only on high-altitude vehicles. These and other factors made it apparent that the $40 modification limit would have to be abandoned. As originally conceived, however, the concept of requiring all vehicles to be modifiable at a modest cost would have maximized model availability because all vehicles would have had a high-altitude counterpart. In order to preserve some benefit from this concept, the final rule retains the requirement that each vehicle be modifiable to a high-altitude configuration (with certain exemptions) in order to obtain a certificate. However, the dollar limit on the modification cost is not included in this rulemaking. With a general knowledge of the technology involved and with the modifiable requirement in force, EPA has concluded that a satisfactory level of model availability will be acceptable although the cost per vehicle may exceed $40 if a low-altitude vehicle needs to be modified. The cost for the average vehicle originally manufactured in the high-altitude configuration will range from less than a dollar to $42, although individual vehicles could cost more (probably not more than $75), depending on the amortization arrangement. This will not significantly alter the consumer's perception of the choices of models available to him.

Also, some commenters pointed out that a failure to certify a vehicle on either technical or business grounds would reduce availability at high *and* low altitude. The vehicles lost would likely be the most fuel economical and, hence, may be of considerable concern to the consumer. EPA remains unconvinced that there is unequivocally an insurmountable technical problem for fuel economy vehicles in complying, but has nonetheless recognized the possibility that such low power-to-weight vehicles may tend to spend an inordinate time in the power enrichment mode at high altitude and may thus fail the test. EPA has resolved this problem primarily through its exemption provision for low performance vehicles, that is, those which would tend to have very low power-to-weight ratios. As discussed elsewhere in this preamble, such exempted vehicles need not comply with the high-altitude standards and may yet be sold at low altitude wherein the bulk of the market lies. High-altitude consumers would be denied these vehicles and thus, model availability to them is reduced. However, because these low performance vehicles are not well suited to high-altitude use because of the power degradation with altitude, interest in these vehicles should be considerably reduced.

The special 30 percent sales exemption for LDT in 1982 will improve model availability because without the exemption, some model lines may not have the opportunity to complete certification in a timely fashion. The exemption permits sales at high altitude so consumer options are maximized.

K. Legal Authority

The manufacturers challenged EPA's contention that this regulation could hold the manufacturers liable for the sale of improper (i.e., low altitude) vehicles at high altitude. They contended that such an action created a vicarious liability; i.e., the arm's length relationship between the manufacturer and the dealer precluded manufacturer responsibility for the dealer's action. Furthermore, section 207(h)(1) of the Act was cited as specifically imposing direct responsibility for the ultimate sale of a vehicle upon the dealer.

EPA's position is that section 203(a)(1) prohibits the manufacturer from selling or introducing into commerce, a vehicle that is not covered by a certificate of conformity. Section 206(a)(1) provides that a certificate of conformity shall be issued if the Administrator determines that the vehicle conforms to the emission standards prescribed under section 202. Because section 203(a)(1) prohibits the manufacturers from selling a vehicle without a certificate of conformity to the emission standards, sale of a vehicle which conforms only to low-altitude standards for principal use at a high altitude would violate 203(a)(1) because that vehicle would not retain its coverage under the applicable certificate of conformity, causing the manufacturer to violate section 203 (a)(1).

The standard dealer/manufacturer arrangement is a franchise type agreement under which the manufacture sells the vehicles to the dealer, who resells them to the ultimate consumer. The vehicle manufacturers asserted that because they do not sell vehicles to the ultimate consumer, they should not be held responsible for the improper sale of vehicles. Instead, they agreed that independent dealers should be responsible for their own actions. Section 203(a)(1) clearly makes the manufacturers responsible for prohibited acts which occur through their distributor agreements. In addition, section 203(a)(4)(A) prohibits the manufacturer from selling a vehicle which does not conform to section 207(a). Section 207(a) requires the manufacturer to warrant to the *ultimate* purchaser that the vehicle will conform to the applicable regulations under section 202.

Because section 203(a)(1) and section 203(a)(4)(A) place their prohibitions solely on the manufacturer, the manufacturer may shift the performance of the required acts to another party but the responsibility for the proper performance of the duty cannot be shifted. The requirement that a vehicle conform to standards creates a non-delegable duty. The doctrine of the non-delegable duty is usually applied only when violation of a duty can result in harm to an individual or the public. The public health concerns connected with air pollution certainly qualify.

One other point raised by the vehicle manufacturers is that section 207(h)(1) of the Clean Air Act requires the dealer to furnish the purchaser with a certificate stating that the vehicle conforms to the applicable regulations under section 202. While this section does place a duty onto the dealer, there is no reason why that should release the vehicle manufacturers of their duty to also certify the vehicles as required by Section 203. Regulations of this sort are not without precedent. The 1977 high-altitude regulations had a similar condition (section 85.177–30(a)(4)).

L. Labeling

EPA received comments on the general subject of the new labeling requirements contained in this final rule. The commenters had two major concerns: (1) the use of the phrase "unsafe at high altitude" and (2) the use of the phrase "vehicle was sold."

The proposal would have required that the manufacturer affix a label to all exempted, low-altitude vehicle configurations stating that the vehicle had insufficient power to operate safely at high altitudes. The commenters claimed that while the high-altitude performance of an exempted vehicle may, indeed, be less than the low-altitude performance, such high-altitude performance would not necessarily be unsafe. In fact, such a label would imply that the exempted, low-altitude vehicle should not even be driven *through* high-altitude areas such as on a cross country trip.

EPA agrees with the commenters that the labeling requirement for exempted, low-altitude vehicles should be changed for the final rule. Accordingly, these final regulations require that the manufacturer affix a label to all exempted, low-altitude vehicles that states the vehicle is unsuitable for high-altitude use because of its poor performance and because of its noncompliance with the high-altitude emission standards.

The NPRM required manufacturers to affix a label to all high-altitude vehicles stating that the vehicle was sold to the ultimate purchaser for use at high altitude. The commenters argued that the labeling criterion was illegal because a manufacturer cannot state that a vehicle was sold for any purpose since the vehicle is eventually sold by a dealership. This question of whether or not a manufacturer is liable for the ultimate sale of a vehicle is discussed in the issue titled EPA's Legal Authority in the Summary and Analysis of Comments for this rulemaking. In that discussion, EPA holds that the manufacturer is liable for the ultimate sale of the vehicle. Therefore, the proposed labeling requirement is legal and is retained in this Final Rule.

A change from the proposal occurred due to further analysis of the issue. EPA recognizes the possibility that a low-altitude vehicle may be modified at a dealership to the high-altitude version (or vice-versa). Therefore, EPA is requiring that if a dealer modifies a low-altitude version to the high-altitude, then that dealer must affix a label to the vehicle which states that the vehicle has been modified to the high-altitude version prior to sale to the ultimate purchaser.

M. Fuel Economy

In response to the Notice of Proposed Rulemaking, a few commenters argued that it would not be possible to modify certain high fuel economy vehicles to meet the proposed high-altitude standards. Others commented that to do so would require major modifications which could degrade fuel economy, and because of the proposed $40 maximum charge, such vehicles might be prohibited from being sold at both high and low altitudes.

EPA recognizes that there is a remote possibility that some high fuel economy vehicles might not be able to comply with the high-altitude standards, but these are generally the same low-power vehicles which will be eligible for exemption, and, in fact, are often not in high demand at high altitude due to performance limitations. Thus, EPA disagrees with those manufacturers which claimed that their corporate average fuel economy at high altitudes would be negatively impacted by these regulations.

With respect to the fuel economy of manufacturers' low-altitude fleets, the Agency believes that these regulations will have no effect. The availability of exemptions for certain low-power vehicles will enable the manufacturers to market certain high fuel economy vehicles at low altitude that possibly could not certify to the high-altitude standards. Furthermore, the revocation of the $40 maximum charge eliminates the possibility that a manufacturer would be prohibited from selling vehicles at low altitude because of an excess cost for high-altitude modifications.

In addition, a few comments (and almost no data) were received regarding the fuel economy effects of the control hardware is expected to be utilized to meet the high-altitude standards. In responding to these comments, EPA found that the basic parameter of interest with respect to altitude changes is the air/fuel ratio of the combustion chamber mixture. For each vehicle, the manufacturer identifies the optimum air/fuel ratio for optimization of emissions, fuel economy, driveability, performance, etc. As the altitude of the vehicle increases, and the atmospheric density decreases, less air will necessarily enter the combustion chamber. Unless compensated for, the engine will thus have a lower air/fuel ratio (a "richer mixture"). This condition will produce higher hydrocarbon and carbon monoxide emissions, and typically worse fuel economy.

Generally, the net result of the modifications which manufacturers are expected to adopt will be an increase in the air/fuel ratio (a "leaner mixture") to one that is as close to the optimized air/fuel ratio as possible. This would be expected to increase fuel economy. Spark timing, in addition, can have an important effect on fuel economy. At high altitudes, NO_x emissions are naturally lower, there exists the ability to advance the timing to reduce fuel consumption. However, due to an absence of data from the manufacturers, it is impossible to quantify this alleged benefit. It is impossible to support a claim that there is a fuel penalty.

Availability of Documents and the Public Docket

Materials relevant to this rulemaking have been assembled in Public Docket No. A-79-14, U.S. Environmental Protection Agency, Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, S.W., Washington, DC 20460. Such materials as regulatory support documents, comments, hearing transcripts, correspondence, the Summary and Analysis of Comments, and the Regulatory Analysis may be obtained by anyone from the docket. As provided in 40 CFR Part 2, the Agency may charge a reasonable fee for copying services. Additionally, single copies of the Summary and Analysis of Comments and the Regulatory Analysis are available through the Director, Emission Control Technology Division, 2565 Plymouth Road, Ann Arbor, MI 48105.

Evaluation Plan

Because of the fixed two-year life span of the regulations proposed in this action, the Agency is not planning to review it subsequent to its ultimate promulgation. However, at the time when regulations pertaining to high-altitude emission standards for 1984 and subsequent model years are promulgated, the Agency will put forward a plan for the review of the efficacy of that rulemaking action, to be completed within five years after its promulgation.

Reporting and Recordkeeping Requirements

Under the EPA's new "sunset" policy for reporting requirements in regulations, the reporting requirements in this regulation will automatically expire five years from the date of promulgation, unless EPA takes affirmative action to extend them. However, these regulations will be replaced or substantially revised by 1984 in response to the statutory requirements of Section 206(f) of the Clean Air Act.

Regulatory Analysis

The Administrator has determined that this action is a "significant" regulation. The Agency has prepared a document entitled, "Final Regulatory Analysis: Environmental and Economic Impact Statement for the 1982 and 1983 Model Year High-Altitude Motor Vehicle Emission Standards," which satisfies the requirements for analyses called for by Executive Order 12044, and sections 202(f983) and 317 of the amended Clean Air Act. Anyone may review and reproduce this document in the EPA Central Docket Section. Copies are also available upon request from the Office of Mobile Source Air Pollution Control, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460

Dated: October 2, 1980

Douglas M. Costle,

Administrator.

1. The table of contents for Subpart A of Part 86 is amended by the addition of the following sections:

Subpart A—General Provisions for Emission Regulations for 1982 and Later Model Year New Light-Duty Vehicles, 1982 and Later Model Year New Light-Duty Trucks, and for 1982 and Later Model Year New Heavy-Duty Engines

* * * * *

Sec.

86.082-1 General applicability.

Sec.
86.082–2 Definitions.
86.082–8 Emission standards for 1982 and later model year light-duty vehicles.
86.082–9 Emission standards for 1982 and later model year light-duty trucks.
86.082–21 Application for certification.
86.082–24 Test vehicles and engines.
86.082–26 Mileage and service accumulation; emission measurements.
86.082–28 Compliance with emission standards.
86.082–30 Certification.
86.082–35 Labeling.
86.082–38 Maintenance instructions.
86.083–9 Emission standards for 1983 and later model year light-duty trucks.

* * * * *

2. A new § 86.082–1 is added. This section is identical to § 86.079–1 except that paragraph (c) is deleted.

§ 86.082–a General applicability.

(a) The provisions of this subpart apply to 1982 and later model year new gasoline-fueled and diesel light-duty vehicles, 1982 and later model year new gasoline-fueled and diesel light-duty trucks, and 1982 and later model year new gasoline-fueled and diesel heavy-duty engines.

(b) *Optional applicability.* A manufacturer may request to certify any heavy-duty vehicle 10,000 pounds GVWR or less as a light-duty truck: Heavy-duty vehicle provisions do not apply to such a vehicle.

3. A new § 86.082–2 is added and reads as follows:

§ 86.082–2 Definitions.

The definitions in § 86.080–2 remain effective, except that the definition of "high-altitude conditions" is superseded and the definition of "low-altitude conditions" is added.

"High-altitude conditions" means a test altitude of 1,620 meters (5,315 feet) plus or minus 100 meters (328 feet), or equivalent observed barometric test conditions of 83.3 ± 1 kilopascals.

"Low-altitude conditions" means a test altitude less than 549 meters (1,800 feet).

4 Section 86.082–8 is amended by revising paragraph (a)(1) and adding paragraphs (d), (e), (f), and (g).

§ 86.082–8 Emission standards for 1982 and later model year light-duty vehicles.

(a)(1) The standards set forth in paragraphs (a) through (c) of this section shall apply for vehicles sold for principal use at other than designated high-altitude locations. Exhaust emissions from 1982 and later model year light-duty vehicles shall not exceed:

* * * * *

(d)(1) Model year 1982 and later light-duty vehicles sold for principal use at a designated high-altitude location shall be capable of meeting the following exhaust emission standards when tested under high-altitude conditions.

(i) *Hydrocarbons.* 0.57 grams per vehicle mile (0.35 grams per vehicle kilometer).

(ii) *Carbon monoxide.* 7.8 grams per vehicle mile (4.8 grams per vehicle kilometer), except that carbon monoxide emissions from light-duty vehicles of the following 1982 model year engine families shall not exceed 11 grams per vehicles mile (6.8 grams per vehicle kilometer).

Manufacturer	Engine family
American Motors	258 CID.
Chrysler	1.7L
	3.7L
	5.2L–4V.
General Motors	2.8L/173 CID–2V
	3.8L/231 CID–2V.
Jaguar-Rover-Triumph	215 CID
	326 CID.
Toyota	88.6 CID.

(2) *Oxides of nitrogen.* The allowable levels of oxides of nitrogen from light-duty vehicles which are sold for principal use at designated high-altitude locations are the same as set forth in paragraph (a)(1)(iii) of this section.

(2) The standards set forth in paragraph (d)(1) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures.

(e)(1) Fuel evaporative emissions from 1982 and later model year gasoline-fueled light-duty vehicles sold for principal use at designated high-altitude locations shall not exceed 2.6s gram per test when tested under high-altitude conditions.

(2) The standard set forth in paragraph (e)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(f) No crankcase emissions shall be discharged into the ambient atmosphere from any 1982 and later model year gasoline-fueled light-duty vehicles sold for principal use at designated high-altitude locations.

(g)(1) All light-duty vehicles shall be capable (by initial design, adjustment, or modification) of meeting the applicable emission standards set forth in this section for any altitude of operation. Such adjustments and modifications shall:

(i) Be capable of being effectively performed by commercial repair facilities.

(ii) All adjustments and modifications recommended by the manufacturer to be performed on vehicles to satisfy this requirement must be included in the manufacturer's application for certification, and be approved in advance by EPA in accordance with § 86.079–22.

(2) Exemptions for vehicles from the high-altitude emissions standards as set forth in paragraph (d) of this section may be granted by the Administrator for vehicles that are expected to have unsatisfactory performance under high-altitude conditions. Such exemptions will be granted upon petition by the manufacturers that the vehicle falls within the definition of vehicles eligible for exemption. A vehicle shall be considered eligible for exemption if its design parameters [displacement-to-weight ratio (D/W) and engine speed-to-vehicle speed (N/V)] simultaneously fall within the exempted range for that manufacturer for that year. The exempted range is determined according to the following procedure:

(i) The manufacturer shall graphically display the D/W and N/V data of all vehicle configurations it will offer for the model year in question. The axis of the abscissa shall be D/W (where (D) is the engine displacement expressed in cubic centimeters and (W) is the equivalent vehicle test weight expressed in pounds), and the axis of the ordinate shall be
N/V (where (N) is the crankshaft speed expressed in revolutions per minute and (V) is the vehicle speed expressed in miles per hour). At the manufacturer's option, either the 1:1 transmission gear ratio or the lowest numerical gear ratio available in the transmission will be used to determine N/V. The gear selection must be the same for all N/V data points on the manufacturer's graph. For each transmission/axle ratio combination, only the lowest N/V value shall be used in the graphical display.

(ii) The product line is then defined by the equation, $N/V = C(D/W)^{-0.9}$, where the constant, (C), is determined by the requirement that all the vehicle data points either fall on the line or lie to the upper right of the line as displayed on the graphs.

(iii) The exemption line is then defined by the equation, $N/V = C(0.84\ D/W)^{-0.9}$, where the constant, (C), is the same as that found in paragraph (g)(2)(ii) of this section.

(iv) The exempted range includes all values of N/V and D/W which simultaneously fall to the lower left of the exemption line as drawn on the graph.

(3) The sale of a vehicle for principal use at a designated high-altitude

location that has been exempted as set forth in paragraph (g)(2) of this section will be considered a violation of § 203(a)(1) of the Clean Air Act.

5. Section 86.082–9 is amended by revising paragraph (a)(1) and adding paragraphs (d), (e), (f), and (g).

§ 86.082–9 Emission standards for 1982 and later model year light-duty trucks.

(a)(1) The standards set forth in paragraphs (a) through (c) of this section shall apply for trucks sold for principle use at other than a designated high-altitude location. Exhaust emissions from 1982 and later model year light-duty trucks shall not exceed:

* * * * *

(d)(1) Model year 1982 and later light-duty trucks sold for principal use at a designated high-altitude location shall be capable of meeting the following exhaust emission standards when tested under high-altitude conditions.

(i) *Hydrocarbons.* 2.0 grams per vehicle mile (1.24 grams per vehicle kilometer);

(ii) *Carbon monoxide.* 26 grams per vehicle mile (16.2 grams per vehicle kilometer);

(iii) *Oxides of nitrogen.* 2.3 grams per vehicle mile (1.43 grams per vehicle kilometer).

(2) The standards set forth in paragraph (d)(1) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures.

(e)(1) Fuel evaporative emissions from 1982 and later model year gasoline-fueled light-duty trucks sold for principal use at a designated high-altitude location shall not exceed 2.6 grams per test when tested under high-altitude conditions.

(2) The standard set forth in paragraph (e)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(f) No crankcase emissions shall be discharged into the ambient atmosphere from any 1982 and later model year gasoline-fueled light-duty trucks sold for principal use at a designated high-altitude location.

(g)(1) All light-duty trucks shall be capable (by initial design, adjustment, or modification) of meeting the applicable emission standards set forth in this section for any altitude of operation. Such adjustments and modifications shall:

(i) Be capable of being effectively performed by commerical repair facilities.

(ii) All adjustments and modifications recommended by the manufacturer to be performed on vehicles to satisfy this requirement must be included in the manufacturer's application for certification, and be approved in advance by EPA in accordance with § 86.079–22.

(2) Exemptions for 1982 model year trucks from the high-altitude emission standards as set forth in paragraph (d) of this section may be granted by the Administrator upon petition by the manufacturer. No specific justification for the exemption need be included in the petition, but certain restrictions apply:

(i) Exemptions may be granted for up to 30 percent of the manufacturer's total projected LDT sales at high altitude for the 1982 model year.

(ii) Exemptions may be granted only for entire engine familes until the limit set forth in paragraph (g)(2)(i) of this section has been attained.

(3) The sale of a vehicle for principal use at a designated high-altitude location that has been exempted as set forth in paragraph (g)(2)(i)(A) and (B) of this section will *not* be considered a violation of § 203(a)(1) of the Clean Air Act.

6. A new § 86.082–21 is added. This section is identical to § 86.081–21 except for paragraphs (a), (b)(2), (b)(5)(i) and (b)(5)(ii).

§ 86.082–21 Application for certification.

(a) A separate application for a certificate of conformity shall be made for each set of standards (except for high-altitude standards) and each class of new motor vehicle engines. Such application shall be made to the Administrator by the manufacturer and shall be updated and corrected by amendment.

(b) The application shall be in writing, signed by an authorized representative of the manufacturer, and shall include the following:

(1)(i) *All vehicles and engines.* Identification and description of the vehicles (or engines) covered by the application and a description of their engine (vehicles only), emission control system and fuel system components. This shall include a detailed description of each auxiliary emission control device (AECD) to be installed in or on any certification test vehicle (or certification test engine).

(ii) *Light-duty vehicles and light-duty trucks.* (A) The manufacturer shall provide to the administrator in the preliminary application for certification:

(*1*) A list of those parameters which are physically capable of being adjusted (including those adjustable parameters for which access is difficult) and that, if adjusted to settings other than the manufacturer's recommended setting, may affect emissions;

(*2*) A specification of the manufacturer's intended physically adjustable range of each such parameter, and the production tolerances of the limits or stops used to establish the physically adjustable range;

(*3*) A description of the limits or stops used to establish the manufacturer's intended physically adjustable range of each adjustable parameter, or any other means used to inhibit adjustment;

(*4*) The nominal or recommended setting, and the associated production tolerances, for each such paramater.

(B) The manufactuer may provide, in the preliminary application for certification, information relating to why certain parameters are not expected to be adjusted in actual use and to why the physical limits or stops used to establish the physically adjustable range of each parameter, or any other means used to inhibit adjustment, are expected to be effective in preventing adjustment of parameters on in-use vehicles to settings outside the manufacturer's intended physically adjustable ranges. This may include results of any tests to determine the difficulty of gaining access to an adjustment or exceeding a limit as intended or recommended by the manufacturer.

(C) The Administrator may require to be provided detailed drawings and descriptions of the various emission related components, and/or hardware samples of such components, for the purpose of making his determination of which vehicle or engine parameters will be subject to adjustment for new certification and Selective Enforcement Audit testing and of the physically adjustable range for each such vehicle or engine parameter.

(2) Projected U.S. sales data sufficient to enable the Administrator to select a test fleet representative of the vehicles (or engines) for which certification is requested. The sales data shall also include the altitude of intended sale for light-duty vehicles and light-duty trucks.

(3) A description of the test equipment and fuel proposed to be used.

(4)(i) A description of the proposed mileage (or service) accumulation procedure for durability testing.

(ii) A description of the test procedures to be used to establish the evaporative emission deterioration factors required to be determined and supplied in § 86.079–23(a)(2).

(5)(i) A statement of recommended maintenance and procedures necessary to assure that the vehicles (or engines)

covered by a certificate of conformity in operation conform to the regulations, and a description of the program for training of personnel for such maintenance, and the equipment required.

(ii) A description of vehicle adjustments or modifications necessary, if any, to assure that light-duty vehicles and light-duty trucks covered by a certificate of conformity, conform to the regulations while being operated at any altitude locations, and a statement of the altitude at which the adjustments or modifications apply.

(6) At the option of the manufacturer, the proposed composition of the emission-data test fleet or (where applicable) the durability-data test fleet.

(c) Complete copies of the application and of any amendments thereto, and all notifications under §§ 86.079–32, 86.079–33, and 86.079–34 shall be submitted in such multiple copies as the Administrator may require.

(d) Incomplete light-duty trucks shall have a maximum completed curb weight and maximum completed frontal area specified by the manufacturer.

7. A new § 86.082–24 is added. This section is identical to section 86.081–24 except for paragraphs (b)(1)(v), (b)(1)(vi), and (b)(1)(vii)(D).

§ 86.082–24 Test vehicles and engines.

(a)(1) The vehicles or engines covered by an application for certification will be divided into groupings of engines which are expected to have similar emission characteristics throughout their useful life. Each group of engines with similar emission characteristics shall be defined as a separate engine family.

(2) To be classed in the same engine family, engines must be identical in all the following respects:

(i) The cylinder bore center-to-center dimensions.

(ii) The dimension from the centerline of the crankshaft to the centerline of the camshaft.

(iii) The dimension from the centerline of the crankshaft to the top of the cylinder block head face.

(iv) The cylinder block configuration (air cooled or water cooled; L–6, 90° V–8, etc.).

(v) The location of intake and exhaust valves (or ports) and the valve (or port) sizes (within a ⅛-inch range on the valve head diameter or within 10 percent on the port area).

(vi) The method of air aspiration.

(vii) The combustion cycle.

(viii) Catalytic converter characteristics.

(ix) Thermal reactor characteristics.

(x) Type of air inlet cooler (e.g., intercoolers and aftercoolers) for diesel-duty engines.

(3) Engines indentical in all the respects listed in paragraph (a)(2) of this section may be further divided into different engine families if the Administrator determines that they may be expected to have different emission characteristics. This determination will be based upon a consideration of the following features of each engine:

(i) The bore and stroke.

(ii) The surface-to-volume ratio of the nominally dimensioned cylinder at the top dead center positions.

(iii) The intake manifold induction port size and configuration.

(iv) The exhaust manifold port size and configuration.

(v) The intake and exhaust valve sizes.

(vi) The fuel system.

(vii) The camshaft timing and ignition or injection timing characteristics.

(4) Where engines are of a type which cannot be divided into engine families based upon the criteria listed in paragraphs (a)(2) and (a)(3) of this section, the Administrator will establish families for those engines base upon those features most related to their emission characteristics.

(5) The gasoline-fueled vehicles covered by an application for certification will be divided into groupings which are expected to have similar evaporative emission characteristics throughout their useful life. Each group of vehicles with similar evaporative emission characteristics shall be defined as a separate evaporative emission family.

(6) To be classed in the same evaporative emission family, vehicles must be similar with respect to:

(i) Type of vapor storage device (e.g., canister air cleaner, crankcase).

(ii) Basic canister design.

(iii) Fuel system.

(7) Where vehicles are of a type which cannot be divided into evaporative emission families based on the criteria listed above, the Administrator will establish families for those vehicles based upon the features most related to their evaporative emission characteristics.

(8) If the manufacturer elects to participate in the Alternative Durability Program, the engine families covered by an application for certification shall be grouped based upon similar engine design and emission control system characteristics. Each of these groups shall constitute a separate engine family group.

(9) To be classed in the same engine family group, engine families must contain engines identical in all of the following respects.

(i) The combustion cycle.

(ii) The cylinder block configuration (air-cooled or water-cooled; L–6, V–8, rotary, etc.).

(iii) Displacement (engines of different displacement within 50 cubic inches or 15 percent of the largest displacement and contained within a multidisplacement engine family will be included in the same engine family group).

(iv) Catalytic converter usage and basic type (non-catalyst, oxidation catalyst only, three-way catalyst equipped).

(10) Engine families identical in all respects listed in paragraph (a)(9) of this section may be further divided into different engine family groups if the Administrator determines that they are expected to have significantly different exhaust emission control system deterioration characteristics.

(b) Emission data:

(1) *Emission-data vehicles.* Paragraph (b)(1) of this section applies to light-duty vehicle and light-duty truck emission-data vehicles.

(i) Vehicles will be chosen to be operated and tested for emission data based upon the engine family groupings. Within each engine family, the requirements of this paragraph must be met.

(ii) Vehicles for each engine family will be divided into engine displacement-exhaust emission control system combinations as applicable. A projected sales volume will be established for each combination for the model year for which certification is sought. One vehicle of each combination will be selected in order of decreasing projected sales volume until 70 percent of the projected sales of a manufacturer's total production of vehicles of that engine family is represented, or until a maximum of four vehicles is selected. If any single combination represents over 70 percent, then two vehicles of that combination may be selected. The vehicle selected for each combination will be specified by the Administrator as to such features as engine code, transmission type, fuel system, and inertia weight class.

(iii) The Administrator may select a maximum of four additional vehicles within each engine family based upon features indicating that they may have the highest emission levels of the vehicles in that engine family. In selecting these vehicles, the Administrator will consider such features as the emission control system combination, induction system characteristics, fuel system, rated

horsepower, rated torque, compression ratio, inertia weight class, transmission options, and axle ratio.

(iv) If the vehicles selected in accordance with paragraphs (b)(1)(ii) and (iii) of this section do not represent each engine-system combination, then one vehicle of each engine-system combination not represented will be selected by the Administrator. The vehicle selected shall be of the engine displacement with the largest projected sales volume of vehicles with the control system combination in the engine family and will be designated by the Administrator as to such features as engine code, transmission type, fuel system, and inertia weight class.

(v) For each engine family, the manufacturer will select for testing under high-altitude conditions the one non-exempt vehicle previously selected under paragraphs (b)(1)(ii), (iii), or (iv) of this section which is expected to have the highest levels of exhaust emissions of vehicles in that engine family when operated at high altitude. In selecting these vehicles, the manufacturer will consider such features as the emission control system combination, induction system characteristics, ignition system characteristics, fuel system, rated horsepower, rated torque, compression ratio, inertia weight class, test weight, transmission options, and axle ratio.

(vi) [Reserved]

(vii)(A) Vehicles of each evaporative emission family will be divided into evaporative emission control systems. One vehicle of each evaporative emission control system within the evaporative emission family will be selected.

(B) The Administrator may select a maximum of four additional vehicles within each evaporative emission family based upon features indicating that they may have the highest evaporative emission levels of vehicles in that family.

(C) The Administrator may determine that the vehicles selected under paragraphs (b)(1)(ii) through (iv) of this section may be used to satisfy the requirements of paragraph (b)(1)(vii)(A) or (B) of this section.

(D) For each evaporative emission family, the manufacturer will select for testing under high-altitude conditions the one non-exempt vehicle previously selected under paragraphs (b)(1)(vii)(A), or (B) of this section which is expected to have the highest levels of evaporative emissions when operated at high altitude.

(E) Vehicles selected under paragraph (b)(1)(v) of this section may be used to satisfy the requirements of paragraph (b)(1)(vii)(D) of this section.

(2) *Gasoline-fueled heavy-duty emission-data engines.* Paragraph (b)(2) of this section applies to gasoline-fueled heavy-duty engines.

(i) Engines will be chosen to be run for emission data based upon engine family groupings. Within each engine family, the requirements of this paragraph must be met.

(ii) Engines of each engine family will be divided into engine displacement-exhaust emission control system combinations. A projected sales volume will be established for each combination for the applicable model year. One engine of each combination will be selected in order of decreasing projected sales volume until 70 percent of the projected sales of a manufacturer's total production of engines of that family is represented, or until a maximum of four engines is selected. The engines selected for each combination will be specified by the Administrator as to fuel system.

(iii) The Administrator may select a maximum of two additional engines within each engine family based upon features indicating that they may have the highest emission levels of the engines in that engine family. In selecting these engines, the Administrator will consider such features as the exhaust emission control system, induction system characteristics, ingition system characteristics, fuel system, rated horsepower, rated torque, and compression ratio.

(iv) If the engines selected in accordance with paragraph (b)(2)(ii) and (iii) of this section do not represent each engine displacement-exhaust emission control system combination, then one engine of each engine displacement-exhaust emission control system combination not represented shall be selected by the Administrator.

(3) *Diesel heavy-duty emission-data engines.* Paragraph (b)(3) of this section applies to diesel heavy-duty emission-data engines.

(i) Engines will be chosen to be run for emission data based upon engine family groupings. Within each engine family, the requirements of this paragraph must be met.

(ii) Engines of each engine family will be divided into groups based upon their exhaust emission control systems. One engine of each engine system combination shall be run for smoke emission data and gaseous emission data. Either the complete gaseous emission test or the complete smoke test may be conducted first. Within each combination, the engine that features the highest fuel feed per stroke, primarily at the speed of maximum rated torque and secondarily at rated speed, will usually be selected. If there are military engines with higher fuel rates than other engines in the same engine system combinations, then one military engine shall also be selected. The engine with the highest fuel feed per stroke will usually be selected.

(iii) The Administrator may select a maximum of one additional engine within each engine-system combination based upon features indicating that it may have the highest emission levels of the engines of that combination. In selecting this engine, the Administrator will consider such features as the injection system, fuel system, compression ratio, rated speed, rated horsepower, peak torque speed, and peak torque.

(c) Durability data:

(1) *Durability-data vehicles.* Paragraph (c)(1) of this section applies to light-duty vehicle and light-duty truck durability-data vehicles, except for the production durability-data vehicles selected for the Alternative Durability Program according to paragraph (h)(1) of this section.

(i) A durability-data vehicle will be selected by the Administrator to represent each engine-system combination. The vehicle selected shall be of the engine displacement with the largest projected sales volume of vehicles with that control-system combination in that engine family and will be designated by the Administrator as to transmission type, fuel system, inertia weight class, and test weight.

(ii) A manufactuer may elect to operate and test additional vehicles to represent any engine-system combination. The additional vehicles must be of the same engine displacement, transmission type, fuel system and inertia weight class as the vehicle selected for that engine-system combination in accordance with the provisions of paragraph (c)(1)(i) of this section. Notice of an intent to operate and test additional vehicles shall be given to the Administrator no later than 30 days following notification of the test fleet selection.

(2) *Gasoline-fueled heavy-duty durability-data engines.* Paragraph (c)(2) of this section applies to gasoline-fueled heavy-duty durability-data engines.

(i) A durability-data engine will be selected by the Administrator to represent each engine-system combination.

(ii) [Reserved]

(iii) A manufacturer may elect to operate and test additional engines to represent any engine-system combination. The additional engines must be of the same engine displacement and fuel system as the

engine selected for that combination in accordance with the provisions of paragraph (c)(2)(i) of this section. Notice of an intent to run additional engines shall be given to the Administrator no later than 30 days following notification of the test fleet selection. Deterioration factors calculated for each engine-system combination shall be applied separately to military and nonmilitary engines within the same engine-system combination.

(3) *Diesel heavy-duty durability-data engines.* Paragraph (c)(3) of this section applies to diesel heavy-duty durability-data engines.

(i) One engine from each engine-system combination shall be tested as prescribed in § 86.082–26(b)(6). At each test point, either the complete gaseous emission test or the complete smoke test may be conducted first. Within each combination, the engine which features the highest fuel feed per stroke, primarily at rated speed and secondarily at the speed of maximum rated torque, will usually be selected for durability testing. In the case where more than one engine in an engine-system combination has the highest fuel feed per stroke, the engine with the highest maximum rated horsepower will usually be selected for durability testing. If an engine-system combination includes both military and nonmilitary engines, then the nonmilitary engine with the highest maximum rated horsepower will usually be selected for durability testing.

(ii) A manufacturer may elect to operate and test additional engines to represent any engine-system combination. The additional engines must be of the same model and fuel system as the engine selected in accordance with the provisions of paragraph (c)(3)(i) of this section. Notice of intent to test additional engines shall be given to the Administrator no later than 30 days following notification of the test fleet selection. Deterioration factors calculated for each engine-system combination shall be applied separately to military and nonmilitary engines within the same engine-system combination.

(d) For purposes of testing under § 86.082–26(a)(9) or (b)(11), the Administrator may require additional emission-data vehicles (or emission-data engines) and durability-data vehicles (or durability-data engines) identical in all material respects to vehicles (or engines) selected in accordance with paragraphs (b) and (c) of this section, *provided* that the number of vehicles selected shall not increase the size of either the emission-data fleet or the durability-data fleet by more than 20 percent or one vehicle, whichever is greater.

(e) Any manufacturer whose projected sales for the model year in which certification is sought is less than:

(1) 2000 gasoline-fueled light-duty vehicles, or

(2) 2000 diesel light-duty vehicles, or

(3) 2000 gasoline-fueled light-duty trucks or

(4) 2000 diesel light-duty trucks, or

(5) 2000 gasoline fueled heavy-duty engines, or

(6) 2000 diesel heavy-duty engines,

may request a reduction in the number of test vehicles (or engines) determined in accordance with the foregoing provisions of this section. The Administrator may agree to such lesser number as he determines would meet the objectives of this procedure.

(f) In lieu of testing an emission-data or durability-data vehicle (or engine) selected under paragraph (b) or (c) of this section, and submitting data therefor, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data and/or fuel evaporative emission data, as applicable on a similar vehicle (or engine) for which certification has previously been obtained or for which all applicable data required under § 86.078–23 has previously been submitted.

(g)(1) This paragraph applies to light-duty vehicles and light-duty trucks, but does not apply to the production vehicles selected under paragraph (h) of this section.

(2) Where it is expected that more than 33 percent of the vehicles in an engine family will be equipped with an optional item, the full estimated weight of that item shall be included, if required by the Administrator, in the curb weight computation for each vehicle available with that option in the engine family. Where it is expected that 33 percent or less of the vehicles in an engine family will be equipped with an item of optional equipment, no weight for that item will be added in computing curb weight. In the case of mutually exclusive options, only the weight of the heavier option will be added in computing curb weight. Optional equipment weighing less than 3 pounds per item need not be considered.

(3) Where it is expected that more than 33 percent of the vehicles in an engine family will be equipped with an item of optional equipment that can reasonably be expected to influence emissions, then such items of optional equipment shall actually be installed, unless specifically excluded by the Administrator, on all emission-data and durability-data vehicles in the engine family on which the option is intended to be offered in production. Optional equipment that can reasonably be expected to influence emissions are the air conditioner, power steering, power brakes and other items determined by the Administrator.

(4) Optional equipment that can reasonably be expected to influence emissions which is utilized on 33 percent or less of the vehicles in the engine family shall not be installed on any vehicle in that engine family unless specifically required under this section.

(h) *Alternative Durability Program durability-data vehicles.* Paragraph (h) of this section applies to light-duty vehicle and light-duty truck durability-data vehicles selected under the Alternative Durability Program. The Alternative Durability Program is described in § 86.081–13.

(1) In order to update the durability data to be used to determine a deterioration factor for each engine family group, the Administrator will select durability-data vehicles from the manufacturer's production line. Production vehicles will be selected from the 1981, 1982, and 1983 model year production of vehicles.

(i) The Administrator shall select the production durability-data vehicle designs from the designs that the manufacturer offers for sale. For each model year and for each engine family group, the Administrator may select production durability-data vehicle designs of equal number to the number of engine families within the engine family group, up to a maximum of three vehicles.

(ii) The production durability-data vehicles representing the designs selected in paragraph (h)(1)(i) of this section will be randomly selected from the manufacturer's production. The Administrator will make these random selections unless the manufacturer (with prior approval of the Administrator) elects to make the random selections.

(iii) The manufacturer may select additional production durability-data vehicle designs from within the engine family group. The production durability-data vehicles representing these designs shall be randomly selected from the manufacturer's production in accordance with paragraph (h)(1)(ii) of this section.

(iv) For each production durability-data vehicle selected under paragraph (h)(1) of this section, the manufacturer shall provide to the Administrator (before the vehicle is tested or begins service accumulation) the vehicle identification number. Before the vehicle begins service accumulation the manufacturer shall also provide the

Administrator with a description of the durability-data vehicle as specified by the Administrator.

(2) If, within an existing engine family group, a manufacturer requests to certify vehicles of a new design, engine family, emission control system, or with any other durability-related design difference, the Administrator will determine if the existing engine family group deterioration factor is appropriate for the new design. If the Administrator cannot make this determination or deems the deterioration factor not appropriate, the Administrator shall select preproduction durability-data vehicles under the provisions of paragraph (c) of this section. If vehicles are then certified using the new design, the Administrator may select production vehicles with the new design under the provisions of paragraph (h)(1) of this section.

(3) If a manufacturer requests to certify vehicles of a new design that the Administrator determines are a new engine family group, the Administrator shall select preproduction durability-data vehicles under the provisions of paragraph (c) of this section. If vehicles are then certified using the new design, the Administrator may select production vehicles of that design under the provisions of paragraph (h)(1) of this section.

8. A new § 86.082–26 is added. This section is identical to § 86.081–26 except for paragraphs (a)(3)(i)(B), (a)(3)(i)(C), (a)(3)(ii)(B), and (a)(3)(ii)(C), and the addition of paragraphs (a)(3)(i)(D) and (a)(3)(ii)(D).

§ 86.082–26 Mileage and service accumulation; emission measurements.

(a)(1) Paragraph (a) of this section applies to light-duty vehicles and light-duty trucks.

(2) The procedure for mileage accumulation will be the Durability Driving Schedule as specified in Appendix IV to this part. A modified procedure may also be used if approved in advance by the Administrator. Except with the advance approval of the Administrator, all vehicles will accumulate mileage at a measured curb weight which is within 100 pounds of the estimated curb weight. If the loaded vehicle weight is within 100 pounds of being included in the next higher inertia weight class as specified in § 86.129, the manufacturer may elect to conduct the respective emission tests at higher loaded vehicle weight.

(3) *Emission-data vehicles.* Unless as otherwise provided for in § 86.079–23(a), emission-data vehicles shall be operated and tested as follows:

(i) *Gasoline-fueled.* (A) Each gasoline-fueled emission-data vehicle shall be driven 4,000 miles with all emission control systems installed and operating. Complete exhaust emission tests shall be conducted at zero miles and 4,000 miles on those vehicles selected under § 86.082–24 (b)(1)(ii) through (b)(1)(v). Complete exhaust and evaporative emission tests shall be conducted at zero miles and 4,000 miles on those vehicles selected under § 86.082–24(b)(1)(vii). The manufacturer may at his option test the vehicles selected under § 86.082–24(b)(1)(vii) up to three times at the 4,000-mile test point as long as the ±250-mile test tolerance is adhered to. The Administrator may determine under § 86.082–24(f) that no testing is required.

(B) Emission tests for emission-data vehicle(s) selected for testing under § 86.082–24 (b)(1)(v) or (b)(1)(vii)(D) shall be conducted at 6,436 kilometers (4,000 miles) under high-altitude conditions.

(C) Exhaust and evaporative emission tests for emission-data vehicle(s) selected for testing under § 86.082–24(b)(1) (ii), (iii), (iv)(A), or (vii)(B) shall be conducted at the 6,436-kilometer (4,000-mile) test point under low-altitude conditions.

(D) For each engine family, the manufacturer will select one vehicle previously selected under § 86.082–24 (b)(1)(ii) through (b)(1)(iv) to be tested under high-altitude conditions. If the manufacturer recommends adjustments or modifications in order to conform to emission standards at high altitude, such adjustments or modifications shall be made to the test vehicle (in accordance with the instructions to be provided to the ultimate purchaser) before being tested under high-altitude conditions.

(ii)(A) *Diesel.* Each diesel emission-data vehicle shall be driven 6,436 kilometers (4,000 miles) with all emission control systems installed and operating. Emission tests shall be conducted at zero kilometers (zero miles) and 6,436 kilometers (4,000 miles).

(B) Emission tests for emission-data vehicles(s) selected for testing under § 86.082–24(b)(1)(v) shall be conducted at the 6,436-kilometer (4,000-mile) test point under high-altitude conditions.

(C) Emission tests for emission data vehicle(s) selected under § 86.082–24(b)(1) (ii), (iii), or (iv) shall be conducted at the 6,436-kilometer (4,000-mile) test point under low-altitude conditions.

(D) For each engine family, the manufacturer will select one vehicle previously selected under § 86.082–24 (b)(1)(ii) through (b)(1)(iv) to be tested under high-altitude conditions. If the manufacturer recommends adjustments or modifications in order to conform to emission standards at high altitude, such adjustments or modifications shall be made to the test vehicle (in accordance with the instructions to be provided to the ultimate purchaser) before being tested under high-altitude conditions.

(iii)(A) Vehicles tested for compliance under high-altitude conditions shall be tested at an elevation of 1,620 meters ±100 meters (5,315 feet±328 feet) or the equivalent observed barometric test conditions of 83.3±1 kilopascal.

(4) *Durability-data vehicles.* Unless as otherwise provided for in § 86.079–23(a), durability-data vehicles shall be operated and tested as follows:

(i) *Gasoline-fueled.* Each gasoline-fueled durability-data vehicle selected by the Administrator or elected by the manufacturer under § 86.082–24(c)(1) shall be driven, with all emission control systems installed and operating, for 50,000 miles or such lesser distance as the Administrator may agree to as meeting the objective of this procedure. Complete exhaust emission tests shall be made on all durability-data vehicles selected by the Administrator or elected by the manufacturer under § 86.082–24(c) at the following mileage points except as specified by paragraph (a)(4)(iii) of this section: 0; 5,000; 10,000; 15,000; 20,000; 25,000; 30,000; 35,000; 40,000; 45,000; 50,000. The Administrator may determine under § 86.082–24(f) that no testing is required.

(ii) *Diesel.* Each diesel durability-data vehicle shall be driven, with all emission control system installed and operating, for 50,000 miles or such lesser distance as the Administrator may agree to as meeting the objectives of the procedure. Complete emission tests (see §§ 86.106 through 86.145) shall be made at the following mileage points except as specified by paragraph (a)(4)(iii) of this section: 0; 5,000; 10,000; 15,000; 20,000; 25,000; 30,000; 35,000; 40,000; 45,000; and 50,000.

(iii) Production durability-data vehicles selected under § 86.082–24(h)(1) shall be driven and tested in accordance with paragraphs (a)(4)(i) and (a)(4)(ii) of this section with the exception that the emission test specified for the 5,000-mile point shall be conducted at the 4,000-mile point.

(5) All tests required by this subpart to be conducted after every 5,000 miles of driving for durability-data vehicles and 4,000 miles for emission-data vehicles must be conducted at any accumulated mileage within 250 miles of each of those test points.

(6)(i) The results of each emission test shall be supplied to the Administrator immediately after the test. The

manufacturer shall furnish to the Administrator explanation for voiding any test. The Administrator will determine if voiding the test was appropritate based upon the explanation given by the manufacturer for the voided test. If a manufacturer conducts multiple tests at any test point at which the data are intended to be used in the calculation of the deterioration factor, the number of tests must be the same at each point and may not exceed three valid tests. Tests between test points may be conducted as required by the Administrator. Data from all tests (including voided tests) shall be air posted to the Administrator within 24 hours (or delivered within 3 working days). In addition, all test data shall be compiled and provided to the Administrator in accordance with § 86.079–23. Where the Administrator conducts a test on a durability-data vehicle at a prescribed test point, the results of that test will be used in the calculation of the deterioration factor.

(ii) The results of all emission tests shall be rounded, using the "Rounding Off Method" specified in ASTM E 29–67, to the number of places to the right of the decimal point indicated by expressing the applicable emission standard of this subpart to three significant figures.

(7) Whenever the manufacturer proposes to operate and test a vehicle which may be used for emission or durability data, he shall provide the zero-mile test data to the Administrator (except for those vehicles for which the zero-mile test requirement has been waived under § 86.079–23(a)(2)) and make the vehicle available for such testing under § 86.081–29 as the Administrator may require before beginning to accumulate mileage on the vehicle. Failure to comply with this requirement will invalidate all test data submitted for this vehicle.

(8) Once a manufacturer begins to operate an emission-data or durability-data vehicle, as indicated by compliance with paragraph (a)(7) of this section, he shall continue to run the vehicle to 4,000 miles or 50,000 miles, respectively, and the data from the vehicle will be used in the calculations under § 86.082–28. Discontinuation of a vehicle shall be allowed only with the written consent of the Administrator.

(9)(i) The Administrator may elect to operate and test any test vehicle during all or any part of the mileage accumulation and testing procedure. In such cases, the manufacturer shall provide the vehicle(s) to the Administrator with all information necessary to conduct this testing.

(ii) The test procedures in §§ 86.106 through 86.145 will be followed by the Administrator. The Administrator will test the vehicles at each test point. Maintenance may be performed by the manufacturer under such conditions as the Administrator may prescribe.

(iii) The data developed by the Administrator for the engine-system combination shall be combined with any applicable data supplied by the manufacturer on other vehicles of that combination to determine the applicable deterioration factors for the combination. In the case of a significant discrepancy between data developed by the Administrator and that submitted by the manufacturer, the Administrator's data shall be used in the determination of deterioration factors.

(10) Emission testing of any type with respect to any certification vehicle other than that specified in this part is not allowed except as such testing may be specifically authorized by the Administrator.

(11) This section does not apply to testing conducted to meet the requirements of § 86.079–23(b)(2).

(b)(1) Paragraph (b) of this section applies to heavy-duty engines.

(2)(i) For gasoline-fueled engines, the dynamometer service accumulation schedule will consist of several operating conditions which give the percent loads and the modes as specified in the following chart. The percentage of time in each mode must be held within the limits specified. The maximum observed torque for each mode in the service accumulation cycle must be determined at the rpm at which the mode is being conducted. The percent load for that mode will be determined from the maximum torque at the rpm at which the mode is being conducted.

Mode	Observed torque (percentage of maximum observed)	Percentage of time
Idle	Idle	23 (22 to 24)
CT	CT	14 (13 to 15)
PTD	10	6 (5 to 7)
Cruise	25	31 (30 to 32)
PTA	55	15 (14 to 16)
FL	90	11 (10 to 12)

(ii) The equivalent control parameter for engine loading will be manifold vacuum, manifold pressure, or torque. Usage of one of the three parameters will require approval in advance by the Administrator. The control parameter values that correspond to the appropriate percent loads as specified in the emission test cycle will be initially determined at the zero-hour point or after an appropriate break-in procedure. The control parameter values determined initially will be used for the entire service accumulation schedule. If at any time during the service accumulation the 90 percent torque value cannot be attained, the engine shall be operated at wide-open throttle.

(iii) The average speed shall be between 1,650 and 1,700 rpm. Subject to the requirements as to average speed, there must be operation at speeds in excess of 3,200 rpm (but not in excess of governed speed for governed engines or rated speed for non-governed engines) for a cumulative maximum of 0.5 percent of the actual cycle time, excluding time in transient conditions. Maximum cycle time shall be 15 minutes. A cycle approved in advance by the Administrator shall be used.

(3)(i) For diesel engines, the following criteria must be met before service accumulation can begin. Failure to comply with these requirements shall invalidate all test data submitted for an engine.

(A) Each engine shall produce at least 95 percent of the maximum horsepower, corrected to rating conditions, at 95 to 100 percent of the rated speed.

(B) The fuel rate at maximum horsepower shall be within manufacturer's specifications.

(ii) During service accumulation, hours can be credited toward the required service accumulation hours when the following criteria are met. If these criteria cannot be met, engine operation shall be discontinued and the Administrator shall be notified immediately. (Adjustments to the fuel rate can be approved under the provisions of § 86.079–25.)

(A) Each engine shall produce at least 95 percent of the maximum horsepower, at 95 to 100 percent of the rated speed, observed at the zero-hour point. Horsepower values shall be corrected to the rating conditions.

(B) The engine shall be operated at 75 percent of the inlet and exhaust restrictions specified in § 86.879–8 except that the tolerance will be ±3 inches of water and ±0.5 inch of Hg respectively.

(C) During each emission test the inlet and exhaust restrictions shall be as specified in § 86.879–8.

(4) If a break-in procedure is used, the procedure must be the same as recommended to the ultimate purchaser. Prior approval by the Administrator is required for use of any break-in procedure. The hours accumulated during the break-in procedure will not be counted as part of the service accumulation.

(5) Emission-data engines: Each emission-data engine shall be operated for 125 hours with all emission control systems installed and operating. An emission test shall be conducted at 125 hours. A zero-hour emission may be performed after the engine has been approved by the Administrator to begin service accumulation. Evaporative emission controls need not be connected provided normal operating conditions are maintained in the engine induction system.

(6) Durability-data engines: Each gasoline-fueled durability-data engine shall be operated, with all emission control systems installed and operating, for 1,500 hours. Each diesel durability-data engine shall be operated for 1,000 hours. Emission measurement, as prescribed, shall be made at 125-hour intervals beginning at 125 hours of operation. A zero-hour emission test may be performed after the engine has been approved by the Administrator to begin service accumulation. Evaporative emission controls need not be connected provided normal operating conditions are maintained in the engine induction system.

(7) All tests required by this subpart to be conducted after 125 hours of operation or at any multiple of 125 hours may be conducted at any accumulated number of hours within 8 hours of 125 hours or the appropriate multiple of 125 hours respectively.

(8)(i) Data from all emission tests (including voided tests) shall be air posted to the Administrator within 72 hours (or delivered within 5 working days). The manufacturer shall furnish to the Administrator an explanation for voiding any test. The Administrator will determine if voiding the test was appropriate based upon the explanation given by the manufacturer for the voided test. If a manufacturer conducts multiple tests at any test point at which the data are intended to be used in the calculation of the deterioration factor, the number of tests must be the same at each point and may not exceed 3 valid tests. Tests between test points may be conducted as required by the Administrator. In addition, all test data shall be compiled and provided to the Administrator in accordance with § 86.079–23. Where the Administrator conducts a test on a durability-data engine at a prescribed test point, the results of that test will be used in the calculation of the deterioration factor.

(ii) The results of all emission tests shall be recorded and reported to the Administrator using two places to the right of the decimal point. These numbers shall be rounded in accordance with the "Rounding Off Method" specified in ASTM E 29–67.

(9) Whenever the manufacturer proposes to operate and test an engine which may be used for emission or durability data, he shall provide such information concerning components used on the engine as the Administrator may require and make the engine available for such testing under § 86.081–29 as the Administrator may require, before beginning to accumulate hours on the engine. Failure to comply with this requirement will invalidate all test data later submitted for this engine.

(10) Once a manufacturer begins to operate an emission-data or durability-data engine, as indicated by compliance with paragraph (b)(9) of this section, he shall continue to run any emission-data engine to 125 hours, any gasoline-fueled durability-data engine to 1,500 hours, and any diesel durability-data engine to 1,000 hours. The data from the engine will be used in the calculations under § 86.345. Discontinuation of an engine shall be allowed only with the prior written consent of the Administrator.

(11)(i) The Administrator may elect to operate and test any test engine during all or any part of the service accumulation and testing procedure. In such cases the manufacturer shall provide the engine(s) to the Administrator with all information necessary to conduct the testing.

(ii) The test procedure (Subpart D of this part for gasoline-fueled engines, and Subparts D and I of this part for diesel engines) will be followed by the Administrator. The Administrator will test the engines at each test point. Maintenance may be performed by the manufacturer under such conditions as the Administrator may prescribe.

(iii) The data developed by the Administrator for the engine-system combination shall be combined with any applicable data supplied by the manufacturer on other engines of that combination to determine the applicable deterioration factors for the combination. In the case of a significant discrepancy between data developed by the Administrator and that submitted by the manufacturer, the Administrator's data shall be used in the determination of deterioration factors.

(12) Emission testing of any type with respect to any certification engine other than that specified in this subpart is not allowed except as such testing may be specifically authorized by the Administrator.

9. Section 86.082–28 is amended by revising paragraph (a)(4)(i)(B).

§ 86.082–28 Compliance with emission standards.

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(a) * * *

(4) * * *

(i) * * *

(B) All applicable exhaust emission results shall be plotted as a function of the mileage on the system, rounded to the nearest mile, and the best fit straight lines, fitted by the method of least squares, shall be drawn through all these data points. The interpolated 4,000- and 50,000-mile points on this line must be within the low-altitude standards provided in § 86.082–8 or § 86.082–9 as applicable, or the data will not be acceptable for use in calculation of a deterioration factor, unless no applicable data point exceeded the standard. An exhaust emission deterioration factor shall be calculated for each engine-system combination as follows:

Factor = Exhaust emissions interpolated to 50,000 divided by exhaust emissions interpolated to 4,000 miles.

These interpolate values shall be carried out to a minimum of four places to the right of the decimal point before dividing one by the other to determine the deterioration factor. The results shall be rounded to three places to the right of the decimal point in accordance with ASTME 29–67.

* * * * *

10. A new § 86.082–30 is added. This section is identical to § 86.081–30 except for paragraph (a)(3), (a)(4)(i), (a)(4)(ii), (a)(5), (a)(6), (b)(1)(i)(B), and (b)(1)(i)(C).

§ 86.082–30 Certification.

(a)(1) If, after a review of the test reports and data submitted by the manufacturer, data derived from any inspection carried out under § 86.078–7(c), and any other pertient data or information, the Administrator determines that a test vehicle(s) (or test engine(s)) meet(s) the requirements of the Act and of this subpart, he will issue a certificate of conformity with respect to such vehicle(s) (or engine(s)) except in cases covered by paragraph (c) of this section.

(i) Each certificate of conformity shall state the altitudes(s) at which the vehicle(s) covered by the certificate has demonstrated compliance with the applicable emission standards.

(ii) [Reserved].

(2) Such certificate will be issued for such period not to exceed one model year as the Administrator may determine and upon such terms as he may deem necessary to assure that any new motor vehicle (or new motor vehicle engine) covered by the

certificate will meet the requirements of the Act and of this part. Each such certificate shall contain the following language:

This certificate covers only those new motor vehicles (or new motor vehicle engines) which conform, in all material respects, to the design specifications that apply to those vehicles (or engines) described in the application for certification and which are produced during the ——— model year production period of the said manufacturer, as defined in 40 CFR 86.082–2.

It is a term of this certificate that the manufacturer shall consent to all inspections described in 40 CFR §§ 86.078–7(c), 86–606, and 86.1006 and authorized in a warrant or court order. Failure to comply with the requirements of such a warrant or court order may lead to revocation or suspension of this certificate as specified in 40 CFR § 86.082–30(c), (d), or (f). It is also a term of this certificate that this certificate may be revoked or suspended for the other reasons stated in § 86.082–30(c), (d), or (f).

(3) One such certificate will be issued for each engine family. For gasoline-fueled light-duty vehicles and light-duty trucks, one such certificate will be issed for each engine family-evaportative emission family combination. Each certificate will certify compliance with no more than one set of standards except for low-altitude standards and high-altitude standards. The certificate shall state that it covers vehicles sold or delivered to an ultimate purchaser for principal use at a designated high-altitude location only if the vehicle conforms in all material respect to the design specification that apply to those vehicles described in the application for certification at high altitude.

(4) The adjustment or modification of any light-duty vehicle and light-duty truck in accordance with instructions provided by the manufacturer as approved by EPA for the altitude where the vehicle is principally used will not be considered violation of Section 203(a)(3) of the Clean Air Act. A violation of Section 203(a)(1) of the Clean Air Act occurs when any manufacturer sells or delivers to an ultimate purchaser any light-duty vehicle or light-duty truck, subject to the regulations under the Act which is not configured to meet:

(i) High-altitude requirements:

(A) At a designated high-altitude location, unless such manufacturer has substantial reason to believe that such motor vehicle will not be used principally at a desingated high-altitude location; or

(B) At an other-than-designated high-altitude location, when such manufacturer has reason to believe that such motor vehicle will be used principally at a designated high-altitude location; or

(ii) Low-altitude requirements:

(A) At an other-than-designated high-altitude location, unless such manufacturer has substantial reason to believe that such motor vehicle will be used principally at a designated high-altitude location; or

(B) At a designated high-altitude location, when such manufacturer has reason to believe that such motor vehicle will be used principally at an other-than-designated high-altitude location.

(5) For the purpose of paragraph (a) of this section, "designated high-altitude location" is any county which has substantially all of its area located above 1,219 meters (4,000 feet) and which is identified below:

Counties Located Substantially Above 1,219 Meters (4,000 Feet) in Elevation

State of Arizona

Apache	Navajo
Cochise	Yavapai
Coconino	

State of Colorado

Adams	Kit Carson
Alamosa	Lake
Arapahoe	La Plata
Archuleta	Larimer
Boulder	Las Animas
Chaffee	Lincoln
Cheyenne	Mesa
Clear Creek	Mineral
Conejos	Moffat
Costilla	Montezuma
Crowley	Montrose
Custer	Morgan
Delta	Otero
Denver	Ouray
Dolores	Park
Douglas	Pitkin
Eagle	Pueblo
Elbert	Rio Blanco
El Paso	Rio Grande
Fremont	Routt
Garfield	Saguache
Gilpin	San Juan
Grand	San Miguel
Gunnison	Summit
Hinsdale	Teller
Huerfano	Washington
Jackson	Weld
Jefferson	

State of Idaho

Bannock	Franklin
Bear Lake	Fremont
Bingham	Jefferson
Blaine	Lemhi
Bonneville	Madison
Butte	Minidoka
Camas	Oneida
Caribou	Power
Cassia	Teton
Clark	Valley
Custer	

State of Montana

Beaverhead	Madison
Deer Lodge	Meagher
Gallatin	Park
Jefferson	Silver Bow
Judith Basin	Wheatland
Powell	

State of Nebraska

Banner	Kimball
Cheyenne	Sioux

State of Nevada

Carson City	Lyon
Douglas	Mineral
Elko	Nye
Esmeralda	Pershing
Eureka	Storey
Humboldt	Washoe
Lander	White Pine
Lincoln	

State of New Mexico

Bernalillo	Mora
Catron	Rio Arriba
Colfax	Roosevelt
Curry	Sandoval
De Baca	San Juan
Grant	San Miguel
Guadalupe	Santa Fe
Harding	Sierra
Hidalgo	Socorro
Lincoln	Taos
Los Alamos	Torrance
Luna	Union
McKinley	Valencia
Otero	

State of Oregon

Harney	Klamath
Lake	

State of Texas

Jeff Davis	Parmer
Hudspeth	

State of Utah

Beaver	Morgan
Box Elder	Piute
Cache	Rich
Carbon	Salt Lake
Daggett	San Juan
Davis	Sanpete
Duchesne	Sevier
Emery	Summit
Garfield	Tooele
Grand	Uintah
Iron	Utah
Juab	Wasatch
Kane	Wayne
Millard	Weber

State of Wyoming

Albany	Natrona
Campbell	Niobrara
Carbon	Park
Converse	Platte
Fremont	Sublette
Goshen	Sweetwater
Hot Springs	Teton
Johnson	Uinta
Laramie	Washakie
Lincoln	Weston

(6) The provisions of paragraph (a)(4) of this section shall not apply to any light-duty vehicle or light-duty truck sold, offered for sale, introduced, or delivered for introduction into commerce in California provided that the vehicle is covered by a certificate of conformity with emission standards in effect in California.

(7) Certificates issued for light-duty vehicles or light-duty trucks certified with catalytic converters shall be subject to the following term in addition

to the term in paragraph (a)(2) of this section: "Catalyst-equipped vehicles, otherwise covered by this certificate, which are driven outside the United States, Canada, and Mexico will be presumed to have been operated on leaded gasoline resulting in deactivation of the catalysts. If these vehicles are imported or offered for the importation without retrofit of the catalyst, they will be considered not to be within the coverage of this certificate unless included in a catalyst control program operated by a manufacturer or a United States Government Agency and approved by the Administrator."

(8) Certificates issued for incomplete light-duty trucks shall be subject to the following term in addition to the term in paragraph (a)(2) of this section: "For incomplete light-duty trucks, this certificate covers only those new motor vehicles which when completed by having the primary load-carrying device or container attached, conform to the maximum curb weight and frontal area limitations described in the application for certification as required in 40 CFR 86.082–21 (d)."

(9) Certificates issued for heavy-duty engines shall be subject to the following term in addition to the term in paragraph (a)(2) of this section: "For heavy-duty engines, this certificate covers only those new motor vehicle engines installed in heavy-duty vehicles which conform to the minimum gross vehicle weight rating, curb weight, or frontal area limitations for heavy-duty vehicles described in 40 CFR 86.082–2."

(b)(1) The Administrator will determine whether a vehicle (or engine) covered by the application complies with applicable standards by observing the following relationships:

(i) *Light-duty vehicles and light-duty trucks.* (A) The durability-data vehicle(s) selected under § 86.082–24(c)(1)(i) shall represent all vehicles of the same engine-system combination.

(B) The emission-data vehicle(s) selected under § 86.082–24(b)(1)(ii) through (b)(1)(v) shall represent all vehicles of the same engine-system combination as applicable.

(C) The emission-data vehicle(s) selected under § 86.082–24(b)(1)(vii) shall represent all vehicles of the same evaporative control system within the evaporative emission family, as applicable.

(D) The emisison-data vehicle(s) selected under § 86.082–24(b)(1)(v) shall represent all vehicles of the same engine-system combination to be sold at high altitude.

(E) The emission-data vehicle(s) selected under § 86.082–24(b)(1)(vii)(D) shall represent all vehicles of the same evaporative control system within the evaporative family sold at high altitude.

(ii)(A) *Gasoline-fueled heavy-duty engines.* A test engine selected under § 86.082–24(b)(2)(ii) and (iv) shall represent all engines in the same engine family of the same engine displacement-exhaust emission control system combination.

(B) A test engine selected under § 86.082–24(b)(2)(iii) shall represent all engines in the same engine family of the same engine displacement-exhaust emission control system combination.

(C) A test engine selected under § 86.082–24(c)(2)(i) shall represent all engines of the same engine-system combination.

(iii)(A) *Diesel heavy-duty engines.* A test engine selected under § 86.082–24(b)(3)(ii) shall represent all engines in the same engine-system combination.

(B) A test engine selected under § 86.082–24(b)(3)(iii) shall represent all engines of that emission control system at the rated fuel delivery of the test engines.

(C) A test engine selected under § 86.082–24(c)(3)(i) shall represent all engines of the same engine-system combination.

(2) The Administrator will proceed as in paragraph (a) of this section with respect to the vehicles (or engines) belonging to an engine family or engine family-evaporative emission family combination (as applicable), all of which comply with all applicable standards.

(3) If, after a review of the test reports and data submitted by the manufacturer, data derived from any additional testing conducted pursuant to § 86.079–29, data or information derived from any inspection carried out under § 86.078–7(c) or any other pertinent data or information, the Administrator determines that one or more test vehicles (or test engines) of the certification test fleet do not meet applicable standards, he will notify the manufacturer in writing, setting forth the basis for his determination. Within 30 days following receipt of the notification, the manufacturer may request a hearing on the administrator's determination. The request shall be in writing, signed by an authorized representative of the manufacturer and shall include a statement specifying the manufacturer's objections to the Administrator's determination and data in support of such objections. If, after a review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.078–6 with respect to such issue.

(4) For light-duty vehicles and light-duty trucks the manufacturer may, at his option, proceed with any of the following alternatives with respect to an emission-data vehicle determined not in compliance with all applicable standards for which it was tested:

(i) Request a hearing under § 86.078–6; or

(ii) Remove the vehicle configuration (or evaporative vehicle configuration, as applicable) which failed, from his application;

(A) If the failed vehicle was tested for compliance with exhaust emission standards only: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission-data vehicle to be tested for exhaust emission compliance only.

(B) If the failed vehicle was tested for compliance with both exhaust and evaporative emission standards: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission-data vehicle which will be tested for compliance with both exhaust and evaporative emission standards. If one vehicle cannot be selected in accordance with the selection criteria employed in selecting the failed vehicle, then two vehicles may be selected (i.e., one vehicle to satisfy the exhaust emission vehicle selection criteria and one vehicle to satisfy the evaporative emission vehicle selection criteria). The vehicle selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards only. The vehicle selected to satisfy the evaporative emission vehicle selection criteria will be tested for compliance with both exhaust and evaporative emission standards; or

(iii) Remove the vehicle configuration (or evaporative vehicle configuration, as applicable) which failed from the application and add a vehicle configuration(s) (or evaporative vehicle configuration(s), as applicable) not previously listed. The Administrator may require, if applicable, that the failed vehicle be modified to the new engine code (or evaporative emission code, as applicable) and demonstrate by testing that it meets applicable standards for which it was originally tested. In addition, the Administrator may select, in accordance with the vehicle selection criteria given in § 86.082–24(b), a new emission-data vehicle or vehicles. The vehicles selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards only. The vehicles

selected to satisfy the evaporative emission vehicle selection criteria will be tested for compliance with both exhaust and evaporative emission standards; or

(iv) Correct a component or system malfunction and show that with a correctly functioning system or component the failed vehicle meets applicable standards for which it was originally tested. The administrator may require a new emission-data vehicle, of identical vehicle configuration (or evaporative vehicle configuration, as applicable) to the failed vehicle, to be operated and tested for compliance with the applicable standards for which the failed vehicle was originally tested.

(5) For heavy-duty engines the manufacturer may, at his option, proceed with any of the following alternatives with respect to any engine family represented by a test engine(s) determined not in compliance with applicable standards:

(i) Request a hearing under § 86.078–6; or

(ii) Delete from the application for certification the engines represented by the failing test engine. (Engines so deleted may be included in a later request for certification under 86.079–32.) The Administrator will then select in place of each failing engine an alternate engine chosen in accordance with selection criteria employed in selecting the engine that failed; or

(iii) Modify the test engine and demonstrate by testing that it meets applicable standards. Another engine which is in all material respects the same as the first engine, as modified, shall then be operated and tested in accordance with applicable test procedures.

(6) If the manufacturer does not request a hearing or present the required data under paragraphs (b)(4) or (b)(5) (as applicable) of this section, the Administrator will deny certification.

(c)(1) Not withstanding the fact that any certification vehicle(s) (or certification engine(s)) may comply with other provisions of this subpart, the Administrator may withhold or deny the issuance of a certificate of conformity (or suspend or revoke any such certificate which has been issued) with respect to any such vehicle(s) (or engine(s)) if:

(i) The manufacturer submits false or incomplete information in his application for certification thereof;

(ii) The manufacturer renders inaccurate any test data which he submits pertaining thereto or otherwise circumvents the intent of the Act, or of this part with respect to such vehicle (or engine);

(iii) Any EPA Enforcement Officer is denied access on the terms specified in § 86.078–7(c) to any facility or portion thereof which contains any of the following:

(A) The vehicle (or engine);

(B) Any components used or considered for use in its modification or buildup into a certification vehicle (or certification engine);

(C) Any production vehicle (or production engine) which is or will be claimed by the manufacturer to be covered by the certificate;

(D) Any step in the construction of a vehicle (or engine) described in (C) of this subdivision;

(E) Any records, documents, reports, or histories required by this part to be kept concerning any of the above;

(iv) Any EPA Enforcement Officer is denied "reasonable assistance" (as defined in § 86.078–7(c)) in examining any of the items listed in paragraph (c)(1)(iii) of this section.

(2) The sanctions of withholding, denying, revoking, or suspending of a certificate may be imposed for the reasons in paragraphs (c)(1)(i), (ii), (iii), or (iv) of this section only when the infraction is substantial.

(3) In any case in which a manufacturer knowingly submits false or inaccurate information or knowingly renders inaccurate or invalid any test data or commits any other fraudulent acts and such acts contribute substantially to the Administrator's decision to issue a certificate of conformity, the Administrator may deem such certificate void ab initio.

(4) In any case in which certification of a vehicle (or engine) is proposed to be withheld, denied, revoked, or suspended under paragraph (c)(1)(iii) or (c)(1)(iv) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.078–7(c) in fact occurred, the manufacturer, if he wishes to contend that, even though the violation occurred, the vehicle (or engine) in question was not involved in the violation to a degree that would warrant withholding denial, revocation, or suspension of certification under either paragraph (c)(1)(iii) or (c)(1)(iv) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(5) Any revocation or suspension of certification under paragraph (c)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.078–6 hereof.

(ii) Extend no further than to forbid the introduction into commerce of vehicles (or engines) previously covered by the certification which are still in the hands of the manufacturer, except in cases of such fraud or other misconduct as makes the certification invalid ab initio.

(6) The manufacturer may request in the form and manner specified in paragraph (b)(3) of this section that any determination made by the Administrator under paragraph (c)(1) of this section to withhold or deny certification be reviewed in a hearing conducted in accordance with § 86.078–6. If the Administrator finds, after a review of the request and supporting data, that the request raises a substantial factual issue, he will grant the request with respect to such issue.

(d)(1) Notwithstanding the fact that any vehicle configuration or engine family may be covered by a valid outstanding certificate of conformity, the Administrator may suspend such outstanding certificate of conformity in whole or in part with respect to such vehicle configuration or engine family if:

(i) The manufacturer refuses to comply with the provisions of a test order issued by the Administrator pursuant to § 86.603; or

(ii) The manufacturer refuses to comply with any of the requirements of § 86.603; or

(iii) The manufacturer submits false or incomplete information in any report or information provided pursuant to the requirements of § 86.609; or

(iv) The manufacturer renders inaccurate any test data which he submits pursuant to § 86.609; or

(v) Any EPA Enforcement Officer is denied access to a facility on the terms specified in § 86.606; or

(vi) Any EPA Enforcement Officer is denied the opportunity on the terms specified in § 86.606, to:

(A) Monitor vehicle selection pursuant to § 86.607, or

(B) Select vehicles for testing pursuant to § 86.607, or

(C) Monitor vehicle testing performed to satisfy any of the requirements of this part; or

(vii) Any EPA Enforcement Officer is denied "reasonable assistance" as defined in § 86.606 in examining any of the items listed in that section; or

(viii) The manufacturer refuses to comply with the requirements of §§ 86.604(a), 86.605, and 86.607, 86.608, 86.610, or 86.611.

(2) The sanction of suspending a certificate may not be imposed for the reasons in paragraphs (d)(1) (i), (ii), or (viii) of this section where such refusal is caused by conditions and

circumstances outside the control of the manufacturer which renders it impossible to comply with those requirements. Such conditions and circumstances shall include, but not be limited to, any uncontrollable factors which results in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment breakdown or failure or illness of personnel, but shall not include failure of the manufacturer to adequately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(3) The sanctions of suspending a certificate may be imposed for the reasons in paragraphs (d)(1) (iii), (iv), (v), (vi), or (vii) of this section only when the infraction is substantial.

(4) In any case in which a manufacturer knowingly submitted false or inaccurate information or knowingly rendered inaccurate any test data or committed any other fraudulent acts, and such acts contributed substantially to the Administrator's original decision not to suspend or revoke a certificate of conformity in whole or in part, the Administrator may deem such certificate void from the date of such fraudulent act.

(5) In any case in which certification of a vehicle is proposed to be suspended under paragraph (d)(1)(v), (d)(1)(vi), or (d)(1)(vii) of this section, and in which the Administrator has presented to the manufacturer involved reasonable evidence that a violation of § 86.606 in fact occurred, the manufacturer, if he wishes to contend that even though the violation occurred, the vehicle configuration or engine family in question was not involved in the violation to the degree that would warrant suspension of certification under either paragraph (d)(1)(v), (d)(1)(vi), or (d)(1)(vii) of this section, shall have the burden of establishing that contention to the satisfaction of the Administrator.

(6) Any suspension of certification under paragraph (d)(1) of this section shall:

(i) Be made only after the manufacturer concerned has been offered an opportunity for a hearing conducted in accordance with § 86.613 hereof, and

(ii) Not apply to vehicles no longer in the hands of the manufacturer.

11. A new § 86.082–35 is added. This section is identical to § 86.081–35 except for paragraphs (a)(1)(iii)(D) and (a)(1)(iii)(F), and (a)(1)(iii)(G).

§ 86.082–35 Labeling.

(a) The manufacturer of any motor vehicle (or motor vehicle engine) subject to the applicable emission standards of this subpart, shall, at the time of manufacture, affix a permanent legible label, of the type and in the manner described below, containing the information hereinafter provided, to all production models of such vehicles (or engines) available for sale to the public and covered by a certificate of conformity under § 86.082–30(a).

(1) *Light-duty vehicles and light-duty trucks.* (i) A permanent, legible label shall be affixed in a readily visible position in the engine compartment.

(ii) The label shall be affixed by the vehicle manufacturer who has been issued the certificate of conformity for such vehicle, in such a manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(A) The label heading: Vehicle Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches), engine, family identification and evaporative family identification;

(D) Engine tune-up specifications and adjustment, as recommended by the manufacturer in accordance with the altitude at which the vehicle is to be sold for principal use to the ultimate purchaser, including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value; e.g., idle CO, idle air-fuel ratio, idle speed drop, high idle speed, initial injection timing, and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (e.g., air conditioner), if any should be in operation. If adjustments or modifications to the vehicle are necessary to ensure compliance with emission standards at either high or low altitude, the manufacturer shall either include the instructions for such adjustments on the label, or indicate on the label where instructions for such adjustments may be found. The label shall indicate whether the engine tune-up or adjustment specifications are applicable to high altitude, low altitude or both.

(E) An unconditional statement of compliance with the appropriate model year U.S. Environmental Protection Agency regulations which apply to light-duty vehicles;

(F) A statement, if applicable, that the adjustments or modifications indicated on the label are necessary to ensure emission control compliance at the altitude specified.

(G) A statement, if applicable, that the high-altitude vehicle was designed or modified for principal use at high altitude. This statement must be affixed by the manufacturer at the time of assembly or by any dealer who performs the high-altitude modification or adjustment prior to sale to an ultimate purchaser.

(H) A statement, if applicable, that the vehicle has been exempted from meeting the high-altitude gaseous emission standards as specified in § 86.082–8(g)(2) and § 86.083–9(g)(2), and that its unsatisfactory performance under high-altitude conditions makes it unsuitable for principal use at high altitude.

(I) A statement, if applicable, that the vehicle has been exempted from meeting the high-altitude gaseous emissions standards as specified in § 86.082–9(g)(2) and, as a consequence, the emission performance warranty provisions of 40 CFR Part 85, Subpart V do not apply when the vehicle is tested at high altitude.

(2) *Heavy-duty engines.* (i) A permanent legible label shall be affixed to the engine in a position in which it will be readily visible after installation in the vehicle.

(ii) The label shall be attached to an engine part necessary for normal engine operation and not normally requiring replacement during engine life.

(iii) The label shall contain the following information lettered in the English language in block letters and numerals which shall be of a color that contrasts with the background of the label:

(A) The label heading: Engine Exhaust Emission Control Information;

(B) Full corporate name and trademark of manufacturer;

(C) Engine displacement (in cubic inches) and engine family and model designations;

(D) Date of engine manufacture (month and year);

(E) Engine specifications and adjustments as recommended by the manufacturer. These specifications should indicate the proper transmission position during tuneup and what accessories (e.g., air conditioner), if any, should be in operation;

(F) For gasoline-fueled engines the label should include the idle speed,

ignition timing, and the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), and valve lash.

(G) For diesel engines the label should include the advertised hp at rpm, fuel rate at advertised hp in mm ^{3} stroke, valve lash, initial injection timing, and idle speed.

(H) An unconditional statement of compliance wih appropriate model year (e.g., 1979) U.S. Environmental Protection Agency regulations applicable to heavy-duty engines.

(iv) The label may be made up of one or more pieces; *Provided,* That all pieces are permanently attached to the same engine or vehicle part as applicable.

(b) The provisions of this section shall not prevent a manufacturer from also reciting on the label that such vehicle (or engine) conforms to any applicable state emission standards for new motor vehicles (or new motor vehicle engines) or any other information that such manufacturer deems necessary for, or useful to, the proper operation and satisfactory maintenance of the vehicle (or engine).

(c)(1) The manufacturer of any light-duty vehicle or light-duty truck subject to the emission standards of this subpart shall, in addition and subsequent to setting forth those statements on the label required by the Department of Transportation (DOT) pursuant to 49 CFR 567.4, set forth on the DOT label or on an additional label located in proximity to the DOT label and affixed as described in 40 CFR 567.4(b), the following information in the English language, lettered in block letters and numerals not less than three thirty-seconds of an inch high, of a color that contrasts with the background of the label:

(i) The Heading: "Vehicle Emission Control Information."

(ii) The statement: "This Vehicle Conforms to U.S. EPA Regulations Applicable to 19— Model Year New Motor Vehicles."

(iii) One of the following statements, as applicable, in letters and numerals not less than six thirty-seconds of an inch high and of a color that contrasts with the background of the label:

(A) For all vehicles certified as non-catalyst-equipped: "Non-Catalyst"

(B) For all vehicles certified as catalyst-equipped which are included in a manufacturer's catalyst control program for which approval has been given by the Administrator: "Catalyst—Approved for Import"

(C) For all vehicles certified as catalyst-equipped which are not included in a manufacturer's catalyst control program for which prior approval has been given by the Administrator: "Catalyst"

(2) In lieu of selecting either of the labeling options of paragraph (c)(1) of this section, the manufacturer may add the information required by paragraph (c)(1)(iii) of this section to the label required by paragraph (a) of this section. The required information will be set forth in the manner prescribed by paragraph (c)(1)(iii) of this section.

(d)(1) Incomplete light-duty trucks or incomplete heavy-duty vehicles optionally certified as light-duty trucks shall have the following prominent statement printed on the label required in paragraph (a)(1) of this section in lieu of the statement required by paragraph (a)(1)(iii)(E) of this section: "This vehicle conforms to U.S. EPA regulations applicable to 19— Model Year New Motor Vehicles when completed at a maximum curb weight of —— pounds and a maximum frontal area of — square feet."

(e) Incomplete heavy-duty vehicles having an 8,500 pound gross vehicle weight rating or less shall have the following statement printed on the label required in paragraph (a)(2) of this section in lieu of the statement required by paragraph (a)(2)(iii)(H) of this section: "This engine conforms to U.S. EPA regulations applicable to 19— Model Year New Heavy-Duty Engines when installed in a vehicle completed at a curb weight of more than 6,000 pounds or with a frontal area greater than 45 square feet."

(f) The manufacturer of any incomplete vehicle shall notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emission certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Traffic Safety Administration safety notification requirements published in 49 CFR Part 568.

12. A new § 86.082–38 is added. This section is identical to § 86.079–38 except for paragraphs (c)(2) and (d)(2).

§ 86.082–38 Maintenance instructions.

(a) The manufacturer shall furnish or cause to be furnished to the purchaser of each new motor vehicle (or motor vehicle engine) subject to the standards prescribed in §§ 86.082–8, 86.082–9, 86.079–10, or 86.079–11, as applicable, written instructions for the maintenance and use of the vehicle (or engine) by the purchaser as may be reasonable and necessary to assure the proper functioning of the emission control system.

(1) Such instructions shall be provided for those vehicle and engine components listed in Appendix VI to this part (and for any other components) to the extent that maintenance of these components is necessary to assure the proper functioning of emission control system.

(2) Such instructions shall be in clear, and to the extent practicable, nontechnical language.

(b) The maintenance instructions required by this section shall contain a general description of the documentation which the manufacturer will require from the ultimate purchaser or any subsequent purchaser as evidence of compliance with the instructions.

(c) For gasoline-fueled light-duty vehicles and light-duty trucks.

(1) Such instructions shall specify the performance of all scheduled maintenance performed by the manufacturer under § 86.079–25(a), and shall explain the conditions under which EGR system and catalytic converter maintenance are to be performed (e.g., what type of warning device is being employed and whether the device is activated by component failure or the need for periodic maintenance).

(2) Such instructions shall indicate what adjustments or modifications, if any, are necessary to allow the vehicle to meet applicable emission standards at elevations above 4,000 feet, or at elevations of 4,000 feet or less.

(3) [Reserved]

(d) For diesel light-duty vehicles and light-duty trucks.

(1) Such instructions shall specify the performance of all scheduled maintenance performed by the manufacturer under § 86.079–25(a) and shall explain the conditions under which EGR system and catalytic converter maintenance are to be performed (e.g., what type of warning device is being employed and whether the device is activated by component failure or the need for periodic maintenance).

(2) Such instructions shall indicate what adjustments or modifications, if any, are necessary to allow the vehicle to meet applicable emission standards at elevations above 4,000 feet, or at elevations of 4,000 feet or less.

(e) For gasoline-fueled heavy-duty engines, such instructions shall specify the performance of all scheduled maintenance performed by the manufacturer under § 86.079–25(c)(2). Scheduled maintenance in addition to that performed on the durability-data engine under § 86.079–25(c)(2) may be recommended for reasons such as to offset the effects of operating conditions which differ from the dynamometer durability cycle or to increase the life of

the engine beyond 1,500 hours (or the equivalent). The instructions may schedule maintenance on a calendar time basis and/or mileage basis in addition to the engine service time basis that was followed by the manufacturer under § 86.079–25(c)(2).

(f) For diesel heavy-duty engines, such instructions shall specify the performance of all scheduled maintenance performed by the manufacturer under § 86.079–25(c)(2). Scheduled maintenance in addition to that performed on the durability-data engine under § 86.079–25(c)(2) may be recommended for reasons such as to offset the effects of operating conditions which differ from the dynamometer durability cycle or to increase the life of the engine beyond 1,000 hours (or the equivalent). The instructions may schedule maintenance on a calendar time basis, mileage basis, engine service time basis, or combinations of each.

13. A new § 86.083–9 is added. This section is identical to § 86.082–9 except for paragraphs (a)(1), (d), (e), (f), and (g).

§ 86.083–9 Emission standards for 1983 and later model year light-duty trucks.

(a)(1) The standards set forth in paragraphs (a) through (c) of this section shall apply for trucks sold for principal use at other-than-designated high-altitude locations. Exhaust emissions from 1983 and later model year light-duty trucks shall not exceed:

(i) *Hydrocarbons.* 1.7 gram per vehicle mile (1.06 gram per vehicle kilometer);

(ii) *Carbon Monoxide.* 18 grams per vehicle mile (11.16 grams per vehicle kilometer);

(iii) *Oxides of Nitrogen.* 2.3 grams per vehicle mile (1.43 grams per vehicle kilometer);

(iv) *Particulate Emissions* (diesels only). 0.60 gram per vehicle mile (0.373 gram per vehicle kilometer).

(2) The standards set forth in paragraphs (a)(1) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B and measured and calculated in accordance with those procedures.

(b)(1) Fuel evaporative emissions from 1983 and later model year gasoline-fueled light-duty trucks shall not exceed:

(i) *Hydrocarbons.* 2.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any 1983 and later model year light-duty truck.

(d)(1) Model year 1983 and later light-duty trucks sold for principal use at designated high-altitude locations shall be capable of meeting the following exhaust emission standards when tested under high-altitude conditions.

(i) *Hydrocarbons.* 2.0 grams per vehicle mile (1.24 grams per vehicle kilometer);

(ii) *Carbon monoxide.* 26 grams per vehicle mile (16.2 grams per vehicle kilometer);

(iii) *Oxides of nitrogen.* 2.3 grams per vehicle mile (1.43 grams per vehicle kilometer).

(2) The standards set forth in paragraph (d)(1) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures.

(e)(1) Fuel evaporative emissions from 1983 and later model year gasoline-fueled light-duty trucks sold for principal use at designated high-altitude locations shall not exceed 2.6 grams per test when tested under high-altitude conditions.

(2) The standard set forth in paragraph (e)(1) of this section refers to a composite sample of the fuel evaporative emission collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(f) No crankcase emissions shall be discharged into the ambient atmosphere from; any 1983 and later model year gasoline-fueled light-duty trucks sold for principal use at designated high-altitude locations.

(g)(1) All light-duty trucks shall be capable (by initial design, adjustment, or modification) of meeting the applicable emission standards set forth in this section for any altitude of operation. Such adjustments and modifications shall:

(i) Be capable of being effectively performed by commercial repair facilities.

(ii) All adjustment and modifications recommended by the manufacturer to be performed on vehicles to satisfy this requirement must be approved in advance by EPA in accordance with § 86.079–22.

(g)(2) Exemption for vehicles from the high-altitude emission standards as set forth in paragraph (d) of this section may be granted by the Administrator for vehicles that are expected to have unsatisfactory performance under high-altitude conditions. Such exemptions will be granted upon petition by the manufacturer that the vehicle falls within the definition of vehicles eligible for exemption. A vehicle shall be considered eligible for exemption if its design parameters (displacement-to-weight ratio (D/W) and engine speed-to-vehicle speed (N/V)) simultaneously fall within the exempted range for that manufacturer for that year. The exempted range is determined according to the following procedure:

(i) The manufacturer shall graphically display the D/W and N/V data of all vehicle configurations it will offer for the model year in question. The axis of the abscissa shall be D/W (where (D) is the engine displacement expressed in cubic centimeters and (W) is the equivalent vehicle test weight expressed in pounds), and the axis of the ordinate shall be N/V (where (N) is the crank shaft speed expressed in revolutions per minute and (V) is the vehicle speed expressed in miles per hour). At the manufacturer's option, either the 1:1 transmission gear ratio or the lowest numerical gear ratio available in the transmission will be used to determine N/V. The gear selection must be the same for all N/V data points on the manufacturer's graph. For each transmission/axle ratio combination, only the lowest N/V value shall be used in the graphical display.

(ii) The product line is then defined by the equation, $N/V = C(D/W)^{-0.9}$, where the constant, (C), is determined by the requirement that all the vehicle data points either fall on the line or lie to the upper right of the line as displayed on the graph.

(iii) The exemption line is then defined by the equation, $N/V = C(0.84\ D/W)^{-0.9}$, where the constant, (C), is the same as that found in paragraph (g)(2)(ii) of this section.

(iv) The exempted range includes all values of N/V and D/W which simultaneously fall to the lower left of the exemption line as drawn on the graph.

(3) The sale of a vehicle for principal use at a designated high-altitude location that has been exempted as set forth in paragraph (g)(2) of this section will be considered a violation of § 203(a)(1) of the Clean Air Act.

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Part VI

Nuclear Regulatory Commission

Standards for Protection Against Radiation

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

Standards for Protection Against Radiation

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The NRC is considering amending its regulations to permit licensees greater leeway in disposing of liquid scintillation media and animal carcasses containing tracer levels of hydrogen-3 (tritium) or carbon-14. Most licensees presently dispose of these items by sending them to a radioactive waste burial ground or by obtaining special authorization from NCR for incineration or on site burial. Under the proposed regulations, the licensee may dispose of specified concentrations of these materials without regard to their radioactivity. The NRC is also considering amending its regulations to raise the annual limits for disposal of hydrogen-3 and carbon-14 by release to the sanitary sewerage system. The proposed rule changes would conserve waste burial capacity that is already in short supply.

DATE: Comment period expires November 24, 1980.

Note.—Comments received after the expiration date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before that date.

ADDRESSES: Interested persons are invited to submit written comments and suggestions for consideration on the proposed amendments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, attention: Docketing and Service Branch. Copies of the preliminary value/impact analysis and of comments received may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, D. C. Single copies of the preliminary value/impact analysis are available from John R. Cook at the phone number and address listed below.

FOR FURTHER INFORMATION CONTACT: John R. Cook, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Telephone: 301–427–4240).

SUPPLEMENTARY INFORMATION: Radionuclide tracers are used extensively in biomedical research and for the diagnosis of diseases in humans. One of the end products of these research and medical activities is radioactive wastes. These wastes are usually shipped to radioactive waste burial grounds although certain water soluble or dispersible wastes are released into sanitary sewerage systems. Two of the most commonly used radioisotopes in biomedical research (and to a lesser extent in medical procedures) are hydrogen-3 and carbon-14. The concentrations of these radionuclides in biomedical waste are minute, generally less than 0.05 microcuries per gram.

Liquid scintillation media and animal carcasses, both containing tracer quantities of hydrogen-3 or carbon-14, constitute the largest volume of radioactive biomedical waste.

Liquid scintillation counting has become a widespread technique for detecting radioactivity in biological samples such as blood or urine. Typically, a fraction of a milliliter of the biological sample containing tracer levels of hydrogen-3 or carbon-14 is combined with 20 milliliters or less of an organic solvent, primarily toluene, in a small vial to make a liquid scintillation medium. The vial is placed in a liquid scintillation counter, and the biological sample is assayed. The vials are used once and then collected and shipped to a radioactive waste burial ground.

Research laboratories and hospitals throughout the country presently use between 84 and 159 million vials per year, which represents between 200,000 and 400,000 gallons of liquid scintillation media. Disposal of this waste in radioactive waste burial grounds requires approximately 400,000 cubic feet of space at a cost of over $13 million per year for packing materials, transport, and disposal (this does not include the cost of licensee labor or overhead). Liquid scintillation media are approximately 43% of the total volume of radioactive waste shipped to burial grounds that is not related to nuclear power generation and its supporting fuel cycle.

Animals are used in research mainly for the development and testing of new drugs. Virtually every chemical compound that is considered for use as a human or veterinary drug is first tagged with a hydrogen-3 or carbon-14 tracer and injected into research animals to study how the chemical compound behaves. These research animals include mice, rats, dogs, monkeys, swine, and sheep. The animal carcasses containing trace quantities of hydrogen-3 and carbon-14 are usually shipped to radioactive waste burial grounds. Animal carcasses annually require about 80 thousand cubic feet of burial space at a cost of almost $3 million per year. Animal carcasses are approximately 9% of the total volume of radioactive waste shipped to burial grounds that is not related to nuclear power generation and its supporting fuel cycle.

There are other hydrogen-3 and carbon-14 waste streams in the research laboratory that do not result in liquid scintillation vials and animal carcasses; for example, the solutions and attendant material used to prepare the research samples. These materials also contain tracer levels of hydrogen-3 and carbon-14.

Under present NRC regulations, hydrogen-3 and carbon-14 wastes that are readily soluble or dispersible in water can be disposed of by release to the sanitary sewerage system. The annual limit for release to the sanitary sewerage system is found in 10 CFR 20.303 and is limited to a total of 1 curie of all radionuclides per year for each licensee. This proposed rule would raise the limit for hydrogen-3 to 5 curies per year and the limit for carbon-14 to 1 curie per year. This change would result in a negligible addition to the level of these radioisotopes already present in the natural environment.

There are alternatives for disposal of liquid scintillation media and animal carcasses containing hydrogen-3 and carbon-14 other than consignment to a radioactive waste burial ground. Liquid scintillation media can be evaporated, distilled, burned, or buried on a licensee's site if an appropriate location is available. Animal carcasses can be incinerated in a pathogen incinerator. Currently, none of these alternatives to radioactive waste burial are readily available. Generally, liquid scintillation media and animal carcasses with *any* added hydrogen-3 or carbon-14 are being handled as radioactive waste and consigned to a radioactive waste burial ground under NRC's regulations (§§ 30.41 and 20.301) and similar Agreement State regulations.

The state agencies that control the existing radioactive waste burial grounds do not want to accept liquid scintillation media or animal carcasses. Liquid scintillation media are flammable and are suspected of leaching radioactive chemicals out of the burial trenches. Also, some of the shipping containers arrive at the burial grounds leaking. Liquid scintillation media are chemically toxic and are suspected of being carcinogenic and thus pose a waste hazard unrelated to their radioactive character. Animal carcasses decompose and can be a pathogen hazard. Sometimes the animal carcasses will cause their containers to burst during shipment. The voids formed in the burial trenches by the decaying

animal carcasses are also believed to contribute to migration of chemicals by increasing rain water percolation in the trenches.

The three radioactive waste burial grounds in the U.S. are located in Barnwell, South Carolina; Beatty, Nevada; and Richland, Washington. The Richland, Washington and Beatty, Nevada sites accept both liquid scintillation media and animal carcasses. The Barnwell, South Carolina site does not accept liquid scintillation media but does accept animal carcasses. At all three sites, the state regulatory bodies are attempting to reduce the volume of incoming waste to prolong site use.

During a temporary state-imposed embargo in mid-1979, some hospitals and research institutions across the country apparently came within days of curtailing operations involving liquid scintillation counting and animal research before the radioactive waste burial grounds in Richland, Washington and Beatty, Nevada resumed accepting liquid scintillation vials and animal carcasses.

The Rule

This rulemaking would allow NRC licensees to dispose of liquid scintillation media and animal carcasses containing less than 0.05 microcuries of hydrogen-3 or carbon-14 per gram without regard to their radioactivity.

This regulation would not relieve licensees from complying with other applicable regulations of Federal, state, and local government agencies regarding the disposal of non-radioactive materials. Scintillation media are toxic and flammable, and animal carcasses are sometimes pathogenic. These characteristics, which are a more important public health problem than their radioactivity, may require them to be disposed of under applicable Federal, state, and local laws governing chemical and biological hazards. This rulemaking would also allow the disposal by release to a sanitary sewerage systerm of up to 5 curies of hydrogen-3 and 1 curie of carbon-14 per year, in addition to the presently allowed 1 curie per year for all radionuclides. Neither the rulemaking allowing disposal of liquid scintillation media and animal carcasses without regard to their radioactivity nor that raising the limit for disposal of hydrogen-3 and carbon-14 to sanitary sewerage authorized disposal of liquids scintillation media (e.g., toluene) into the sanitary sewerage system.

Because the amount of hydrogen-3 and carbon-14 that could be released to the environment as a result of this rulemaking is very small, and because calculations employing conservative assumptions indicate the dose to any exposed individual is likely to be much less than 1 millirem per year, the Commission believes that the rulemaking would have little adverse impact from a radiological health standpoint.

The rule would essentially remove any NRC restrictions on the disposal of liquid scintillation media and animal carcasses. It would no longer be necessary for NRC licensees to ship these materials, which could pose a chemical and biological hazard, up to thousands of miles across the country for disposal in a radioactive waste burial ground. NRC Agreement States could make similar amendments to their regulations in order to extend the benefit of this action to their licensees.

The preliminary value/impact analysis prepared by the NRC staff to support the proposed rule concludes that this rule change is the best solution to the problem of disposal of liquid scintillation media and animal carcasses containing tracer amounts of hydrogen-3 and carbon-14. The preliminary value/impact analysis indicated that the action is non-substantial and insignificant from the standpoint of environmental impact. If also adopted by the Agreement States, this action would save hospitals and research institutions in excess of $13 million annually ($16 million for the cost of packaging materials, transportation, and disposal, minus the $3 million estimated for non-radioactive waste disposal). Also, it would save almost one-half million cubic feet of radioactive waste burial capacity annually, or half of that used for radioactive waste not related to nuclear power generation and its supporting fuel cycle.

In summary, the proposed amendments concerning the disposal of tracer levels of hydrogen-3 and carbon-14 in liquid scintillation media and animal carcasses would be appropriate because: (a) the proposed amendments would not pose an unreasonable risk to the common defense and security and to the health and safety of the public; (b) disposal of these wastes in radioactive waste burial grounds is expensive and without benefit commensurate with the expense; (c) the flammability of liquid scintillation media (organic solvents) and the decomposition of animal carcasses cause a significant problem in transporting these wastes to burial grounds; and (d) these wastes consume a significant portion of radioactive waste burial capabity which is in short supply.

Similarly, the amendment raising the limit for sanitary sewerage disposal of hydrogen-3 and carbon-14 is appropriate because it would not pose an unreasonable risk to the public. In addition, the shipment of this waste to radioactive waste burial grounds is costly and consumes valuable burial space that could be made available for more hazardous radioactive waste.

The Commission has decided that a 45 day comment period for this rulemaking is appropriate because the potential radiological impacts are small and there is a shortage of available burial ground capacity.

Under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Part 20 is contemplated.

1. In § 20.301, paragraph (c) is revised to read as follows:

§ 20.301 General requirement.

* * * * *

(c) As provided in § 20.303 or § 20.304, applicable respectively to the disposal of licensed material by release into sanitary sewerage systems or burial in soil, or in § 20.306 for disposal of specific wastes, or in § 20.106 (Radioactivity in effluents to unrestricted areas).

2. In § 20.303, paragraph (d) is revised to read as follows:

§ 20.303 Disposal by release into sanitary sewerage systems.

* * * * *

(d) The gross quantity of licensed and other radioactive material, excluding hydrogen-3 and carbon-14, released into the sewerage system by the licensee does not exceed one curie per year. The quantities of hydrogen-3 and carbon-14 released into the sanitary sewerage system may not exceed 5 curies per year for hydrogen-3 and 1 curie per year for carbon-14. Excreta from individuals undergoing medical diagnosis or therapy with radioactive material shall be exempt from any limitations contained in this section.

3. § 20.305 is revised to read as follows:

§ 20.305 Treatment or disposal by incineration.

No licensee shall treat or dispose of licensed material by incineration except for materials listed under § 20.306 or as specifically approved by the Commission pursuant to §§ 20.106(b) and 20.302.

4. A new § 20.306 is added to read as follows:

§ 20.306 Disposal of specific wastes.

(a) Any licensee may dispose of the following licensed material without regard to its radioactivity:

(1) 0.05 microcuries or less of hydrogen-3 or carbon-14, per gram of medium, used for liquid scintillation counting; and

(2) 0.05 microcuries or less of hydrogen-3 or carbon-14, per gram of animal tissue averaged over the weight of the entire animal; provided however, tissue may not be disposed of under this section in a manner that would permit its use either as food for humans or as animal feed.

(b) Nothing in this section, however, relieves the licensee of maintaining records showing the receipt, transfer, and disposal of such byproduct material as specified in § 30.51 of this chapter.

(Sec. 81, 161b, Pub. L. 83–703, 68 Stat. 935, 948, as amended (42 U.S.C. 2111, 2201), Sec. 201, Pub. L. 93–438, 88 Stat. 1242 (42 U.S.C 5841))

Dated at Washington, DC, this 2d day of October, 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 80–31316 Filed 10–7–80; 8:45 am]

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Wednesday
October 8, 1980

Part VII

Department of Energy

Office of Alcohol Fuels and Office of Conservation and Solar Energy

Loan Guarantees for Alcohol Fuels, Biomass Energy, and Municipal Waste Energy Projects; Environmental Assessment of Financial Assistance for Energy Recovery From Industrial Waste: Wood, Paper, and Food Processing

DEPARTMENT OF ENERGY

Office of Alcohol Fuels and Office of Conservation and Solar Energy

10 CFR Part 799

Loan Guarantees for Alcohol Fuels, Biomass Energy, and Municipal Waste Energy Projects

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: On August 14, 1980, the Department of Energy (DOE) issued a notice of proposed rule making (45 FR 54264) to establish rules under which DOE will provide loan guarantees to assist in the financing of the construction of alcohol fuel, biomass energy, and municipal waste energy projects as authorized by the Biomass Energy and Alcohol Fuels Act of 1980 (Title II of the Energy Security Act, Pub. L. 96–294). The Department of Energy, having concluded public hearings and received and analyzed oral and written comments on the proposed rule, herewith publishes its final rule which identifies the procedures that will be followed by the Department of Energy in implementing its loan guarantee programs for alcohol fuels, biomass energy, and municipal waste energy projects under this statutory authority.

EFFECTIVE DATE: October 8, 1980.

FOR FURTHER INFORMATION CONTACT:

(As to alcohol fuel projects), Ted D. Tarr, Acting Director, Division of Production Incentives, Office of Alcohol Fuels, Mail Stop 6A–211, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–9487.

(As to non-alcohol biomass projects), Leslie S. Levine, Acting Director, Office of Solar Applications for Industry, Mail Stop 404, 600 E Street, N.W., Washington, D.C. 20585, (202) 376–4424.

(As to municipal wastes projects), Donald K. Walter, Acting Director, Office of Energy from Municipal Waste, Mail Stop 1E–276, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–9397.

(As to legal matters), Thomas L. Blair or Paul W. Douglass, Office of General Counsel, Mail Stop 6E–067, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–6967.

(As to Contracting Officer matters), Steven R. Morgan, Deputy Director, Office of Financial Incentives, Procurement and Assistance Management Directorate, Mail Stop 1J–009, 1000 Independence Ave., S.W., Washington, D.C. 20585, (202) 252–8182.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Comments and Responses on the Proposed Regulations:
A. Definitions.
B. Solicitation, Evaluation, and Approval of Applications.
C. Applications.
D. Policy Considerations.
E. Required Findings and Determinations.
F. Guarantee Agreement Terms and Conditions.
G. Loan Agreement Requirements and Conditions.
H. Special Considerations for Partial Financing.
I. Withdrawal or Limitation of Guarantee.
J. Project Costs.
K. Miscellaneous Comments.
III. Additional Information.

I. Background

On June 30, 1980, the President signed the Energy Security Act, Pub. L. 96–294, which contains Title II, the Biomass Energy and Alcohol Fuels Act of 1980 (the "Act"). The Act, among other things, authorizes the Department of Energy to provide various forms of financial assistance to alcohol fuels, biomass energy and municipal waste energy projects to reduce the dependence of the United States on imported petroleum and natural gas. On August 14, 1980, the Department of Energy published proposed rules in the **Federal Register** (45 FR 54264) to implement the loan guarantee authorities vested in DOE by the Act. These proposed rules also announced public hearings that were held on September 5 in Denver, Colorado, September 8 in Chicago, Illinois, and September 9, 1980, in Washington, D.C. to give interested parties an opportunity to appear and comment upon the proposed rules. September 12, 1980, was specified as the due date for receipt of written comments on the proposed rule. DOE received oral testimony from approximately 25 separate parties at the public hearings and received approximately 40 written comments from interested parties representing both public and private sector viewpoints. All comments and testimony were appreciated and all were closely reviewed and considered.

The comments and responses on the proposed regulations are summarized below. Those comments that were directed toward the provisions of the proposed rule which are mandated by virtue of the statutory provisions of the Act were not addressed because DOE is legally required to follow its authorizing legislation. The final rule is effective beginning October 8, 1980. DOE has established this immediate effective date to comply with the mandate of Congress in the Act that the Secretary implement the authorities of the Act as quickly as possible and because DOE believes that it is in the national interest that new energy projects be undertaken on an expedited basis.

II. Comments and Responses on the Proposed Regulations

A. Definitions

Several comments were received which proposed various changes in the definitions stated in the proposed rule. Many of the definitions in the proposed rule were taken directly from the provisions of the Act and those comments which would require a change in the statutory meaning were not accepted. However, for purposes of clarification, and in accordance with some comments received, a few of the definitions have been modified.

The definition of loan was broadened to provide flexibility in providing guarantees to a wide variety of financial transaction structures and associated debt instruments.

The definition of municipal waste was slightly modified to indicate that incidental amounts of hazardous wastes which are normally found in a municipal waste stream would not cause a municipal waste project to become ineligible, provided that significant amounts of those substances defined as hazardous wastes are not included in the feedstock. In addition, a number of comments were received which expressed concern over the use of recyclable material as a fuel in a municipal waste energy project rather than retaining these materials for recycling. The Department recognizes the importance of the recycling industry in the conservation of domestic energy and natural resources. Section 799.44(b) provides that the applicant must assure that the project will not use waste paper which would otherwise be replaced for use other than as a fuel. In implementing this requirement, DOE will look carefully at assurances provided by applicants to ensure that those projects receiving guarantees are consistent with the intentions of Congress in protecting existing recycling facilities and avoiding unnecessary disruption of existing municipal waste collection and disposal systems.

A definition has been added for "start-up costs" to indicate that a loan guarantee application for construction of an eligible facility may include those start up costs which are reasonably and

necessarily incurred during the construction of the project. Such costs must be directly attributable to the testing of equipment or the implementation of the initial production process and capitalized under generally accepted accounting practices. This definition was added to address comments which pointed out that most construction debt financing includes some provisions for start up of the facility which might be excluded under a restrictive interpretation of the proposed rule.

Finally, the definition of competition cycle has been modified to provide that the duration of each cycle will be established by solicitation announcement for the cycle rather than in the rule. This definition also specifies that the intitial competition cycle for alcohol fuel and biomass energy projects will end on October 20, 1980. This change will permit greater flexibility for the program if it becomes apparent that shorter or longer cycles are needed to meet program objectives. In addition, the closing date for the initial competition cycle has been extended to November 14, 1980 for municipal waste energy project applications to allow municipal governments additional time to prepare and submit applications. This change was made in recognition of the time that may be required by some municipalities for appropriate decision making in accordance with their procedures and bylaws.

B. Solicitation, Evaluation, and Approval of Applications

The Department received a few comments expressing concern over the lack of flexibility in the competition process under which guarantees would be solicited, evaluated, and approved. The Department has made a few adjustments in the proposed rule to address these concerns and insure that each applicant will have adequate opportunity to obtain information sufficient to assist in the preparation of a competitive application. In accordance with those procedures specified in future Solicitation Announcements, the Department will also allow applicants to submit written questions to the Contracting Officer concerning the preparation of an application.

A revision was also made in § 799.3(e)(4) to provide that the Application Evaulation Panel may, in coordination with the Contracting Officer, after the closing of the competition cycle, request additional information of any applicant which may be necessary to complete the evaluation of the application.

Finally, § 799.3(d)(2)(iv) has been modified to provide that an application received after a particular competition cycle has been closed may be evaluated with other applications received before the competition cycle closed if the Application Evaluation Panel determines that evaluation of that application on an immediate basis, would make a significant contribution to the achievement of program objectives.

C. Applications

Section 799.4 sets out the general requirements for applications. A number of comments were received expressing concern that applicants might not be able to meet all of the requirements of the application contents section of the proposed rule. DOE made only minor adjustments to this section of the rule as a result of these comments because DOE does not construe this section of the rule from prohibiting any applicant from filing an application that does not contain all of the specifics and information described in this section. The inability of an applicant to meet each and every information requirement will not necessarily remove the application from consideration. However, it may affect the applicant's competitive position as compared to other applications. In order for DOE to evaluate an application, it must contain as much information as possible concerning the proposed project and its relevant financial, technical, business, environmental, and managerial aspects. This section of the rule is intended to identify that information which DOE believes is necessary for a full and complete evaluation of the applicant's proposed project. It is the applicant's responsibility to comply with this section and submit that information which the applicant has available and which gives the Application Evaluation Panel a reasonable opportunity to make recommendations as to whether or not a particular application should receive a loan guarantee. Applicants are encouraged to meet the basic requirements of this section in accordance with the availability of information to the applicant and the current status of the proposed project.

D. Policy Considerations

Several comments indicated that there was some confusion among commentors between policy considerations and evaluation criteria when applied by DOE to a loan guarantee application. Each application shall be comparatively ranked by the Application Evaluation Panel in accordance with the criteria described in § 799.3(e)(3). Once the panel has developed its ranking of applications using these criteria, the panel presents to the Application Approving Official its ranking and recommendations regarding the applications so evaluated. The Application Approving Official then utilizes the policy considerations stated in section 799.5 for selecting among those applications the proposals which were similarly ranked by the panel. A slight wording change in section 799.5 was inserted to better reflect this procedure.

A few comments were received suggesting the Department add various policy factors to its list of policy considerations. None of these suggestions was adopted because the Department did not agree that they were consistent with the authorities provided in the Act.

E. Required Findings and Determinations

A number of comments were received on this section of the proposed rule inquiring as to either the meaning of certain provisions or suggesting additions or deletions. None of the suggestions for changes was adopted because they would either have resulted in a violation of the Department's statutory authority or indicated the Department was willing to accept a greater degree of risk in the financing of project proposals than prudent management allows. It should be noted by applicants, however, that DOE intends to be flexible in making determinations and findings regarding proposals submitted under this rule. Applicants should consider the provisions of this section as being of the nature of general guidelines for the types of determinations necessary for the Department to make prior to the issuance of a guarantee.

F. Guarantee Agreement Terms and Conditions

Several comments were received which addressed the guarantee agreement terms and conditions contained in § 799.7 of the proposed rule. Some concern was expressed by commentors that the patent provisions contained in paragraphs (a)(2) and (a)(3) of this section of the proposed rule were overly restrictive and would require the pledging of patent rights owned by a third party, or which were needed for projects outside of the scope of the guarantee. Such was not the intention of the Department. This portion of § 799.7 has been rewritten to specify in greater detail the requirements of the guarantee agreement with regard to patents, technology, and other proprietary rights

related to the project funded by the guarantee debt.

One comment suggested that the requirement of paragraph (a)(9) providing for a period of grace of 60 days prior to the making of demand for payment pursuant to the guarantee be shortened. This comment was not accepted. The Department believes that such a time period is justified in the interest of the Department having adequate time to determine whether to provide for principal and interest assistance to the project which ultimately works to the benefit of all parties concerned.

One party suggested that numerous provisions of this section of the proposed rule were overly restrictive and harmful to the interest of small businesses. However, the Department regards these provisions are reasonably consistent with those normally used by the private sector in the financing of industrial projects of similar sizes and serve to reasonably protect the interest of the borrower, the lender or other holders of the debt, as well as the United States. Accordingly, no changes in the proposed rule were made in that regard. It should be noted however that in the selection of applications for award, specific priorities are identified in §§ 799.25 and 799.35 for small and disadvantaged businesses.

G. Loan Agreement Requirements and Conditions

Section 799.8 of the proposed rule specified the requirements and conditions of the loan agreement to which the guarantee applies. Several comments were received which expressed concern that the various provisions of this section might prevent debt financing through the sale of bonds or corporate debentures. Such is not the case. Prospective lenders should read this section of the rule as a general guideline for the provisions of the lending arrangements. The Department envisions that trustees, escrow agents, or other fiduciaries may be used in various capacities to insure proper debt servicing and control over disbursement of funds to the project and that such arrangements will adequately provide for the use of any type of debt instruments including bonds and debentures. One additional comment expressed concern that interest only periods would not be allowed during the construction of the project. However, the proposed rule does not prohibit such type of arrangement and no provision in the final rule has been inserted which would exclude interest only periods. The Department of Energy expects proposals for financial transactions which will be structured in a variety of forms and that such proposals may include interest only periods during construction. The Department has not tried to identify all acceptable types of financial structures and will generally accept any reasonable form of financing for a project which is appropriate to the size and type of project and which does not duly expose the Department to unreasonable levels of risk.

H. Special Considerations for Partial Financing

Comments received from several parties pointed out that some confusion exists as to the application of provisions of the proposed rule where the guaranteed loan was not for the full financing of a complete facility but for only the partial financing of that facility. Examples of such situations would be additions or modifications to an existing plant, guaranteed financing for only a portion of the assets of a new facility with *pari passu* arrangements with other creditors, or guaranteed financing for one or more individual assets with other financial arrangements being made for a majority of the assets of the facility. The Department has inserted a new section in the rule to clarify that such financings are eligible for loan guarantee consideration. This new section, § 799.9, provides that these financings are eligible if the loan guarantee is limited to loans for the financing of those items which can reasonably be attributed to the production of energy. This new section also specifies that the guarantee agreement and loan agreement associated with these financings may have terms and conditions which are modified from those specified in §§ 799.7 and 799.8, in an appropriate manner consistent with the type of financing involved.

I. Withdrawal or Limitation of the Guarantee

Concern was expressed by several persons that the provisions in the proposed rule under § 799.9, which provided for withdrawal or limitation of the guarantee would be exercised without prior discussions with the borrower or lender. This reading of that proposed section is incorrect. DOE wishes to emphasize the language of paragraph (a) of that section which provides that discussions with borrowers and lenders will occur prior to a withdrawal or limitation of the guarantee. The provisions of this section are now found in § 799.10 of the final rule.

Another person objected to the provisions of paragraph (c) of this section on the basis that it could be construed by loan servicers as an opportunity to escape the obligations in their servicing contracts. The Department of Energy does not agree with this interpretation and believes that written contracts with those parties responsible for loan servicing will adequately insure that the servicer is obligated to perform for the benefit of all parties affected by such servicing. The failure of the servicing agent to adequately perform these requirements will give rise to a claim for damages by parties affected by such failure. The Department of Energy will not allow loan servicing responsibilities to be ignored and intends to hold those legally responsible parties for such servicing liable for their failure to perform should such occur.

J. Project Costs

A few comments were received on § 799.10 of the proposed rule which dealt with project costs. This section is now numbered 799.11 in the final rule and is changed in only one significant respect. Start up costs have been added as an example of eligible project costs which may be funded by the guaranteed loan. As stated above, a definition of "start up costs" has been added to the definition section of the final rule. In all cases, the Secretary will examine the proposed project costs and have the right to exclude from the guaranteed financing those costs which the Secretary determines to be unnecessary or excessive. This provision will also apply to those start up costs which the Secretary determines should not be funded by the guaranteed loan.

Several comments suggested that various forms of operating expenses should be included in the eligible project costs as defined in this section. DOE reminds all applicants that the loan guarantee authority provided by the Act is for the construction of facilities only. Costs associated with the operation of the facility, i.e. those costs that are normally operating expenses under generally accepted accounting principles, are not eligible for guaranteed financing under this authority. The final rule should be read to exclude all costs not normally associated with the construction of an industrial facility.

K. Miscellaneous Comments

A variety of comments were received which could not be grouped with others to indicate a concensus of opinion regarding any provisions of the proposed rule but which indicated individual concern with certain provisions. These comments are discussed in this section, and in the

opinion of DOE resulted primarily from a misreading or misinterpretation of the proposed rule. For purposes of clarification, or as a result of new developments or information, sections of the proposed rule may have been changed slightly as a result of these comments.

A concern was expressed that in some cases the development of a proposed project might occur without adequate coordination with State and local governmental units. DOE believes that because of the licensing requirements for any major industrial facility, such a lack of coordination is not likely to exist. However, DOE urges all applicants to appropriately coordinate with involved State and local governmental units to ensure that any facility for which a loan guarantee is sought will not experience delays in its undertaking as a result of such failure to coordinate with the appropriate governmental units having responsibility in a geographical area. Where appropriate, the Department of Energy may contact various State and local governmental units to ensure that adequate coordination has occurred concerning the proposed facility and the planning for any impact that may result from the location of such a facility in a geographical area. Applicants should be aware of the responsibilities of affected State and local governmental units for planning for the development of such facilities and should indicate in their application the nature and extent of involvement with applicable governmental planning units.

One comment expressed concern regarding the equity requirements in cost overrun situations and suggested measures for insuring that the borrower commit sufficient equity for such purpose. As a general principle, the Department of Energy considers, in its evaluation procedure, the ability of project owners to provide equity for cost overrun situations. In those cases where the Department determines such to be necessary, provisions will be inserted in the guarantee agreement that specify requirements for cost overrun circumstances. However, because of the variety of project types and associated financing proposals, the Department has inserted no specific requirement in the final rule.

One comment perceived that the Department of Energy's monitoring requirements as specified in § 799.14 of the proposed rule were unreasonable and burdensome upon the applicant. This comment was not accepted and no change in that section has been made. The Department has responsibility for adequate protection of the interests of the government under its loan guarantees, and therefore undertakes the monitoring of projects as indicated in the proposed § 799.14. However, the Department of Energy will not unreasonably interfere in the activities of the borrower or lender in its monitoring of a project and assures all applicants that the practices and procedures of the Department for project monitoring will not cause undue interference in the operation of the project.

It should be noted by applicants that the Department of Energy has made some changes in Subpart D of the rule which pertains to municipal waste energy projects. These changes are primarily a result of the publication of an environmental assessment in the industrial waste category and some adjustment in the wording of various parts for purposes of clarification. For example, the word "demonstration" has been removed from § 799.49 to indicate that there is no requirement that a facility be a demonstration type facility. In the case of industrial waste projects, the final rule now provides in § 799.43(b) that eligible categories of industrial waste projects at this time are those which use wood processing waste, paper processing waste, and waste from food processing (including waste from fruit and vegetable processing, nut packing, grain milling, sugar refining, and similar materials, but excluding waste from meat processing and dairy products industries) which do not constitute the waste or residues of the agricultural activities, wood harvesting activities or production of forest products.

Finally, one person suggested that non-Federal employees be excluded from or carefully limited in their participation in the evaluation of applications. An opposite comment was recieved that suggested all Applications Evaluation Panels contain representatives from the private sector. The Department of Energy undertakes its application evaluation activities by using Federal employees. These employees are assisted in some cases by non-Federal employees who are under contract with the Department of Energy for purposes of providing technical advice and assistance. Whenever non-Federal employees are utilized in such manner, their activities are carefully reviewed by the Federal employees and each non-Federal employee is obligated not to reveal or use any information obtained as a result of such activities in a way which might create a potential conflict of interest. However all applicants should understand that decisions relating to the commitment and award of loan guarantees are made only by duly authorized Federal employees.

III. Additional Information

On September 26, 1980, the Department of Energy held a preapplication conference for applicants intending to submit proposals during the initial competition cycle as provided by the proposed rule. This conference was held pursuant to a notice published in the **Federal Register** on September 16, 1980 (45 FR 61347). A transcript of this conference may be obtained from:

Public Hearings Management, Department of Energy, Room B210, Box XU, 2000 M Street, N.W., Washington, D.C. 20461.

In addition to giving notice of the conference, this notice also contained the information identified in section 799.3(c) for a Solicitation Announcement. Of particular interest to applicants may be the dollar levels identified as eligble to be awarded in the initial competition cycle. These amounts are up to $400 million for alcohol fuel projects, up to $15 million for biomass energy projects, and up to $25 million for municipal waste energy projects.

In addition, applicants should also be aware that the Department of Energy has published concurrently with the publication of this final rule a Notice of Availability and Finding of No Significant Impact of Financial Assistance for Energy Recovery from Industrial Waste: Wood, Paper, and Food Processing. For reasons set out in the preamble, Chapter III of Title 10, Code of Federal Regulations, is amended as set forth below.

Issued in Washington, D.C., on October 6, 1980.

John C. Sawhill,
Deputy Secretary.

Part 799 is added to 10 CFR Chapter III to read as follows:

PART 799—LOAN GUARANTEES FOR ALCOHOL FUELS, BIOMASS ENERGY AND MUNICIPAL WASTE PROJECTS

Subpart A—General Provisions

Sec.
799.1 Purpose.
799.2 Definitions.
799.3 Solicitation, evaluation, and approval of applications.
799.4 Applications.
799.5 Policy considerations.
799.6 Required findings and determinations.
799.7 Guarantee Agreement terms and conditions.
799.8 Loan Agreement requirements and conditions.

799.9 Special considerations for partial financing.
799.10 Withdrawal or limitation of guarantee.
799.11 Project costs.
799.12 Cost overruns.
799.13 Principal and interest assistance.
799.14 Lender servicing requirements.
799.15 Project monitoring.
799.16 Default, demand, payment, and collateral liquidation.
799.17 Appeals.
799.18 Deviations.

Subpart B—Alcohol Fuel Projects

799.20 Purpose.
799.21 Program management and administration.
799.22 Receipt of applications.
799.23 Eligible projects.
799.24 Additional required findings and determinations.
799.25 Priorities.

Subpart C—Biomass Energy Projects

799.30 Purpose.
799.31 Program management and administration [Reserved].
799.32 Receipt of applications.
799.33 Eligible projects.
799.34 Additional required findings and determinations.
799.35 Priorities.

Subpart D—Municipal Waste Energy Projects

799.40 Purpose.
799.41 Program management and administration [Reserved].
799.42 Receipt of applications.
799.43 Eligible and ineligible projects.
799.44 Additional application requirements.
799.45 Policy considerations.
799.46 Additional required findings and determinations.
799.47 Priorities.
799.48 Tax Treatment.
799.49 EPA role in program administration.

Authority: Title II of the Energy Security Act (Pub. L. 96–294), 94 Stat. 683, 42 U.S.C. 8801 *et seq.* and the Department of Energy Organization Act (Pub. L. 95–91), sec. 644 *et seq.* 91 Stat. 599 (42 U.S.C. 72545).

Subpart A—General Provisions

§ 799.1 Purpose.

The purpose of this regulation is to set forth policies and procedures utilized by the Secretary to receive, evaluate, and approve applications seeking federal loan guarantees for the financing of biomass energy projects (which include alcohol fuels, biomass, and municipal waste energy projects). This regulation also identifies those requirements and conditions which will be imposed by the Secretary under loan guarantees issued for the purpose of providing financial assistance for the construction of biomass energy projects. The authority of the Secretary to issue loan guarantees under this regulation shall be limited to the extent provided in advance in appropriation acts.

§ 799.2 Definitions.

For the purposes of this regulation:

"Act" means the Biomass Energy and Alcohol Fuels Act of 1980, Pub. L. 96–294 (Title II).

"Alcohol" means alcohol (including methanol and ethanol) which is produced from biomass and which is suitable for use by itself or in combination with other substances as a fuel or as a substitute for petroleum or petrochemical feedstocks.

"Applicant" means any individual, company, cooperative, partnership, corporation, association, consortium, estate, or any entity organized for a common business purpose, any State or local government (including any special purpose district or similar governmental unit) or any agency or instrumentality thereof, or any Indian tribe or tribal organization which has the authority to enter into and is seeking a loan guarantee under this regulation.

"Application Approving Official" means the Secretary or person designated by the Secretary who is authorized to approve an application for a loan guarantee under this regulation and to authorize the negotiation and award of commitments to guarantee, guarantee agreements and other contractual documents. In the case of loan guarantees issued under Subpart B of this part, the Secretary has designated the Director of the Office of Alcohol Fuels as the Application Approving Official.

"Application Evaluation Panel" (also referred to as "the Panel") means a team of Federal employees appointed by an Application Approving Official to evaluate loan guarantee applications and make approval or disapproval recommendations regarding such applications.

"Biomass" means any organic matter which is available on a renewable basis, including agricultural crops and agricultural waste and residues, wood and wood waste residues, animal waste, municipal waste, and aquatic plants.

"Biomass energy" means biomass fuel or energy or steam derived from the direct combustion of biomass for the generation of electricity, mechanical power, or industrial process heat.

"Biomass energy project" means any facility (or portion of a facility) located in the United States which is primarily for the production of biomass fuel (and byproducts); or the combustion of biomass for the purpose of generating industrial process heat, mechanical power, or electricity (including cogeneration).

"Biomass fuel" means any gaseous, liquid, or solid fuel produced by conversion of biomass.

"Borrower" means any person who enters into a loan all or any portion of which is guaranteed under this regulation.

"Btu" means British thermal unit.

"Cogeneration" means the combined generation by any facility of electrical or mechanical power, and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes.

"Competition cycle" means the period of time in which applications will be received for evaluation. With respect to alcohol fuels and biomass energy projects the initial competition cycle will expire at 4:30 pm on October 20, 1980 and on November 14, 1980 for municipal waste energy projects. Additional competition cycles will be announced in the **Federal Register** within fifteen days after closing of each previous cycle.

"Construction" means the construction or acquisition of any biomass energy project or the conversion of any facility to a biomass energy project or the expansion or improvement of any biomass energy project which increases the capacity or efficiency of that facility to produce biomass energy. Such term includes the acquisition of equipment and machinery for use in or at the site of a biomass energy project and the acquisition of land and improvements thereon for the construction, expansion, or improvement of such a project, or the conversion of a facility to such a project including the capital costs necessary to meet environmental standards. Such term does not include the acquisition of any facility which was operated as a biomass energy project before the acquisition.

"Cooperative" means any agricultural association as that term is defined in section 15(a) of the Act of June 15, 1929, as amended (46 Stat. 18; 12 U.S.C. 1141j), commonly known as the Agricultural Marketing Act.

"Contracting Officer" means the Department of Energy official warranted and authorized to contractually obligate the Department of Energy and execute written agreements that are binding on the Department.

"Cost overrun" means any cost that exceeds the estimated total cost of the project as established by the Application Approving Official prior to or at the time of the execution of a loan guarantee agreement.

"Default" means the actual failure by the borrower to make payment of principal or interest in accordance with the terms and conditions of a loan guaranteed under this regulation, or the failure of the borrower to meet other

requirements specified as a default condition in the guarantee agreement.

"Disadvantaged business concern" means a concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals (as defined in Pub. L. 95-507).

"Federal Agency" means any Executive agency, as defined in Section 105 of Title 5, United States Code.

"Guarantee Agreement" means the same as that definition contained herein for "Loan Guarantee".

"Holder" means a person or entity holding in due course all or part of the rights, title and interest in the guaranteed portion of the loan.

"Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan native village or regional village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"Lender" means any entity which make a loan that is guaranteed under this regulation. Examples of lenders 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, trust companies, trusts, or other entities designated as trustees or agents acting on behalf of bond holders or other lenders; Provided, That the term "lender" does not include the Federal Financing Bank, or any other Federal agency.

"Loan" means a transaction in which a written financial obligation is undertaken, under which obligation the payment of money is guaranteed in accordance with the provisions of this regulation, and where the overall financial obligation may be evidenced by one or more bonds, debentures, notes, or other instruments or classes of debt.

"Loan guarantee" or "Guarantee agreement" means a written agreement issued by the Department of Energy that guarantees, in accordance with the terms and conditions contained therein, the payment of sums of money owing by a borrower to a lender.

"Motor fuel" means gasoline, kerosene, and middle distillates (including diesel fuel).

"Municipal waste" means any organic matter, including sewage, sewage sludge, refuse-derived fuel, and industrial or commercial waste, and mixtures of such matter and inorganic refuse from any publicly or privately operated municipal waste collection or similar disposal system, or from similar waste flows (other than such flows which constitute agricultural waste or residues, or wood waste or residues from wood harvesting activities or production of forest products). Such term includes substances normally found in a municipal waste stream, including incidental amounts of hazardous wastes, but does not include significant amounts of those substances defined as hazardous wastes pursuant to Subpart D of 40 CFR Part 261 or which when utilized in any biomass energy project would, in the opinion of the Secretary, endanger the public health or negatively impact the environment in a significant way.

"Municipal waste energy project" means any facility (or portion of a facility) located in the United States primarily for—

(a) The production of biomass fuel (and byproducts) from municipal waste; or

(b) The combustion of biomass from municipal waste for the purpose of generating steam or forms of useful energy, including industrial process heat, mechanical power, or electricity (including cogeneration).

Such term includes any necessary transportation, preparation, and disposal equipment and machinery for use in or at the site of the facility involved.

"Primary fuel" means the predominate fuel used by the biomass energy project and does not include incidental use of petroleum and natural gas.

"Project cost" means any cost that is described in § 799.11.

"Secretary" means the Secretary of Energy or his designee, by delegation or otherwise.

"Small business" means a concern which, including its affiliates, is independently owned and operated and not dominant in its field of operation, has a net worth less than $6 million or has an average net income (after Federal income taxes) for the preceding two years of less than $2 million or has 1,000 employees or less.

"Start up costs" means those costs that are reasonably and necessarily incurred during the construction of the project which are directly attributable to the testing of equipment or the implementation of the initial production process and which can be capitalized under generally accepted accounting practices.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust territory of the Pacific Islands.

§ 799.3 Solicitation, evaluation, and approval of applications.

(a) *Competition.* It is Department of Energy policy to solicit and evaluate applications on a competitive basis as provided herein. Each application received in accordance with the provisions of this regulation will be considered within the competition cycle in which it is received.

(b) *Application Process.* The Application Process will consist of the following:

(1) The continuing solicitation of applications during the competition cycle or otherwise as provided in paragraph (c) of this section;

(2) Submission of an application which complies with § 799.4;

(3) Preliminary review and screening of applications;

(4) Comparative evaluation and identification of competitive field;

(5) Selection of applications, to the extent that appropriations are available, by the Application Approving Official for competitive negotiations or commitments to guarantee, as appropriate, subject to terms and conditions as determined by the Application Approving Official in his or her sole discretion;

(6) Issuance of such conditional commitment;

(7) Negotiation; and

(8) Execution of a loan guarantee upon satisfaction of conditions in such conditional commitment.

(c) *Solicitation announcement.* The Secretary will, within fifteen days after the closing of each competition cycle and prior to the beginning of the next competition cycle, issue a Solicitation Announcement, which shall as a minimum be published in the **Federal Register** and the Commerce Business Daily. A Solicitation Announcement will indicate some or all of the following:

(1) The place and time for application submission;

(2) The programmatic or technological areas that will be emphasized in the next competition cycle;

(3) Identification of the issuing office;

(4) Identification of statutory authority and relevant regulation;

(5) Any special requirements not contained in the regulations;

(6) Identification of the time period during which written questions regarding the preparation of applications may be submitted;

(7) Application receipt deadline and location to which application must be delivered if different from that specified in the regulation;

(8) The extent to which appropriations are currently available for loan guarantees;

(9) Date of presubmission conference, if any, open to all interested parties; and

(10) Any additional information determined by the Secretary to be relevant to the solicitation of applications at that time.

(d) *Receipt and handling of applications.* (1) Applications for loan guarantees may be filed at the addresses specified in the applicable subparts of this regulation in accordance with the type of project to be undertaken.

(2) An application received at the location of filing after 4:30 p.m. on the last day of the competition cycle will not be considered in that competition cycle unless—

(i) It is received before the selection of applications by the Application Approving Official under that competition cycle and;

(ii) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of the application; or

(iii) It was sent by mail and is determined by the Contracting Officer that the late receipt was due solely to mishandling by the Department of Energy; or

(iv) The Application Evaluation Panel determines that the proposed project would make a significant contribution to the achievement of program objectives if the application is considered immediately.

(3) Late applications, unless accepted pursuant to the provision of paragraph (d)(2) of this section, will be considered in the next competition cycle to the extent appropriations are available and meet the eligibility requirements for such cycle.

(e) *Evaluation and ranking of applications.* (1) Evaluation and ranking of applications shall be accomplished by an appointed Application Evaluation Panel or other appropriate officials designated by the Application Approving Official for the purpose of determining eligibility of applications and identifying those best suited for selection to accomplish the purpose of the Act. The application evaluation process is intended to provide the Application Approving Official sufficient information to permit an optimal selection from among competing applications. The Panel is responsible for preliminary review and screening, comparative evaluations, and presentation of its findings and recommendations to the Application Approving Official. Applicants shall not be permitted to modify applications after the close of the competition cycle, except as provided by paragraph (e)(6) of this section.

(2) Preliminary review and screening of all applications shall be conducted by the Panel to determine which applications should be considered in comparative evaluations. The Panel shall initially review the applications to determine whether each application:

(i) Complies with statutory requirements for project eligibility;

(ii) Complies with programmatic eligibility requirements stated in this regulation and the Solicitation Announcement, if any;

(iii) Contains sufficient information to enable the Panel to perform a comparative evaluation; and

(iv) Is signed by an authorized official of the applicant organization and the lending institution making the loan.

(3) Those applications meeting the requirements of paragraph (e)(2) of this section shall then be comparatively evaluated and ranked by the Panel. The Panel shall consider the following in comparatively ranking applications:

(i) Technical project feasibility and likelihood of success;

(ii) Market potential and economic feasibility;

(iii) *Financial.* (A) Credibility of cost estimates,

(B) Adequacy of capitalization, cash flow, working capital, and other financial capability,

(C) Financial condition of applicant and other principals to the project,

(iv) *Financing structure.* (A) Financial commitment of applicant and other principals to the project,

(B) Lender commitment and debt financing plan,

(C) Other factors which are relevant to a full description of the particular financing structure of the proposed project;

(v) *Management plan.* (A) Corporate and personnel experience,

(B) Management organization and interrelationships,

(C) Key personnel and associated responsibilities;

(vi) Environmental, health, safety and socio-economic impacts of the proposed project; and

(vii) Ability of applicant to comply with requirements of this regulation.

(4) The Panel may, in coordination with the Contracting Officer and in the course of evaluating an application, request additional information of the applicant that may be necessary to complete its evaluation.

(5) The Panel shall present to the Application Approving Official its ranking of the applications together with its findings and recommendations in a comprehensive report, which represents internal evaluations and judgments prior to final decision making.

(f) Selection of Applications. The Application Approving Official may, in his sole discretion, select any number of the competing applications, subject only to the requirement that appropriations be available for the total guaranteed loan amount of the applications selected.

(1) Prior to making a decision, the Application Approving Official may determine that additional project specific information is required. Such additional information requirements will be communicated in writing directly to the applicant or, in some cases, its respective lenders or servicers.

(2) The Application Approving Official will consider the report of the Panel, such other information as the Application Approving Official determines to be relevant, and the policy considerations specified in § 799.5 and applicable subparts of this rule in selecting applications for conditional commitments or competitive negotiations, as appropriate.

(3) When the Application Approving Official determines that competitive negotiations are appropriate, the Panel will negotiate with all or a subset of competing applicants for the purpose of clearly defining the degree and extent of the competitive issues related to the applications prior to the selection of applications for conditional commitments. The Panel will revise its report to the Application Approving Official to reflect the results of negotiations.

(4) Upon, or, in some cases, subject to, the satisfactory completion of the requirements contained in this section, the Application Approving Official may authorize the Contracting Officer to issue a conditional commitment to provide a guarantee for the transaction proposed by the application. The conditional commitment shall 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 of the guarantee.

(5) Decisions by the Application Approving Official shall be made within 120 days of the deadline for receipt of applications (as specified in the Solicitation Announcement). For the purpose of beginning this 120 day period, all applications received during a competition cycle shall be considered as received on the last day of the

competition cycle. Those applications not approved for issuance of a conditional commitment shall receive an immediate notification of such disapproval and reasons therefor from the Contracting Officer.

(g) *Post Selection Negotiation and Closing.* (1) Subsequent to execution of a conditional commitment, the Application Approving Official shall designate a Contracting Officer to ensure that the conditions of the conditional commitment are met and negotiate such terms and conditions of the guarantee agreement and related documents as may be required to comply with the Act and this regulation, including §§ 799.7 and 799.8.

(2) In performing the functions under paragraph (g)(1) of this section, the Contracting Officer may request necessary additional information from any relevant party.

(3) If, within a reasonable period of time, the Contracting Officer is unable to negotiate satisfactory terms and conditions, or conditions of the conditional commitment cannot be met on a timely basis, the Application Approving Official shall determine whether to continue negotiations, authorize modification of the commitment, or take other appropriate action. A condition of the conditional commitment shall be unsatisfied unless the Contracting Officer certifies in writing that the condition has been met or, in the alternative, the guarantee agreement is executed.

(4) If the Contracting Officer can negotiate satisfactory terms and conditions in the instruments to be used in the closing of the guaranteed loan, and the conditions of the conditional commitment are met, the Application Approving Officer shall authorize a closing for the purpose of executing the loan guarantee agreement and other related transaction documents. The date, time and place for closing shall be fixed by agreement with the applicant and the lender. Nothing contained in the conditional commitment shall in any way constrain or restrict the ability of the Contracting Officer to require additional documentation, or the insertion of additional terms and conditions which, in his or her sole discretion, are reasonable and necessary for the protection of the interests of the United States. Issuance of the guarantee shall be conclusive evidence that the loan and guarantee comply with the Act and these regulations; that the loan has been approved by the Secretary; and that the guarantee is an obligation supported by the full faith and credit of the United States of America.

(h) *Unsolicited Applications.* Because applications will be evaluated on a competitive basis, unsolicited applications for a loan guarantee will not be considered under this regulation. Applications not submitted pursuant to a specific Solicitation Announcement will be returned to the applicant with a recommendation to refile in accordance with the current Solicitation Announcement.

(i) *Discussion with Unsuccessful Applicants.* Upon the written request by an applicant whose application did not result in a loan guarantee, representatives of the Application Approving Official will explain in detail why the application was disapproved.

(j) *Non-written Representations.* No representation shall be binding on the Department of Energy unless in writing and duly signed by a Contracting Officer and all instruments and modifications thereof shall not be considered as approved by the Department unless signed by a Contracting Officer.

§ 799.4 Applications.

(a) The Secretary's consideration of a loan guarantee request for a biomass energy project shall begin with the filing of an application which complies with the application requirement of this regulation. The Secretary may publish additional application requirements in Solicitation Announcements issued pursuant to § 799.3 of this regulation. In general, an applicant is expected to provide information in the application which is similar to that required by an investment banking or other financial institution which might consider the biomass energy project for debt financing. The application must contain the most current data available, and be adequate for the Secretary to properly evaluate the project.

(b) Prospective applicants may request through written questions submitted to the Contracting Officer that the Application Evaluation Panel clarify any provision of this rule at any time prior to the close of the competition cycle. The Contracting Officer shall exercise discretion in the acceptance of questions to insure that no question submitted would result in providing an unfair advantage to any person.

(c) Applications shall be filed with one original and ten legible copies. Each application should contain the following information submitted in a brief but precise manner:

(1) A description of the scope, nature, extent, and location of the proposed project, including identification and feasibility of the technology to be utilized in the project and the extent to which such applicant is applying for, or receiving any other Federal or other governmental financial assistance for the project;

(2) A preliminary or conceptual design of the proposed facility;

(3) A description of prior construction and operating experience of the applicant with the technology to be utilized in the project;

(4) A detailed estimate for the total construction and financing cost of the project (including escalation and contingencies) together with a description of the methodology and assumptions used;

(5) A general description of the overall financial plan for the proposed project including all sources of equity, debt, and the liability of parties associated therewith, necessary for the construction and operation of the project;

(6) Construction and operation schedules for the project including major activity and cost milestones;

(7) Copies of proposed or actual construction contracts together with a description of the construction contractor's experience and financial strength;

(8) An analysis of the market for the product to be produced including relevant economics justifying the analysis and proposed and actual marketing contracts or letters of intent, if any;

(9) A description of the applicant's management concept and plan of operation to be employed in carrying out the project;

(10) A description of the general management experience of the applicant in organizing and undertaking projects of this nature;

(11) Pro forma cash flow statements for at least the first five (5) years of project operation including income statements and balance sheets. All such statements shall include assumptions made in their preparation;

(12) Proposed risk allocation among project participants and financial statements supporting the project participant's ability to contribute equity to the project;

(13) Financial statements for the past three (3) years of the applicant and parties relevant to the applicant's financial backing, together with business and financial interests of principal organizations such as parent and/or subsidiary corporations or partners of the applicant;

(14) An environmental report containing a detailed analysis of the potential environmental, health, safety and socio-economic (EHSS) impacts of the project and any necessary or proposed mitigation measures and other

relevant data that may be available to the applicant to enable the Department to assess the probable EHSS impacts and provide the Department with information for any documents required by the National Environmental Policy Act.

(15) A list of all permit applications filed or to be filed, and permit approvals issued or to be issued by Federal, state, and local government agencies for all required permits and authorizations to undertake construction and begin operations associated with the project. If these approvals have not been obtained, or applications not filed, the estimated date of such filings and approvals should be provided. Explain any past, present or anticipated problems in obtaining any approvals.

(16) A description of the applicant's organization and, where applicable, a copy of partnership agreement or corporate charter, articles of incorporation, bylaws, and appropriate authorizing resolutions or their equivalent;

(17) A written affirmation from both the applicant and any proposed lender justifying the need for a Federal loan guarantee in order to finance the project;

(18) The amount of the loan and percentage of guarantee requested, proposed repayment schedule, and other relevant terms and conditions of the anticipated debt financing;

(19) A copy of any lending commitment issued to the applicant by the proposed lender in the transaction;

(20) A statement from the lender reciting the lender's general experience in financing and servicing debt related to projects of the size and general type of the proposed project, together with the lender's proposed loan servicing and monitoring plan for the proposed project;

(21) A listing of assets associated, or to be associated, with the project and any other asset which will serve as collateral for the guaranteed loan, including appropriate data as to the value and useful life of any physical assets and a description of any other associated security and its value;

(22) Copies of all current or proposed contracts between the applicant and any third parties which are significant to the proposed project including any feedstock supply agreements and contracts for the sale of biomass energy and related byproducts.

(23) Information relevant to findings or determinations which the Secretary must make under the Act or this rule in accordance with § 799.6, and §§ 799.24, 799.34 or § 799.46, as appropriate.

(24) Information relevant to the policy considerations under § 799.5 and the priorities and policy considerations under Subparts B, C, or D of this rule, as appropriate.

(d) In addition to the above requirements, the application shall contain such additional information as may be required by the appropriate subpart of this regulation which will apply to the specific type of biomass energy projects for which a loan guarantee is requested.

(e) Information received by the Secretary under this rule may be available to the public subject to the provision of 5 U.S.C. 552 and 18 U.S.C. 1905; Provided, That,

(1) Subject to the requirements of law, information such as trade secrets, commercial and financial information, and other information concerning the project that the applicant or lender submits to the Secretary in an application or at other times throughout the duration of the project, on a privileged or confidential basis, will not be disclosed by the Department of Energy without prior notice to the submitter in accordance with Department of Energy regulations concerning public disclosure of information. Any submitter asserting that the information is privileged or confidential should appropriately identify and mark such information.

(2) Upon a showing satisfactory to the Secretary by a person that any information or portion thereof obtained under this regulation would, if made public, divulge trade secrets or other proprietary information of such person, the Secretary may not disclose such information.

(3) This section shall not be construed as authority to withhold information from Congress, or from any committee of Congress upon request of the Chairman.

(f) When information submitted by the applicant under this rule or in response to a request for additional information made by the Secretary is significantly changed as a result of new circumstances which make the originally submitted information inaccurate or incomplete, the applicant shall promptly notify the Secretary in writing.

§ 799.5 Policy considerations.

The following policy considerations described under this subpart, and other subparts to this regulation which are relevant to the specific type of biomass energy project for which a guarantee has been requested, will be utilized by the Application Approving Official in the selection of applications from among those recommended applications which are similarly ranked by the Application Evaluation Panel:

(a) The Application Approving Official shall consider the extent to which a loan guarantee is necessary for the lender to extend credit to the applicant at reasonable rates and terms, taking into consideration prevailing rates and terms for loans for similar purposes and periods of time. The Application Approving Official shall also consider whether the financial assistance applied for encourages and supplements, but does not compete with nor supplant, any private capital investment which otherwise would be available to the proposed project on reasonable terms and conditions.

(b) In evaluating applications for loan guarantees to be issued under this regulation, the Application Approving Official shall consider the percentage of the guarantee in relation to the total cost of the project and any nonguaranteed loan being provided to the project.

(c) In evaluating applications for loan guarantees to be made under this regulation, the Application Approving Official shall consider the degree to which the borrower is investing equity funds into the project, which were not provided through the issuance of debt, and the extent to which responsible financial parties affiliated with or constituting the legal entity of the borrower are liable for repayment of the debt to be guaranteed.

(d) The Application Approving Official shall consider the degree to which the lender has accepted a reasonable and appropriate degree of risk in the financing of the project. The Application Approving Official shall also consider the extent to which liability will accrue to the Government for repayment of loan proceeds during both the interim and permanent financing stage of the project.

(e) The Application Approving Official shall consider the extent to which necessary feedstocks and a market for the biomass energy produced and related project byproducts are available throughout the life of a biomass energy project.

(f) In evaluating applications for loan guarantees to be made under this regulation, the Application Approving Official shall consider the length of time over which the proposed borrower will repay the guaranteed debt, with regard to the anticipated cash flow of the project and the length of time that the Government should reasonably be exposed to liability for debt associated with the project.

(g) The Application Approving Official shall consider competition factors associated with the concentration and control of biomass energy production that may result from

the issuance of a loan guarantee in connection with a particular biomass energy project.

(h) The Application Approving Official shall consider the degree to which the project is receiving other Federal financial assistance.

(i) The Application Approving Official shall consider the relative ability of a project or technology to maintain or improve the quality of the environment.

§ 799.6 Required findings and determinations.

In addition to meeting the requirements set forth in other applicable subparts of this rule, a loan guarantee for a biomass energy project shall be issued only after the Secretary is satisfied, in the sole discretion of the Secretary, that the following requirements have been met:

(a) 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, including adequate contingency funds and working capital;

(b) There is a reasonable assurance of repayment of principal and interest of the loan by the borrower;

(c) The project assets (or other acceptable forms of collateral) and other collateral or surety, as determined by the Secretary to be necessary, are pledged by the borrower as security for the repayment of the loan and a valid first and superior lien or other acceptable lien position will exist on such assets, collateral, or surety for the mutual benefit of the lender and the Department of Energy in accordance with their pro-rata interest;

(d) The terms, conditions, maturity, security, and repayment provisions with respect to the guaranteed loan are reasonable and sufficient to protect the interest of the United States pursuant to the guarantee;

(e) The interest rate on the loan to be guaranteed and other fees charged by the lender in connection with the making of the loan are determined to be reasonable by the Secretary after consideration of the range of interest rates and fees prevailing in the private sector for similar obligations and the degree to which the lender is protected from risk by the guarantee;

(f) Advancement of the loan proceeds by the lender to the borrower will be made under a milestone and disbursement schedule which is satisfactory to the Secretary;

(g) The Secretary has determined that there is satisfactory evidence that the applicant is capable of constructing and operating in a competent manner, the project for which the loan is made;

(h) The Secretary is satisfied that the lender is capable of servicing the debt that is guaranteed in accordance with the requirements of § 799.14 of this regulation;

(i) The Secretary has determined that the loan to be guaranteed is for the construction of a project which is within the applicable purposes and objectives of this rule;

(j) The Secretary is satisfied that the lender is not willing, without the guarantee, to extend credit at reasonable rates and terms;

(k) The Secretary is satsified with the borrower's schedule for inserting equity into the project and determines that the schedule is appropriate for the transaction;

(l) The amount of the loan to which the guarantee applies does not exceed 90 percent of the cost of the construction of the project;

(m) The percentage of the guarantee does not exceed 90 percent of the amount of the loan to which the guarantee applies;

(n) The Secretary has determined that the project will be in conformance with established environmental statutes, regulations, and Executive Orders, which shall include, but are not limited to, the following: (1) Completing any environmental analysis required pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq., Pub. L. 91–190); (2) conformance with Executive Order 11988—Floodplain Management, and Executive Order 11990—Protection of Wetlands, and DOE regulations thereunder (10 CFR Part 1022); and (3) receiving, or anticipated receipt of, all necessary environmental permits and approvals;

(o) The Secretary has determined that the project is technically and economically feasible and environmentally acceptable;

(p) There is sufficient evidence that the applicant will initiate and complete the project in a timely, efficient and acceptable manner;

(q) The Secretary has determined that necessary feedstocks are available and will reasonably continue to be available for the life of the project and that the process to be used by the project (except in the case of municpal waste energy projects) will extract the protein content of the feedstock as food or feed unless such extraction would be technically or economically impractical;

(r) The Secretary has determined that no portion of the interest paid on the guaranteed portion of the loan will be excluded from the gross income of the holder of the debt pursuant to the provision of the Internal Revenue Code of 1954, as amended;

(s) The project meets such additional requirements as determined reasonable and necessary by the Secretary for the protection of the interest of the United States; and

(t) The Secretary has made the findings and determinations required under Subparts B, C, or D of this rule, as appropriate.

§ 799.7 Guarantee agreement terms and conditions.

(a) A loan guarantee agreement issued by the Secretary under this regulation shall contain the following requirements and conditions:

(1) A requirement that the lender may not accelerate repayment of the borrower's indebtedness or exercise other remedies available to the lender in the event of the borrower's default, except in the case of the borrower's failure to pay a required payment of principal or interest, without the prior consent of the Secretary or as otherwise permitted in the guarantee agreement;

(2) The following requirements concerning patents, technology, inventions, and other proprietary rights:

(i) A requirement that all patents, technology, and other proprietary rights necessary for the construction and operation of the project shall be obtained by the borrower;

(ii) A requirement that all patents, technology, and other proprietary rights owned or controlled by the borrower and used in the construction and operation of the project, and all patents, technology and other proprietary rights licensed from third parties pursuant to the requirements of paragraph (i) above, shall, upon default of the guaranteed loan, be available to any party acquiring the project assets for the purpose of completing the construction of the project and operating the project throughout the anticipated life of the project. In such circumstances, the license for such patents, technology, and other proprietary rights owned by third parties shall be on terms and conditions no less favorable than the borrower received, and the patents, technology and other proprietary rights owned by the borrower shall be on a royalty free basis;

(iii) A requirement that any inventions conceived or first actually reduced to practice in the course of or under the project, and any patents or patent applications thereon, and all technology and other proprietary rights developed under the project, shall be pledged as collateral securing the guaranteed loan;

(iv) Unless such rights are determined to be inappropriate by the Application

Approving Official, a requirement that the borrower grant, on reasonable terms and conditions, to any responsible party designated by the Secretary, nonexclusive licenses to patents, technology, and other proprietary rights owned or controlled by the borrower for the construction or operation of similar projects.

(3) A requirement that no change of project ownership or financial arrangement will occur without the prior written consent of the Application Approving Official;

(4) A requirement that the project be built and operated in the United States;

(5) A requirement that, in the event that the Secretary makes a payment of principal or interest on the guaranteed loan in accordance with liability accruing to the Secretary under the guarantee, the Secretary shall be subrogated to the rights of the recipient of such payment and have superior right in and to the property acquired by virtue of such payment;

(6) A requirement that the borrower not obtain credit from any creditor without the written consent of the Contracting Officer, unless such creditor agrees to subordinate, in a manner acceptable to the Contracting Officer, its rights to receive payment, in the event that such creditor would, without such subordination, receive by contract or otherwise a lien on the assets securing the guaranteed loan;

(7) A provision that specifies that when a lender holds a guaranteed and a non-guaranteed portion of a loan for a biomass energy project, payments of principal or interest made by the borrower under such loan shall be applied by the lender to reduce the guaranteed and non-guaranteed portion of the loan on a proportionate basis and that the non-guaranteed portion of the loan shall not, in any event, receive preferential treatment over the guaranteed portion of the loan;

(8) A requirement that the lender provide an adequate period of grace of not less than 60 days prior to the making of demand for payment pursuant to the guarantee agreement in order that the Secretary have adequate time to make a decision regarding principal and interest assistance in accordance with the provision of § 799.13 of this regulation;

(9) A requirement that the borrower keep and maintain adequate records and documents concerning the construction and operation of the project in order that representatives of the Secretary may determine the technical and financial conditions of the project and its compliance with environmental requirements;

(10) A requirement for the borrower to prepare and deliver to the Application Approving Official annual audited financial statements prepared according to generally accepted accounting principles;

(11) A requirement that duly authorized representatives of the Secretary shall have access to the project site at reasonable times during construction and operation of the project;

(12) A requirement that the borrower agree to protect and preserve at all times the project assets and other collateral serving as security for the guaranteed loan and to assist in the liquidation of the collateral for the purpose of minimizing loss in the event of loan default;

(13) A requirement providing for the orderly liquidation of the assets of the project in the event of loan default with an option on the part of the Secretary to acquire from the lender the lender's interest in the project assets pursuant to any non-guaranteed portion of the loan;

(14) A requirement that the borrower not discriminate against any person on the grounds of race, color, national origin, sex, handicap, or age in the carrying out or completion of the project;

(15) A requirement that the borrower agree to take positive efforts to maximize the utilization of small and disadvantaged business concerns in connection with the project;

(16) A requirement that the Secretary be paid at the closing of the guaranteed loan, a fee for the issuance of the loan guarantee, which fee shall not exceed 1 percent of the total amount of the guaranteed portion of the loan;

(17) A requirement that the lender perfect and maintain the liens on the collateral pledged as security for the guaranteed loan and undertake such other loan servicing functions normally performed by a reasonable and prudent lender or as required of the lender in accordance with the provisions of § 799.14 of this regulation;

(18) A requirement that performance of contractors engaged in the construction of the project for which the guaranteed loan is made be fully bonded or that other acceptable arrangements are made that assure adequate performance by contractors;

(19) A requirement that the project operate in full compliance with all laws and regulations;

(20) A provision permitting free transferability and assignability of shares of all or partial interests in the guaranteed loan; Provided, That such transfers take place under agreements acceptable to the Secretary and that the lender does not transfer or assign the servicing requirements levied upon the lender by the guarantee without the prior written approval of the Secretary;

(21) A requirement that the lender shall not take any adverse action against the borrower without providing 15 days prior notice to the Secretary; and

(22) Such other terms and conditions as determined by the Application Approving Official to be reasonable and necessary for the protection of the United States.

(b) Upon the issuance of a duly executed guarantee agreement in accordance with the requirements of this regulation, the full faith and credit of the United States shall be pledged to the payment of sums of money due and lawfully owing under such guarantee. The guarantee agreement shall be conclusive evidence that the guarantee and the underlying loan for which the guarantee is issued comply with the provisions of the Act and this regulation and such a guarantee subject to terms and conditions of the guarantee shall be valid and incontestable by the Government except for fraud or misrepresentation by the holder of the loan to which the guarantee applies. The guarantee agreement shall provide that the guarantee become effective when signed by the parties and shall apply to each disbursement made by the lender to the borrower.

§ 799.8 Loan agreement requirements and conditions.

In addition to meeting the requirements set forth in 799.6 of this regulation, a guaranteed loan may be made only if the underlying loan agreement and other documents necessary for the financing transaction are determined by the Secretary to be satisfactory and meet the following requirements:

(a) The notes, bonds, debentures, or other instruments of debt, credit agreements, security agreements, guarantees, collateral pledge agreements, mortgages, and all other instruments, legal opinions, certificates, licenses, contracts and other documents determined necessary by the Secretary to properly document and close the lending transaction, and the terms and conditions related thereto, are satisfactory to the Secretary in both form and content;

(b) The plan, if any, for marketing the debt to secondary lenders or other holders is acceptable to the Secretary and provides a reasonable assurance that the debt will be funded in a timely manner in accordance with the requirements of the project. The Secretary must also be satisfied that the

types of debt instruments and the mix, if any, between long term and short term securities are appropriate for the size and scope of the project and reasonably minimize the cost of borrowing;

(c) The orderly and ratable retirement of the loan which may include sinking fund provisions, installment payment provisions, or other methods of payment and debt payment reserves which are appropriate and necessary in accordance with the size and type of the project and the type of debt instruments to be used;

(d) The lending agreements contain provisions for a minimum period of grace of 60 days from the date the principal or interest payment is due;

(e) The loan proceeds will be advanced by the lender to the borrower on an identified disbursement schedule which is appropriate for the size and type of project to be financed and has adequate control mechanisms to ensure that the funds are utilized in the construction of the project and for the purpose intended;

(f) Trustees, escrow agents, fiscal agents and other fiduciaries acting for the benefit of the lender, the borrower, holders, or any other party, agree, in accordance with the powers, rights and duties expressed in the written contract by virtue of which they so act, to recognize and protect in an appropriate manner the interests of the United States under to the guarantee;

(g) An option on the part of the borrower to prepay the loan at acceptable time intervals, with prepayment penalties, if any, determined acceptable by the Secretary after consideration of the likely holder of such debt at the time of prepayment and of the type of debt instrument utilized;

(h) Appropriate opportunities on the part of the borrower to cure any default, failure, or breach of any of the covenants, conditions and obligations undertaken by the borrower pursuant to the provisions of the loan agreement and other documents relevant to the financing transaction;

(i) The exclusion of any provision which prohibits forbearance or waiver of any breach or failure on the part of the borrower;

(j) Appropriate provisions for the acceleration and demand for full payment of the entire indebtedness in the event of the occurrence of identifiable occasions of borrower default;

(k) A requirement that the borrower keep the assets of the project insured in an acceptable amount from risk of loss, and acceptable provisions for control over any insurance proceeds paid in the event of such a loss to assure that such proceeds are appropriately utilized for the benefit of the project;

(l) A requirement that the borrower maintain its legal entity in good standing with applicable Federal, State, and local laws and requirements regulating the conduct of its business, including the payment of all taxes, fees and other charges, and the maintenance of all requisite licenses and any other governmental authorization necessary for the continued operation of the project;

(m) A requirement that the borrower not suffer or permit any judgment, lien, or other encumberance to be placed against any asset of the project (excluding those liens obtained by the lender pursuant to the loan guarantee under this regulation);

(n) When appropriate for the type of transaction under consideration, an acceptable provision for the control over project revenue which ensures that profits above a predetermined level are made available to the project for the future requirements of the project or for prepayment of the guaranteed loan;

(o) A provision specifying the extent to which project profits can be utilized for dividends and other distributions to the equity participants in the project; and

(p) Such other terms and conditions determined necessary by the Secretary for the protection of the interest of the United States.

§ 799.9 Special considerations for partial financing.

(a) Nothing in this rule shall prohibit applicants from seeking loan guarantees for the financing of a part of, modification of, additions to, or individual assets associated with, biomass and municipal waste energy projects; provided that such financing is consistent with the eligibility requirements of this rule. In such cases, the loan guarantee shall be limited to loans for the financing of those items which the Application Approving Official can reasonably attribute to the production of energy.

(b) Guarantee agreements made for loans described in paragraph (a) of this section, and the loan agreements associated herewith, may have terms and conditions which are modified from those specified in § 799.7 and § 799.8. Such modifications will be those as determined by the Application Approving Official to be appropriate for the type of financing, extent and rights of other creditors, existing liens, collateral, liability for debt repayment, and the protection of the interests of the United States.

§ 799.10 Withdrawal or limitation of guarantee.

(a) The Secretary may withdraw the guarantee by written notice to the lender and the borrower if after discussions with the borrower and lender, it is determined that initiation of the project has not occurred within the period of time set forth in the guarantee agreement or collateral documents, and such failure has materially affected the purposes of the United States in issuing the guarantee.

(b) The Secretary may limit the guarantee by written notice to the lender and the borrower to those amounts already disbursed under the guaranteed loan if, after discussions with the borrower and lender, it is determined that:

(1) The borrower has failed to acquire capital from intended or alternate sources, or has failed to comply with material terms and conditions as set forth in the loan or guarantee agreement. The Secretary will notify the borrower and the lender that the guarantee shall be limited only to the amount that has been received by the borrower as of the date of receipt of the written notice by the lender; or

(2) The lender has failed to comply with any material term or condition set forth in the guarantee or loan agreement. The guarantee may be limited to the amount that has been received by the borrower as of the date of receipt of the Secretary's notice by the lender of reduction of the guarantee. Notice of the Secretary's finding that a material term has not been complied with by the lender shall be sent by the Secretary to the borrower and the lender. Following notification, the borrower will be allowed reasonable time to acquire a substitute lender that is capable of complying with provisions in the loan and guarantee agreements; or

(3) The project's economic success or environmental acceptability is no longer achievable as determined by the Secretary. The guarantee shall be limited to amounts which have been received by the borrower as of the date that the notice is received by the lender. Any guaranteed funds held by a servicing agent shall be returned to the lender.

(c) The guarantee agreement or collateral documents shall provide that the lender will obtain a substitute servicing agent whenever the Secretary, by written notice to the lender, determines that the current servicing agent has failed to comply with a material term or condition in the guarantee agreement or collateral document.

§ 799.11 Project costs.

(a) Project costs will be recorded in accordance with generally accepted accounting principles which are customarily applied.

(b) Except as set forth in paragraph (c) of this section, those reasonable and customary costs that have been incurred, are expected to be incurred, and which are directly related to the project shall be used to estimate total project costs. Examples of these costs include, but are not limited to, the following:

(1) Start up costs;

(2) Costs of acquisition or rental of real property, including engineering fees, surveys, title insurance, recording fees, real estate commissions, and legal fees incurred in connection with land acquisition or rental, site improvements, site restoration, access roads and fencing;

(3) Professional services and fees necessary to obtain licenses, permits, and to prepare environmental reports and data;

(4) Financial, accounting, and legal services costs;

(5) Engineering and architectural fees;

(6) Equipment purchase, placement and testing costs;

(7) Materials, labor, utility services, travel, and transportation;

(8) Costs to provide safety and environmental protection equipment, facilities, and services;

(9) Interest costs and other normal costs charged by lenders during the construction period;

(10) Bond financing costs and trustee's fees and commissions during the construction period;

(11) Necessary and appropriate insurance and bonds of all types related to the construction of the project;

(12) Purchase of flood and other natural disaster insurance, if required;

(13) Taxes to be paid to Federal, State, and local government agencies, and other taxing authorities during construction;

(14) A reasonable contingency reserve to cover the possibility of construction cost overruns; and

(15) Other necessary and reasonable costs, as approved by the Secretary.

(c) Costs that are not allowable project costs include the following:

(1) Fees and commissions charged to the borrower, including finder fees, for obtaining the Federal guarantee;

(2) Parent corporation general and administrative expenses, 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 construct the project, as determined by the Secretary;

(7) Costs not attributable to the production of energy; and

(8) Costs incurred as normal operating expenses.

(d) The Secretary may audit any or all cost elements included in the estimated project costs, 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.

§ 799.12 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 construction cost incurred exceeds the estimated construction cost specified in the guarantee agreement. In no event may the guarantee be increased to cover overruns that amount to more than that allowed in paragraph (c) of this section. All of 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 such cost overrun;

(2) The borrower, when requesting overrun assistance, has provided a revised expected completion date and revised construction costs for the project;

(3) The borrower submits an acceptable plan indicating how the borrower's share of the cost overruns will be funded;

(4) The borrower provides a list of the additional collateral, if any, to be pledged for the increased guarantee(s) to cover the cost overruns; and

(5) The borrower provides updated information on the project economics to indicate that a reasonable assurance of repayment of the guaranteed loan (including the cost overruns) still exists.

(b) Based on the information submitted by the borrower and other information known to the Secretary, the Secretary may determine, at his discretion, to provide for the guarantee of additional loan funds for the expected cost overruns if the Secretary finds that:

(1) The continuation of the project is worthwhile to meet the program's objectives and is in the public interest or

(2) The probable net cost to the Government in increasing the loan guarantee, in the event of cost overruns, will be less than that which would result in the event of default.

(c) In no event may the original loan guarantee be increased to cover overruns that amount to more than:

(1) 60 percent of the estimated overrun costs for biomass energy projects and

(2) 90 percent of a loan to cover estimated overrun costs for construction of municipal waste energy projects, providing that such overrun costs do not exceed 10 percent of the total initially estimated project costs.

§ 799.13 Principal and interest assistance.

With respect to any loan guaranteed pursuant to this regulation, 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 such loan, if the Secretary finds that:

(a) The borrower is unable to meet principal or interest payments or both and is not in default;

(b) It is in the public interest to permit the borrower to continue to pursue the purposes of the project;

(c) The probable net benefit to the Federal Government in paying such principal or interest will be greater than that which would result in the event of a default for the nonpayment of principal or interest;

(d) The amount of principal or interest payment which may be made under this section will not be greater than the amount of principal or interest that the borrower is obligated to pay under the loan agreement; and

(e) The borrower agrees to reimburse the Secretary for such payment (including interest) on terms and conditions which are satisfactory to the Secretary and executes all written contracts required by the Secretary for such purpose.

§ 799.14 Lender servicing requirements.

(a) The loan guarantee agreement shall provide that the lender service the loan in accordance with these regulations and the terms and conditions of the guarantee. In this regard the lender is generally expected to undertake those servicing responsibilities that a reasonable and prudent lender would undertake in a similar transaction which was not guaranteed by the Government. The

lender may select a third party to service the loan in the event that the lender is a private entity that normally does not service loans or in other situations where such course of action is determined by the Secretary to be appropriate and such services are acceptable to the Secretary.

(b) The lender or other party servicing the loan shall exercise such care and diligence in the disbursement, servicing, and collection of the loan as would be exercised by a reasonable and prudent lender in dealing with a loan without a guarantee.

(c) The lender or other party servicing the loan shall notify the Secretary in writing without delay:

(1) That the disbursement or loan drawdown for the first project milestone 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 milestone under the loan;

(3) Of any nonreceipt of payment within 10 days after the date specified for payment, together with evidence of appropriate notifications to the borrower;

(4) Of any known failure by an intended source of capital to honor its commitment;

(5) Of any known failure by the borrower to comply with terms and conditions as set forth in the loan guarantee agreement;

(6) Of evidence that the borrower may fall within any of the default conditions set forth in the loan agreement or the borrower may not be able to meet any future scheduled payment of principal or interest; and

(7) Of any significant changes from the original cash flow projections as evidenced from information and reports by the borrower.

(d) The guarantee agreement or related documents shall require the lender or other party servicing the loan to submit to the Application Approving Official periodic financial reports on the status and condition of the loan.

§ 799.15 Project monitoring.

The guarantee agreement or collateral documents shall provide that employees and representatives of DOE shall have access at reasonable times and under reasonable circumstances to the project site. Further, the agreement shall provide that auditors selected by the Secretary or the U.S. Comptroller General shall have access to, and the right to examine, any directly pertinent documents and records of the borrower. The lender or servicing agent, to the extent lawful and within its control, and the borrower will assure availability of information related to the project 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.

§ 799.16 Default, demand, payment and collateral liquidation.

(a) In the event that the borrower has defaulted in the making of required payments of principal or interest on the loan guaranteed by the Secretary, and such default has not been cured within the period of grace provided in the guarantee and loan agreements, the lender, or any nominee or trustee empowered to act for the lender, or any other holder or trustee empowered to act for the lender or holder (referred to collectively in this section as "lender"), may make written demand on the Secretary for payment pursuant to the provisions of the guarantee agreement.

(b) In the event that the borrower has failed to comply with one or more of the terms of the guarantee agreement, note, loan agreement, or other contractural obligation relating to the transaction, other than the borrower's obligation to pay principal or interest, as provided in paragraph (a) of this section, the lender will not be entitled to make demand for payment pursuant to the guarantee, unless the Secretary agrees in writing that such default has materially affected the rights or security of the parties, and finds that the lender should be entitled to receive payment pursuant to the guarantee agreement.

(c) No provision of this regulation shall be construed to preclude forbearance by the Secretary or the lender, with the consent of the Secretary, for the benefit of the borrower in accordance with the terms and conditions of the guarantee.

(d) Upon the making of demand for payment as provided in paragraph (a) or (b) of this section, the lender shall provide, in conjunction with such demand, or immediately thereafter at the request of the Secretary, such supporting documentation as may be reasonably required to justify such demand.

(e) Payment as required by the guarantee agreement shall be made within 60 days after receipt by the Secretary of written demand for payment: Provided, That the demand complies with terms and conditions of the guarantee agreement.

(f) The guarantee agreement shall provide that upon payment of the guaranteed portion of the loan by the Secretary, the lender shall transfer and assign to the Secretary all rights held by the lender in the guaranteed portion of the loan. Such assignment shall include all related liens, security, and collateral rights. Upon such payments and assignment, the Secretary shall be subrogated to the rights of the recipient of the payment and shall have superior rights in the property acquired from the recipient of the payment.

(g) The guarantee agreement will specify the terms and conditions for the handling of collateral by the lender and the Secretary in loan default situations. Such provisions may provide for liquidation of the collateral either prior to or after the Secretary has made payment pursuant to the guarantee.

(h) The guarantee agreement shall specify the respective rights of the parties who are the legal owners of the guaranteed loan with respect to the liquidation of assets securing the loan. Such agreement shall include a specification that proceeds received as a result of collateral liquidation shall be applied in the following manner:

(1) First to the payment of legally recoverable expenses actually incurred as a result of such recovery;

(2) Second to the payment of accrued interest on the loan;

(3) Third to the payment of the outstanding principal balance of the loan; and

(4) Fourth to the payment of other recognizable claims held by the legal owners of the loan and for which such proceeds may be lawfully utilized. The proceeds so recovered shall be paid to each of the legal owners of the loan in accordance with their respective percentage of ownership.

(i) In the event that proceeds received as a result of liquidation of the assets securing the loan are insufficient to fully pay all expenses of recovery and the principal and accrued interest of the loan, the legal owners of the loan shall be entitled to attempt further recovery from any parties liable for such deficiency in accordance with the provisions of the loan agreement and other documents related thereto. No action taken in the liquidation of any assets pledged by the borrower to secure the loan will, unless agreed otherwise, affect the rights of any party, including the Secretary, to attempt further recover of any deficiency.

§ 799.17 Appeals.

The guarantee agreement shall include a provision which specifies that any dispute concerning a question of fact arising under the guarantee shall be decided in writing by the Contracting Officer. The borrower or lender may

request the Contracting Officer to reconsider any such decision. If not satisfied with the Contracting Officer'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, Financial Assistance Appeal Board (FAAB), Department of Energy, Washington, D.C. 20585. The Board shall proceed in accordance with the Department of Energy's rules and regulations for such purpose. The decision of the Board with respect to such appeals shall be the final decision of the Secretary.

§ 799.18 Deviations.

To the extent that such requirements are not specified by the Act, relevant Appropriations Acts, or in other applicable statutes, the Secretary may deviate on an individual application basis from the requirements of this regulation upon a finding that a deviation is necessary and warranted in the individual case for the accomplishment of program objectives and that unique circumstances exist which make a deviation clearly in the best interests of the Government.

Subpart B—Alcohol Fuel Projects

§ 799.20 Purpose.

The purpose of this subpart is to set forth the policies and procedures, in addition to those of Subpart A of this rule under which the Secretary will approve an application and issue, or commit to issue, a Federal guarantee on a loan or loans to construct facilities for the production of alcohol fuel from biomass (other than municipal waste) in an environmentally acceptable manner.

§ 799.21 Program management and administration.

Program management of the alcohol fuels loan guarantee program is assigned to the Director of the Office of Alcohol Fuels ("Director"). For purposes of this subpart the Director is the Applications Approving Official as defined in section 799.2 and exercises the functions of the Application Approving Official described in this subpart. That authority includes, but is limited to, determining terms and conditions for inclusion in conditional commitments and guarantee agreements, selecting members of the application evaluation panel, selecting recipients of loan guarantees, and representing the Secretary in consultations with other Federal agencies on alcohol fuel program matters.

§ 799.22 Receipt of applications.

(a) Applicants are requested to file applications under this subpart directly with: Manager, Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho 83401.

(b) Applications may also be filed at one of the following regional offices:

Region I: Department of Energy, Regional Representative, 150 Causeway Street, Analex Building, Room 700, Boston, MA 02114.
Region II: Department of Energy, Regional Representative, 26 Federal Plaza, Room 3206, New York, NY 10007.
Region III: Department of Energy, Regional Representative, 1421 Cherry Street, Room 1001, Philadelphia, PA 19102.
Region IV: Department of Energy, Regional Representative, 1651 Peachtree Street, 8th Floor, Atlanta, GA 30309.
Region V: Department of Energy, Regional Representative, 175 West Jackson Boulevard, Room A-333, Chicago, IL 60604.
Region VI: Department of Energy, Regional Representative, P.O. Box 35228, 2626 West Mockingbird Lane, Dallas, TX 75235.
Region VII: Department of Energy, Regional Representative, Twelve Grand Building, P.O. Box 2208, 112 East 12th Street, Kansas City, MO 64142.
Region VIII: Department of Energy, Regional Representative, P.O. Box 26247, Belmar Branch, Lakewood, CO 80226.
Region IX: Department of Energy, Regional Representative, 333 Market Street, San Francisco, CA 94105.
Region X: Department of Energy, Regional Representative, 1992 Federal Building, 915 Second Avenue, Seattle, WA 98174.

(c) All applications should be marked by the application on the outside of the package "Application for Loan Guarantee—Alcohol Fuel."

§ 799.23 Eligible projects.

In addition to meeting the requirements of Subpart A, to be eligible under this subpart to receive a Federal guarantee on a loan or loans to construct facilities for the production of alcohol fuel from biomass (other than municipal waste), a project must either:

(a) Utilize aquatic plants as feedstocks; or

(b) Have an anticipated annual energy production capacity equal to at least the energy equivalent of 15 million gallons of ethanol.

§ 799.24 Additional required findings and determinations.

(a) In addition to meeting the requirements of Subpart A of this rule, prior to committing to issue or issuing a loan guarantee, the Application Approving Official must find with respect to an eligible project:

(1) The Btu content of the motor fuels to be used in the facility involved to produce the alcohol fuel will not exceed the Btu content of the alcohol fuel produced in the facility. In making this determination, the Application Approving Official shall take into account any displacement of motor fuel or other petroleum products which result from the alcohol fuel produced in the facility involved;

(2) The process to be used by the project will extract the protein content of the feedstock for use as food or feed for readily available markets where such extraction is technically and economically practicable; and

(3) Necessary feedstocks are available and will continue to be available in the future to sustain long term commercial operations, and for alcohol fuel projects using wood, wood wastes or residues from the National Forest System, the current levels of use by existing facilities have been considered in coordination with the Department of Agriculture.

(b) Prior to committing to issue or issuing a loan guarantee, the Application Approving Official shall, to the extent and in the manner required by the Act, consult with and, where applicable, obtain the concurrence of the Secretary of Agriculture.

§ 799.25 Priorities.

(a) In evaluating applications under Subpart A of this rule, priority will be given to eligible projects which use a primary fuel other than petroleum or natural gas in the production of alcohol fuel; apply new technologies that expand possible feedstocks; produce alcohol using improved or new technologies; or any combination of the foregoing.

(b) Within the group of priority projects preferential consideration will be given to:

(1) Projects which have the smallest ratio of petroleum and natural gas consumed to biomass energy produced;

(2) Applicants proposing projects that evidence a strong likelihood of business success and economic viability;

(3) Applicants that qualify as small or disadvantaged business concerns;

(4) Applicants which maximize private investment and have a strong equity position; and

(5) Projects which promote competition.

Subpart C—Biomass Energy Projects

§ 799.30 Purpose.

The purpose of this Subpart is to set forth the policies and procedures in addition to those of Subpart A of this rule, under which the Secretary will approve an application and issue, or commit to issue, a Federal guarantee on a loan or loans to construct facilities for the production of biomass energy (other than alcohol) from biomass (other than municipal waste but including wastes or

residues of agricultural activities, wood harvesting activities or production of forest products) in an environmentally acceptable manner.

§ 799.31 Program management and administration. [Reserved]

§ 799.32 Receipt of applications.

(a) Applicants are requested to file applications under this subpart directly with: Department of Energy, Manager, Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho 83401.

(b) Applications may also be filed at one of the following regional offices:

Region I: Department of Energy, Regional Representative, 150 Causeway Street, Analex Building, Room 700, Boston, MA 02114.
Region II: Department of Energy, Regional Representative, 26 Federal Plaza, Room 3206, New York, NY 10007.
Region III: Department of Energy, Regional Representative, 1421 Cherry Street, Room 1001, Philadelphia, PA 19102.
Region IV: Department of Energy, Regional Representative, 1651 Peachtree Street, NE., 8th Floor, Atlanta, GA 30309.
Region V: Department of Energy, Regional Representative, 175 West Jackson Boulevard, Room A-333, Chicago, IL 60604.
Region VI: Department of Energy, Regional Representative, P.O. Box 35228, 2626 West Mockingbird Lane, Dallas, TX 75235.
Region VII: Department of Energy, Regional Representative, Twelve Grand Building, P.O. Box 2208, 112 East 12th Street, Kansas City, MO 64142.
Region VIII: Department of Energy, Regional Representative, P.O. Box 26247, Belmar Branch, Lakewood, CO 80226.
Region IX: Department of Energy, Regional Representative, 333 Market Street, San Francisco, CA 94105.
Region X: Department of Energy, Regional Representative, 1992 Federal Building, 915 Second Avenue, Seattle, WA 98174.

(c) All applications should be marked by the applicant on the outside of the package "Application for Loan Guarantee—Biomass."

§ 799.33 Eligible projects.

In addition to meeting the requirements of Subpart A of this part, to be eligible under this subpart to receive a Federal guarantee on a loan or loans to construct facilities for the production of biomass energy (other than alcohol) from biomass (other than municipal waste), a project must either:

(a) Utilize aquatic plants as feedstock; or

(b) Have an anticipated annual energy production capacity equal to at least the energy equivalent of 15 million gallons of ethanol as determined pursuant to a notice issued by DOE and USDA, 45 FR 52911, August 8, 1980, or any revisions thereof.

§ 799.34 Additional required findings and determinations.

(a) In addition to meeting the requirements of Subpart A of this rule, and prior to committing to issue or issuing a loan guarantee, the Application Approving Official must find with respect to an eligible project that:

(1) The Btu content of the motor fuels to be used in the facility involved to produce the biomass fuel will not exceed the Btu content of the biomass fuel produced in the facility, taking into account any displacement of motor fuel or other petroleum products which results from the biomass fuel produced in the facility involved;

(2) The process to be used by the project will extract the protein content of the feedstock for use as food or feed for readily available markets where such extraction is technically and economically practicable;

(3) Necessary feedstocks are available and will continue to be available in the future to sustain long term commercial operations, and for biomass energy projects using wood, wood wastes or residues from the National Forest System, the current levels of use by existing facilities have been considered.

(b) Prior to committing to issue or issuing a loan guarantee, the Application Approving Official shall, to the extent and in the manner required by the Act, consult with and, where applicable, obtain the concurrence of the Secretary of Agriculture.

(c) In cases where a variety of technologies is available, the Application Approving Official shall assure that the awards of financial assistance are designed to minimize duplication of technologies.

§ 799.35 Priorities.

(a) In evaluating applications under Subpart A of this rule, priority will be given to eligible projects which use a primary fuel other than petroleum or natural gas in the production of biomass fuel; apply new technologies that expand possible feedstocks or produce new forms of energy, produce energy (other than alcohol) using improved or new technologies; or any combination of the foregoing.

(b) Within the group of priority projects preferential consideration will be given to:

(1) Projects which have the smallest ratio of petroleum and natural gas consumed to biomass energy produced;

(2) Applicants proposing projects that evidence a strong likelihood of business success and economic viability;

(3) Applicants that qualify as small or disadvantaged business concerns;

(4) Applicants, which maximize private investment and have a strong equity position;

(5) Projects which promote competition.

Subpart D—Municipal Waste Energy Projects

§ 799.40 Purpose.

The purpose of this subpart is to set forth the policies and procedures in addition to those of Subpart A of this rule, under which the Secretary will approve an application and issue, or commit to issue, a Federal guarantee on a loan or loans to construct facilities for the production of biomass energy from municipal waste in an environmentally acceptable manner.

§ 799.41 Program management and administration. [Reserved]

§ 799.42 Receipt of applications.

(a) Applications under this subpart shall be filed with Department of Energy, Procurement and Contracts Management Directorate, Mail Stop 1J009, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

(b) All applications should be marked by the applicant on the outside of the package "Application for Loan Guarantee-Municipal Waste."

§ 799.43 Eligible and ineligible projects.

(a) In addition to meeting the requirements of Subpart A of this rule, to be eligible under this Part to receive a Federal guarantee on a loan or loans to construct facilities for the production of biomass energy, a project must utilize municipal waste as a feedstock.

(b) Loan guarantees for municipal waste energy projects involving industrial waste shall be available only for wood processing waste, paper processing waste, and waste from food processing (including waste from fruit and vegetable processing, nut packing, grain milling, sugar refining, and similar materials, but excluding waste from meat processing and dairy products industries) which do not constitute the wastes or residues of agricultural activities, wood harvesting activities or production of forest products.

§ 799.44 Additional application requirements.

An application for a loan guarantee for a municipal waste energy project shall include the following additional information:

(a) An analysis of the feasibility and effect of source separation technigues, including identification of existing source separation efforts, if applicable;

(b) Assurances that the project will not use, in any substantial quantities, waste paper or other recyclable material which would otherwise be recycled for use other than as a fuel and will not substantially compete with facilities in existence on the date of issuance of the loan guarantee which are engaged in the separation or recovery of reuseable materials from municipal waste.

(c) A description of the materials in the waste stream and an analysis to the extent practicable, of the economic and energy conservation potential for alternative uses of materials derived from the municipal waste stream.

(d) If the applicant requests an interest subsidy, a complete analysis and statement of the reasons such subsidy is essential to the undertaking of the projects.

(e) Other information relevant to the policy considerations, required findings and determinations, and priorities under this subpart.

§ 799.45 Policy considerations.

The following additional considerations apply to evaluation of applications:

(a) The extent of energy that can be recovered or conserved economically by the project including, but not limited to, energy savings resulting from recycling of source separated and otherwise recovered material and from displacement of petroleum or natural gas;

(b) The extent of the economic and energy conservation potential of alternative uses of source separated components of the municipal waste feedstock;

(c) The extent to which there are performance guarantees on the technology;

(d) The extent of coordination with local or regional planning activities;

(e) The extent to which the project minimizes unnecessary disruption of existing municipal waste collection and disposal services;

(f) The extent to which the Federal Government will incur additional costs as a result of financial assistance in the form of interest subsidies; and

(g) The extent to which selections provide an appropriate level of assistance to both private and publicly owned projects.

§ 799.46 Additional required findings and determinations.

In addition to the requirements stated in Subpart A, the Application Approving Official must, prior to committing to issue or issuing a loan guarantee for an eligible project determine:

(a) With respect to projects producing biomass energy other than biomass fuel, that the project does not use petroleum or natural gas except for flame stabilization or startup;

(b) With respect to projects producing biomass fuel, that the Btu content of the biomass fuel exceeds the Btu content of any petroleum or natural gas used in the project to produce the biomass fuel; and

(c) Assurances have been provided as required under § 799.44(b).

§ 799.47 Priorities.

In evaluating applications under Subpart A of this rule, priority will be given to eligible projects which will:

(a) Produce a liquid fuel from municipal waste; or

(b) Displace petroleum or natural gas as a fuel; or

(c) Require the least amount of Federal assistance, including interest subsidies under the provisions of § 799.48 of this subpart, in comparison to total project cost.

§ 799.48 Tax treatment.

(a) With respect to any loan or debt obligation which is—

(1) Issued after June 30, 1980, by or on behalf of, any state or any political subdivision or governmental entity thereof, and is

(2) Guaranteed by the Secretary, and

(3) Not supported by the full faith and credit of the issuer as a general obligation of the issuer, the interest paid on such obligation and received by the purchaser thereof (or the purchaser's successors in interest) shall be included in gross income for the purposes of chapter 1 of the Internal Revenue Code of 1954.

(b) With respect to the amount of obligations described in paragraph (a)(1) of this section that the issuer would have been able to issue as tax exempt obligations (other than obligations secured by the full faith and credit of the issuer as a general obligation of the issuer), the Secretary is authorized to pay only to the issuer any portion of the interest on such obligations, as determined by the Secretary of the Treasury to be appropriate after taking into account the interest rate which would have been paid on the obligations had they been issued as tax exempt obligations without being so guaranteed by the Secretary, and the interest rate actually paid on the obligations when issued as taxable obligations. Such payments shall be made in amounts determined by the Secretary and in accordance with such terms and conditions as the Secretary of the Treasury shall require.

§ 799.49 EPA role in Program Administration.

The Administration of any project entered into pursuant to these regulations for any commercial facility for the conversion or bioconversion of solid waste will be administered in accordance with the May 7, 1976, Interagency Agreement between the Environmental Protection Agency (EPA) and DOE on the "Development of Energy From Solid Wastes," and related documents. The intragency agreement provided that:

(a) For those energy-related projects of mutual interest, planning will be conducted jointly by EPA and DOE, following which project responsibility will be assigned to one agency;

(b) Energy-related projects for recovery of synthetic fuels or other forms of energy from solid waste will be the responsibility of DOE; and

(c) EPA will retain responsibility for the environmental 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.

[FR Doc. 80-31478 Filed 10-7-80; 8:45 am]

BILLING CODE 6450-01-M

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10 CFR Part 799

Environmental Assessment of Financial Assistance for Energy Recovery From Industrial Waste: Wood, Paper, and Food Processing

AGENCY: Department of Energy.

ACTION: Notice of availability and finding of no significant impact.

SUMMARY: The Department of Energy (DOE) announces the availability of an environmental assessment (EA) on proposed financial assistance programs for energy recovery from industrial wastes generated in the wood, paper, and food processing industries. Potential forms of financial assistance include construction loan guarantees, construction loans, price guarantees, and price support loans. DOE has determined, based on the findings of this EA, that the proposed DOE programs would not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* Therefore, an environmental impact statement (EIS) will not be prepared for financial assistance

programs for waste-to-energy projects in these industries, and a finding of no significant impact, pursuant to the Council on Environmental Quality regulations for compliance with NEPA, is hereby issued.

ADDRESSES: Single copies of the EA may be obtained from:

Theodore C. Collins, CS-461, Office of Industrial Programs, Office of the Assistant Secretary for Conservation and Solar Energy, U.S. Department of Energy, Washington, D.C. 20585, (202) 252-2384.

For further information, contact Theodore Collins, or:

Steven R. Woodbury, EV-121, NEPA Affairs Division, Office of Environmental Compliance and Overview, Office of the Assistant Secretary for Environment, U.S. Department of Energy, Washington, D.C. 20585, (202) 252-4610.

Fredric P. Andes, GC-34, Office of the General Counsel, U.S. Department of Energy, Washington, D.C. 20585, (202) 252-6947.

On July 18, 1979, DOE published in the **Federal Register** (44 FR 42110) a notice of availability of an environmental assessment (DOE/CS-0095) and negative declaration stating that the Department's overall urban waste program (covering municipal waste other than industrial waste) would not constitute a "major Federal action significantly affecting the quality of the human environment" within the meaning of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* Industrial waste, which is included in the Energy Security Act (Pub. L. 96-264) definition of municipal waste, is not covered by the urban waste environmental assessment. The Department has determined that some industrial waste-to-energy processes have the potential to significantly affect the quality of the human environment, within the meaning of NEPA; therefore an EIS would be prepared for a full industrial waste-to-energy program. The Department has prepared an EA for a limited program encompassing financial assistance for certain industrial waste technologies using wood, paper, and food processing wastes which do not constitute agricultural or forest wastes. Following completion of the programmatic EIS on industrial waste-to-energy projects, DOE will consider inclusion of additional technologies covered in the EIS.

The environmental assessment addresses waste-to-energy processes in three industries: wood processing, paper processing, and food processing. Several technologies are discussed within each industry. Technologies for wood and paper wastes include denisification, combustion, and pyrolysis. (Alcohol production from biomass is addressed in a separate program within DOE.) Within the food processing industries, the technologies assessed include combustion of fruit pits, olive pits, and nut shells; combustion of rice hulls; and combustion of sugarcane waste or bagasse.

Based on the analyses provided in the EA, DOE has determined implementation of programs for financial assistance for industrial waste-to-energy projects involving the following waste streams: wood processing wastes, paper processing wastes, and wastes from food processing (including wastes from fruit and vegetable processing, nut packing, grain milling, sugar refining, and similar materials; but excluding wastes from meat packing and dairy products industries) which do not constitute the wastes or residues of agricultural activities, wood harvesting activities or production of forest products, would not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of NEPA.

This conclusion is based on the following considerations.

Air Quality

- Combustion of certain wastes, such as wood and bark, fruit pits, and bagasse, has the potential for creating particulate pollution. Known and demonstrated control measures can reduce particulate emissions to acceptable levels.
- Combustion of wood waste treated with pentachlorophenol releases dioxin, a potent mutagen and teratogen. Such waste is excluded from consideration in this program.
- Some hydrogen cyanide may be released from combustion of peach and other fruit pits. The use of wet scrubbers is expected to remove HCN and minimize any hazard potential.
- Certain air emissions are highly dependent on operating conditions. As a condition for assistance, the Department, where appropriate, will include in its financial assistance agreements guidelines to assure efficient combustion and minimize emissions.

Solid Waste

- Combustion of food processing wastes would have a beneficial effect by reducing problems of nuisance odors, and insect and rodent infestation, and by reducing the amount of waste otherwise disposed of by landfill burial.
- Fly ash and bottom ash from combustion processes require disposal in landfill operations. The volume requiring disposal would be substantially less than the original waste.

Water Quality

- No serious water pollution potential was identified. Available controls are adequate to meet water quality standards.
- The generation of gas from pyrolysis processes would yield a wastewater stream with high concentrations of biological oxygen demand, chemical oxygen demand, phenols and other organics. Burning the gas directly on-site does not allow the organics to condense out of the gas, obviating the need for wastewater treatment. Where the gas is burned off-site, treatment of the condensate would be required.

The finding of no significant impact applies to the establishment of financial assistance programs for waste-to-energy projects in the identified industries. The environmental assessment is programmatic in nature, and leaves open the possibility that there may be site-specific environmental impacts of concern based upon the specific technology and location of a particular facility. The program and its implementing regulations will require preparation of site specific environmental reports by industrial applicants, and the performance of an appropriate NEPA review, prior to any commitment of DOE financial assistance for industrial waste-to-energy facilities.

Alternatives discussed in the EA include: no action to provide financial assistance for industrial waste-to-energy projects; delay of the program; implementation of a variey of financial incentive mechanisms authorized in the Energy Security Act, including loan guarantees, construction loans, price guarantees, and price support loans. In addition, a variety of alternative technologies are assessed.

Dated at Washington, D.C., this first day of October 1980 for the United States Department of Energy.

Ruth C. Clusen,

Assistant Secretary for Environment.

[FR Doc. 80-31477 Filed 10-7-80; 8:45 am]

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Reader Aids

Federal Register

Vol. 45, No. 197

Wednesday, October 8, 1980

INFORMATION AND ASSISTANCE

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Federal Register, Daily Issue:

202-783-3238	Subscription orders and problems (GPO)
	"Dial-a-Reg" (recorded summary of highlighted documents appearing in next day's issue):
202-523-5022	Washington, D.C.
312-663-0884	Chicago, Ill.
213-688-6694	Los Angeles, Calif.
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523-5240	Photo copies of documents appearing in the Federal Register
523-5237	Corrections
633-6930	Public Inspection Desk
523-5227	Index and Finding Aids
523-5235	Public Briefings: "How To Use the Federal Register."

Code of Federal Regulations (CFR):

523-3419	
523-3517	
523-5227	Index and Finding Aids

Presidential Documents:

523-5233	Executive Orders and Proclamations
523-5235	Public Papers of the Presidents, and Weekly Compilation of Presidential Documents

Public Laws:

523-5266 -5282	Public Law Numbers and Dates, Slip Laws, U.S. Statutes at Large, and Index
275-3030	Slip Law Orders (GPO)

Other Publications and Services:

523-5239	TTY for the Deaf
523-5230	U.S. Government Manual
523-3408	Automation
523-4534	Special Projects
523-3517	Privacy Act Compilation

FEDERAL REGISTER PAGES AND DATES, OCTOBER

64879-65172.....1
65173-65492.....2
65493-65992.....3
65993-66438.....6
66439-66768.....7
66769-67040.....8

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
11157.....66439
12137 (Amended by 12245).....66769
12241.....64879
12242.....65175
12243.....66439
12244.....66443
12245.....66769

Proclamations:
4797.....65173
4798.....66441

Administrative Orders:

Memorandum:
October 1, 1980.....65177

Presidential Determination:
80-24 of August 7, 1980 (Amended by 80-27 of September 21, 1980).....65993
80-27 of September 21, 1980.....65993

5 CFR

330.....65493
351.....66445
530.....65493
531.....65493
540.....65493

Proposed Rules:
733.....65603

6 CFR

705.....65995
706.....65502
707.....65502

7 CFR

2.....66445
29.....65179
210.....66446
230.....66446
246.....66447
282.....66448
301.....65510, 65511
632.....65180
908.....65181
910.....65511
982.....65512
989.....65512
999.....65513
1007.....65514
1011.....65514
1030.....65514
1032.....65514
1046.....65514
1049.....65514
1050.....65514
1062.....65514
1064.....65514
1065.....65514
1068.....65514
1071.....65514
1073.....65514
1076.....65514
1079.....65514
1094.....65514
1096.....65514
1097.....65514
1098.....65514
1099.....65514
1102.....65514
1104.....65514
1106.....65514
1108.....65514
1120.....65514
1126.....65514
1131.....65514
1132.....65514
1138.....65514
1492.....64881
1493.....64894
1942.....66771
1945.....65996
1980.....65996
2853.....65515

Proposed Rules:
271.....65932
275.....65932
277.....65932
282.....66463
622.....65603
729.....66469
1421.....66471
1701.....66472

8 CFR

100.....66451
215.....65515

Proposed Rules:
Ch. I.....66173

9 CFR

78.....64901
82.....65182, 65519, 66451
94.....65519
106.....65183
307.....65520
350.....65520
351.....65520
354.....65520
355.....65520
362.....65520
381.....65520

10 CFR

30.....65521
40.....65521
70.....65521
150.....65521

205 ... 66772
799 ... 67022, 67038
Proposed Rules:
2 ... 66754
20 ... 67018
50 ... 65247, 65466
70 ... 66472
150 ... 66473
430 ... 65604, 65605
436 ... 66620, 66631
456 ... 66960
457 ... 66970

12 CFR
205 ... 66346
206 ... 65184
207 ... 66779
220 ... 66779
221 ... 66779
526 ... 66781
545 ... 66781
563 ... 66781
Proposed Rules:
205 ... 66348, 66349
545 ... 66798, 66801

13 CFR
305 ... 65997
Proposed Rules:
111 ... 66807
120 ... 66174, 66807

14 CFR
39 ... 65193, 65997–65999
71 ... 66002
97 ... 65197
243 ... 66451
287 ... 64902
Proposed Rules:
Ch. V ... 66177
39 ... 66175
71 ... 67176
203 ... 66473
399 ... 66474

15 CFR
370 ... 65206
372 ... 65206
375 ... 65206
386 ... 65206
935 ... 65198
Proposed Rules:
30 ... 65250

16 CFR
13 ... 66784
1201 ... 66002
1700 ... 65538
Proposed Rules:
13 ... 65252, 65255
441 ... 66809
444 ... 66474
455 ... 66810

17 CFR
Proposed Rules:
4 ... 65257

18 CFR
1 ... 65170
282 ... 65170, 65207
284 ... 66784
292 ... 66787
Proposed Rules:
2 ... 66810
270 ... 66810
271 ... 65606–65608, 66810–66812

19 CFR
353 ... 64902, 64903

20 CFR
404 ... 65540
416 ... 65541

21 CFR
193 ... 64903, 65559
561 ... 64904

22 CFR
217 ... 66414
Proposed Rules:
213 ... 65258
357 ... 65609
358 ... 65609
444 ... 65618
801 ... 65619
899 ... 65619

24 CFR
115 ... 65560
Proposed Rules:
51 ... 65258

25 CFR
252 ... 64906
Proposed Rules:
233 ... 64960

26 CFR
1 ... 64906, 65560
48 ... 66452
301 ... 65561, 65564
404 ... 65561, 65564
420 ... 65564
Proposed Rules:
1 ... 65625
301 ... 65625

27 CFR
5 ... 66454
6 ... 66007

28 CFR
2 ... 66789
Proposed Rules:
Ch. I ... 66813

29 CFR
32 ... 66706
1903 ... 65916
2610 ... 64907
Proposed Rules:
Ch. XII ... 64960
452 ... 65926
1955 ... 65625
1956 ... 66475
2608 ... 65259

30 CFR
784 ... 64908
817 ... 64908
Proposed Rules:
732 ... 64961
761 ... 66178
884 ... 65626
931 ... 65626
935 ... 64962
950 ... 64971

32 CFR
199 ... 64909
706 ... 66007, 66008
800 ... 64909
Proposed Rules:
553 ... 66476

33 CFR
144 ... 65207
165 ... 66009
Proposed Rules:
117 ... 66178
150 ... 65480

36 CFR
28 ... 65575
Proposed Rules:
1228 ... 66179

38 CFR
3 ... 64909
Proposed Rules:
3 ... 66815

39 CFR
3000 ... 65575
3001 ... 65575

40 CFR
52 ... 65209, 66789–66792
60 ... 66742
80 ... 65581
81 ... 65585
86 ... 66952, 66984
125 ... 65942
180 ... 64910, 65209
205 ... 65594
Proposed Rules:
52 ... 65262, 65628, 65630
80 ... 66479–66483
81 ... 65630–65632
123 ... 65263, 65632
162 ... 66736
163 ... 65633
173 ... 65633
180 ... 66484
201 ... 66485
264 ... 66816
712 ... 66180
762 ... 66726

41 CFR
Ch. 18 ... 65210, 65213
Ch. 101 ... 65146
1–4 ... 66014
1–6 ... 66016
3–3 ... 64911
60–4 ... 65976
Proposed Rules:
101–11 ... 64978

42 CFR
405 ... 64913
421 ... 64912
442 ... 64913
447 ... 64913

43 CFR
Proposed Rules:
7 ... 66370
20 ... 66370
Public Land Orders:
5756 ... 66455

44 CFR
64 ... 66014, 66455
65 ... 66016
302 ... 64913

45 CFR
260 ... 66666
400 ... 64926
1000 ... 64926, 65220
1061 ... 64926, 65220, 66462
1062 ... 64936, 65229
1067 ... 64926, 64936, 64940, 65220, 65229, 65233
1068 ... 64940, 65233
1069 ... 64940, 65233
Proposed Rules:
1176 ... 65635
1300 ... 66180

46 CFR
Ch. I ... 65242
385 ... 66167
522 ... 66795
Proposed Rules:
521 ... 66485

47 CFR
0 ... 64949
1 ... 65595
21 ... 65597
22 ... 65597
73 ... 64950–64951
Proposed Rules:
73 ... 64981–64951, 65637
81 ... 65639

48 CFR
Proposed Rules:
4 ... 65640
9 ... 65640

49 CFR
830 ... 65243
1011 ... 64959
1033 ... 64954–64958, 65243, 65601, 66459, 66796
1038 ... 65601
1048 ... 66460
1100 ... 64958
1101 ... 64959
Proposed Rules:
393 ... 65264
1039 ... 65641
1201 ... 65641
1241 ... 65641

50 CFR
10 ... 64952
13 ... 64952
14 ... 64952
17 ... 64132
32 ... 64953, 65244
227 ... 66460
651 ... 66461
653 ... 65246
Proposed Rules:
17 ... 66410
296 ... 65264
611 ... 64995, 65641, 65642
651 ... 64996

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/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
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

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

COMMUNITY SERVICES ADMINISTRATION

59153 9-8-80 / Grantee procurement standards; policy statement

ENVIRONMENTAL PROTECTION AGENCY

59150 9-8-80 / Pennsylvania; designation of areas for air quality planning purposes; Section 107 designations

INTERSTATE COMMERCE COMMISSION

59169 9-8-80 / Use of incentive per diem funds earned on boxcars and gondolas

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration—

59161 9-8-80 / Onshore interstate pipeline facilities; transportation of highly volatile liquids

Deadlines for Comments On Proposed Rules for the Week of October 12 through October 18, 1980

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service—

53449 8-12-80 / Foreign quarantine notices; importation of Maypan Variety of Coconut from Jamaica; comments by 10-14-80

54302 8-15-80 / Mediterranean fruitfly, expanding area listed as a regulated area in Santa Clara County, Calif.; comments by 10-14-80

Commodity Credit Corporation—

60914 9-15-80 / 1980 Crop sunflower seed price support program; comments by 10-15-80

Federal Crop Insurance Corporation—

54346 8-15-80 / Oat crop insurance regulations; comments by 10-14-80

53486 8-12-80 / Soybean crop insurance regulations; comments by 10-14-80

Food and Nutrition Service—

53792 8-12-80 / Food Stamp Program; verification requirements; comments by 10-14-80

Rural Electrification Administration—

54354 8-15-80 / Proposed revision of REA Bulletin 385-4, Form 397b, Design specifications for trunk carrier systems, and 397c, design specifications for subscriber carrier systems; comments by 10-14-80

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

55010 8-18-80 / Minimum guidelines and requirements for accessible design; comments by 10-17-80

COMMERCE DEPARTMENT

Economic Analysis Bureau—

60850 9-12-80 / Foreign direct investment surveys; content of mandatory BE-12 report form; comments by 10-13-80

CONSUMER PRODUCT SAFETY COMMISSION

61941 9-17-80 / Proposed stockpiling rule for unvented gas-fired space heaters; comments by 10-17-80

ENERGY DEPARTMENT

Economic Regulatory Administration—

54694 8-15-80 / Maximum lawful selling price for unleaded gasoline; comments by 10-14-80

Federal Energy Regulatory Commission—

63001 9-23-80 / Revision of Form No. 2, annual report for natural gas companies; comments by 10-14-80

ENVIRONMENTAL PROTECTION AGENCY

61319 9-16-80 / Air quality implementation plans; approval and promulgation; State of Alaska; comments by 10-16-80

61644 9-17-80 / Approval and promulgation of implementation plans—Maine; ambient monitoring network; comments by 10-17-80

60903 9-15-80 / Hazardous waste guidelines and regulations; comments extended to 10-15-80

[Originally published at 45 FR 47833, 7-16-80]

59178 9-8-80 / Indiana State implementation plan; comments by 10-17-80

[*See also* 45 FR 45314, 7-3-80]

54373 8-15-80 / New York State implementation plan, proposed revision; comments by 10-14-80

54642 8-15-80 / Premanufacture review program; proposed processor requirements; comments by 10-14-80

[Corrected at 45 FR 57150; 8-27-80]

60931 9-15-80 / San Joaquin Valley Air Basin nonattainment area plan; approval and promulgation of implementation plans; comments by 10-15-80

62850 9-22-80 / Statutory restriction on new sources under certain circumstances for nonattainment areas; comments by 10-14-80

FEDERAL COMMUNICATIONS COMMISSION

46121 7-9-80 / American Telephone & Telegraph Co.; manual containing procedures for allocation of costs; reply comments by 10-17-80

55777 8-21-80 / Common carrier services; MTS and WATS market structure; interstate telecommunications services entry policy, and Alaska submarket inquiry; comments by 10-17-80

58629 9-4-80 / FM Broadcast Stations in Aguada, Arecibo, Cidras, Lajas, Manati, Mayaguez, Quebradillas and Utuado, P.R.; proposed changes in table of assignments; comments by 10-17-80

58611 9-4-80 / FM Broadcast Stations in Hampton, Ark.; proposed changes in table of assignments; comments by 10-17-80

58621 9-4-80 / FM Broadcast Station in Irmo, S.C.; proposed changes in table of assignments; comments by 10-17-80

58612 9-4-80 / FM Broadcast Station in Oildale, Calif.; Proposed Changes in Table of Assignments; comments by 10-17-80

58619 9-4-80 / FM Broadcast Station in Olivia, Minn.; Proposed Changes in Table of Assignments; comments by 10-17-80

58616 9-4-80 / FM Broadcast Station in Smith Center, Kans.; Proposed Changes in Table of Assignments; comments by 10-17-80

58613 9-4-80 / FM Broadcast Station in South Lake Tahoe, Calif.; Proposed Changes in Table of Assignments; comments by 10-17-80

58622 9-4-80 / FM Broadcast Station in Tremonton, Utah; Proposed Changes in Table of Assignments; comments by 10-17-80

58610 9-4-80 / FM Broadcast Station in Tucson and Nogales, Arizona; Proposed Changes in Table of Assignments; comments by 10-17-80

55775 8-21-80 / Radio services, special; Microwave device, new low power, unlicensed class and low power, limited coverage systems operation; reply comments by 10-14-80

55242 8-19-80 / Representation of stations by representatives owned by competing stations in the same area; comments by 10-14-80

55244 8-19-80 / TV broadcast stations in Jacksonville, Lumberton, Roanoke Rapids and Rockingham, N.C.; Farmville and Kenbridge, Va.; table of assignments; comments by 10-14-80

58627 09-4-80 / TV Broadcast Stations in Sanger, Clovis, Visalia, and Fresno, Calif.; Proposed Changes in Table of Assignments; comments by 10-17-80

58608 9-4-80 / TV Broadcast Station in Fort Walton Beach, Florida; proposed changes in table of assignments; comments by 10-17-80

64220 9-29-80 / Verification and methods of measurement of computing devices; reply comments extended to 10-15-80

[*See also* 45 FR 42347, 6-24-80]

FEDERAL HOME LOAN BANK BOARD

56031 8-22-80 / Federal mutual savings banks, amendments; comments by 10-15-80

FEDERAL TRADE COMMISSION

53839 8-13-80 / Mobile home sales and service; publication of staff report; comments by 10-14-80

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

60422 9-12-80 / Food additives; Tris([2,4-di-tert-butylphenyl]phosphite; safe use as an antioxident and/or stabilizer in rubber articles intended for repeated use; objections by 10-14-80

Health Care Financing Administration—

60944 9-15-80 / Conditions of participation for skilled nursing and intermediate care facilities; comments extended to 10-14-80

[*See also* 45 FR 47368, 7-14-80]

Public Health Service—

53492 8-12-80 / Project grants to States for hypertension control; comments by 10-14-80

INTERIOR DEPARTMENT

Fish and Wildlife Service—

57471 8-28-80 / Federal Aid in Fish and Wildlife Restoration; participation requirements; comments by 10-14-80

64520 9-29-80 / Proposed findings for export of American alligator and American ginseng taken in 1980-81 season; comments by 10-14-80

INTERNATIONAL TRADE COMMISSION

57147 8-27-80 / Conduct of antidumping and countervailing duty investigations; comments by 10-14-80

INTERSTATE COMMERCE COMMISSION

61335 9-16-80 / Railroad acquisition, control, merger, consolidation project, trackage rights and lease procedures; policy statement; comments by 10-16-80

LABOR DEPARTMENT

Mine Safety and Health Administration—

54656 8-15-80 / Pattern of violations; comments by 10-14-80

PERSONNEL MANAGEMENT OFFICE

53485 8-12-80 / Programs for specific positions and examinations (miscellaneous); reinstatement of administrative law judges; comments by 10-14-80

53481 8-12-80 / Qualifications requirements (medical); reduction in grade and removal based on unacceptable performance; adverse actions; retirement; comments by 10-14-80

POSTAL SERVICE

61318 9-16-80 / Folders, popups, and multilayer materials as permissible novelty pages in second-class mail; comments by 10-16-80

60453 9-12-80 / Privately shipped letters; alternate methods of paying postage; comments by 10-14-80

60452 9-12-80 / Special rate bulk third class mailers; identification of name and return address of user; comments by 10-14-80

SMALL BUSINESS ADMINISTRATION

61637 9-17-80 / Business loans; loans to qualified employee trusts; comments by 10-17-80

TRANSPORTATION DEPARTMENT

Coast Guard—

47876 7-17-80 / Exception from PFD carriage requirement for sailboards; comments by 10-15-80

Federal Aviation Administration—

41439 6-19-80 / Petition for rulemaking of the Institute for Public Interest representation; comments by 10-17-80

45595 7-7-80 / Transport category airplanes, seat and seat restraint strength; comments by 10-17-80

Research and Special Programs Administration—

48668 7-21-80 / Shippers; specifications for tank cars; comments by 10-16-80

TREASURY DEPARTMENT

Alcohol, Tobacco, and Firearms Bureau—

54087 8-14-80 / Distilled Spirits Tax Revision Act of 1979, implementation; comment period extended to 10-15-80

[*See also* 44 FR 71612, 10-15-80]

Customs Service—

60921 9-15-80 / Garments with traditional, but primarily decorative features, and garments with simulated features; comments extended to 10-15-80

[*See also* 45 FR 54085, 8-14-80]

Fiscal Service—

61318 9-16-80 / Additional charges (interest) on overdue reclamations and double repayment refunds; comments by 10-15-80

Deadlines for Comments On Proposed Rules for the Week of October 19 through October 25, 1980

ACTION

Peace Corps—

62512 9-19-80 / Volunteer discrimination complaint procedure; comments by 10-20-80

AGRICULTURE DEPARTMENT

Agricultural Stabilization and Conservation Service—

64594 9-30-80 / Flue-cured tobacco; 1981 National marketing quotas for flue-cured tobacco; comments by 10-24-80

COMMERCE DEPARTMENT

Economic Development Administration—

55420 8-20-80 / Implementation of National Environmental Policy Act; comments by 10-20-80

National Oceanic and Atmospheric Administration—

59914 9-11-80 / Groundfish of the Gulf of Alaska; approval of fishery management plan amendments; comments by 10-20-80

DEFENSE DEPARTMENT

Office of the Secretary—

63004 9-23-80 / Privacy Act of 1974; comments by 10-23-80

ENERGY DEPARTMENT

Conservation and Solar Energy Office—

65605 10-3-80 / Energy Conservation Program for Consumer Products; revised version of certification/enforcement approach for energy efficiency standards; comments by 10-20-80

63822 9-25-80 / Municipal Waste Energy Price Support Loan Program; comments by 10-20-80

Economic Regulatory Administration—

62090 9-18-80 / Calculation for the cost of using alternate fuels under the Powerplant and Industrial Fuel Use Act of 1978; comments by 10-20-80

Federal Energy Regulatory Commission—

61641 9-17-80 / Amendment to filing requirements for Interstate Pipelines respecting incurrence of production, production-related, and non-allocable costs; comments by 10-24-80

65606-65608 10-3-80 / High-cost gas produced from tight formations; designation of certain Colorado formations, (3 documents); comments by 10-23-80

63296 9-24-80 / Revision of Annual Report for electric utilities, licensees and others (Classes A and B); Form No. 1; extension of comment period until 10-20-80

[*See also* 45 FR 47705, 7-16-80]

61643 9-17-80 / Special Rule Under Part 270: Production costs and maximum lawful prices in sales under the Natural Gas Policy Act of 1978; comments by 10-24-80

Office of the Secretary—

63292 9-24-80 / Criteria and procedures for determining eligibility for access to classified matter or significant qualities of special nuclear material; correction to nomenclature; comments by 10-24-80

ENVIRONMENTAL PROTECTION AGENCY

65632 10-3-80 / Air quality, ozone; designation of attainment status for areas east of the Mississippi River; comments by 10-22-80

62850 9-22-80 / Approval and promulgation of implementation plans: MIssouri; comments by 10-22-80

56369 8-25-80 / Approval of revision to New York State Implementation Plan; comments by 10-24-80

59180 9-8-80 / California; Federal assistance limitations; comments by 10-23-80

59343 9-9-80 / Consolidated permit regulations; criteria for new source determination; comments by 10-24-80

49256 7-24-80 / Fuel economy of motor vehicles; inclusion of electric vehicles in CAFE; comments by 10-22-80

62851 9-22-80 / Gasoline-fueled heavy-duty vehicles, evaporative emission regulation and test procedure; comments extended to 10-22-80

[*See also* 45 FR 28922, 4-30-80]

58383 9-3-80 / Inorganic chemicals manufacturing point source category effluent limitations guidelines, pretreatment standards and new source performance standards; comments by 10-22-80

62163 9-18-80 / Kentucky Part D Particulate State Implementation Plan: comments period extended to 10-20-80

[*See also* 44 FR 65781, 11-15-80]

63004 9-23-80 / Michigan State Implementation Plan, State and Federal Administrative Orders Revision; Comments by 10-23-80

63514 9-25-80 / Motor vehicle pollution control; waiver of carbon monoxide emission standards; comments by 10-24-80

55482 8-20-80 / New York state implementation plans; revision; comments by 10-20-80

62821 9-22-80 / Phenosulfonic acid-formaldehyde-Urea Condensate, exemption from tolerances for pesticide chemicals in or on raw agricultural commodities; objections by 10-22-80

56374 8-25-80 / Proposed designation of ocean dumping site; for fish cannery wastes originating in American Samoa; comments by 10-24-80

63300 9-24-80 / Proposed revision of Virginia State Implementation Plan; comments by 10-24-80

62509 9-19-80 / Water pollution control; innovative technology; use by industries under national pollutant discharge elimination system; comments by 10-20-80

FARM CREDIT ADMINISTRATION

55213 8-19-80 / Proposed Statement of policy—National Environmental Policy Act; comments by 10-20-80

FEDERAL COMMUNICATIONS COMMISSION

56116 8-22-80 / Amendment of broadcast equal employment opportunity rules and FCC Form 395; Comments extended to 10-24-80

[Originally published at 45 FR 42729, 6-25-80]

58620 9-4-80 / FM broadcast stations in Columbia and Monroe City, Mo.; proposed changes in table of assignments; comments by 10-21-80

52843 8-8-80 / FM broadcast station in Greybull, Wyo.; proposed changes in table of assignments, reply comments by 10-20-80

52846 8-8-80 / FM broadcast station in Hugoton, Kans.; proposed changes in table of assignments; reply comments by 10-20-80

59908 9-11-80 / FM broadcast stations in Kennewick and Richland, Wash.; changes in table of assignments; comments by 10-24-80

58618 9-4-80 / FM broadcast station in North Mankato, Minn.; proposed changes table of assignments; comments by 10-21-80

58617 9-4-80 / FM broadcast station in Owingsville, Ky., proposed changes in table of assignments; comments by 10-21-80

52845 8-8-80 / FM broadcast station in Ogallala, Nebr.; proposed changes in table of assignments; reply comments 10-20-80

58626 9-4-80 / FM broadcast station in Orem, Utah; proposed changes in table of assignments; comments by 10-21-80

55241 8-19-80 / FM broadcast station in Pasco, Wash.; table of assignments; reply comments by 10-23-80

52848 8-8-80 / FM broadcast station in Petersburg, Ill.; proposed changes in table of assignments; reply comments by 10-20-80

58615 9-4-80 / FM broadcast station in Rifle, Colorado; proposed changes in table of assignments; comments by 10-21-80

63304 9-24-80 / FM broadcast station in Uvalde, Crystal City, and Pearsall, Tex.; proposed changes in table of assignments; reply comments by 10-20-80

[*See also* 45 FR 50373, 7-29-80]

59361 9-9-80 / FM broadcast station in Walker, Minn.; changes in table of assignments; comments by 10-24-80

58150 9-2-80 / 9 kHz channel spacing for AM broadcasting; reply comments by 10-21-80

40192 6-13-80 / Permitting facsimile and television transmission in additional frequency band; reply comments by 10-22-80

FEDERAL DEPOSIT INSURANCE CORPORATION

52819 8-8-80 / Public access to application files; comments by 10-20-80

FEDERAL HOME LOAN BANK BOARD

55750 8-21-80 / Mutual Capital certificates; issuance procedures; comments by 10-20-80

57728 8-29-80 / Trust powers authorization; comments by 10-21-80

FEDERAL RESERVE SYSTEM

56818 8-26-80 / Equal credit opportunity; consideration of income; disclosure of reasons for adverse action; comments by 10-20-80

63295 9-24-80 / Truth in lending; proposed official staff interpretation; comments by 10-24-80

FEDERAL TRADE COMMISSION

56070 8-22-80 / Credit practices; publication of staff report on proposed trade regulation rule; comments by 10-21-80

55219 8-19-80 / Universal Bodybuilding, Inc. et al.; consent agreement with analysis to aid public comment; comments by 10-20-80

GENERAL SERVICES ADMINISTRATION

National Archives and Records Service—

55769 8-21-80 / Federal advisory committee management; comments by 10-20-80

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

See also Health and Human Services Department.

Food and Drug Administration—

26977 4-22-80 / Diluents for cosmetic color additive mixtures; intent to propose regulations; comments by 10-20-80

HEALTH AND HUMAN SERVICES DEPARTMENT

See also Health, Education, and Welfare Department.

Food and Drug Administration—

62978 9-23-80 / D & C Violet No. 2; listing of color additives subject to certification; objections by 10-23-80

56075 8-22-80 / Sulfones; Bioequivalence requirements; comments by 10-21-80

Social Security Administration—

56074 8-22-80 / Recovery of black lung overpayments from benefits due survivors; comments by 10-21-80

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Office of the Secretary—

55223 8-19-80 / Siting of HUD-assisted projects near hazardous operations handling conventional fuels or chemicals of an explosive or flammable nature; comments by 10-20-80

INTERIOR DEPARTMENT

Fish and Wildlife Service—

64520 9-29-80 / Proposed findings for export of bobcat, lynx, river otter, Alaskan brown bear, and Alaskan gray wolf taken in 1980-81 season; comments by 10-24-80

Indian Affairs Bureau—

62151, 62154 9-18-80 / Procedures for preparation, certification, and approval of a membership roll of Delaware Indians of western Oklahoma; comments by 10-20-80 (2 documents)

INTERSTATE COMMERCE COMMISSION

63012 9-23-80 / Railroad consolidation procedures; comments by 10-23-80

LABOR DEPARTMENT

Mine Safety and Health Administration—

56312 8-22-80 / Definition of signaling device, removal of design restriction requirement; comments by 10-21-80

56308 8-22-80 / Electrical components and headlights for mobile diesel-powered transportation equipment; comments by 10-21-80

Wage and Hour Division, Employment Standards Administration—

63880 9-26-80 / Service Contract Act; labor standards for Federal service contracts; comments extended to 10-24-80

[*See also* 44 FR 77036, 12-28-79; 45 FR 34877, 5-23-80; 45 FR 42332, 6-24-80; 45 FR 49628, 7-25-80]

SECURITIES AND EXCHANGE COMMISSION

64599 9-30-80 / Proposed increase in filing fee for associated persons of nonmember broker-dealers and automation of SECO examination; comments by 10-24-80

SMALL BUSINESS ADMINISTRATION

55468 8-20-80 / Clarification of eligibility for Section 8(a) Program; comments by 10-20-80

55468 8-20-80 / Proposed changes to regulations governing Small Business Investment Company Program; comments by 10-20-80

TRANSPORTATION DEPARTMENT

Coast Guard—

48826 7-21-80 / Puget Sound Vessel Traffic Service Area; comments by 10-20-80

48827 7-21-80 / Tank vessel operations-Puget Sound; comments by 10-20-80

Federal Aviation Administration—

59295 9-8-80 / Operations review program; comments by 10-23-80

Federal Highway Administration—

56355 8-25-80 / Forest highways; administration and construction provisions; comments by 10-24-80

55763 8-21-80 / Selection of pavement type; comments by 10-20-80

TREASURY DEPARTMENT

Customs Service—

55474 8-20-80 / U.S. and Canada in-transit truck procedures; comments by 10-20-80

Internal Revenue Service—

55764 8-21-80 / Administrative summonses, comments by 10-20-80

VETERANS ADMINISTRATION

56082 8-22-80 / Confidentiality of certain medical records; Proposed regulatory development; comments by 10-21-80

WAGE AND PRICE STABILITY COUNCIL

63462 9-24-80 / Anti-inflationary price standards; interim rules; comments by 10-20-80

Next Week's Meetings

AGRICULTURE DEPARTMENT

Agricultural Marketing Service—

59605 9-10-80 / Hop Marketing Advisory Board, Portland, Oregon (open), 10-14-80

Science and Education Administration—

63894 9-26-80 / Joint Council on Food and Agricultural Sciences Arlington, Va. (open), 10-14 through 10-16-80

63894 9-26-80 / Joint Council on Food and Agricultural Sciences, Executive Committee, Arlington, Va. (open), 10-14 through 10-14-80

ARTS AND HUMANITIES, NATIONAL FOUNDATION

63925 9-26-80 / Humanities Panel meetings, Washington, D.C. (closed), 10-17 and 10-18-80

64307 9-29-80 / Music Panel (Solo Recitalists), Washington, D.C. (closed), 10-15 and 10-16-80

64770 9-30-80 / Opera Musical Theatre Panel, Washington, D.C. (partially open), 10-15-80

CIVIL RIGHTS COMMISSION

64226 9-29-80 / Georgia Advisory Committee, Atlanta, Ga. (open), 10-17-80

61652 9-17-80 / Indiana Advisory Committee, Michigan City, Mich. (open), 10-14-80

64226 9-29-80 / New Hampshire Advisory Committee, Bedford, N.H. (open), 10-16-80

COMMERCE DEPARTMENT

Census Bureau—

62869 9-22-80 / Census Advisory Committee on the Black Population for the 1980 Census, Suitland, Md. (open), 10-14-80

COMMERCE DEPARTMENT

International Trade Administration—

65009 10-1-80 / Computer Systems Technical Advisory Committee, Washington, D.C. (partially closed), 10-16-80

64614 9-30-80 / Computer Systems Technical Advisory Committee, Hardware Subcommittee, Washington, D.C. (partially open), 10-15-80

64614 9-30-80 / Computer Systems Technical Advisory Committee, Licensing Procedures Subcommittee, Washington, D.C. (open), 10-15-80

National Oceanic and Atmospheric Administration—

62871 9-22-80 / Mid-Atlantic Fishery Management Council, Phiadelphia, Pa. (open), 10-15 and 10-16-80

63896 9-26-80 / New England Fishery Management Council, Scientific and Statistical Committee, Boston, Mass. (open), 10-15-80

63309 9-24-80 / Reduction of sea turtle mortality in southeastern U.S. waters, Richmond Hill, Ga. (open), 10-16-80

64227 9-29-80 / Regional Fishery Management Council Executive Directors, San Juan, Puerto Rico (open), 10-18-80

Office of the Secretary—

52859 8-8-80 / Conference on U.S. International Standardization, Testing, Certification and Related Matters, and their Implications under Trade Agreements Act of 1979, Washington, D.C. (open), 10-15 and 10-16-80

DEFENSE DEPARTMENT

Air Force Department—

63328 9-24-80 / Scientific Advisory Board, Hanscom AFB, Mass. (closed), 10-17 and 10-18-80

Office of the Secretary—

62177 9-18-80 / DOD Advisory Group on Electron Devices, Arlington, Va. (closed), 10-15-80

51890 8-5-80 / Defense Intelligence Agency Advisory Committee, Washington, D.C. (closed), 10-16 and 10-17-80

57163 8-27-80 / Defense Science Board Task Force on Anti-Tactical Missiles; Huntsville, Ala. (closed), 10-17 and 10-18-80

58933 9-5-80 / Defense Systems Management College, Board of Visitors, Fort Belvoir, Va. (open), 10-16-80

56381 8-25-80 / Wage Committee, Washington, D.C. (closed), 10-14-80

EDUCATION DEPARTMENT

63045 9-23-80 / Indian Education National Advisory Council, Dallas, Texas (open), 10-17 through 10-19-80

ENERGY DEPARTMENT

64232 9-29-80 / Environmental Advisory Committee and Synfuels Subcommittee, Denver, Colo. (open), 10-15 through 10-17-80

62192 9-18-80 / Fossil Energy Advisory Committee, Grand Forks, N.D. (open), 10-15-80

65026 10-1-80 / National Petroleum Council, Refinery Flexibility Committee, Coordinating Subcommittee, Washington, D.C. (open), 10-15-80

Federal Energy Regulatory Commission—

62191 9-18-80 / Idaho Power Co. project environmental impact scoping meeting, Boise, Idaho (open), 10-17-80

64238 9-29-80 / Revision of Rules of Practice and Procedure Advisory Committee; Review of Commission Decisional Process Subcommittee, Washington, D.C. (open), 10-14-80

ENVIRONMENTAL PROTECTION AGENCY

64244 9-29-80 / Science Advisory Board, Innovative/Alternative Wastewater Technologies Subcommittee, Washington, D.C. (open), 10-14 and 10-15-80

FEDERAL COMMUNICATIONS COMMISSION

63546 9-25-80 / AM Broadcasting in Region 2 Advisory Committee, Reorganization Meeting and Organizational Meetings of the Technical and Allocations Subgroups, Washington, D.C. (open), 10-14-80

65036 10-1-80 / Radio Technical Commission for Marine Services, Washington, D.C. (open), 10-15-80

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

63137 9-23-80 / Meeting, Washington, D.C. (open), 10-16-80

Fine Arts Commission

64863 11-8-79 / Meeting, Wash., D.C. (open), 10-14-80

HEALTH AND HUMAN SERVICES DEPARTMENT

Alcohol Drug Abuse and Mental Health Administration—

62549 9-19-80 / Alcohol Human Resource Development Review Committee, Rockville, Md. (partially open) 10-16-80, (closed) 10-17-80

62549 9-19-80 / Community Alcoholism Services Review Committee, Rockville, Md. (partially open) 10-15, (closed) 10-16 through 10-20-80

62549 9-19-80 / Community Processes and Social Policy Review Committee, Washington, D.C. (partially open) 10-16-80, (closed) 10-17 and 10-18-80

Center for Disease Control—

62905 9-22-80 / Immunization Practices Advisory Committee, Atlanta, Ga. (open), 10-15 and 10-16-80

Food and Drug Administration—

61368 9-16-80 / Consumer participation, San Francisco, Calif. (open), 10-14-80

Health Resources Administration—

58208 9-2-80 / Health Careers Opportunity Program, grant orientation conference; Boston, Mass. (open), 10-16 and 10-17-80

63552 9-25-80 / National Council on Health Planning and Development, Agenda Planning Subcommittee, New York, N.Y. (open), 10-17-80

Human Development Services Office—

65045 10-1-80 / White House Conference on Aging; Technical Committee on Health Services, Washington, D.C. (open), 10-14-80

National Institutes of Health—

59206 9-8-80 / Aging National Advisory Council, Bethesda, Md. (partially open), 10-15 through 10-17-80

59207 9-8-80 / Arthritis, Metabolism, and Digestive Diseases National Advisory Council, Bethesda, Md. (partially open), 10-15 through 10-17-80

59205 9-8-80 / Biophysics and Biophysical, Chemistry A Study Section, Bethesda, Md. (partially open), 10-17 through 10-19-80

62561 9-19-80 / Cancer Control Grant Review Committee, Bethesda, Md. (partially open) 10-13-80, (closed) 10-14-80

59207 9-8-80 / General Medical Sciences National Advisory Council, Bethesda, Md. (partially open), 10-16 and 10-17-80

59205 9-8-80 / Hematology Study Section, Chevy Chase, Md. (partially open), 10-16 through 10-18-80

63145 9-23-80 / National Advisory Research Resources Council, Atlanta, Ga. (open and closed), 10-15 through 10-17-80

59205 9-8-80 / Reproductive Biology Study Section, Augusta, Ga. (partially open), 10-15 and 10-16-80

59205 9-8-80 / Social Sciences and Population Study Section, Washington, D.C. (partially open), 10-17 through 10-19-80

59205 9-8-80 / Surgery, Anesthesiology and Trauma, Bethesda, Md. (partially open), 10-17 and 10-18-80

59205 9-8-80 / Surgery and Bioengineering Study Section, Washington, D.C. (partially open), 10-16 and 10-17-80

Public Health Service—

65046 10-1-80 / Health Care Technology National Council, Criteria and Research Agenda Subcommittee, New York, N.Y. (open), 10-17-80

62548 9-19-80 / Health Services Research Review Subcommittee, Washington, D.C. (partially open) 10-16-80, (closed) 10-17-80

61371 9-16-80 / National Toxicology Program Board of Scientific Counselors, Bethesda, Md. (open), 10-15 through 10-17-80

HISTORIC PRESERVATION ADVISORY COUNCIL

63892 9-26-80 / Boylan Avenue Bridge replacement, Raleigh, N.C. (open), 10-14-80

INTERIOR DEPARTMENT

Land Management Bureau—

55536 8-20-80 / Baker District Advisory Council, Baker, Oreg. (open), 10-16-80

65335 10-2-80 / Battle Mountain District Advisory Council, Battle Mountain, Nev. (open), 10-15-80

64271 9-29-80 / Coos Bay District Multiple Use Advisory Council (Field Tour), Coos Bay, Oreg., 10-16-80

62911 9-22-80 / Couer d'Alere District Multiple Use Advisory Council, St. Maries, Idaho (open), 10-16 and 10-17-80

60028 9-11-80 / Miles City District Advisory Council, Miles City, Mont. (open), 10-16-80

62209 9-18-80 / Outer Continental Shelf Advisory Board, North Atlantic Technical Working Group, Somerville, Mass. (open), 10-15 and 1-16-80

65682 10-3-80 / Rocky Mountain Pipeline (proposed) Project, scoping meetings, Hone Pine, Calif. and Tonapah, Nev. (open), 10-14 through 10-16-80

58982 9-5-80 / Roseburg District Advisory Council, Roseburg, Oreg. (open), 10-16-80

58982 9-5-80 / Shoshone District Advisory Council, Shoshone, Idaho (open), 10-17-80

57554 8-28-80 / Vale District Multiple Use Advisory Council, Vale, Oreg. (open), 10-17-80

National Park Service—

65683 10-3-80 / Chesapeake and Ohio Canal National Historical Park Commission, Poolesville, Md. (open), 10-18-80

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development—

61801 9-17-80 / Joint committee for agricultural development of the board for International Food and Agricultural Development (open):

10-14-80, Washington, D.C. and Arlington, Va.

10-15-80, Arlington, Va.

61801 9-17-80 / Joint Research Committee of the board for International Food and Agricultural Development, Rosslyn, Va. (open), 10-14-80

JUSTICE DEPARTMENT

Justice Assistance Research, and Statistics—

64762 9-30-80 / Criminal Justice National Minority Advisory Council, Washington, D.C. (open), 10-16 through 10-18-80

LABOR DEPARTMENT

Employment and Training Administration—

61396 9-16-80 / Unemployment Insurance Federal Advisory Council, Wash., D.C. (open), 10-16 and 10-17-80

Labor Statistics Bureau—

63979 9-26-80 / Business Research Advisory Council, Washington, D.C. (open), 10-14 and 10-15-80

METRIC BOARD

65088 10-1-80 / Public forum, Columbus, Ohio (open), 10-16-80

NATIONAL SCIENCE FOUNDATION

63580 9-25-80 / Engineering and Applied Science Advisory Committee, Washington, D.C. (open), 10-13-80

61053 9-15-80 / Environmental Biology Advisory Committee, Population Biology and Physiological Ecology Subcommittee, Washington, D.C. (closed), 10-16 and 10-17-80

64771 9-30-80 / Ocean Sciences Advisory Committee, Manganese Nodule Project Ad Hoc Subcommittee, La Jolla, Calif. (closed), 10-16 and 10-17-80

59460 9-9-80 / Physiology, Cellular and Molecular Biology Advisory Committee, Developmental Biology Subcommittee, Wash., D.C. (closed), 10-15 through 10-17-80

59460 9-9-80 / Physiology, Cellular and Molecular Biology Advisory Committee, Molecular Biology Subcommittee Group A, Wash., D.C. (closed), 10-16 and 10-17-80

59460 9-9-80 / Physiology, Cellular and Molecular Biology Advisory Committee, Regulatory Biology Subcommittee, Wash., D.C. (closed), 10-8 through 10-10-80

62231 9-18-80 / Subcommittee for the Linguistics Program of the Advisory Committee for Behavioral and Neural Sciences, Washington, D.C. (closed), 10-16 and 10-17-80

NUCLEAR REGULATORY COMMISSION

59232 9-8-80 / Sand Rock Mill Project scoping meeting, Casper, Wyo. (open), 10-16-80

PERSONNEL MANAGEMENT OFFICE

64774 9-30-80 / Commission on Executive, Legislative, and Judicial Salaries, Washington, D.C. (open), 10-15-80

[Time rescheduled at 45 FR 65749, 10-3-80]

SMALL BUSINESS ADMINISTRATION

61061 9-15-80 / Region I Advisory Council, Concord, N.H. (open), 10-15-80

58283 9-2-80 / Region IV Advisory Council, Buchanan, Tenn. (open), 10-15-80

64313 9-29-80 / Region V Advisory Council, Columbus, Ohio (open), 10-16-80

65102 10-1-80 / Region VII Advisory Council, Wichita, Kans. (open), 10-17-80

61061 9-15-80 / Region VIII Advisory Council, Denven, Colo. (open), 10-15-80

65102 10-1-80 / Region VIII Advisory Council, Salt Lake City, Utah (open), 10-17-80

63203 9-23-9-80 / Region VIII—Advisory Council, Sioux Falls, S.D. (open), 10-17-80

58283 9-2-80 / Region IX Advisory Council, Las Vegas, Nev. (open), 10-16-80

61845 9-17-80 / Region IX Advisory Council, Los Angeles, Calif. (open), 10-14-80

65102 10-1-80 / Region X Advisory Council, Anchorage, Alaska (open), 10-17-80

63597 9-25-80 / Region X Advisory Council, Seattle, Washington (open), 10-16-80

STATE DEPARTMENT

Office of the Secretary—

62949 9-22-80 / Advisory Committee to the U.S. National Section of the International Commission for the Conservation of Atlantic Tunas, Washington, D.C. (closed), 10-15 and 10-16-80

63409 9-24-80 / International Investment, Technology, and Development Advisory Committee, Washington, D.C. (open), 10-14-80

63987 9-26-80 / Shipping Coordinating Committee, Washington, D.C. (open) 10-16-80

VETERANS ADMINISTRATION

65396 10-2-80 / Central Office Education and Training Review Panel, Washington, D.C. (open), 10-16-80

61845 9-17-80 / Medical Research Service Merit Review Boards, Washington, D.C. (partially open), 10-17-80

59470 9-9-80 / Wage Committee, Washington, D.C. (closed), 10-16-80

Next Week's Public Hearings

ENERGY DEPARTMENT

Economic Regulatory Administration—

58871 9-5-80 / Mandatory Petroleum Price Regulations; retroactive amendments to "V" factor of refiner cost allocation formulae, Wash., D.C., 10-16-80

ENVIRONMENTAL PROTECTION AGENCY

58383 9-3-80 / Inorganic chemicals manufacturing point source category , Washington, D.C., 10-15-80

INTERIOR DEPARTMENT

Indian Affairs Bureau—

63361 9-24-80 / Ute Mountain proposed strip coal mine, Towaoc, Colo., 10-16-80

TRANSPORTATION DEPARTMENT

Federal Highway Administration—

64337 9-29-80 / Highway Cost Allocation Study, Washington, D.C., 10-17-80

TREASURY DEPARTMENT

Internal Revenue Service—

58143 9-2-80 / Voluntary employee's beneficiary associations, Washington, D.C., 10-14-80

VETERANS ADMINISTRATION

61422 9-16-80 / Educational Allowances Station Committee, Hato Rey, Puerto Rico, 10-14-80

List of Public Laws

Last Listing October 7, 1980

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

H.R. 5192 / Pub. L. 96-374 Education Amendments of 1980. (Oct. 3, 1980; 94 Stat. 1367) Price $4.00

H.R. 5278 / Pub. L. 96-375 To authorize the Secretary of the Interior to engage in feasibility investigations of certain water resource developoments, and for other purposes. (Oct. 3, 1980; 94 Stat. 1505) Price $1.00.

S. 2489 / Pub. L. 96-376 To authorize appropriations for the Coast Guard for fiscal year 1981, to authorize supplemental appropriations for fiscal year 1980, and for other purposes. (Oct. 3, 1980; 94 Stat. 1509) Price $1.00.

H.R. 7478 / Pub. L. 96-377 To facilitate the management of the public debt by permitting an increase in the investment yield on United States savings bonds above the existing 7 per centum ceiling, and by increasing the amount of the bonds paying interest in excess of 4¼ per centum which may be outstanding. (Oct. 3, 1980; 94 Stat. 1512) Price $1.00.

H.R. 5164 / Pub. L. 96-378 To amend certain inspection and manning laws applicable to small vessels carrying passengers or freight for hire, and for other purposes. (Oct. 6, 1980; 94 Stat. 1513) Price $1.00.

S. 1895 / Pub. L. 96-379 To change the name of the Los Esteros Dam (New Mexico) to the Santa Rosa Dam and Lake, and to designate Clark Hill Dam and Lake on the Savannah River, Georgia and South Carolina, as "Clarks Hill Dam and Lake". (Oct. 6, 1980; 94 Stat. 1520) Price $1.00.

H.R. 6242 / Pub. L. 96-380 To establish a Towing Safety Advisory Committee in the Department of Transportation. (Oct. 6, 1980; 94 Stat. 1521) Price $1.00.

S. 1123 / Pub. L. 96-381 To amend section 204 of the Marine Protection, Research and Sanctuaries Act of 1972 to authorize appropriations for title II of such Act for fiscal year 1980. (Oct. 6, 1980; 94 Stat. 1523) Price $1.00.

H.R. 3748 / Pub. L. 96-382 To provide for a uniform national three-year statute of limitations in actions to recover damages for personal injury or death, arising out of a maritime tort, and for other purposes. (Oct. 6, 1980; 94 Stat. 1525) Price $1.00.

H.R. 8018 / Pub. L. 96-383 To rename a reservior and dam in the Little Miami River Basin, Ohio, as the "William H. Harsha Lake" and the "William H. Harsha Dam". (Oct. 3, 1980; 94 Stat. 1526) Price $1.00.

H.R. 8024 / Pub. L. 96-384 To change the name of Aubrey Lake, Texas, to Ray Roberts Lake. (Oct. 6, 1980; 94 Stat. 1527) Price $1.00.

Documents Relating to Federal Grant Programs

This is a list of documents relating to Federal grant programs which were published in the **Federal Register** during the previous week.

RULES GOING INTO EFFECT

64936 10-1-80 / CSA Board and Committees of Title II Programs; amendment to final rule; effective 10-1-80

64940 10-1-80 / CSA—Cost principles; grantee financial management; effective 10-31-80

64926 10-1-80 / CSA—Index and applicability of CSA regulations; effective 10-1-80

DEADLINES FOR COMMENTS ON PROPOSED RULES

64472 9-29-80 / Interior/BIA—Special education, Indian Children; comments by 11-29-80

APPLICATIONS DEADLINES

65724 10-2-80 / ED—Program of Research Grants on Desegregation Studies; apply by 11-25-80 for small grants in elementary/secondary and higher education desegregation; preapply by 11-25-80 and 4-1-81 and apply by 4-1 and 9-17-81 for major grants in elementary/secondary and higher education desegregation respectively

64253 9-29-80 / HHS/HRA—Dental team practice grants; apply by 11-14-80

64711 9-30-80 / HUD/CPD—Community Development Block Grant Programs for Indian tribes and Alaskan Natives; applications by: Region V, 4-27-81; Region VI, 1-12-81; Region VIII, 11-17-80; Region IX, 10-15-80; Region X, 3-2-81; Alaska, 11-17-80

65319 10-2-80 / HUD/CPD—Small Cities Program under Community Development Block Grants Program; preapplication deadlines for various regions 9-22-80 through 1-12-81

MEETINGS

65316 10-2-80 / HHS/NIH—Cellular and molecular basis of disease Review Committee, Bethesda, Md. (partially open), 11-18-80

64270 9-29-80 / HHS/NIH—Clinical Applications and Prevention Advisory Committee, Bethesda, Md. (partially open), 11-6 and 11-7-80

64270 9-29-80 / HHS / NIH—Communicative Disorders Review Committee, Bethesda, Md. (partially open), 10-30 and 10-31-80

64270 9-29-80 / HHS/NIH—Neurological Disorders Program—Project Review A Committee, Bethesda, Md. (partially open), 11-9 through 11-11-80

64271 9-29-80 / HHS/NIH—Neurological Disorders Program—Project Review B Committee, Cincinnati, Ohio (partially open), 11-7 through 11-9-80

65317 10-2-80 / HHS/NIH—Maternal and Child Health Research Committee, Bethesda, Md. (partially open), 11-18 and 11-19-80

65317 10-2-80 / HNS/NIH—Mental Retardation Research Committee, Bethesda, Md. (partially open), 11-19 and 11-20-80

65318 10-2-80 / HHS/NIH—Pharmacological Sciences Review Committee, Bethesda, Md. (partially open), 11-20 and 11-21-80

65319 10-2-80 / HHS/NIH—Research Manpower Review Committee, Bethesda, Md. (partially open), 10-27 through 10-31-80

64307 9-29-80 / NFAH—Music Panel (Solo Recitalists), Washington, D.C. (closed), 10-15 and 10-16-80

64770 9-30-80 / NFAH—Opera Musical Theatre Panel, Washington, D.C. (open and closed), 10-15 and 10-16-80

64770 9-30-80 / NSF—Advisory Committee for Engineering and Applied Science; Subcommittee for Earthquake Hazards Mitigation, Washington, D.C. (open), 10-23 and 10-24-80

64771 9-30-80 / NSF—Advisory Committee for Mathematical and Computer Sciences; Subcommittee for Computer Science, Washington, D.C. (open and closed), 10-20 thru 10-22-80

64771 9-30-80 / NSF—Advisory Committee for Ocean Sciences; Ad Hoc Subcommittee on the Manganese Nodule Project, La Jolla, Calif. (closed), 10-16 and 10-17-80

64771 9-30-80 / NSF—Advisory Committee for Social and Economics Science; Subcommittee for Sociology, Washington, D.C. (closed), 10-30 and 10-31-80

64772 9-30-80 / NSF—DOE/NSF Nuclear Science Advisory Committee Subcommittee on Computational Capabilities for Nuclear Theory, Germantown, Md. (open), 11-5-80

65706 10-3-80 / NSF—Physics Advisory Committee, Washington, D.C. (open), 10-23 through 10-25-80

65706 10-3-80 / NSF—Policy Research and Analysis, and Science Resources Studies, Environment, Energy and Resources Subcommittee, Washington, D.C. (open), 10-22-80

65706 10-3-80 / NSF—Social Sciences Advisory Committee, Economic Subcommittee, Washington, D.C. (closed), 11-7 and 11-8-80

OTHER ITEMS OF INTEREST

64314 9-29-80 / DOT/FAA—Airport development aid program/Revised apportionment of funds authorized for the continued development of the Nation's Airports for Fiscal Year 1980

65042 10-1-80 / HHS—Retirement Policy Study; grant award announcement

65368 10-2-80 / LSC—Announcement of receipt of grant application from Fresno-Merced Counties Legal Services

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